

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 28th July, 2021

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

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

PRAYER

PAPERS LAID

FINANCIAL REPORTS FOR COUNTY GOVERNMENTS FOR FY 2018/2019 (VOLUME I)

Sen. Dullo: Thank you, Mr. Speaker, Sir. I beg to lay the following papers on the Table of the Senate today, 28th July, 2021:

Report of the Auditor-General for the County Governments for the Financial Year 2018/2019 (Volume I).

FINANCIAL REPORTS FOR COUNTY ASSEMBLIES FOR FY 2018/2019 (VOLUME II)

Report of the Auditor-General for the County Assemblies for the Financial Year 2018/2019 (Volume II).

EACC ANNUAL REPORT FOR FY 2019/2020

The annual report of the Ethics and Anti-Corruption Commission for the Financial Year 2019/2020.

(Sen. Dullo laid the documents on the Table)

NOTICE OF MOTION

INTEGRATING CLIMATE EDUCATION INTO SCHOOL CURRICULUM

Sen. Were: Mr. Speaker, Sir, Sen. Halake requested that I read it on her behalf.

The Speaker (Hon. Lusaka): That is okay.

Sen. Were: Thank you, Mr. Speaker, Sir. On behalf of Sen. Halake, I beg to give Notice of the following Motion -

THAT, AWARE THAT it is important that both the current and future generations are better equipped to address the problem of climate change and this can be accomplished by using appropriate instructional strategies such as integrating climate education into the syllabus to assist students in improving their understanding of climate change and acquiring the essential skills to reduce its effects;

ACKNOWLEDGING THAT education is crucial to promote climate action as it helps individuals understand and address the impacts of the climate crisis, empowering them with the knowledge, skills, values and attitudes needed to act as agents of change, hence protect the environment and take action by crafting community level solutions.

COGNIZANT OF THE FACT the Constitution of Kenya in Article 42 provides for the right to a clean and healthy environment for every Kenyan, which includes the right to have the environment protected for the benefit of present and future generations.

FURTHER NOTING THAT climate change is a global nightmare with consequences that are already quite visible, and should be a priority for our education curriculum, in accordance to Article 12 of the Paris Agreement which espouses the enhancement of climate change education, training, public awareness, public participation and public access to information;

NOW THEREFORE, the Senate calls upon the Council of Governors in partnership with the Ministry of Education, Science and Technology to:

1. Integrate climate education in the school curriculum in all counties to equip all school going children; and
2. Equip teachers and administrators with the necessary information and training skills to teach climate education in schools.

Thank you.

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

APPROVAL PROCESS AND IMPORTATION PROCEDURE FOR COVID-19 VACCINES INTO KENYA

I do not see Sen. Cherargei. The Statement is deferred.

(Statement deferred)

STATE OF MENTAL HEALTH AMONGST OFFICERS IN THE DISCIPLINED FORCES

I do not see Sen. (Dr.) Mbiti. The Statement is deferred.

(Statement deferred)

Sen. Omogeni, proceed.

STATUS OF SENATE COURT CASE CHALLENGING
VARIOUS ACTS PASSED BY THE NATIONAL ASSEMBLY

Sen. Omogeni: Thank you, Mr. Speaker, Sir. I rise under Standing Order No.51(1)(a) to make a Statement.

As you may recall this House on 20th June, 2019 passed a Motion whereof the Senate filed a High Court Petition No.284 of 2019 that was later consolidated with Petition No.353 of 2019, whereas the Senate was challenging a number of Acts that were passed by the National Assembly without compliance with Article 110(3) of the Constitution that makes it a condition precedence of the Speakers of the two Houses to have concurrence before Bills are processed by either House.

Mr. Speaker, Sir, you will recall that on the 29th October, 2020, a favourable judgement was issued by the High Court where 29 Acts of Parliament were declared null and void for noncompliance with that provision of the Constitution. The National Assembly, being dissatisfied with the outcome of the High Court proceeded to file Civil Appeal No. E284 of 2021 that has been pending before the Court of Appeal.

I wish to report that yesterday, Sen. Orengo, Sen. Mutula Kilonzo Jnr. and I represented the Senate in the Civil Appeal No. E284 of 2021 that was heard before Lady Justice Agnes Murgor, Lady Justice Nyamweya and Lady Justice Lessit.

