

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 29<sup>th</sup> July 2015

The House met at 2.30 p.m.

*[The Deputy Speaker  
(Dr.) Laboso in the Chair]*

### PRAYERS

### PAPERS LAID

**Hon. A.B. Duale:** Sorry, Hon. Deputy Speaker, Hon. Alfred Keter was giving me some documents.

Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today, Wednesday 29<sup>th</sup> July 2015:-

The Report of the Auditor-General on the Financial Statements of New Kenya Cooperative Creameries Limited for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya Forest Service for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya Year Book Editorial Board for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Kajiado South Constituency) for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya Nuclear Electricity Board for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Parliamentary Service Commission for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Independent Electoral and Boundaries Commission (IEBC) for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of National Cohesion and Integration Commission for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

**Hon. Deputy Speaker:** The Leader of the Majority Party, it would also be in the interest of this House--- There is an Auditor-General Report that is widely circulating in the media; has it been tabled in this House?

**Hon. A.B. Duale:** I tabled that Report yesterday and I think media houses have picked copies from Room 8. So, it is in order.

**Hon. Deputy Speaker:** So, it is before this House?

**Hon. A.B. Duale:** Yes.

**Hon. Deputy Speaker:** What about the Chairperson of the Committee on Environment and Natural Resources? Well, you are supposed to be tabling some two reports. Is that the Vice-Chair of the Committee on Labour and Social Welfare? Go ahead.

**Hon. (Ms.) T. G. Ali:** Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:-

The Report of the Departmental Committee on Labour and Social Welfare on:-

(i) Sessional Paper No. 2 of 2013 on the National Industrial Training and Attachment Policy; and,

(ii) Sessional Paper No. 2 of 2014 on the National Social Protection Policy.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** The Chair of Environment and Natural Resources Committee or the Vice-Chair or a Member who has been designated to do so.

**Hon. (Ms.) R.N. Wanyonyi:** Thank you, Hon. Deputy Speaker. I beg to lay the following Paper on the Table of the House today, Wednesday, 29<sup>th</sup> July 2015:-

The Report of the Departmental Committee on Environment and Natural Resources on the Petition regarding the degazettement of Legal Notice No.29 of 2013 on the declaration of Wayu as a forest area.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Next Order!

## PROCEDURAL MOTION

### APPROVAL OF MORNING SITTINGS

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

THAT, pursuant to the provisions of Standing Order 30(3)(b), this House resolves to hold sittings on Thursdays Morning commencing at 9.30 a.m. to 1.00 p.m. as follows:-

- (i) Thursday 30<sup>th</sup> July 2015;
- (ii) Thursday 6<sup>th</sup> August 2015;
- (iii) Thursday 20<sup>th</sup> August 2015; and
- (iv) Thursday 27<sup>th</sup> August, 2015.

The House is scheduled to proceed for a long recess in four weeks time in accordance with the calendar of the House. This translates to nine sittings, and these sittings on Thursday have been proposed so that we have a morning sitting starting tomorrow to clear the huge business backlog that we have.

Following the Speaker's Communication yesterday our Parliament will be hosting the 46<sup>th</sup> CPA, Africa Region, Conference between 9<sup>th</sup> and 15<sup>th</sup> August, 2015. The House will not have any sitting during that duration in order to allow Members to actively engage in the conference. This will be to allow Members to participate in the various meetings and interact with their colleagues from Commonwealth countries in Africa. Currently, before the House there are more than 35 Bills, both Government and Private Members' Bills at various stages. We have the Finance Bill which must be concluded within 90 days from the time the Budget was read. We have a number of committee reports and, above all, we have close to 15 Bills from the Senate. We thus want to allocate them Thursday morning, if the House agrees to this Motion.

On Thursday morning, we will deal with committee reports, including the famous Deputy President Jet Report, on which the Chair of the Public Accounts Committee has sought the guidance of the House Business Committee (HBC). We will also deal with Bills from the Senate and committee reports. At the same time, during the CPA session we agreed last night in the HBC that the committees will continue with their meetings, so that they also complete a number of pending reports. This was the decision of the HBC last night.

I will ask Hon. Jakoyo Midiwo who is the Minority Deputy Leader to second.

**Hon. Midiwo:** Thank you, Hon. Deputy Speaker. I rise to second. I do not quite think there is anything controversial in the Motion. We just want to seek the indulgence of the Members. The Leader of the Majority Party has explained that our plate is full and we have a CPA Conference upcoming. We want to participate, but also do our duty as the National Assembly. So, we are adding Thursday morning sittings because we want to deal with a lot of Motions from committees, and also Private Members' Bills. So, we are going to basically clear our table.

With those few remarks, I second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Deputy Speaker:** There is a point of order by Hon. Jakoyo.

*(Loud consultations)*

THE 2014/2015 BUDGET IN RESPECT OF MEMBERSHIP OF  
THE BUDGET AND APPROPRIATIONS COMMITTEE

**Hon. Midiwo:** On a point order, Hon. Deputy Speaker. I was trying to catch your eye; could you protect me from noisemakers and hecklers?

**Hon. Deputy Speaker:** Order, Members! The consultations are too loud.

**Hon. Midiwo:** Hon. Deputy Speaker, there is an issue which Members of this Assembly have and we thought we needed your indulgence to seek a way forward this afternoon. It has nothing to do with what is on the Order Paper, but it has everything to do with the national Budget for 2014/2015 in respect of the membership of our Budget and Appropriations

Committee. Some things have come to the attention of this House and Members, which we need to discuss, probably in a *Kamukunji* or in a manner suggested by the Chair or the Speaker.

In our constituencies and your constituency, there have been issues of, for example, bursaries. The national bursary which has been coming to our constituencies was not forthcoming this past financial year. It has also come to our attention that constituencies of Members who sit on the Budget and Appropriations Committee have been getting some weird funding, which was concealed when we passed the Budget in this House.

(Applause)

If you talk, for example, to your District Education Officer, you will find that a neighbouring constituency, whose Member of Parliament happens to sit on the Budget and Appropriations Committee, is getting strange money for infrastructure; they got Kshs15 million or Kshs20 million for roads and even ECD, which is a county governments affair. I raised this issue here some months ago and a ruling was made when the Budget and Appropriations Committee was trying to give itself money in the current Budget which we thought was unconstitutional and not in their mandate. I have come to find out that what I was trying to prevent had occurred in the last financial year. So, in our constituencies, there are no activities, but in the constituencies of these Members there are some activities involving millions of shillings. We need to talk so that we do not embarrass the Committee. I think something of a criminal nature is taking place as we watch.

This House cannot be involved in a process that discriminates against some Members of the National Assembly. Our role, as the National Assembly, is to negotiate the Budget. That is how you do it in the new dispensation, but not negotiate it for yourself. In the Financial Year 2015/2016, this House, in its wisdom, prevented the Budget and Appropriations Committee from allocating itself about Kshs3 billion for some unknown events which they were calling “public hearing”. They refused to explain and the substantive Speaker then made a ruling. They do not have power. So, we need to investigate what happened in the Financial Year 2014/2015. I need to know and my people need to know why bursaries did not come. They need to know why constituencies of these Members are getting Kshs40 million for infrastructure. They are getting Kshs15 million per school for the ECD. If you look at the details, there is even money for free feeding in primary schools. I do not know which Member’s school children are being fed for free. This cannot be the role of the National Assembly.

I want to request that we convene a *Kamukunji* so that this does not happen as we watch; we will have done right for our constituents.

**Hon. Deputy Speaker:** I think you have made the right recommendation, Hon. Jakoyo so that we can discuss this as Members of the National Assembly. A *Kamukunji* situation would, in my view, be a better place for us to air out all the matters, and the other Members will also get a right of reply. We should not appear to be casting aspersions on each other in the full view of cameramen. If there is evidence and facts, we can do that in a *Kamukunji* situation.

Hon. Members, let us leave it at that. Between the Leader of the Majority Party, the Leader of the Minority Party and the speakership, we can see if that *Kamukunji* can be organised as soon as possible in the course of either this week or next week, so that these matters can then be ventilated in full. Let us leave it at that. I have said that they are very grave matters; if it is

true that that is happening, we need to do something about it. But let us get the full facts and speak to one another in a *Kamukunji* situation.

Allow us to move on to the next Order. That is why I said that between the Majority and the Minority Leaders and the Whips, let us agree on a good day and time for us to have a *Kamukunji*. It should not be a long one, if this is the only matter to be discussed; it should not take us a whole morning.

Next Order!

## BILL

### *Second Reading*

#### THE COMPANIES BILL

*(Hon. Chepkong'a on 8.7.2015)*

*(Resumption of Debate interrupted on 28.7.2015)*

This is resumption of debate and Hon. George Omondi was on the Floor in the debate on the Companies Bill.

**Hon. G.W. Omondi:** Thank you, Hon. Deputy Speaker. I was on the Floor when I was stopped to discuss the great man's visit. From where I left, I was saying that this Bill tries to modernise and overhaul the current Companies Act. One area that this Bill is handling adequately is corporate governance.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Members! The consultations are loud.

**Hon. G.W. Omondi:** Hon. Deputy Speaker, Part XXV, Division 9, requires the director's remuneration report to be approved by the members. These are some of the areas which have caused problems in companies and brought about poor governance and failure by companies. In essence, it is a general requirement throughout the clauses of this Bill for directors to provide detailed information about what they have acquired from the company, including dealings in shares in public quoted companies. This is going to prevent the use of inside information for one to benefit unfairly.

Finally, Clause 771(1)(a) of the Bill establishes an audit committee to set out corporate governance principles and Clause 771(2)(a) and (b) categorically states that:-

“The audit committee of the quoted company is responsible for-

- (a) organising the company to promote the effective and prudent management of the company and the directors oversight of that management”.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Members! There are too many Members who are standing on the corridors.

**Hon. G.W. Omondi:** Hon. Deputy Speaker, the next requirement for this audit committee is to establish standards of business conduct and ethical behaviour of the directors, managers and other personnel of the company. This will include policies for private transactions that involve the company's employees like directors, managers, those who trade with the company and other transactions or practices which are not at an arm's length. This in essence will entrench corporate governance in our companies.

Part XXX of the Bill introduces a requirement that the affairs of the company could be investigated. Before, we would wait until a whole load is carried out to discover what a company is doing. This Part XXX now requires that a company could be investigated either by its members or by the Attorney-General (AG). Specifically, Clause 787(1)(a)(i) and (ii) provide that some members of the company could go to court and request that the affairs of the company be investigated. Clause 788(1) provides that the Attorney-General can, by a resolution of the company, order that a company's affairs be investigated. This is different from what has been happening. It is in this context that I am saying that this is overhauling and modernising the existing company law. At Clause 801(1), Division, there is a requirement that this Bill intends to introduce into companies law, if it is passed by this House.

This Bill also intends to introduce a requirement in terms of the circulation of information on companies. It provides that the information of a company can be provided through electronic means. One of the problems that we have been having is relying on written copies which are given to the members. This Bill, at Clauses 272, 273, 282, 315 and 316 provides that company information can be provided through electronic means and can also be put on a website. This will facilitate faster business transactions, something which was not there before.

This Bill also intends to bring flexibility in a company. The current Act provides that you form a company if you are more than one. This Bill introduces a situation where we can have a one-member limited company. Part XII, Clause 244, provides that a private company can have one member as the owner and can enjoy limited liability benefits. Secondly, that clause also provides that a private company need not have a company secretary. One of the problems that have dragged entrepreneurs back is this requirement that you need to have a company secretary. This drains a company's resources.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Hon. Members! Your consultations are too loud. Please, look for an appropriate place to consult.

**Hon. G.W. Omondi:** Hon. Deputy Speaker, this clause of the Bill provides that companies which have a capital of Kshs5 million or below can do self filing of secretarial matters at the Companies Registry. This will encourage individuals to go ahead and form their companies because expenses have been reduced.

Finally, Clause 779(1) is on the approval of foreign qualified accountants. I think there should be an amendment to this clause, which I am going to bring; it gives the mandate to approve foreign accountants or auditors to the Cabinet Secretary. I recommend that it should be done with the recommendation of the Institute of Certified Public Accountants of Kenya. They should give recommendations to the Cabinet Secretary on the qualifications of foreign professionals. I will be bringing an amendment to this clause at the Committee Stage of this Bill.

Otherwise, I support it.

**Hon. Deputy Speaker:** Engineer Gumbo.

**Hon. (Eng.) Gumbo:** Hon. Deputy Speaker, thank you so much for giving me the opportunity to contribute to this Bill.

As I contribute, allow me to start by thanking the Departmental Committee on Justice and Legal Affairs for having done a fairly good job in going through this Bill. As you know, this Bill is very voluminous. Those who have endeavoured to go through it know that it is a fulltime job. The Bill has 804 pages, 1,027 clauses, 42 parts and each part is divided into several divisions. It is one of what you would call an abnormal Bill. In that context, I thank the House for moving a Procedural Motion, because those of us who have endeavoured to take their time to go through the Bill felt that confining the debate to 10 minutes, as is the norm here, would have denied us an opportunity to exhaustively discuss the Bill.

I have noticed that in their Report, the Departmental Committee on Justice and Legal Affairs propose just about 30 amendments which, in my view, do not capture some of the inconsistencies that are in the Bill. There are quite a number of errors, inaccuracies, incorrect paragraphing and incorrect cross-referencing in so many places in the Bill. Before I get into the gist of my discussion, I just wish to point out that having gone through the Bill, I have noticed quite a few inaccuracies in Clauses 26, 62, 173, 242, 331, 349, 748, 520, 526, 547, 550, 598, 607, 618, 655, 678, 711, 715, 744, 763, 829 (4), 903 (1) and (2), 926 (1), 944, 952 (a), 955, 102 and 104.

Even more importantly, I would request that as we move into the Committee Stage, the Departmental Committee on Justice and Legal Affairs, working together with some of us who have taken time to look at this Bill, may want to look at the arrangement of parts and clauses. In my view, Part V, which is on the name of the company, should come before Part II, which refers to companies and company formation. This, in my view, should be followed by Part III which refers to the company's constitution, which in turn should be followed by Part XXXI on registration of companies and company documents. The normal order of doing things is to name the company, form the company, write the company constitution, register the company and then register the company documents. I am also of the view that Part VIII, which is on the exercise of rights by members should be followed by Part XXIX, which is on the protection of members against oppressive conduct and unfair prejudice. Once you give people rights it is only natural that you safeguard those rights. That would provide for protecting the members against oppressive conduct and unfair prejudice.