The arguments and submissions were concluded yesterday and the Court of Appeal reserved the judgement for the said appeal for the 5th November, 2021. The Justices of the Court of Appeal also directed that the status quo do remain in force in terms of the 23 Bills that were nullified by the High Court pending the delivery of the judgement of the Court of Appeal on the 5th November, 2021.

Mr. Speaker, Sir, on behalf of the Committee on Legal Affairs, Justice and Human Rights, we give a commitment to this House that we will continue to ably represent the interest of the Senate in that appeal until the matter is heard and concluded.

I also wish to thank your Office and that of the Clerk for the support which has been extended to our team in undertaking this important exercise in terms of the advocates that were forwarded to us to provide legal support. The legal officers are Mercy Thanji and Sylvia who gave us support during the preparation and hearing of this petition.

Mr. Speaker, Sir, we shall continue to update the House on the outcome of that ruling on the 5th November 2021.

I thank you.

The Speaker (Hon. Lusaka): Thank you, Sen. Omogeni.

Hon. Senators, I wish to rearrange the Order Paper for the convenience of the House.

I direct that we go to Order No.20 on the Order Paper. This is a continuation of debate. Once the Whips are ready, they will let me know so that we can go back to the other Orders.

BILLS*Second Reading*THE OFFICE OF THE COUNTY PRINTER BILL
(SENATE BILLS NO. 13 OF 2021)*(Sen. Were on 27.7.2021)**(Resumption of Debate interrupted on 27.7.2021)*

Sen. Were: Thank you, Mr. Speaker, Sir. I rise to move that the Office of the County Printer Bill (Senate Bills No. 13 of 2021) be read a Second Time.

Mr. Speaker, Sir, as I had expressed earlier, this Bill had been brought to this House by myself in 2018 in this Parliament. However, it had also been canvassed in the previous Parliament noting the importance of the Bill to devolution and the challenges that the practitioners of devolution are going through in trying to publish their writes ups.

Public participation was intensively done on this Bill and some of the deliberations that had been made then as well as objection that had been expressed by the National Government Printer have now been looked at, expressed and reviewed in the new Bill before we republished it for consideration. Some of the concerns that were raised by the National Government Printer is that there would be a lot of duplication of work. In Section Six of this Bill, we have said that there will be coordination and liaison with the Office of the National Government Printer to avoid duplication. They will also be reporting to the National Council for Law Reporting.

Those are issues that had not been captured in the Bill previously in the Bill that we had published. However, those two issues have now been included. I thank Sen. Omogeni who has this afternoon given his Statement on the court process where unfortunately the Senate is embroiled with the National Assembly on this issue of Bills. I thank our lawyers who are engaged in court trying to protect the Senate and devolution.

Mr. Speaker, Sir, the principle object of this Bill is to establish the office of the county printer in each of the 47 counties. The establishment of this office is necessitated by the provisions of the County Governments Act 2012 which keeps making reference to the publication of Bills, Acts and other documentation in a county gazette. However, the Act does not provide for the establishment of the office of a county printer that will then publish these gazettes.

Article 185 (1) of the Constitution provides for the legislative authority of county governments in the following terms; the legislative authority of the county assemblies under Article 185(1) states that: -

“The legislative authority of a county is vested in, and exercised by, its county assembly.”

Article 199(1) of the Constitution on the publication of county legislation states that:

“County legislation does not take effect unless published in the Gazette.”

Article 199 (2) of the Constitution states that:

“National and county legislation may prescribe additional requirements in respect of the publication of county legislation.”

Hence the prescription of this Bill by the Senate of Kenya. Section 23 of the County Governments Act No.17 of 2012 states that in the publication of a Bill,

“A Bill shall be published by including the Bill as a supplement in the county Gazette and the Kenya Gazette.”

Section 25 (1) and (2) of the County Governments Act No. 17 of 2012 further state that a legislation passed by the county assembly comes into force in the following terms:

- (1) A legislation passed by the county assembly and assented to by the governor shall be published in the county Gazette and Kenya Gazette within seven days after assent.
- (2) Subject to subsection (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the county Gazette and Kenya Gazette, whichever comes earlier, unless the legislation stipulates a different date on or time at which it shall come into force.”

Kindly note the use of the word ‘shall’ in Section 25(1) that means that it is important to have a county gazette in place otherwise the county assemblies are making laws that can easily be termed as unconstitutional. You can also see that Section 25(2) also mandates the county assembly legislation to have their laws if passed be published in the county gazette.