Having said that, this Bill is very important. This Bill is long overdue because as you know, the current Companies Act was a copy and paste from the British way of doing business. It is British law which was made to apply to the Kenyan situation. The Bill that we have now, in its current context, is a good attempt which should provide an enabling environment for as many Kenyans as possible to own and run companies. As I have said before, if as many Kenyans as possible are to own and run companies, then it is important that the format of drafting and text in general should be simplified as much as possible. Why do I say this? Forming and owning companies should not just be a preserve of the elite in our society. We have seen from conferences that have been going on in our country that the trend now is towards entrepreneurship. We would be enclosing ourselves in a shell in thinking that only the elite, educated and the well-to-do have a right to engage in entrepreneurship.

Clear and simplified definitions and meanings for all the terminologies used in the Bill should be provided in Clause 3. In particular, I am of the view that clear definitions should be provided for the following: “private company, private limited company, limited company, public company, public limited company and limited private company”. A clear meaning of the term “quasi-loan” should also be provided. The meaning and distinction between shares and stocks should be explained. The meaning of “nominal value of shares, equity securities, treasury shares and subscribers of memorandum” should be stated. Even simple terms like “mergers, asset, liability, share premiums, creditors, debtors, solvency statement, lien, residual interest, off-market purchase, debenture, probate, redeemable shares, perpetual debentures, trust deed, floating charge” and “convertible securities” should be clearly defined. Terms such as “squeezing” which are described in the Bill should clearly be defined as to what they mean. “Sell-out, quoted and unquoted company, publication, liability limitation agreements, unregistered companies, securities, traded companies” and distinctions between a traded company and a listed company should be very clear if we are to flatten the barriers to entry. These are terms which for professionals in management science may look obvious. However, we would be lying to ourselves if we said that only those people who have knowledge of management science and a background in business or business oriented courses should engage in entrepreneurship, company formation and ownership of companies in general.

Hon. Deputy Speaker, these terminologies should be defined, if possible in the simplest language possible devoid of all forms of jargon and grand eloquence so that the Kerubos, Naliakas, Wangaris, Achiengs, Chepkiruis, Wanjas, Wangeshis and Halimas of Kenya are not unduly scared of the business world.

Madam Speaker, I have noticed that the objective of the Bill, as it is now, is very noble. It is to facilitate commerce, industry and other socio-economic activities by enabling one or more persons to form any corporation as legal entity with perpetual succession, with or without limited liability, and to provide for the regulation of such entities in the public interest, and in particular, in the interest of their members and creditors. In my view, this facilitation must have as its primary objective not only empowering but also putting wealth in the hands of Kenyans. When we talk about putting the wealth of our country in the hands of Kenyans, it is nothing to be ashamed of. I am not aware of any country in the world which is grown by exporting its wealth to foreigners. The running theme in this Bill should be to flatten as much as possible barriers to entry to entrepreneurship, barriers to entry to ownership of businesses and companies by Kenyans.

Hon. Deputy Speaker, it is a fact that all countries that seek to grow and give their people a high quality of life start by not only empowering their citizens but also by ensuring that the bulk of wealth generated in the country remains in the hands of the citizens. I am a student of one of the greatest statesmen of our time, the Late Lee Loong of Singapore. If you look at the model that Lee Loong crafted for Singapore right at the time that it became a nation without an inter land and access to the sea, his idea of growing Singapore was to empower its people so that as much as possible of the wealth that was generated in that country remained in the hands of Singaporeans. If you look at Singapore, every citizen owns one kind of a house or another; they own property within that country. This is because they have been empowered to have total belief in themselves, and to know that whatever effort that they put in is for their betterment. That is why if we divert attention to something like this, even as we seek foreign direct investment into



our country, it should not be confused with empowering foreigners. This is because there is no country in the world which can grow by having the empowerment of foreigners at its primary agenda.

Hon. Deputy Speaker, I think as we discuss this Bill, all of us must be not only converts but also disciples of pursuit of wealth through labour, commitment, honesty, hard work and respect for the rights of fellow citizens and humanity in general. I have disputed this notion that acquiring wealth in itself can be bad. Some people tend to think that when we make our people acquire wealth that is bad. It can never be bad. Wealth acquisition for any country--- If our goals with regard to nationhood, if our goals with regard to fellow citizens are correct, wealth acquisition cannot be bad. I believe every Kenyan should be empowered to aspire to acquire wealth. What we must condemn and describe as a deadly sin is any attempt by anybody, be it a Kenyan or a foreigner living in Kenya, to acquire wealth without working. As the late Mahatma Gandhi said, wealth without work is a deadly sin.

As I have said before, this Bill is very voluminous. Having read it, I am quite happy that the Committee has done a good job. I want to thank Hon. Chepkong'a. According to me, to propose about 30 amendments to a Bill of 1027 clauses looks limiting. I would like the Committee to engage some of us who have looked at the Bill in detail to have some of the amendments we have proposed looked at very positively. It is one of those Bills you come across once in a lifetime.

Hon. Deputy Speaker, in the Committee's Report, they have captured quite a few of the views of the professionals who are interested in this. I noticed that under Clause 224, the Institute of Certified Public Secretaries of Kenya (ICPSK) has made a proposal for all companies to have a company secretary. That for me will be introducing another barrier on the path of Kenyans to owning companies. If we are to pass this amendment as proposed by the ICPSK, it will equate to erecting a barrier to Kenyans who want to pursue business. And it would definitely be inhibiting the growth of entrepreneurship in general and small companies in particular. As we go forward and look into this Bill, the proposal that wants to make it mandatory for all companies to have company secretaries is very inhibiting. We must encourage as many Kenyans as possible to embrace the spirit of entrepreneurship and to own companies. Indeed, my sense is that this recommendation by ICPSK seems aimed at achieving no more than selfish interests through expansion of relevance, which I think is rather narrow and should be rejected.

I have also noticed that in the Committee's Report, ICPSK has proposed that no person should qualify to be appointed a secretary unless that person is registered and qualified under the ICPSK Act, Chapter 534. I believe that proposal is a good one. Much as we want to seek entrepreneurship, empower our people to own companies and enterprises, I think we will be starting on a wrong footing if we throw professionalism out of the window.

I have looked at the Bill and small companies have been defined as those with a turnover of less than Kshs720 million, net assets of less than Kshs360 million and employees fewer than 50. That definition does not capture the reality in our country. Until the Kenyan Shilling started misbehaving, a company with a turnover of Kshs720 million was worth about US\$10 million.

Hon. Deputy Speaker, net assets of Kshs360 million were about US\$5 million. In the context of Kenya, to limit that definition to assets of less than Kshs360 million cannot qualify to be called small companies. That provision does not capture the realities in our country, and I will be proposing that we change that definition through an amendment, so that we look at an annual

turnover to be less than Kshs100 million, net assets less than Kshs50 million and employees earning less than Kshs30 million when we define small companies. I would want to believe that, that is the definition captured under the Small and Medium-sized Enterprises (SMEs) at the moment.

Under the same clause, the mandate given to the Capital Markets Authority (CMA) under Part XXIV, which is on company takeover, is laudable because it is wider and more acceptable as it now includes non-listed companies. If you look at the current Capital Markets Authority Act, it only extends the mandate of the CMA to listed companies. To have the CMA mandate limited only to listed companies is limiting. What it means is that we will be having two sets of laws giving CMA different mandates if we pass this law as it is. I do not think that is good. It would be good to have a harmonisation. My thinking of harmonising those two sets of laws is to amend the CMA Act, so that it captures the mandate of the CMA as provided for in this proposed Bill.

I also notice that Part XXIV of this Bill does not take particular recognition of the role of the Competition Authority of Kenya (CAK). This is a regrettable omission. It is regrettable because the role of the CAK is so important, especially when you start talking about acquisitions, takeovers and fair market practices. That is because there are times when entities engage in takeovers merely for the purpose of perpetuating unfair market practices, and so that they engage in a deliberate process to remove competition from the market. In so doing, they unnecessarily entrench unfair dominance and monopolistic tendencies, all with the purpose of denying consumers the right to choose. Clearly, as we go into the Committee Stage of this Bill, we must find accommodation under Part XXIV by recognising the role of the CAK to prevent the habit of some companies engaging in mergers, takeovers and acquisitions merely for the purpose of denying people a choice.

Hon. Deputy Speaker, having said that, let me just briefly talk about the provisions of Clause 16 of this Bill, which is the statement of proposed officers. This is elaborate and it is very good in so far as it gives clear definitions, that the applicant for registration shall ensure that the requisite statement for the company's proposed officers complies with the relevant Sub-sections (2) and (4) of this Bill which, I think, is a good provision.

As I rush to conclude, allow me to say something about registration of foreign companies. For a long time, we have had a situation where we have lived in the global sphere. Of course, we will definitely be having engagements with foreign companies from time to time, but when we register foreign companies, the provisions here are that foreign companies must make sure they have their local representatives. This is a very good provision. I think the requirement for foreign registered companies to have local offices in Kenya is good, but then we have to be alive to the realities of the trading world now. I want to ask that when we get to the Committee Stage, we should look at how then we will deal with issues of e-commerce and other forms of electronic trading. What are the implications of insisting on this? Much as it is a very good provision that foreign companies must have their physical offices and local representatives here in Kenya, which is one form of empowerment, what does it mean for somebody who engages in e-commerce? What does it mean for somebody who engages in other forms of electronic trading?

These are some of the areas that I can think of right now, but all in all, and as I stated, I want to thank the Departmental Committee on Justice and Legal Affairs. The Bill that we have

now truly captures the aspirations of Kenyans; the law that we have is not as good. To the Committee and my good friend Hon. Chepkong'a, this is a very good start. Please, allow those of us who have already read this Bill as we go forward - I know you have proposed some amendments and maybe it would be in your interest that we restrict those amendments as much as possible--- You realise that there are so many bits and pieces, cross-referencing, wrong terminologies and so on, based even on your own Report. This is a big Bill and it is expected. Allow us to engage as we go forward, so that some of the good ideas and input that we have made into the Bill can also inform a Bill that will help Kenyans to engage in meaningful entrepreneurship for the purpose of wealth creation for our people.

With those remarks, I support. Thank you.

**Hon. Deputy Speaker:** Well, Hon. (Eng.) Gumbo, you must have spent your 45 minutes. You really required them when you appealed for them.

Now, I want to give chance to Hon. M'ruaki. Is he here? If he is not here then we will have Hon. Gichigi.

**An hon. Member:** He is not here.

**Hon. Deputy Speaker:** Hon. Gichigi is not here but he has even put his card in the intervention slot. I can see this is a technical subject. Can I then have Hon. Zuleikha?

Is Hon. Zuleikha here? Where is your card?

**Hon. (Ms.) Juma:** Sorry, Hon. Deputy Speaker. I did not want to speak to this Bill. It is a mistake. You can give the opportunity to the next person.

**Hon. Deputy Speaker:** Hon. Millie Odhiambo. Members, those are the names on my list. Hon. Robert Mbui, are you interested in contributing?

**Hon. Mbui:** Thank you, Hon. Deputy Speaker, for this opportunity to make my contribution on the Companies Bill, 2015. I have just observed that Members are being given 45 minutes each to contribute to this Bill. Unless you are stammering, it is quite a big job to come up with content for all that time. Nevertheless, the House made a good decision because this is a Bill with has 1,027 clauses that need to be interrogated by this House.

This Bill seeks to consolidate and reform the laws that lead to the incorporation, registration, operation, management and regulation of companies. It is coming at a very opportune moment for Kenyans because we have all these separate laws that have been brought together, so that we are able to deal with the issue of operating businesses in this country.

From Independence, we set out to eradicate poverty. Year in, year out, Governments keep talking about this issue. It is an issue that can be addressed if we encourage businesses to exist and operate in our country. We have had this narration every five years from leaders, ourselves included; we keep promising that we are going to ensure the economy grows, our youth get employment and our country moves to the next level. In 2013 the Government said that our economy would grow by double digits. However, two years down the road Kenyans are still waiting. The economic take-off that we were promised is a mirage.

I want to remind the House that about a week ago, the most powerful person in the world, the president of the free world, His Excellency the President of the United States, was in Kenya. He was here to open the Global Entrepreneurship Summit (GES). This is a conference that brought together young entrepreneurs from all over the world. This is something that we need to look at because the innovation, spirit and excitement of people who were coming up with those ideas are not everything. At the end of the day, the foundation for them to operate an enterprise is

to form a company. So, this Bill is extremely important in ensuring that citizens who want to set up businesses in a proper manner are given the right opportunity.

Clause 2 states the objects of this Bill. It says that:

“The objects of this Act are to facilitate commerce, industry and other socio-economic activities by enabling one or more natural persons to incorporate as entities with perpetual succession, with or without limited liability, and to provide for the regulation of those entities in the public interest and, in particular, in the interest of their members and creditors.”

In the past we have had companies formed, operated and proceeded to fleece the general public, their own members and sometimes creditors. So, this Bill seeks to regulate the operation of companies so that this problem can become a thing of the past. This has been a problem because of poor, or no regulation of companies. I have read through this Bill and it has very important clauses that will enable us to move the country forward in terms of operation of businesses. We also understand that once trust is lost then money will get lost.

*[The Deputy Speaker (Hon. (Dr.) Laboso) left the Chair]*

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

On the part of incorporation of companies, clauses 5 to 10 provide some of the things that anyone who wants to start a business needs to understand. There are several types of companies that have been provided for in this Bill. The first one is limited company, those that are limited by shares and those limited by guarantee. Companies limited by shares are those where the liability of the members is limited to any amount unpaid on the shares that members are holding. Companies limited by guarantee, first and foremost, are those that do not have share capital and the liability of the members is limited to the amount that the members undertake to contribute at the point when they make a decision to liquidate the company. The other type of company is unlimited companies where there is absolutely no limit to the liability of the members. We also have private companies whose membership is restricted to a maximum of 50 people. The members are also restricted in the transfer of shares. The other type is a public company that allows members to offer their shares for public subscription.