Mr. Speaker, Sir, Section 30(2) (1) of the same Act states that: -

“(2) Subject to the Constitution, the governor shall—

sign and cause to be published in the county gazette, notice of all important formal decisions made by the governor or by the county executive committee.”

Mr. Speaker, Sir, such publications include appointments, policy changes and all the others that must be published in the county gazette as much as it is published in the national Government Gazette.

Mr. Speaker, Sir, the foregoing provisions require the publishing of county legislations and certain important formal decisions in the county gazette.

Section 2 of the Act defines a county gazette to mean a gazette published by the authority of the county government or a supplement of such gazette.

Presently, county governments rely on the office of the Government Printer to publish their legislation and any other matter that may require to be published. This Bill, therefore, seeks to establish a legal framework for the independent publishing of laws and other official documents by the 47 counties.

Mr. Speaker, Sir, I will now go to the Bill and outline what it contains as an overview. Clause 2 provides for the definition of terms that are used in the Bill. For example, authorized officer who is a County Executive Committee Member (CECM) or county gazette, as envisaged in the constitution as well as the County Government Act, County printer and what the office is and what a document is for purposes of publication in the county gazette.

Clause 3 of the Bill provides for the objects and purposes of the Bill, which I have outlined and, therefore, the purpose for establishing the office of the county printer and to provide for the printing and publication of a county gazette in each county.

Clause 4 of the Bill provides for the establishment of the office of the county printer as an office in the office of the CECM responsible for matters relating to information.

Clauses 5 and 6 outline the functions of the office of the county printer, which shall be mainly to publish all authorized documents, advise and form partnerships on all matters relating to printing and publishing and ensure that there is no duplication in the printing and publication of documents.

These documents as outlined in Clauses 5 and 6 may be authorized for publication by an authorized officer who is also defined in the Bill to include the governor, the speaker of a County Assembly, CECM or the chairperson or secretary of an independent board, for example, the County Public Service Board (CPSB), a County Commission Committee, or any other body established by law in a county. Laws established in a county are done by the County Assembly.

Clauses 7 and 8 of the Bill provide that a county gazette shall be published at least once every week or such other time as may be required in which case they will call it a special gazette.

It further proposes to proscribe the publishing of documents for purposes of advertising or any other commercial gain. Then, of course, county governments to improve on their own-source revenues.

Additionally, issues of the county gazette shall be made available to the National Council for Law Reporting. As I had indicated in my introduction, this was a requirement that was not in the previous Bill, but after undergoing public participation and engagement of all the stakeholders, this was something we have included.

This is to ensure there is standardization and some form of quality control by the National Council for Law Reporting as we seek to empower our county governments both at the executive and county assembly levels.

Mr. Speaker, Sir, Clauses 9 and 10 provide that the office shall be headed by the county printer who shall be competitively recruited by the CPSB. It provides for the qualifications of the county printer and the functions.

The county printers shall be in charge of the day today management of the office of the county printer and shall among other things appoint staff to that office in consultation with the county secretary, manage the funds of the office, implement policy and development of plans.

Clauses 11 and 12 provide for offences and penalties that will ensure there is no abuse of the office of the county printer. This was also a main issue that was raised by the Government Printer when we were doing public participation of the Bill and that has now been included.

Clause 11 provides for offences, for example, failure to approve the publication of a document required to be published, failure to publish within the required time a document approved for publication, authorizing the publication or publishing of false or misleading information and altering a document approved for publication. This will bring some discipline in that office across counties. That was also the concern of the National Government Printer.

Punishment for such an offence is a fine not exceeding Kshs200,000 or imprisonment of a term not exceeding six months or both.

Clause 12 provides for a general penalty of a fine not exceeding Kshs100, 000 or imprisonment of a term not exceeding six months or both.

Clause 13 which is the last gives the CECM the power to make regulations for the better carrying out of the provisions of the proposed law. Of course, it also provides that the CECM in charge will make regulations to help guide the implementation of this law.

This will also take care of the unique factors of each county at the implementation of the Bill.

Mr. Speaker, Sir, as I had indicated earlier, the status is that all official documents are printed by the Government Printer. This Bill is seeking to devolve the office of the national Government Printer that is already in the law and the Constitution.

Most of the documents used at the county level are not gazetted because the office of the National Government Printer is overwhelmed by work. If you have paid a visit to that office that is near the Kenya Polytechnic University College, it is a very small place. One even wonders if they are able to effectively handle the work at the national level. For us to consider that 47 counties also rely on that same office to publish their documents is a nightmare. Therefore, it ends up creating shortcuts or delays which breed corruption.

We were informed by some of the players when we were doing public participation that most counties are going for printing at River Road. There are several budgets that have been in use yet they were never published.

This Bill is long overdue and necessary. It is important that we devolve the functions of this Government Printer so that people continue to publish legal documents.

It is also easy for us as the secondary overseers of devolution after the county assemblies to have a knowledge of Bills passed by the various county assemblies. It is now impossible to know where to go if you want to know which Bill, Bungoma, Busia or Baringo counties have published because there is no printer where you can go.

If you go to the Government Printer, you will most probably get Bills that have been published by the Senate or National Assembly. We do not have anywhere to look for Bills published or Acts passed by the various county assemblies. The establishments of the office of the county printer will help a great deal in dealing with that.

As I had indicated earlier, Section 32 of the County Government Act requires a governor to publish in the county gazette the assignment of responsibilities to CECMs and all other important decisions made by the governor of the county executive committee.

If there is no place, where these responsibilities are gazetted, it is not possible to hold accountable any of the players in devolution.

I beg to move and ask Sen. Mutula Kilonzo Jnr., to second.

The Speaker (Hon. Lusaka): Sen Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I rise to second the Office of the County Printer Bill (2021). This Bill gives me a lot of nostalgia because I seconded this Bill when Sen. Sang was holding brief for Sen. Wako in the Committee on Justice, Legal Affairs and Human Rights. I hope that this time round, it will find itself in law.

As I second it, allow me to say that during the public participation that we did on this Bill, we discovered many things. One, the Government Printer is not regulated in any form. There is no legal framework for the Government Printer; not a policy nor a Cabinet

paper. It is just a printer yet these people handle all the printing, whether it is succession, lost Identification Cards (IDs), or deeds for purposes of people who want to change their names, *et cetera*.

Mr. Speaker, Sir, under Articles 185 and 199 of the Constitution that Sen. Were has quoted in the memorandum of objects, it was contemplated that the publication of the county legislation will be done at the national and county levels. This brings out another contradiction in the Constitution.

They acknowledge that there will be a county printer. However, when you go to the definitions at the back of the Constitution, you see that the gazette is referred to as the Kenya Gazette, an obvious contradiction. However, for purposes of understanding the law, this primary legislation under Articles 185 and 189 takes precedence over the definitions appearing at the back of the Constitution. That is the submission I can make again and again.

Mr. Speaker, Sir, you have been a governor and I am told that you might be a governor again. I might also be a governor. It is painful for somebody to come from Garissa or Marsabit to get a budget printed here. It is painful, expensive and wasteful for counties in a devolved system to rely on printer in Nairobi. Why can Lamu not have its own printer to print their succession clauses for courts?

Mr. Speaker, Sir, the courts have devolved. The High Court has devolved. There is a High Court in almost every other county and it is anticipated that in the long run we will have 47 High Courts. Why can we not have our succession clauses, pupillage deeds and lost titles printed for those particular counties? What is the business of a person in Nairobi to print something about Marsabit about a person who wants to change his name?

Mr. Speaker, Sir, we had also suggested that in the absence of this agreement you can have the Kenya Gazette, Makueni Edition, Bungoma Edition, Laikipia Edition, and so on, and so forth. They also refused that. The solution is here. Counties have had problems. You will recall that in the last Senate when Gov. Kibwana had problems with his county assembly, part of it was the gazetting of the budget. There is no reason why counties should wait for 14 to 21 days for their budgets to be published.

True devolution is to devolve this. It is possible that in creating this structure in Garissa, Sen. Abdul M. Haji, first of all, he will hire people, create jobs, and make it easier and faster for them to get their things done. The only thing that gets done very quickly here is the impeachment of governors. For some very strange reason, they get published before the sun rises.

Mr. Speaker, Sir, for those who practice law like me it takes you a long time to get anything published here because the queue is very long. In some cases, before they see the actual official gazette notice, you are not going to get anything done. This is a solution to the problems that we have had with the Government Printer. The functions of the office are here.

I would like to refer to the County Attorney Bill. The former Attorney-General fought tooth and nail to refuse the county attorney. They asked how we can introduce a small Attorney-General in counties. They never understood what it meant to have a county attorney in every county. It took a lot of fight and we finally succeeded. You can see that devolution and counties have settled because counties are now hiring a county attorney.