Clauses 11 to 15 deal with the formation and registration of companies. The clauses give the ideas and ways by which individuals can come together and set up businesses, which is very important because this is information that is required to be legislated. The clauses indicate that once one or more persons subscribe their names to a Memorandum of Understanding (MoU), they are ready to apply for registration. They simply need to give the name of the business and the location of the registered office. The location of the registered office is, as Kenyans have seen in the past, one of the areas where companies have been cheating the system. I remember at one time when we had the Anglo Leasing scam, the Government tried to find out where the registered offices of some of the companies that were trying to fleece Kenyans of their hard-earned money were. It was found out that the companies' registered offices were flats in Europe. So, this is an area where we need to be very careful, so that we do not encourage registration of briefcase companies, that is companies that basically exist in the pockets of their owners.

In the registration of these companies, the liability of members is supposed to be stated, whether by shares or by guarantee and the type of company, whether private or public is also supposed to be stated. There is also a statement of capital that indicates the initial shareholding and a statement of guarantee. Finally, there has to be a statement of the company's proposed officers. These proposed officers are the directors, assistant directors, company secretary and anybody who is designated as a signatory to the company's accounts.

The law is clear that unlawful companies may not be registered. It is important that the definition of "unlawful companies" be clearly defined, so that anyone who wants to register a business can understand what they cannot get into.

Hon. Temporary Deputy Speaker, the final effect of registration means that a company becomes a body corporate with the rights to do anything that an incorporated company can do. I would like to point out that in this country there have been major difficulties for anyone who wanted to set up business. I want to quote Peter Odeng' in his book *How to start your own small business*. He says that 50 per cent of new business start-ups will actually die out by the end of the first year and 75 per cent of those that succeed will shut their doors in the next five years. Basically, we need to encourage businesses. We need to make it easy for businesses to start and we need to encourage the growth of business. This law is basically helping to do that.

We have come a long way. A long time ago when I came out of the university, I attempted to get into business. What the Cabinet Secretary for Devolution and Planning has done with the concept of Huduma Centres is an excellent idea. I was making shoes for ladies in my backyard straight after university. The first thing I discovered was that there are so many Government offices and departments that are interested in knowing what you do. The minute I registered a company, there were people coming to my door. The first ones were the National Social Security Fund (NSSF) who wanted to make me contribute for the employees whose salary was negotiated on a daily basis. The other was the National Hospital Insurance Fund (NHIF) who wanted me to make contribution for the employees' health. Unfortunately, the salary was so low we could not afford it. The next one was the Kenya Revenue Authority (KRA) who wanted to charge VAT and also wanted me to pay PAYE. The next one was the Higher Education Loans Board that wanted money from my staff who were straight from university, and could not afford to pay their loans; unions also walked to my doors and said I had to pay my workers a certain salary. So, basically it was a very difficult time. It is important to thank God that even with all the challenges we are able to do business in an easy way.

Recently, I spoke to a constituent who told me that they operate a pub. To operate a bar, you have to get a licence from NACADA, a licence from the county, a licence from the Government, one from the music copyright body and one from the Music Owners Association. There are almost 10 licences. So, this is an area that, as we go forward, we need to address.

In order to operate, all companies require a constitution. This Bill has clauses that deal with that. They insist that every business must have articles of association. The regulations that will be made under this Bill are going to prescribe model articles of association. There will be different model articles of association for different companies. In the past we have had almost the same memorandum of association used by almost all companies. It is cut and paste that legal officers do. So you find that if you are in manufacturing, service, retail, transport and education basically the memorandum and articles of association are the same. I appreciate that with this

Bill, we are coming up with a model that is for different types of companies, so that every area can be catered for properly.

Once businesses are set up, it sometimes becomes necessary to make amendments to the articles of association; but this law insists that when you want to make amendments they must be lodged with the Registrar within 14 days, failing which it will be an offence and there will be a penalty exceeding Kshs200,000. I feel that this is a law that will protect members because we know that there are unscrupulous directors who can make changes and amendments and implement. For them to be implemented properly, they will need to be lodged with the Registrar; that will mean that all members of a company will know about them.

Companies also pass resolutions in the operation of their businesses. The kinds of resolutions that are made are different types. There are special resolutions. There are resolutions on shareholding; in other words the number of shares an individual can have or what types of shares the company can have. There are resolutions to give, vary, revoke or renew authority for officers of a company. There are resolutions for voluntary liquidation and then there is a resolution to transfer securities. These resolutions once passed by any company must be lodged with the Registrar. That in essence protects members from any unscrupulous dealings by any of the directors. If you do not lodge them with the Registrar it will be an offence with a penalty not exceeding Kshs200,000.

This Bill will go a long way in ensuring that members of companies are protected from any loss of funds because the protection mechanisms are very high. A lot of the business of the company will be lodged with the registrar, so that at all times everybody in the company will be aware of what will be going on.

There is a clause that deals with the naming of companies. This is an area we all know there has been an issue because we have had court cases in this country and abroad where individuals and companies were fighting over names that were very similar, or were actually the same. In the past, we have seen situations where just a letter in a name or dash created two different companies. The law now proposes that once a company makes an application for a name they will be given 30 days. After the 30 days they will be allowed to do registration. That, therefore, means that the speed at which they prepare the memoranda, their articles of association and registers the company will be very fast; within the 30 days the company will need to be registered. There is a clause that allows for special extension of up to 60 days if for whatever reason registration is not possible within 30 days. This is a very good law.

There are types of names that are allowable. There are several names that are considered prohibited. These are the ones where if applied for that would be deemed to constitute an offence. There are also some abbreviations or initials that are not allowed by the law. There are also those names that are offensive or undesirable.

There are four letter-swearing words that people use when they are annoyed. I would hate to imagine a situation where companies are allowed to register in those names. Incidentally, it might not be bad for business because we have seen a lot excitement from the negative in the recent past. There is a story told of an airline that operated and male urinals in the aeroplane had a symbol of a lady's lips. There was an outcry. Everybody was annoyed and felt that was offensive to women; I agree but, the more women picketed and queued outside, the longer the queue for men got to get into that aeroplane.

Sometimes bad publicity is good publicity. We have then to protect the names that people can use in their companies. People can use offensive names that may be attractive to the wrong people and make business out of it. I do not support the use of that name though I have given it as an example. The other ones are protected names.

There are those names that are connected with State organs, county governments and public authorities. If these names are allowed to be used in the registration of private companies for personal use, chances are that the unsuspecting public might trade with them believing that they are connected and in the process lose money.

I want to give an example of the East African Portland Cement (EAPC). If an individual registered a company and purported from the name that it is an affiliate, a connection or a department of the EAPC, what is likely to happen is that, that individual can give orders to people to supply him or her with material believing it is a recognised firm like the EAPC. Probably the material will be given on credit for 60 days but it turns out that that was a conman. It is important to ensure that we do not allow names that are closely related to the names of existing organisations.

The regulations may permit or prohibit the use of certain characters, signs and symbols. This is for obvious reasons so that we ensure that there is no repetition and some of them may not turn out to be offensive. This law is going to give us abbreviations for use to recognise companies that are going to be registered in this country. The abbreviation “PLC” will stand for “Public Limited Company”. So, when you see a company having that abbreviation, you will easily know that it is a Public Limited Company. The abbreviation “LTD” will be for “Private Limited Companies”. Basically that is also a plus or a positive aspect that I strongly support.

Similarities of names are not allowed in this law. So, the names that are to be registered are names that are not the same as any other in the index. This will go a long way in ensuring that the court cases we have had in the past will also become a thing of the past.

The power of registration lies with the Registrar. The Registrar is allowed to make a company change its name, for example, when the name suggests that the nature of the company’s activities are misleading and are likely to cause harm to the public. I have looked at the way many businesses operate. One of the common term people use in their companies is “Enterprises”. You can imagine a situation where a company is registered as auto but it sells clothes or it is registered as a construction company but it offers training.

This Bill is going to bring sanity because these are things we have seen in the past. When you are auditing situations, you wonder why a company that is dealing with construction would also be training. It could be training on things that are totally unrelated to construction. We are going to bring sanity in our companies so that the names are clear. The names should communicate what the companies actually do. It is also clear from this Bill that there is protection of companies that do not want to change their names. These companies can only be made to change their names within the first five years so that we are sure that it is not an afterthought that comes as a result of successes that are triggering jealousies from other quarters.

The companies also have recourse because they can go to court to quash orders to change the name. All this is provided for in the Bill. Failure to comply with the directive of the Registrar when he or she asks you to change the names of your company will also attract penalties of not more than Kshs200,000.

I want to address the issue of regulation of these companies. It is important to ask ourselves who the members of the companies are. This is the question that is asked many times and it is not very clear. The Bill defines members as subscribers to the memorandum and articles of association. They become members upon registration of these companies. Companies are also forced to keep a register of these members so that they can be open for scrutiny. The information they give relates to the names and addresses, the date of registration as members, the date the person stopped being a member, the shares they hold and the amount paid in shares that they hold.

If there is any change to a register of the members of a company, this change must be registered with the Registrar within 14 days. Failure to do that is an offence that carries a fine of Kshs500,000. I think the most important thing to note here is that in the past we had very serious shadowy characters that have operated businesses even with the Government of this country but are impossible to trace the minute something goes wrong.

There are situations where money has been lost and Kenyans, and in particular the offices that deal with public audit, have attempted to find out who these people are. When they get to the Registrar, they find that the files are missing and it is impossible to find out who the members and the directors are. I believe that this law now gives the Registrar power to have that information. Every company should keep its own register so that it is open to scrutiny by the public.

In this Bill, people have a right to inspect the register of members. This right can be extended to any of the members at no fee and to anybody else that is interested in knowing who the members are at a predetermined fee. The only thing is that there have to be conditions for this information to be given. The law states that the people who seek information about membership in a company must give their names and addresses. If they represent companies, they should give their names and addresses and the names and addresses of the companies they represent. Most importantly, they should give the purpose for the information because information is not picked for the sake of it. There must be a reason behind this. Basically, the public has a right to scrutinise the registers of any company. So, it is now easier for members or the general public to know who the members of particular companies are. In the process of declaring the interest of the person in knowing who the members are, they are also expected to disclose whether they will share this information with others. If they are sharing it with anyone, the law insists that they indicate who they are sharing it with and why. This is a law that is going to make it easier for us to know who are running and owning our companies. Again, it is an offence to deny issuing this information. If any company refuses to give a register of members to anyone who is interested, the penalty is actually Kshs750,000.

This law talks about the rights of members and makes the rights of members very clear. Members have rights to nominate other persons and have rights to information within the company. These are clearly articulated. They make it very clear and very easy for anybody that is operating in a company to understand his or her rights.

Clause 122 talks about company directors and their appointments and removal.

It further talks about transactions that require approval of members, so that directors do not do anything that they wish. Finally, the Bill talks about disqualification of directors within these companies. These are regulations that will go a long way in ensuring that companies operate within the law and in the right manner.



There are resolutions and meetings that are held or are expected to be held by every company and resolutions that come about as a result of the meetings. There are also laws to regulate the resolutions and meetings. For instance, no resolution of a company can be made unless it is at the meeting of members. It becomes a resolution when the company members do a vote and the resolution gets a simple majority. But there are special resolutions that would require a 70 per cent vote. The law is clear about which ones are the special resolutions and which ones are ordinary resolutions.

On the issue of written resolutions, it is no longer one man, one vote, especially those that have shared capital. It becomes one vote per share. The larger the share one holds, the more votes they have when they are passing a written resolution. Of course, it is important to note that the regulation on procedure for convening meetings is also clearly stated so that companies do not operate with directors who do not call for meetings. This has been a problem in most of our companies, especially public companies, and particularly the smaller ones where directors take control. They only do elections to remove the current directors. Once new directors take over, they ensure that there is no Annual General Meetings (AGM) again. This is because chances are that next time they hold elections, they are likely to be voted out. It, therefore, becomes difficult.

Some companies actually take too long without holding meetings. However, the procedure is very clear now. An annual meeting has to be held. Companies must hold these general meetings. Either the directors can convene the meetings or the members themselves. If directors fail to convene a meeting, 10 per cent of the members can compel them to call for a general meeting.

Hon. Temporary Deputy Speaker, this law also talks about a key area where conflicts occur in organizations, that is in sharing of assets. It is very clear and it talks about how a company's assets are to be distributed. There is a regulation on how that should be done. For instance, it states that distribution can only be made out of the profits available for the purpose of distribution and not everything that the company owns. There are times when members want to share the company and shut it down. It is now clear that only the profit available for the purpose of distribution can be shared. The general rules of distribution are clear and they avoid conflicts most times between members and directors. The law will ensure that this conflict on sharing of assets and profits is clearly managed.

The law also deals with the issue of company takeover. We have seen in the past companies being taken over by hostile competitors. There is now regulation. In fact, the Capital Markets Authority is meant to make takeover rules to regulate takeover bids and merger transactions. It is basically a positive system that is ensuring that we do not have situations where companies---

**The Temporary Deputy Speaker (Hon. (Ms.) Shebesh):** Hon. Member, let me interrupt you for a while as I recognize the schools that are seated in the gallery. I would like to recognize Our Lady of Mercy Primary School, Bahati Constituency, Nakuru County. I also want to recognize Kimela Primary School, Mwingi North, Kitui County.

*(Applause)*

Thank you. You can go on Hon. Member.

**Hon. Mbui:** Thank you, Hon. Temporary Deputy Speaker. The Capital Markets Authority will regulate on takeover rules that will deal with the takeover bids and merger transactions. It has also been mandated and given authority to rule and interpret the law when there is conflict between organizations at the point one wants to take over the other. It is, therefore, important that this is put clearly in law so that it can ease any possible conflict in future between organizations that want to take on each other because that happens many times. The Authority will also ensure that they rule on interpretation, application and the effect of takeover rules.

As I finish, companies in this law are expected to make annual returns with the Registrar. But I made observations that when the companies are registered they are supposed to give the same requirement and documentation every year. I find that a bit odd because at the point of registration, the information or the items required at that point will be given. When there are any changes, amendments and resolutions they are also given to the Registrar within 14 days, failure of which there are penalties. It is a bit strange that every year companies are expected to make returns to the Registrar. I do understand the bit of financial returns which is not to the Registrar. That is a contradiction.

On auditing of company financial statements, there is a requirement that most companies do audited financial statements. There is also a right of members to request for these audits. This is because there are certain companies that do not have to give or get their audited returns, but members of these companies have a right to seek for audit.

I want to join my colleague who talked about the small companies which have been given certain conditions for exemption from doing annual audits. They say that they have to qualify as a small company. The definition of a small company is a turnover of less than Ksh720million and net assets worth less than Ksh360million. The population of staff is not very important. I want to agree with him that when you talk about a turnover of less than Kshs720 million, you can define that as a small company.

Most of the companies that are operating in this country are operating at a much less turnover. Therefore, it means that most locally and privately owned companies will not be dealing with audit on an annual basis. This is something that needs to be looked at. They give exemptions to public companies, banking and insurance companies which do not qualify to be small companies. The rest that are exempt are dormant companies which do not do business for that financial year, thus they have no returns to make.

Finally, I want to say that this law is very broad. It is a good legislation for this House to go through. It deals with issues on how to appoint auditors and states their functions. I support this Bill. Most of the amendments that will be made will be brought in the Third Reading. If there is any that we will come across, we will also share. Somebody had asked me to share, but I know I do not have that right.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now want to give the Floor to Hon. Wesley Korir.

**Hon. Korir:** Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute on this Bill. This is a very big and important Bill. I am not going to bore the House and the nation by going through all what my honourable colleagues have said but I have only one interest that I want to contribute on.

First of all, it is the issue of forming companies easily. We are living at a time in Kenya when the interest of many people is to be part of the development of this country. Since the Jubilee Government came into power, they have really pushed for the women, youth and people with disabilities to be awarded 30 per cent of the tenders. For you to get a tender in this country, you have to make sure that you have a company. That is the problem that people are facing. I have been looking at this Bill and I have not seen any place that deals with that issue. This is the issue of the Registrar of Companies being in the central place in Nairobi. We need to make it easy for the youth and people in counties to register companies. There is a lot of information in this Bill that needs a lot of scrutiny and should be understood by the public. We need to find a way of educating the public on how to register companies and the different types of companies that we have.

Some of us who went to primary school long time ago before the education system changed know many of these things that we read in this Bill right now, like how to register companies and issues of shareholdings and directors. We learnt all those things when we were in primary school under the subject of business. The subject is not taught now and kids do not have an opportunity to learn how to form companies at a younger age. So, we have to wait until people are old and already out of schools to teach them. It becomes very difficult to comprehend and understand a lot of requirements on how to form a company.

My next concern is about foreign companies in this country. This Bill has come at the right time when we have had the Global Entrepreneurship Summit (GES) in this country. The USA President, Barack Obama came and talked a lot about exposing Kenya to the rest of the world. We have a lot of people who want to come to this country. We also need to be very keen and make sure that as our economy grows, the people on the ground also grow. We need to protect our local companies from the influence and influx of foreign companies. If you look at what is happening right now in the country especially in the construction industry, you will find that there are many construction projects that are being undertaken by Chinese companies. We have to find a way of protecting our local companies.

When I look at the way this Bill has been written especially on the procedure of registration of foreign companies, I only see that the requirements that we have here that can benefit our people in foreign companies is the requirement of having one appointed representative of the company. It does not tell us whether the appointed member is a shareholder of the company or he or she is just a person that has been appointed from the streets to be a representative of the company. What we will see are companies from foreign countries.

I will give an example that will make it really difficult for foreign and local companies to compete. If we allow foreign companies to come and compete with local companies it will be disastrous. You will find a company coming from China or the USA where it can go to a bank and borrow a loan at 3 per cent interest rate competing with other companies locally which have to go to a bank and borrow a loan at 18 per cent interest rate. This is the case and yet these companies have to repay the money that they had borrowed from the banks. Whom do you think will have the highest bidder in any construction? It will be the foreign company that is the lowest bidder because it does not have to make a lot of money from that construction project to repay its loan.

We need to find a way so that as our economy grows, we give priority to our local companies. If that will not happen, then let us make sure that we include in this Bill that for a

foreign company to be allowed to work in this country, at least, 50 per cent or a certain percentage of the shareholders of that company live in Kenya and are Kenyans so that as the money goes back to other countries, we also get some.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, I see a point of order from Hon. Gideon Irea. What is your point of order?

**Hon. Irea:** Is the Hon. Member in order to refer a limited liability company as a local company? When a company is registered in this country, the word “local” should move out because somebody can trade all over the country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Are you arguing or raising a point of order?

**Hon. Irea:** I am raising a point of order because the Hon. Member has said that the local companies we are talking about are limited.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Wesley, go on.

**Hon. Korir:** Hon. Temporary Deputy Speaker, the companies that I am talking about are not local. When I say “local”, it does not mean Nairobi local. I am talking about the Kenyan companies that are run and owned by Kenyans. They do not have an option of going to the USA or China to borrow money from the Chinese banks and come to do business in Kenya. That is what I am talking about. I am not talking about the local Nairobi or other places. My issue is that we need to protect those companies otherwise we will be having companies from overseas doing even the small jobs that our own companies can do.

Recently, we had issues when we had companies like the ones that are building roads at Tassia I Project. That report came to our Committee. As we sat there looking at the way the companies were bidding, the top five companies which were the lowest bidders were all Chinese companies. The next Kenyan company was fifth or sixth because the Chinese companies have the opportunity of borrowing money at the lowest interest rate. They have an opportunity of importing their own things from China which they use here.

When I look at this Bill and the amendments that the Committee is proposing, I do not see anywhere that really shouts out to me that we need to protect our companies so that as we grow as an economy, we do not go to China and borrow money from them and then we come and give the Chinese companies jobs. So, we pay back the money we borrow from China with interest and then the same money goes back to China through the Chinese construction companies. That is my fear that we need to look into as we continue with this Bill. Otherwise, I do not want to talk much but I want to rest my case there. I support this Bill.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to Hon. Joseph M'eruaki.

**Hon. M'uthari:** Thank you, Hon. Temporary Deputy Speaker for this opportunity to contribute to this very important Bill.

The Companies Bill, 2015, is very important. It has taken a lot of time, but it is a Bill whose time has come. As you are aware, the process of amending the relevant Act has taken over 20 years for us to get to where we are today. Many stakeholders have been involved in the long process of coming up with this Bill. The law that we are using at the moment is very old. It is like the one that was used by the British from 1948. Since then, our economy has grown and

there have been many changes and reforms. So, this Bill has taken into consideration the changes in the commercial sector. By coming up with this Bill in terms of amending the Companies Act, Cap 486, we are coming to terms with the realities of the moment by clarifying the various issues regarding the formation, management and operations of our commercial entities.

This Bill is very important because companies, to a larger extent, manage our wealth. So, making it easy to register companies and defining the various types of companies that we can have is a good thing.

The Bill also provides requirements relating to the duties of the directors. It also talks about corporate reporting in line with the updated laws of corporate governance. It also takes into consideration the various persons and laws involved as far as the management of these entities is concerned.

Hon. Temporary Deputy Speaker, as we move on, it is important to consider, as a country, how to support our companies become more competitive compared to other entities. At the moment, and my colleagues have highlighted this, it is clear that we are very innovative people, but sometimes our innovations are lost because of not being able to access the startup capital. This is in line with the 2015 GES that was held here last week in terms of highlighting the issues and encouraging the Kenyan people to take an active role. Kenyans are encouraged to access credit facilities especially the youth, women and the disadvantaged people. They should be accorded an opportunity to access credit facilities so that they can move ahead. This is very good.

This Bill brings to light issues that are related to the management and running of these entities. This clarification in line with the modern economy is good for us. It seeks to streamline the process of registration and management of companies. This will make the running of businesses easy and through this, it will improve our competitiveness as a country in terms of doing business and even competing with other entities.

When this Bill is enacted, the Government should take interest in its implementation. Some economies, like the Chinese economy, have proven that it is not only capitalism that works. Even public companies, if well managed and issues of corruption properly tackled, can succeed. Many of the Chinese companies that are doing construction work in Kenya are public-owned and yet they are very efficient in their work. So, if we support our companies, we can encourage home-grown companies and improve their production. You will realise that many of our companies like the ones that are involved in infrastructure development do not have capacity. The Government should take keen interest and establish a wing within the National Youth Service or in any other institution through which we can develop our home-grown companies rather than exporting jobs and money.

The problem that we are having with our currency *vis-a-vis* the economic growth is a paradox. After getting the money, we again export the dollars through the exportation of jobs by giving them to foreigners. These foreigners come and do businesses or undertake major capital projects with our own capital. Even when we get grants, they again go back to the people who gave them to us because of our inability. The question of capacity, financing and capitalisation needs to be considered so that we can be competitive and expand the ground and space for our companies.

If you look at this in terms of our competitiveness, involvement and participation, you will find that many times our local companies get unfair advantage. As we streamline these laws,

our companies which are involved in production should not transfer their inefficiencies to the consumers. This brings about healthy competition and the need for proper capitalisation and space, so that at the end of the day, there is proper flow of capital from within.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to Hon. (Ms.) Zainab Chidzuga.

**Hon. (Ms.) Chidzuga:** Shukrani, Mhe. Naibu Spika wa Muda. Ninasimama kuuzungumzia Mswada huu. Ukiangalia zile hali ambazo tumekuwa nazo wakati wa nyuma kuhusu mambo ya kampuni ambazo zinaweza kupata zabuni tofauti tofauti katika maeneo yetu, utakuta kuwa kumekuwa na unyanyasaji mkubwa. Nikizungumzia upande wa akina mama na vijana, tukianza hasa katika hali ya mtu kusajili kampuni yake, unakuta kuna sheria nyingi. Ofisi ambazo zinahusika haziko mahali ambapo yule mama ama kijana wa nyanjani anaweza kufika na kupata ile huduma.

Pili, inabidi upitie mikononi mwa mawakili. Ukiangalia pesa ambazo wanadaiwa kulipa ili watengenezewe zile stakabadhi ambazo zinatajikana, inakuwa ni malipo ya hali ya juu sana. Hii ni njia ya unyanyasaji na kumfanya mwenyeji wa nchi hii azidi kubaki maskini. Ikiwa sisi kama Wabunge tunataka kuiondoa shida ambayo imetukabidhi katika nchi hii, katika hali ya kuwatayarisha vijana na akina mama waweze kupata ajira bila kutegemea kuajiriwa, ni lazima tushughulikie huu Mswada vilivyo. Tukiushughulikia huu Mswada vilivyo, tutaweza kuutoa ule uzito ambao unamkabidhi mwananchi ili aweze kufunga safari kuja Nairobi ili kusajili kampuni. Tutaregesha hivi vituo vya kusajili katika Maeneo Bunge, si kaunti pekee, lakini yaende katika Maeneo Bunge ndio yule mwananchi au kijana ambaye hana uwezo aweze kuwa na mahala rahisi pa kuenda.

Pili, tuondoe yale mahitaji ya malipo ambayo yako juu kisheria kwa sababu ikiwa kila kitu lazima kipitie mikononi mwa mwanasheria ndio ile stakabadhi ipatikane, je huyu mama na huyu kijana wataweza lini kuwa na kampuni na wapate zabuni ambazo zitaweza kutekeleza ule mwelekeo ambao tulipitisha katika Bunge hili wa kuwezesha asilimia 30 ya zabuni zipatiwe kina mama na vijana? Zaidi ya hayo, tukizungumzia upande wa hizi kampuni ambazo zinatoka nje, nitawapa mfano wa kampuni ambazo zinashughulikia mambo ya uchimbaji wa madini. Utapata kuwa tuna sheria tuliyoweka kuwa mtu hawezi kuwa na kampuni ikiwa ametoka nje. Ni lazima amhushishe Mkenya. Lakini hatukuweza kuiweka wazi kwamba Mkenya huyu atakuwa yeye mwenyewe ana kiwango gani cha hisa katika ile kampuni? Kwa hivyo, unampata mtu anadanganyika, anaambiwa aje ajiandikishe na yule mwingine, wakubaliane kuwa atapewa shilingi mbili lakini ukiangalia faida kubwa yote inabaki mikononi mwa hizi kampuni ambazo zimetoka nje. Huu ni unyanyasaji wa hali ya juu kwa sababu kile kinachotokona na ule uchimbaji wa yale madini kinabakia mikononi mwa watu wa nje na sisi tunabaki na umaskini.

Itakuwa ni vizuri sana ikiwa sisi Waheshimiwa katika Bunge hili ambalo tumelikalia kwa kula kiapo, tutaamua kwamba tutasimama na taifa letu na wananchi wetu na kuona ni vipi tutakavyokubaliana na Mswada huu ili uelekeze sheria hizi pale ambapo mwananchi, kijana na mama wa kawaida nyanjani ataweza kunufaika kuliko vile ilivyo leo.

Ukiangalia, mawakili wengi hawafanyi kazi za kortini, bali, wanatajirika kupitia hali hii ya kutayarisha stakabadhi hizi ambazo zinasimamia mambo ya usajili wa makampuni. Kwa mfano, kuisajili kampuni moja ambayo ni ya kiasi, inakubidi uwe na takriban kama Ksh25,000

ama Ksh45,000. Je, huyu kijana au mama ambaye anataka kufanya biashara, atakuwa amezitoa wapi pesa hizo ikiwa yeye mwenyewe kwanza hata biashara yenyewe hana?

Mswada huu pia utaweza kuturahisishia mambo kwa sababu utaweza kutuwekea mipangilio ambayo mtu ama vijana wakipata zabuni, benki inaweza kuwasimamia kufanya ile kazi kwa njia ya urahisi kuliko vile ilivyo saa hii. Hata vijana wanapopata hizi zabuni inabidi sisi Waheshimiwa tuanze kuenda juu na chini kuhakikisha hiki kikundi cha kina mama au vijana tumewatafutia pesa ili waweze kufanya ile biashara. Itakapokuwa sisi tumekamilisha huu mwongozo ambao tumeutoa kulingana na Mswada huu, tutaweza kuwa tumerahisisha namna ambayo vijana wetu na kina mama watafanya biashara. Hapo tutakuwa tumesaidia vijana wetu kutoka kwa shida hii ya madawa na kuingiliana na mambo ambayo hayalingani na tamaduni zetu na usalama wetu. Mwisho tunaishia kulia na hali sisi wenyewe ndio ambao tunaweza kurekebisha hii sheria na tuweze kusaidia nchi yetu isonge mbele.