In fact, we have made it possible for young lawyers to become county attorneys. We reduced the framework for their qualifications from ten years to five years. A lawyer who has practiced law for five years can become the county attorney. I must mention Kisumu County and I hope that the Senator is here. Yes, he is here. It is has a very good county attorney. He is a young man.

Mr. Speaker, Sir, that is the basis of having these sorts of small things like this printer in counties. We then create an office that can hire people, so that they do not look for jobs. When I was admitted in the bar, I was No.4530. I do not know what number Sen. Wetangula was. Now there are numbers up to 17,000. A lawyer is admitted and their number is around 18,000.

(An hon. Senator spoke off record)

You see, No.823. What are we going to do with all these people that are being admitted left right and centre? These are the sort of jobs that we can create for them. We can then get counties to publish their Bills and laws very quickly.

Mr. Speaker, Sir, I suggested this some time back because in the last Senate, the County of Taita Taveta was in the middle of discussing a Bill called the Castration Bill. It was a very controversial Bill to deal with rapists at the time.

(Sen. Shiyonga spoke off record)

‘Senator scoop’ is very excited about that Bill. There was a Bill called the Castration Bill in Taita Taveta County. At that time, that was their intention. The framework of what Sen. Were is proposing will enable us---

Mr. Speaker, Sir, through you, I ask the Clerk to have a desk that has the county legislations. We should know what sort of legislations the County of Bungoma, for example, has passed. It should be accessible here in the Senate either through our tablets or in hard copy form in the library. We should know the laws that Isiolo has published so that we can access them in the event that something arises and we need to check.

Every time we impeach a governor, we have to check for the Standing Orders of the county assembly, like for Kiambu County when we impeached Gov. Waititu. We looked for them, but could not find them. There is no reason why we should not have the respective Standing Orders of every county assembly and the legislations that they have passed in here.

Mr. Speaker, Sir, it can be made possible by having the framework. This will make it easier. We can still do it now, but this will make it easier. The minute they publish a law or policy out there in Makueni, we can have it here. Now that I am chairman of the Legislative Summit, this is something that I will champion because it will help all of us to understand and tell our people that our county assemblies are working.

Mr. Speaker, Sir, I will stop there.

I support.

(Question proposed)

The Speaker (Hon. Lusaka): Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, I wish to support this Bill and thank Sen. Were for this foresight in trying to make devolution work better.

The Bill is short in content, but deep in the consequence of its legislation. Today, we have a centralized, tightly controlled and almost draconian office of the Government printer that sometimes is under heavy manipulation by certain forces to print what they want and put aside what they wish.

In setting up this office, the most critical clauses in the Bill are 5, 6, 7 and 8. They clearly sets up how the office will function and the authorized persons so that it is not abused by printing anything and everything that comes to it without proper scrutiny and authorization for the simple reason that a gazette notice carries the force of law. In so doing, it becomes part of delegated legislation that needs to be handled carefully.

Certain gazette notices within the context of delegated legislation even at the county level, should find their way before gazette to the assemblies so that they can work in tandem with the designs and nature of legislations in the county.

Mr. Speaker, Sir, I agree with the distinguished Senator for Makeni. Sen. Were can look at Clause 8 that states that the county printer shall publish the county gazette at least once in every week.

I encourage that we call it, the Kenya Gazette Isiolo, Garissa or Turkana edition so that it remains part of the gazette notice which is the Kenya gazette, but an edition from each county. If it is an edition from Bungoma, it is Kenya gazette Bungoma edition or Kenya gazette, Bomet edition or whatever county is publishing.

I also encourage that once this is passed, the personnel that will man this office must be highly qualified.

In this country, we do not have adequate printers who are properly trained. So, the national Government through the Government printer should assist the counties with manpower development and transfer so that we do not have mediocre characters being put in the office to roll out Kenya gazette, whichever edition, which is full of mistakes and does not have clear messages. This is because every gazette notice has a consequence in law.

In so doing, it will be good for the National Government Printer, as we devolve this office, to liaise with each county in assisting the startup and set up of the county printer.

As my colleague from Makeni has said, we should also encourage each office of the Government printer in the county to have a legal mind to assist them to make sure that whatever is printed, carries correct legal consequences so that we do have prints rolling out from persons who have good intentions, but poorly trained in law or not trained at all; printing things that can cause problems in their interpretation and consequences.