Nasimama kuunga mkono Mswada huu.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now want to give the Floor to Hon. Samuel Gichigi.

**Hon. Gichigi:** Thank you, Hon. Temporary Deputy Speaker. I also rise to support this particular Bill. For a long time, we have had a colonial relic as the Act governing companies' activities in this country. This Bill has been brought at a very timely occasion. It is voluminous but I ask all our Members to have a look at it. It is going to impact on the way business is done in this country. As we move towards opening up our country to foreign investors, it is a good Bill. It has quite a number of amendments that are required to make it properly functional. All in all it is reforming the regime of law that governs companies.

Looking at Clause 129, it is a good law that it is now making it mandatory that a company must have a natural director. Previously, you would have two companies having the same directors. You would not even be able to identify the face behind a company because you might find that if you go and search for two companies that have directors, you will find that the directors of one company are also directors in the other company. It is good that we now have a face that we can identify with the company.

For a long time, people have been using their children as directors and shareholders. The law in Clause 131 is very clear now. For a person to become a director, they must be of majority age of at least 18 years old. It can be very harmful when you are trying to collect a debt only to find that the company itself is completely invalid in that the directors are children. Many people, especially the people who are trying to hide the assets that they were looting from public coffers, would use crooks and children as directors and shareholders. Clause 131 takes care of that.

Some clauses must be corrected. Clause 134 is dangerous in that it is validating all acts of directors, whether those directors are legitimate or illegitimate. We need to qualify such that people do not deliberately pretend to be directors while they know that they are not directors. They need to know that whatever decisions they make are going to be deemed by the law invalid. Clause 134 must be amended and I hope that the Committee is taking care of that.

Clause 135 is very good. The law now requires a company to keep a register and particulars of the directors and also makes it mandatory that the register can be accessible to members of the public during working hours. For a long time, people have engaged with companies. You buy something from a company but when you try to trace who the directors are

it becomes impossible. This particular clause should be retained. It is a very healthy clause in terms of doing business in this country.

Clause 138 provides that the residential addresses of the directors must be disclosed. This is very good. For a long time, you would move up and down looking for the directors of companies that maybe owing their creditors. Even if you knew the identities of such directors it would be difficult to find them without knowing where they live. It is important that we identify the people that we are doing business with.

In Clause 139, if the address of the director is changed, it is now mandatory that the particulars of the new address are filed with the Registrar as well as kept at the registered office of the company.

Clause 152 is also a good clause. In doing business what has been reserved for public companies as well as public officers has been put in this proposed law. A director who has an issue that is being debated and which requires resolution is now put on notice and they must declare their interest in writing so that it is very clear to other members and directors that this person has an interest. Previously, one would hide only to take advantage including insider trading.

Hon. Temporary Deputy Speaker, Clause 156 is also good. In certain transactions, directors are enjoined to ensure that they involve members in approving certain decisions. For a very long time, directors have been taking advantage of their positions to loot companies. With this law, they will be forced when they are selling assets of the companies to seek the approval of the members.

For public companies, Clause 310 is making it mandatory that companies must hold meetings within six months from the accounting reference date. So, if you are supposed to have your accounts ready by a certain date within six months, an Annual General Meeting must be held so that you can explain to the other shareholders who can make decisions against the directors if things are not correct.

Clauses 315 and 316 are good clauses. They are importing technology and introducing digitization in operations of companies where notices are supposed to be posted on the website for communication to the members and other interested parties.

Clause 317 is also good as it requires companies to keep their records of minutes and resolutions for, at least, 10 years. Previously, you could find a resolution that had been made a few months earlier. Now, it is mandatory that those records are kept for, at least, 10 years in line with other important documents.

As I wind up, Clause 11 needs to be clarified. When it says that registration of a company can be done by one or more persons, we need a clarification because a company cannot be formed by one person. As we open our business to foreigners, we need to have certain safeguards such that certain vital, crucial and critical sectors are not taken over by foreigners. We need to put certain restrictions.

We need to provide for clauses that allow the Cabinet Secretary to waive certain costs of registration of companies when it comes to the youths and people living with disabilities. We have been urging our youths to register companies to bid for Government contracts but you find that coming up with the requisite funds to register the companies might be a challenge. We need a clause in the Act that gives the Cabinet Secretary powers to waive such costs for the youths and people living with disabilities. It is a good law and it is going to reform this sector.



I support but we need several amendments.

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

*[The Temporary Deputy Speaker  
(Hon. Kajwang') took the Chair]*

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you, the Member for Kipipiri for your researched and reasoned contribution.

**Hon. (Ms.) Kajuju:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for Meru, I do not know whether you are on intervention or you are requesting to debate. Which is which?

**Hon. (Ms.) Kajuju:** On a point of order.

Thank you, Hon. Temporary Deputy Speaker. I am rising on a point of order.

**The Temporary Deputy Speaker** (Hon. Kajwang'): You want to rise on a point of intervention?

**Hon. (Ms.) Kajuju:** Yes, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): May I just hear the trend of thought you are taking.

**Hon. (Ms.) Kajuju:** Under Section 95---

**The Temporary Deputy Speaker** (Hon. Kajwang'): Just hold on. I can see where you are heading. If that is the direction you are taking, may I have the Member for Kericho first.

**Hon. (Ms.) Chepkwony:** Thank you, Hon. Temporary Deputy Speaker, for inviting me to talk about this Bill.

I stand to support it because it is an advantage to our youth and women who have been marginalized. We know that there are big companies and our youth and women have always been disadvantaged. But this Bill is going to help them register companies without any difficulty. There has been a lot of corruption in Kenya. When we pass this Bill, the companies which have been hiding behind the curtains and did not want to name the directors of the registered companies, will be shown the door. If we do this, we will reduce corruption as we will have directors accountable for the mistakes they have made.

On double registration of companies, most of the registered companies have been doubled thus disadvantaging other people who want to take advantage of the registration of companies. Most women and the youth are denied this while other companies have double registration. This Bill will help us identify the hidden criminals behind the curtains.

With those remarks, I support the Bill.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Yes, the Member for Vihiga.

**Hon. (Ms.) Chanzu:** Thank you, Hon. Temporary Deputy Speaker. I want to support this Bill because it is long overdue. It will modernise the old Act which was borrowed from the UK Companies Act of 1948. The Bill will strengthen the corporate governance framework. If you look at it, you will find that it regulates directors' conduct and we know at times directors may assume other responsibilities. It also reduces the number of directors from seven to one and it is

much easier for a company to run with one director than many to avoid high wage bill. It introduces the modern articles of association which will reduce legal costs to set up companies.

With the *Uwezo* Fund, once given women can come up with companies and get tenders. Looking at people living with disabilities, in Vihiga County, they have had many problems on how to come up with companies because it is expensive. So, it will reduce those legal costs. It solidifies Kenya's plan as a hub of entrepreneurship. Therefore, I urge women to go into business as they are great investors and good managers by nature. The President of the United States of America talked about it and confirmed that women can manage.

I support this Bill because I know it is going to help the youth, people living with disabilities and women to go into entrepreneurship.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): That was concise and very interesting. Member for Butula Constituency.

**Hon. Onyura:** Thank you very much, Hon. Temporary Deputy Speaker, for allowing me to also make a contribution to this Bill. It is a Bill that is timely. I was reading the objects and the memorandum and I find that it is going to modernise the company law that had become moribund, obsolete and outdated in certain sections.

The good thing is that the Departmental Committee on Justice and Legal Affairs that was dealing with this Bill did a good job. I went through the Report that they prepared after going through the Bill particularly with regard to public participation. I was impressed to see that they have an impressive list of strong individual and corporate representatives. However, I did not see the Law Society of Kenya (LSK) when I was looking through it. I thought the LSK will be a very key stakeholder and a strong interested party in this. I also did not see much participation from our universities. This is because I would have imagined that our faculties of law would have taken a lot of interest in this because this company law/commercial area is of great interest to the universities. Looking at this whole volume of over 1,600 pages I think it will form a whole department in the faculty. I thought they would take interest in this. Perhaps they can be invited in the next stage so that they can also give their input.

It was encouraging to see that there has been incorporation of best practices in various countries, particularly in the United Kingdom. It is also going to create a very good and conducive environment that will allow good corporate governance that we have been talking about. We are actually thinking about filing of tax returns and the general area of accountability and transparency which is very much stressed. I also hope that the areas of corporate social responsibility, fair play, fair competition and pricing can be properly regulated through this Act.

I just wanted to also mention a feature that normally happens. This has to do with retention of records at the Registrar's offices where you find files disappearing for one reason or another every now and then. This is something that needs to be looked at and regulated so that we do not have people with bad intention on us or this country hiding behind corporate persons or corporate legal persons.

All in all, I strongly support and thank the Departmental Committee on Justice and Legal Affairs and all the other people who have been involved in drafting this very critical law that will play a very important role in our economy and commerce, both locally and in the region.

With those remarks, I support the Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. Kajwang’): If you have seen the Report, you have seen the labour that the Committee has gone through to reduce the first reprint to the small book that you now have. I like what you say about universities and faculties of law and so on. However, you know that once a Bill has been published, we expect that all conscientious members of the public will engage with the Bill and particularly universities and the LSK. They are lawyers, are they not?

**Hon. Onyura:** They are.

**The Temporary Deputy Speaker** (Hon. Kajwang’): We expect them to know the law and engage with the National Assembly. I am sure they must be hearing that this Bill is going through the Second Reading. The intention of the Second Reading is so that we thoroughly interrogate it, both inside and outside the House.

I just wanted to interact with you on something which the Member for Mvita Constituency had raised yesterday about company secretaries with regard to the Kenya Revenue Authority (KRA). In his view, he felt that if, therefore, the threshold is put to be at a turnover of US\$5 million or so, it will exclude a number of companies from the KRA net. I am asking you this because I know you are an expert in this area. What is your response to the Member for Mvita?

**Hon. Onyura:** I think he is right. We need to engage. Look at the database of the KRA and also ask them to make an input. It is true because some of the nominal shares might be far below that. Although I was there, I was not an accountant but a human resource person. It is something over which we can seek a clarification from them. This is something that I can try and get a little more information from them to know what will be the implication. I think Hon. Millie is right. Maybe it is an area we might seek some amendment on when we move to the next stage.

**The Temporary Deputy Speaker** (Hon. Kajwang’): All right. Member for Mvita has drafted amendments to the section that he thinks will work out magic to that problem. Let me ask the two of you to relate with each other so that you will have harnessed some proposals by the time of going into the Committee Stage. Liaise with the Chairman of the Committee so that you can thin down that reasoning and see whether that can work much better.

**Hon. Onyura:** I agree with you. Thank you very much, Hon. Temporary Deputy Speaker. We will do that.

**The Temporary Deputy Speaker** (Hon. Kajwang’): All right.

*(Hon. Oyoo and Hon. Gichigi consulted loudly)*

The Member for Muhoroni, I am trying to thin down debate. Order, the Member for Muhoroni! I suppose that you were not listening because your spectacles are where they should not be. I am trying to thin down the list of speakers on the Company Bill because I think we have done much justice to it but I see you are on my request list. Are you requesting to speak to the Sessional Papers which we are just going to after this? Is it the same for the Member for Mvita and Kipipiri?

*(Hon. Oyoo and Hon. Nassir nodded)*

I will expect you to find how the two of you can liaise and look for the Chairman of the Committee. Our role here is to make sure the legislation that leaves our hand is one that is helpful to both of us and the people out there. Do some work amongst the three of you; you will come to some very good arrangement.

We will have the Chairman of the Departmental Committee on Justice and Legal Affairs responding to this but just a minute. For purposes of the HANSARD, there being no Member wishing to contribute, I call upon the Mover to reply.

Can you have the microphone?

**Hon. Chepkong'a:** Thank you very much, Hon. Temporary Deputy Speaker. First and foremost, I want to take this opportunity to thank every Member who has contributed to this debate, which has been extremely robust, for their comprehensive understanding of the proposed law.

Once this Bill is passed, it will greatly enhance the environment of doing business in this country. This Bill has been aligned with the UNCITRAL law, that is, the law that regulates commerce in the United States. So, this is a very modern legislation. It has come at such an opportune time when there has been a lot of interest in this country, particularly from business people from the western countries. This Bill is coming just immediately after the very exhilarating visit by the Kenyan-American President of the USA. He came with many congressmen and women together with business people who have shown great interest in Kenya.

The passage of this legislation will greatly boost the interest that these prospective investors have in this country. It simplifies the process and system of registration of companies in this country such that you will now be able to register a company within a day instead of the current process which takes almost a month. Investors would like to register companies and quickly get into business because business opportunities do not wait. People need to make money. Once they put in their money, they need to recoup their investment.

I would like to thank Members for their understanding of this Bill. I hope that when it comes for the Third Reading, we will pass it fairly quickly so that we can do away with the 1948 Companies Act which has already been done away with in the UK. It no longer exists there and yet Kenyans are still using it.

Hon. Temporary Deputy Speaker, while contributing to this Bill you mentioned that this Bill breaks new ground in terms of company law jurisprudence. As you just mentioned while sharing ideas with the Member for Butula, for the first time universities will have a serious law on companies. It is very comprehensive unlike the one that we are seeking to repeal, which left too many lacunae. We have had case law trying to fill all those gaps. We have now sealed all those gaps and made the law very comprehensive so that companies are able to do business without fear.

In the Bill, it has been proposed that companies with a share capital of Kshs5 million and over will have company secretaries. We have had representation from the Institute of Certified Public Accountants (ICPAK) who feel that that is too high threshold. As a Committee, we agreed that it should be lowered. So, we will be moving an amendment to that effect. Very many companies in Kenya, in fact 80 per cent, have share capital which is less than Kshs5 million. Only 20 per cent of companies may be having a share capital of over Kshs5 million. That means most of those who are doing business as company secretaries and the ICPAK will be rendered jobless if we pass the Bill in its current format, in which it is insisted that only companies with at

least Kshs5 million share capital will have a company secretary. We wish to reduce that threshold to at least Kshs1 million so that we can allow company secretaries to continue practising.

With those comments, Hon. Temporary Deputy Speaker, I beg to move.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you very much. The Chairperson of the Departmental Committee on Justice and Legal Affairs, this Bill is overwhelming. I know of no Assembly that has passed such voluminous text in the recent past. I imagine that, apart from your Committee, Members have interacted with this Bill in different ways. There are Members who may have different opinions on some of the clauses that are being proposed. So, there could be need for several Members to prefer their amendments or to interact with you because you may have met the experts in this area. I do not know if you need some directions on how you want to relate with the Members, whether you want to create some deadline or whether you want to have some structural way of meeting Members. There could be as many amendments as there are 900 or so clauses. So, is there a way in which the Assembly could help you tidy up your Committee's amendments or do you want to do that when the time comes?

**Hon. Chepkong'a**: I thank you, Hon. Temporary Deputy Speaker. As you have correctly mentioned, there are a number of Members who have proposed amendments. The ones I have taken note of are Hon. Gumbo, Hon. Nassir and other Members. I would request if it is possible to have bilateral or multilateral arrangements so that we can consolidate the amendments. We have discussed with the Leader of the Majority Party and we are hoping that next week on Tuesday, if possible, we can move the Bill to the Third Reading so that we conclude with it.

As a very able Member of the Departmental Committee on Justice and Legal Affairs, Hon. Temporary Deputy Speaker, you know that we reviewed the first version of this Bill and came up with 900 amendments. That is why it was withdrawn. That is why we have few amendments. There are some which were missed out. As a Committee we have close to 20 amendments. If we take on board those from other Members, I suspect we could have about 50 amendments. We would have reduced the amendments significantly. So, I can have bilateral or multilateral arrangements with the Members so that we can fast-track this Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The best way to go about it is, tomorrow the Leader of the Majority Party will address the Assembly as usual, giving us the work plan for the coming weeks. You should liaise with him today so that when he gives that statement he indicates the deadline by which you would want to interact with Members. I suggest, without giving direction, you have a date with Members so that they can prefer their amendments with your Committee. Many of them may drop or sustain their amendments, depending on how you will convince them based on the information you will have from the experts on those issues. So, you probably want to get in touch with the Leader of the Majority Party so that when he makes his Statement tomorrow, that information will be forthcoming to all Members in the plenary so that everybody is aware of the direction we will take.

Thank you very much.

**Hon. Chepkong'a**: Yes, I will consult with him. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Deputy Leader of the Majority Party, I hear you have a Motion.

**Hon. (Dr.) Shaban:** Yes.

**The Temporary Deputy Speaker** (Hon. Kajwang'): For now you are the Leader of the Majority Party, so do not be surprised when I address you as such. Please proceed.

## NOTICE OF MOTION

### LIMITATION OF DEBATE ON SESSIONAL PAPERS

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

THAT, pursuant to the provisions of Standing Order No. 97(1), and notwithstanding the resolution of the House of 11<sup>th</sup> February 2015, this House resolves to limit each speech in a debate on a sessional paper during the current part of the Session as follows:- A maximum of 45 minutes with not more than five minutes for the Mover in moving and three minutes in replying and a maximum of three minutes for any other Member speaking, including the Leader of the Majority Party and the Leader of the Minority Party, and that priority shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party in that order.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Just a minute! Let us go procedurally. You have just given the Notice of Motion, right?

**Hon. (Dr.) Shaban:** Yes.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Now you can proceed to prosecute your Motion.

## MOTIONS

### LIMITATION OF DEBATE ON SESSIONAL PAPERS

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order No.97(1), and notwithstanding the resolution of the House of 11<sup>th</sup> February 2015, this House resolves to limit each speech in a debate on a sessional paper during the current part of the Session as follows:- A maximum of 45 minutes with not more than five minutes for the Mover in moving and three minutes in replying and a maximum of three minutes for any other Member speaking, including the Leader of the Majority Party and the Leader of the Minority Party and that priority shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party in that order.

We have many sessional papers which need to be dealt with. Earlier on, we discussed the issue of even extending sessions and having more time like on Thursdays simply because we have a lot of work that is pending. We have sessional papers and Bills. In this particular Motion,

I seek that a sessional paper will precisely be taken care of within 45 minutes. That is because it makes it easier for us to complete and move to the next business in the House.

Hon. Temporary Deputy Speaker, I beg to move. I ask Kajuju to second.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Sorry, Deputy Majority Leader. This Member has a special and an honourable title. Would you go back and for my records just pronounce her with her right titles?

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I beg to withdraw first and then move that the Motion be seconded by Hon. Florence Kajuju, the Member for Meru County.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you. Yes, Member for Meru County.

**Hon. (Ms.) Kajuju:** Hon. Temporary Deputy Speaker, I beg to second the Motion that has been presented.

This is a discussion we have had as the House Business Committee (HBC) and looked at the various sessional papers that have been presented to HBC. We have realized that taking into account the time within which we have to debate the sessional papers and the various Bills, private, Government and constitutional Bills that are pending, it is important that we reduce the time of the sessional papers because much of the work has been done through the committees. It is the committees that will be presenting their reports. We believe that if we reduce the time, we can maximize the remaining time on the constitutional Bills that are supposed to be dealt with together with Government Bills that are still pending.

I, therefore, second the Motion.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Kajwang'): Shall I hear many of you who want to discuss this Motion on the Floor? Press your intervention button so that I can see you. I can see the Member for Kipipiri and Member for Nakuru East. Any other Member who wants to debate the Motion on the Floor? All right! Let me listen to those two Members. Member for Kipipiri, please.

**Hon. Gichigi:** Hon. Temporary Deputy, I have an issue with the three minutes. The minimum amount of time we should give Members when we are discussing important policies in this country - policies that have never been established by the various Ministries like employment, productivity and national cohesion - is at least five minutes. There is no need of doing research and then, before you start, your time is over. I would say we have, at least, five minutes for every Member.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Kipipiri, just as you are there, one of the options you have is to amend the Motion which is on the Floor, if you are dissatisfied with the time limit of five or three minutes. One of the things you could do is to amend the Motion on the Floor but, that is for your digestion.

**Hon. Gichigi:** Thank you, Hon. Temporary Speaker. You know we did not have time. It is one of those Motions that come and surprise you. So, I need to look at it. I will be proposing an amendment.

**The Temporary Deputy Speaker** (Hon. Kajwang'): You know what to do. You are a conscientious lawyer. Member for Nakuru Town East.

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Speaker. I was asking Hon. Kajuju what those sessional papers are. We are new. We keep learning every day. I was wondering what those sessional papers are. She has had an opportunity to gladly explain what they are. She has told me that they are Government policies.

I totally agree with Hon. Gichigi that we need to conduct some research and thus, three minutes might not be enough. As you have directed, I do not know how to move an amendment and so, I would gladly ask the Deputy Majority Leader to make an amendment on the same. I totally agree that we need to discuss those Government policies. They are policies we need to look into. We should make enough contribution for each policy at it is indicated in the Order Paper.

Thank you, Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Well said. You know Members, this is your Assembly. You may also want time to debate issues. But against it, there is the public policy of trying to do the business of the House as fast as it can; trying to use parliamentary time properly. Some of them can be exerting like the Companies Bill or many of them could be small Bills. So, you are the ones who are controllers of this thing. From where I sit, I neither have a vote nor an opinion in the matter. Which other Member wants to speak to the debate on the Motion on the Floor, whether to diminish time or not? Do not raise your hands! Just punch the intervention button and I will see you.

Member for Mvita.

**Hon. Nassir:** Thank you, Hon. Temporary Deputy Speaker. I agree with my colleagues. It is only fair and besides, we can go with the limit of 45 minutes bearing in mind the number of Members currently in the Chamber. We can still exhaust all those issues in the stipulated 45 minutes and give time to whoever has been able to do a bit of research to ventilate. Three minutes is for those who have not done much research. So, they would be shouting in the three minutes.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Uriri.

**Hon. Kobado:** Thank you, Hon. Temporary Deputy Speaker. I concur. Really, what can you say in three minutes, unless you are just defining a term? We could still work with the allocation of 45 minutes and limit the number of speakers so that when you get the Floor, you can make some sensible contribution. I support that, maybe, the Mover takes 10 minutes and five minutes for those contributing.

Thank you.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Let us have the Member for Muhoroni.

**Hon. Oyoo:** Thank you, hon. Temporary Deputy Speaker. As has been exhaustively expressed by my colleagues on the Floor of the House, many of those issues will touch on the workers of this country. They are things that are geared at improving the services, lifestyles and working conditions of workers. I believe that sensible Members and, more so, those who are in the Departmental Committee on Labour and Social Welfare will need more than three minutes. That is because we are not just merely coming to say "Aye" or "Nay". We need serious deliberations. We will go blow by blow on each point. I suggest that we work on doing an amendment to change the time limit from three to five minutes.



**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Kipipiri, you have been busy. What is it?

**Hon. Gichigi:** Thank you, hon. Temporary Deputy Speaker. I wish to move an amendment to this Motion. It reads as follows:-

THAT, pursuant to the provisions of Standing Order No. 97 (1) and notwithstanding the resolution of the House on 11<sup>th</sup> February, 2015, this House resolves to limit each speech in a debate on a Sessional Paper during the current part of the Session as follows:- A maximum of 60 minutes with not more than 10 minutes for the Mover in moving and five minutes in replying and a maximum of five minutes for any other Member speaking, including the Leader of the Majority Party and the Leader of the Minority Party, and that priority shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party in that order.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): So, who is seconding this?

**Hon. Gichigi:** I request hon. Gatobu to second.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Hon. Member for Buuri, where are you? I cannot see you on my intervention button on the console. I do not think it has anything to do with your vertical preparedness.

*(Laughter)*

Anyway, there you go.

**Hon. Kinoti:** Thank you, hon. Temporary Deputy Speaker. I wish to second the amendment by the Hon. Member for Kipipiri. I wish to note the grave matters of the issues that we are discussing. Much of what we are experiencing in this social country was moved by Sessional Paper No.10 by Hon. Thomas Mboya. So, when we speak about sessional papers, it is a matter of very grave importance to this country. I wish to support the amendment by Hon. Gichigi that we really cannot speak much to this important issue within three minutes. I wish to support that we discuss the Sessional Paper for a total of 60 minutes, the Mover will have 10 minutes and five minutes should be adequate for each speaker speaking to exhaust those important issues in Kenya.

Thank you, hon. Temporary Deputy Speaker. I wish to second.

*(Question of the first part of the amendment,  
that the words to be left out be left out, proposed)*

**The Temporary Deputy Speaker** (Hon. Kajwang'): Do I have Members who want to discuss the amendment?

**Hon. Members:** Put the Question.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Is that the consensus of the Assembly?

**Hon. Members:** Yes.

*(Question of the first part of the amendment, that the words to be left out be left out, put and agreed to)*

*(Question of the second part of the amendment, that the words to be inserted in place thereof be inserted, proposed)*

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

*(Question of the Motion as amended proposed)*

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Members, now we have the Motion in the amended form. Is there anybody who wants to contribute to the Motion in the amended form? We have not put the Question. We are still on the Motion in the amended form.

**Hon. Members:** Put the Question.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Do I hear a call for a vote?

**Hon. Members:** Yes.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I shall put the Question.

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly:*

THAT, pursuant to the provisions of Standing Order 97 (1) and notwithstanding the resolution of the House on 11<sup>th</sup> February 2015, this House resolves to limit each speech in a debate on a sessional paper during the current part of the Session as follows:- A maximum of 60 minutes with not more than 10 minutes for the Mover in moving and five minutes in replying and a maximum of five minutes for any other Member speaking, including the Leader of the Majority Party and the Leader of the Minority Party, and that priority shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party in that order.

ADOPTION OF SESSIONAL PAPER ON NATIONAL INDUSTRIAL  
TRAINING AND ATTACHMENT POLICY

**The Temporary Deputy Speaker** (Hon. Kajwang'): Let us have the Chairperson of the Departmental Committee on Labour and Social Welfare. Are you in the Assembly? Is that the Vice-Chair? You may proceed.

**Hon. (Ms.) T.G. Ali:** Thank you, hon. Temporary Deputy Speaker. My Chairman is away and so, I am holding brief. We are looking at Sessional Paper No. 2 of 2013 on National Industrial Training and Attachment Policy. Why the Industrial Training and Attachment Policy? Industrial training and attachment is conducted without a national sessional paper. All the

trainings are administered under policy guidelines contained in various Government documents and administrative circulars that are issued by different institutions and agencies.

The framework provides for the establishment of industrial institutions and programmes for planning and implementation of industrial training and attachment. It takes cognisance of regional and global trends towards recognition of qualifications across the country. This framework will also provide for harmonisation of guidelines for implementation of industrial training and attachment. The policy intends to strengthen the linkages between training institutions and industries.

The scope and application of this particular policy will apply to all sectors of the economy. The policy will also cover all the industrial training and attachment standards, requirements, challenges and interventions and the role of all private and public sector players in the economy that include, among others Government Ministries, departments and agencies, universities, trainees and employees. When we look at the challenges, it also emerged that there is limited data for identifying the ever changing training needs and other needs that are relevant to the policy sectors of the economy. This has led to a mismatch between skills offered by training institutions and the skills needed in the industry. Currently, the national qualification framework for accreditation and equating of certification has been passed by the House and it is now waiting presidential assent.

It is also important to note that the country does not have a formalized qualification and certification system for all levels of industrial trainings. There is a limited linkage between industries, trainings and research institutions. This has led to development of poor training curriculum, mismatch between skills acquired from training institutions and the needs of the industries. The financing of industrial training and attachments has been inadequate due to lack of constitutional framework for financing industrial training and attachment. There is also lack of framework for re-training of trainees in order to keep abreast with the emerging areas of technological changes and labour market dynamics. There are also inequalities in accessing industrial trainings and attachment for women, youth, persons with disabilities and those from marginalized areas.

The Committee came up with the following observations after interrogating the Principle Secretary in the Ministry of Labour, Social Security and Services, relevant heads of department and after scrutinizing the policy paper.

One, there is need for a policy that provides for coordination of industrial training and attachment. Two, a policy that provides for framework for establishment of institutions, programmes and implementation of industrial trainings and attachment and it takes cognizance of regional and global qualifications across the borders.

There is also need for a policy that seeks promotion and enhanced industrial training and attachment system to enable trainees acquire practical skills that are relevant to the labour market. The Committee also observed that the matrix of cost in implementing the policy has not been reflected in the sessional paper. The policy also came up with the term “manpower”, which has been used in the policy paper to mean human resources. We noted that this is gender insensitive.

We also observed that the Ministry proposes formation of a national qualification authority to be an implementing agency. The Committee recommends the following:-

One, that the National Assembly adopts the industrial training and attachment policy as contained in Sessional Paper No.22 of 2013.

Two, the implementation of the industrial training in the counties to be done through the establishment of county industrial training and attachment offices, and accreditation of placement or agencies in the counties.

Hon. Temporary Deputy Speaker, I beg to move. If I have remaining minutes, I would like to donate to my Members.

**The Temporary Deputy Speaker** (Hon. Kajwang'): No, you do not have any minutes. You have just moved. This Sessional Paper is still not before us for debate, until it is seconded and proposed to the Assembly.

**Hon. (Ms.) T. G. Ali:** Okay. I move and ask Hon. (Eng.) Kobado of Uriri to second.

**Hon. Kobado:** Thank you very much, Hon. Temporary Deputy Speaker.

I rise to second this particular Sessional Paper. This Paper will serve to help reform and regulate the training environment.

Two, it will also help to reform skills acquisition, competitiveness and, more so, the competencies of the trainers. In this country, we have broadly about three platforms of training. If you look at what is stated in the Paper, attachment and training have been, for a long time, treated separately. But in my view, attachment is just a stage in the training process. Training would start with theory where the trainees are given theoretical knowledge, and then they move into laboratories where they do practical work. They are then exposed to the work environment. That is what we call industrial attachment.

This House has already established three authorities that provide the platform for training for this country. One is the Technical Vocational Education Training Authority (TVETA). This is an establishment which is formal and conducts structured training. We also have the National Industrial Training Authority (NITA) established by an Act of Parliament where we have quite a bit of formal and largely unstructured trainings. Here is where we talk about attachments, internships and apprenticeships. Thirdly, we have the Micro and Small Enterprise Authority (MSEA), which is also established by an Act of Parliament. At MSEA, training is informal and largely unstructured. There is need to have all those bodies coordinate their programmes. This can only be done with this Sessional Paper No. 2, to be able to harmonize all those. You realize there is serious mismatch of skills; particularly the skills that are impacted by the training institutions and the skills that are required in the industry. There is a serious mismatch. Already, this House has passed a Bill on National Qualifications Authority to be able to harmonize those various training activities with education, so that we can establish a career path for those who are training and career progression, which is lacking at the moment.

This policy will require various institutions to draw up their curriculum because if you look at the informal sector there is no curriculum. Those people are just training in haphazard manner. If you look at the industrial trainings, those are not institutions that are established for training, but institutions that are providing the real work situation as a matter of training. There is need to come up with a curriculum so that those people are certified. At the end of it all, if you are going to use the National Qualification Authority, we should be able to know that at this level a person who has trained through exposure or apprenticeship has acquired that level of skill and can be matched with the fellow who has been in a formal structured training institution. This is important and can only be brought about by this particular policy paper.

We require a paradigm shift in the training environment. The thinking must shift from training for employment to training for employability. We are also trying to internationalize trainings so that those who train in this country can ultimately be exported to the neighboring countries. We can export human resource to developed world because Kenya has institutions that have trained and produced many skilled workers. So, that can only be done if all those are harmonized.

Lastly, training is a tripartite arrangement that involves the employer represented by the Federation of Kenya Employers (FKE), the employees represented by the Central Organization of Trade Unions (COTU) and the Government through the Ministry of Labour and Social Welfare. There is need to seek input from those very key stakeholders to come up with a paper that will address all the critical areas.

With those remarks, I second and support this particular Sessional Paper.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, you know I need to give you guidance. We have business appearing as No. 10, No.11, and No. 12. All those are dealing with the Committee on Labour and Social Welfare on various sessional papers which you Members have received and have gone through. They have been interrogated by the Departmental Committee as you can see in one of the reports that have been presented. They have approved all those sessional papers.

So, for now, we are only dealing with Sessional Paper No. 2, but they are so inter-linked. That is why I do not want duplicity in debate. When you feel that it has been properly prosecuted, we do not have to take too long. Otherwise, we are going to take one hour on each Motion for an issue which has been prosecuted. I can see several requests. I am imagining that each of you wants to discuss several or different policy papers. If that is the case, can I have the people who want to discuss this Sessional Paper No. 2 of 2013? Can you press the intervention button so that I do not waste a lot of parliamentary time? Now, we are talking about Sessional Paper No. 2 of 2013. Member for Nakuru Town East.

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Speaker. I thank the Departmental Committee on Labour and Social Welfare for bringing the Motion. I rise to support the adoption of Sessional Paper No. 2. As it has been said, this country is becoming an industrial nation. We do not want to depend on people who are living in classes. Industrial training is a very important issue in this country. These days, it is not everybody who has an opportunity of getting employment in offices. We need to support those kinds of policies in this country because of the young people out there who cannot have an opportunity to be employed in any of the Government or private offices.

The industrial training is going to bring a huge change. It will instil some practical skills in our young people so that they can go out there and be able to earn a living from the skills that they have acquired. If you look at attachment, so many young people are coming from different colleges and are seeking for attachment in various institutions. That is important because as those young people get some skills in various institutions, they need to be acquainted with the current practices. As it has been said by the Vice-Chairperson of the Departmental Committee on Labour

and Social Welfare, it is very important because initially, you would find people just going to colleges to get some theoretical training without understanding the demand in the job market.

This is going to bring a very big change in this country where young people will have an opportunity to practise what they have learnt. If you look at what has just been said, technology is changing on a daily basis. People need to be acquainted with those changes in technology. As the Seconder has said again, we not only need to look at this country but also to prepare young people to export those kinds of acquired skills. I do not want to use the word “manpower” because the Vice-Chairperson has said that it is a little bit discriminative.

Just the other day we were talking about the Lamu Port-South Sudan-Ethiopia Transport (LAPPSET) Corridor Project and the new found oil in Turkana. It will be transported all the way through a pipeline. We have welders who are just concentrating on training only for purposes of welding iron. The pipeline is not just about steel and iron. It might be of another substance. We need proper trained welders to be able to make the pipeline. Otherwise, what we will end up having are welders being imported from other places to the country. We need to have welders who are trained for purposes of the pipeline. It is very important because I know that the Kenyan pipeline was done by people who are not from this country.

The training curriculum is also important. Each institution will have its own training curriculum that can be in tandem with the current requirement. We have talked about the emerging new technology. Issues are changing. As it has been said in the observations which were done by the Committee, it is the actual thing on the ground as it is.

With those few remarks, I support the adoption of Sessional Paper No. 2 that is on National Industrial Training and Attachment Policy. I can see the light is on. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon.Kajwang'): Member for Aldai.

**Hon. Serem:** Thank you, Hon. Temporary Deputy Speaker. I rise to support Sessional Paper No. 2 being a member of this society who understands the challenges that our young men and women are going through in trying to get training when they are still in college. I was once a deputy director of an institution. Most of the students were taking training when they were still in college. The most pressing problems that I came across are the requirements that the students need to have before they get trained or attached to institutions.

Every institution in this country has its own requirements. Some of them require them to have life insurance, medical insurance or identification cards. Those are the challenges that make it very hard for anyone out there who wants to get the skills in a college. Unless those issues are addressed, the poor and disadvantaged students who are in colleges will not get an opportunity to join those institutions that can give them life time skills. The main challenges that this country goes through are the institutions that we have and attach our students to. Sometimes, you get an engineer attached to an institution that deals with medical supplies. At the end of the day, we are satisfied that the student has actually achieved the requirements for attachment. You cannot pick a nurse and attach him or her to an engineering institution. There should be a guideline to show the skills that one has to have for attachment.

The other issue that needs to be addressed - and we realised that it is a big challenge - is the equating of certificates. You get somebody who has a certificate from a college at some corner in this country and he wants an attachment in an institution, but the two cannot match. You get somebody with a certificate and one with a degree being put in the same place and, at

the end of the day, they are being given the same certificate of attendance. There is a problem when we are equating certificates. There should be a framework that guides those attachments.

*(Loud consultations)*

Hon. Temporary Deputy Speaker, Members are consulting in high tones. I am not concentrating. Protect me from my colleagues who are making noise.

**The Temporary Deputy Speaker** (Hon.Kajwang'): There is a new found caucus that seems to be drawing a lot of Members, including Members who should be seated on the Minority side. Okay, proceed.

**Hon. Serem:** In the guidelines, we should address this policy, Hon. Temporary Deputy Speaker. Do we pay students who go for attachments because in most cases, you have students who come from as far as Malindi to Nairobi? Is there a stipend that is being given? There should be a guideline. There are institutions that pay a small amount and some do not pay. The issue of rewards for students that are on attachments should be addressed. I believe that when we discuss this policy, that issue should be looked into.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Let us have the Member for Kipipiri. I hope you were not consulting loudly, so that the Member for Aldai did not have enough time. Please, proceed.

**Hon. Gichigi:** Thank you, Hon. Temporary Deputy Speaker. I also rise to support and seek approval of this policy. It is a tragedy in this country that many years after we gained our Independence, we have not had a comprehensive policy on industrial training. This is the first time that it is coming. That is why we need to look into it and probably approve it very fast. It is also very bad that it has been with us since 2013 and we have not approved it.

There is a trend that is arising in this House, where we come up with laws before the policy is enacted. We now have a neat Act, but we do not have a policy on it. We need to recognise that Kenyans have potential for socio-economic development. This lies with the Kenyan people. Our people have the potential for creativity. We need to push for a serious regime of work ethics as well as entrepreneurship.

This country has invested heavily in human capital development through formal and regular education in terms of primary, secondary and university. But there is a major gap when it comes to industrial attachment. We need to seek a solution to the problem that we have where people go to university and other colleges but, when you put them in a situation of work, they take a long time before they gain the necessary skills to become properly productive.

I know we will be dealing with the policy on productivity, but if Kenya is at 0.84 per cent productivity while a country like America is at 12 per cent, one of the major causes of that problem is lack of industrial training for our people. In all the jobs that are being advertised in newspapers and elsewhere, people are required to have experience. This is a major roadblock for people who are coming from normal learning institutions. When we come up with this policy that is making it easy for the industry to accommodate school leavers in industrial training, the issue of experience will be compensated with industrial training.

In the education sector teachers undergo teaching practice and in the legal sector, there is pupilage and the moot court concept. Those professions prepare their graduates for the real world

out there. It is possible for a person in those professions to go directly from college and work because they are properly prepared.

We need to improve this policy by making it obligatory to mass employers to take in a certain number of trainees for industrial attachment against certain incentives from the Government. We have a massive output in tertiary colleges, but they are not productive. We also need to put policy in the area of budget. We need to take care of the current budgetary constraints in the National Industrial Training and Attachment (NITA). We also need to increase colleges and institutions across the country and in every county to take care of that. We also need to give serious incentives to the industries to take up graduates for industrial training.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Nominated Member, Isaac Mwaura.

**Hon. Mwaura:** Thank you, Hon. Temporary Deputy Speaker. This Sessional Paper is very important to the youth of this country because, for a long time, young people have been giving their free services to the Government, Non-Governmental Organizations (NGOs) and even churches for purposes of getting accredited for graduation, but there has not been any kind of reward or guideline in terms of their engagement. The only incentive that the young people have been told is that in their CVs, they do not need to say that they are not being paid. In fact, my own experience has been that if you are an intern somewhere--- I remember when I first graduated from my undergraduate programme. You get surprised when you start being paid for what you are doing for free. That, in itself, critically shows that, sometimes, cheap labour can be exploited when people do not know how to negotiate.

If you look at the people who are graduating from our universities and tertiary institutions, it is becoming increasingly difficult for them to even get internship positions. I am sure most Members would agree with me that they keep on getting requests to help constituents or individuals get internship positions. That, in itself, is a bit worrying because it shows the kind of manpower that we are developing. I greatly note the reservations of the Vice-Chairperson of the Committee with the word “manpower” because it is gender insensitive.

However, the completion of a course cannot be done without real hands-on experience because that is the inter-link between theory and practice. I want to paraphrase the late Hon. Martin Shikuku who used to say that there is no school that teaches a subject called experience. Therefore, this policy gives a broad statement of intent that would ensure that this critical area of human resource development and national productivity is inter-linked and well-regulated. We have had many cases of young people who are told that they intern for some time in anticipation for placement or employment, only for them to be told that there is no vacancy after they have volunteered for work.

If you look at this country you will realise that quite a number of our people are underemployed. Sometimes, even when you look at the public service, you realise that people have the same qualifications and experience, but there is a very big disparity in terms of how much they get paid. This can be attributed to the entry behaviour. If, for example, you get into an internship position that is not properly regulated, you are more often than not likely to be underpaid.

Hon. Temporary Deputy Speaker, I support the adoption of this Sessional Paper that the Ministry of Labour, Social Security and Services should go ahead and enact the relevant legislation. NETA should possibly be enacted through an Act of Parliament rather than a legal notice. It should ensure that there are proper guidelines that are properly disseminated so that our



youth are not exploited. They will know the guidelines on how to look for internship and how they can be compensated for the work that they do.

I support.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Member for Igembe North.

**Hon. M’uthari:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity.

I rise to support this Session Paper and also the recommendations of the Committee. This is a very important Sessional Paper given the fact that it gives the guidelines as far as training and industrial attachment is concerned. This should have been developed earlier before we came up with the Bill, which I think is now an Act - the Kenya Qualifications Framework - which gives guidelines. It also recognizes the importance of qualifications of the individual, both formal and informal. There are some people who have gone through the informal sector in terms of the industry and they end up doing very well. Some gain experience and end up performing better than the people who have gone through the formal training. But because of reliance on papers in the name of certificates, their competence is not considered. Therefore, this particular Sessional Paper that considers the competence as highlighted in the Kenya Qualifications Framework is a very important thing.

Hon. Temporary Deputy Speaker, in Kenya we have a number of universities and training institutes but, at times the ability and competence of some of the graduates we produce may not be as per what we require. Therefore, specifying and increasing the duration for industrial attachment becomes helpful. They come out as people who can apply their competence, knowledge and skills. This particular Sessional Paper gives the opportunity for career progression and how it happens. It looks at other issues like outpatient, safety and health of people involved in industrial work.

Hon. Temporary Deputy Speaker, however, there is one of the observations by the Committee that I do not agree with - the question of manpower. We are taking too far the question of gender sensitivity. We are going to the level of being sexist and not looking at the things as they are. When you talk about man--- A woman is a woman and so there is an element of man-woman and so, when we say this is gender insensitive, it will be taking some things far. It does not add value in any way.

As a country, it is important to look at the qualifications part. The Sessional Paper was prepared earlier before the Committee’s Report was made. So, some of the elements may have been overtaken by events. As I said, we already have the Kenya qualifications framework that takes into consideration some of the proposals or the recommendations by the Committee and the Sessional Paper.

With those few statements, I highly support this because it is good for the country. Thank you.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Member for Cherangany Constituency.

**Hon. Korir:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Sessional Paper and raise my contribution not only as a member of the Committee, but also a Member of Parliament of the Republic of Kenya.

I think I am in agreement with the Cabinet Secretary (CS) on this policy, that this country needs to streamline and make sure we have policies and guidelines that will enable many trainees

get internship and attachment. However, my concern is on something that I have recently been thinking about and I am---

*(Hon. (Ms.) W.K. Njuguna raised her hand)*

**The Temporary Deputy Speaker** (Hon. Kajwang'): Sorry, Hon. Member for Cherangany Constituency. I can see a Member who is not ordinarily restless being very restless. I cannot even figure you out from my list.

**Hon. (Ms.) W.K. Njuguna:** Thank you, Hon. Temporary Deputy Speaker. I thought it is also good to mind gender because it seems like your eye is not catching us.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Order! Stop this story about gender, Hon. Member for Kirinyaga County. Let us now have more innovative approaches in the Chamber. I have heard that phrase of gender for quite a long time now. We are trying our level best to accommodate everyone.

**Hon. Korir:** Hon. Temporary Deputy Speaker, I would like to say that we need to be very cognizant of the fact that we cannot use gender to get away with everything.

I was talking of attachments to our people. As I was going round in my area of jurisdiction, that is Cherangany, recently I came to learn that we need to do something in this country. Employers, industries and the people that those on attachment work for are not doing what they are supposed to do. As you go around the world and especially in the developed countries, things are different. As we speak now, the world realizes that Kenya is on the move. As President Obama said, Kenya is on the move and Africa is on the move. We need to start and move towards engaging and looking at other people's policies on how they deal with those on attachment. In the developed world like America and Canada, once somebody goes for attachment---

*(Hon. Nassir stood up in his place)*

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Member for Mvita Constituency, I appreciate that you must be very anxious, but the Standing Orders require only one Member to be standing at a time.

**Hon. Korir:** Once somebody goes for attachment, they have to be paid. That does not happen in this country. I have been looking at this policy paper and I do not see anywhere where the CS proposes to introduce or hope to find a solution or a way of making sure that our young men who have graduated or are in the process and working like everybody else are paid. If you look at the hotel industry, when you sit to be served, you will be served by a college or university student who does the same job as somebody who has been employed and is earning in that hotel and yet, that student does not earn a salary. That university student or the one on attachment wakes up at weird hours like 6.00 a.m. or 5.00 a.m. in the morning. They go to work like everybody else but all they get is a certificate stating that they did an attachment at the end of it all. That is not right. As Members of Parliament, we should look at it and find solutions. We should come up with policies, Bills or laws that will enable whoever is on attachment and does a job like any other employee to be paid. Even if it is not the full amount, they need to be paid half

the amount or some percentage. That person needs to eat, pay transport, pay rent and still pay school fees. We need to find a solution for that.

For that, I support this Motion. We need to put our minds together to find a way of helping those on attachment to live comfortably. They should not be used by business people to make money and yet, they are not paying them.

Thank you.

**Hon. Oyoo:** Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity to add my voice to this valuable concept. This concept of National Industrial Training Authority (NITA) must be commended. I went to a technical school in my early years and the concept of NITA is not a new one. Then, we had much more organized attachments. It is just unfortunate that in Kenya, we drive going backwards. Things that should be driven forward are driven backwards and then later on, we run after time trying to reintroduce them as new concepts by doing a bit of polishing. Those days, they were called National Industrial and Vocational Training Centres (NIVTC). The centres used to recruit young “freshers” from technical schools who were then taken for attachment and given consideration in case of vacancies. What made it very successful is that serious consultations were done involving employers and the labour movement and, hence, there was harmony in implementation.

I am aware that the Government of Kenya, during the Kibaki era, did a lot of collaboration with the Chinese Government and, as a result, construction of new technical and vocational training institutes is going on. That will go a long way in producing the much needed manpower. Those people will end up being attached to our NITA Institute. So, we need to do a lot to make sure that the curriculum is in place and that there is room for as many attachments as possible. I am also aware that this concept is not confined to technical schools alone. Even fresh doctors will be attached as interns.

This Sessional Paper has been brought to this House courtesy of the Ministry of Labour, Social Security and Services. This Ministry is fond of running their affairs in the old order where people believed that the Government of the day dictated terms. To be precise, the Ministry is a tripartite Ministry such that for them to create harmony in this country; and for them to help the President achieve his goal in preparing the youth, there must be serious consultations with the stakeholders. That is the Central Organization of Trade Unions of Kenya and the Federation of Kenya Employers.

I am afraid that up to this stage of this paper, no major consultations have been done. I want the commitment of this House that before this paper is adopted and implemented, major stakeholders, that is, COTU and FKE, must be accorded an opportunity to look at it and make their input so that Kenyans can get value out of the paper. It is a good paper, but it needs a lot of refining which will need a lot of consultations. I also want to take this opportunity to ask the Ministry to make good arrangements for law enforcement and implementation. In Kenya, we are very good at making very good laws, floating very good policies and writing very good papers but when taken out for implementation, the concepts fail the test of time because of lack of supervision and implementation. That is why many good papers and concepts have been written by experts, but they have not been useful for the intended purpose due to lack of supervision.

With those few remarks, I support. However, I want the commitment of this House that the major stakeholders in this concept and, more so, COTU and FKE, must be embraced and

brought together by the Ministry because it is a tripartite Ministry. This attitude of “we are the Government” must stop in the Ministry.

Thank you very much. I wish to support.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Muhoroni, you have made statements which, in other circumstances, could be alarming. So, we do not want those people who make stories out of what they say in the Assembly to go and report a beautiful headline that stakeholders were not consulted. Have you looked at the Sessional Paper itself? Policy is derived from stakeholders. I must presume that, that policy must have sprung from the stakeholders. Those people you are mentioning are one of them. So, before this goes as an alarming statement, have you read the policy paper itself and have you satisfied yourself that those people were not consulted?

**Hon. Oyoo:** Thank you very much, Hon. Temporary Deputy Speaker. I am a Member of the Committee. This concept was brought to Mombasa when I was out of the country, courtesy of the Speaker of the National Assembly. I had gone to represent the country in a different committee. But I want to confirm without fear of contradiction that up to the time I am standing before this House, the Ministry or the Committee has not done much to consult the Central Organization of Trade Unions (COTU) and the Federation of Kenya Employers. In fact, they have not been consulted. I would implore that their input be incorporated into this beautiful policy.

**The Temporary Deputy Speaker** (Hon. Kajwang'): All right. But while I give you the benefit of the doubt that your confirmation may be right, your admission that you are part of this Committee in itself is a killer punch for you. Should you not as a Member of this Committee have ensured that participation? You know that the National Assembly in the presidential system works through committees. In plenary, we assume that you have done your work as a Committee and you are giving us a product which can be consumed.

Anyway, thank you very much.

**Hon. Oyoo:** I hope, I have been heard.

**The Temporary Deputy Speaker** (Hon. Kajwang'): That was for your information. Let us move on. Member for Mvita.

**Hon. Nassir:** Thank you very much, Hon. Temporary Deputy Speaker. I wish to support this Sessional Paper. However, I would like to give a point of information as a reminder to all of us. This Sessional Paper is dated 2013. Initially, it was tabled in December 2013 and then it was tabled again in March of 2014, whilst it is being debated at the end of July 2015.

This Sessional Paper is meant to give an overview of industrial training and attachment which is very vital for employment, especially of the youth of this country. Let me give the history of industrial training in Kenya. In 1924, the colonial Government established the first Native Industrial Training Depot (NITD) at Kabete. The reason for its establishment was to absorb and rehabilitate the demobilized African soldiers who had returned from the First World War. This training helped in getting skilled labour, as much as skilled labour had been brought from India. But the labour that was there came from people who had been trained from that particular depot. This was for the “Lunatic Express” which is the Mombasa-Kisumu Railway line that was being built at that time. The law-making process for this Act was the Industrial Training Ordinance Act of May 1960. After Independence, it became the Industrial Training Act of 1971. An amendment to establish the National Industrial Training Council 2011 was made. Another

amendment to establish the National Industrial Training Authority and the National Industrial Training Board was made.

Let us remind ourselves on the pace at which we need to be moving as a country. The First World War was fought between July 1914 and November 1918. Thereafter, there were a series of treaties that were signed. The last one was that of 24<sup>th</sup> July, 1923. When it had already been seen that there was not going to be a level of war anymore, soldiers had to be demobilised. I am taking us back into history to see what we are capable of learning. By 1924, we already had a centre for industrial training established in this country. Today, we fast forward our situation. At that time, there was the “Lunatic Express” that was being built. Today, we have the Standard Gauge Railway (SGR) line being built. We have ports that are being built. We have oil that has been discovered in Turkana which is going to need labour. At that particular time, the country was at war. We were fighting someone else’s war and our soldiers had to be demobilised. Today, we are fighting an internal war against drug abuse, alcohol abuse and the bigger war against unemployment. The rate at which we are moving is worrying. It is now that we are discussing sessional papers that we should have discussed long ago. We are trashing them giving them 60 minutes for debate so that the ministry in charge can come up with proper policies and financial frameworks to say that this is what they need in their budgets. Today, we are discussing sessional papers when the budget for the Financial Year 2015/2016 has already passed. So, if there is anything to implement whatever is being done here, we are looking at the budget of the Financial Year 2016/2017. This is the pace at which we are moving as a country. So, I implore those in the Executive not to just talk about this. I always say this and I am on record of saying this; that we--

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Deputy Leader of the Majority Party, my apologies. It was in the back of my mind that you were going to reply. You have your five minutes.

**Hon. (Dr.) Shaban:** Thank you, hon. Temporary Deputy Speaker. I also stand up to support the Report on the Sessional Paper No. 2 of 2013 on the National Industrial Training and Attachment Policy. I add my voice to the Committee which has done a lot of work to make sure that it presents this Report to Parliament for plenary. I just want to point out a few issues. I like the fact that they have mentioned the National Qualifications Authority, which has actually been overtaken by events. We have the National Qualifications Framework Act in place after passing the National Qualifications Framework Bill earlier on in the year.

I have a few concerns about the issues that have been affecting interns in our country. We have issues where poor youths are being given attachments and yet, there is no allowance being given to them. The Government should have actually pronounced itself on this particular issue and, more so, in line with the Budget Speech, where the Government can put it bluntly that a special tax rebate will be given to companies which take on interns. As they train them, the Government will do something special.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Deputy Leader of the Majority Party, for HANSARD purposes, allow me to apply myself to Standing Order No. 1 and increase the sitting of the Assembly right now by about five minutes so that we are able to respond to it and dispose of it. So, you have about a minute to finish your thought process. It is so ordered.

**Hon. (Dr.) Shaban:** Thank you Hon. Temporary Deputy Speaker. This aligns itself to the Budget Statement which was outlining a policy for this country on special tax rebates for all those companies.

The Jubilee Government is already taking very seriously the training for National Youth Service (NYS), so that they can learn more after getting the classroom training and the work that they have been doing. The Government must pronounce itself.

On the issue of stakeholders, we need to know whether stakeholders were consulted. The main stakeholders where this policy is concerned are COTU and FKE. Most likely, those were the people who were consulted when this policy was being formulated.

Hon. Temporary Deputy Speaker, I beg to support.

**The Temporary Deputy Speaker** (Hon. Kajwang’): The time allocated to this Motion having been exhausted, I now order that the Mover be called upon to reply. You have three minutes.

**Hon. (Ms.) T.G. Ali:** Thank you, Hon. Temporary Deputy Speaker. I want to donate some of the few minutes to Members who are here.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Unfortunately, you cannot do that. Follow the Standing Orders. When the House resolves itself upon some period of time, you now do not have that precious opportunity to donate. Just wind up, you now have two more minutes.

**Hon. (Ms.) T.G. Ali:** I have 10 minutes to reply.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Proceed.

**Hon. (Ms.) T. G. Ali:** Thank you, Hon. Temporary Deputy Speaker. Let me take this opportunity to thank all the Members who have spoken on this Sessional Paper. I know we have Members of the relevant Departmental Committee who have spoken and supported this Paper. I am happy that most of the Members of this House have been able to attend this sitting and they have stayed up to this moment in order to support this Motion. I also want to thank Members of this House who have contributed to this very important Sessional Paper. I know it is going to be very useful; it should have been presented a long time ago. It is a Paper that most Kenyans have been waiting for. So, by implementing this Paper, we will be able to put our training and attachment policy right, and that will benefit Kenyans.

I thank all of you.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, I order that the Motion appearing as Order No.10 be listed tomorrow or as early as it can be for the purposes of calling a vote.

Hon. Members, the time being 6.35 p.m., this House stands adjourned until Thursday, 30<sup>th</sup> July 2015 at 9.00 a.m.

The House rose at 6.35 p.m.