Mr. Speaker, Sir, this is important. If you listen to what happens between the counties and the national Government printer, they are literally held at ransom. A Speaker of an assembly who sends material for printing finds himself frustrated because the governor will place a call to the government printer and say 'do not print that'. Probably the Speaker is calling for a special sitting whose consequence is to affect the governor who does not want it. He sets out to manipulate the office of the Government printer and the work of the assemblies is frustrated.

As we set out this office, it must enjoy some degree of autonomy and independence. A Government Printer printing Kenya Gazette Siaya Edition is not in the clutches of the governor, speaker or any office. This is because when prints are sent, they carry heavy messages that must be done.

Sen. Were has said that once it is sent, they must print within seven days. However, currently the Government printer decides what to print and what not to. You can queue forever.

For example, Gov. Waititu was impeached at 9.00 p.m and the print was out by midnight within three hours. It was super-efficient. I am sure that the efficiency was caused by some force somewhere. This is because there are other prints that are queuing at the Government Printer. However, I am sure that the force is not the office of the Speaker of the Senate.

The Speaker (Hon. Lusaka): Of course, it is not. The Speaker was just efficient in signing.

(Laughter)

Sen. Wetangula: I have no doubt whatsoever that the Speaker of the Senate had no vested interests in the impeachment of that governor or any governor for that matter. However, forces elsewhere worked super efficiently to ensure that nobody could injunct the gazetting of the impeachment so that when a lawyer turns up in court and say that they want to get an injuncted, they are told they cannot injunct what has already happened and they start to look for a different avenue to deal with the matter.

Mr. Speaker, Sir, we need to fast-track this Bill. I believe that when it goes to the National Assembly, it will not suffer the fate many of our Bills suffer by gathering dust in the office of the Leader of Government Business so that we finish it quickly, operationalize it and enable counties to publish their Bills and have portals where anybody can access.

If you look at Article 96 of the Constitution, this House serves as a defender of counties. For example, Sen. Orenge is not here to defend Siaya County. He defends all the counties of Kenya.

So, we want those publications in the county to also have some depository within the Senate documentation. Anybody who wants to see the Kenya Gazette Mombasa edition, simply asks one of our clerks and gets it within a minute and make reference in whichever way he desires.

So, Sen. Were, if you can capture all those, this will be a good functional Bill that will make it easier, efficient and will finally liberate counties from the draconian behaviour of the current office of the Government printer that does what they want depending on who is causing them to do it.

Mr. Speaker, Sir, I support.

Sen. (Dr.) Lang'at: Thank you, Mr. Speaker, Sir, for giving me this opportunity to add my voice to this Bill.

I support the Creation of the County Printer Bill, 2021. Our responsibilities as Members of this House is always to support devolution. Part of supporting devolution is supporting services that are taken closer to our people.

I have seen right from the onset the definition of the terms that will help any person coming across it to understand the contextual meaning of some words that could

easily be confused if such contextual definition was not provided. We can understand some terms that will make an eye opener to anyone who wants to clearly understand this Bill.

I have gone through it, especially right from the objects of the Bill. It is intended to provide effective services to the 47 counties. I support what Sen. Wetangula said that it could further be redefined as maybe gazette for a county like Bomet or Busia chapter because it will also provide a linkage with the Government Printer.

Mr. Speaker, Sir, in Part II, I have seen the functions of the office of the county printer clearly stated. I am also very happy that the qualifications of the office holder are specified well. This will help when sourcing a person who will competently run such a very important office. This is a very important Bill that will help our counties.

I want to also say that regulations should be effectively put in place so clearly so that this very important office may not be abused just as Sen. Wetangula has said what is happening with the Government Printers. This is an important Bill that all of us should support. It is part of taking the services closer to our people.

Mr. Speaker, Sir, particular elements have been put, especially when it comes to the number of times publication can take place in this Government Printer, for example, once every week. This will help to speed up the process because we know very well that whenever some important information needs to be printed by the Government Printer, some sometimes it takes a lot of time. Some information which has got some intentions from some quarters takes shorter time. That is why regulations should be important to provide uniformity when it comes to printing matters.

I support this Bill.

The Speaker (Hon. Lusaka): Sen. Mwaruma, proceed.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir, for this opportunity to contribute to the Office of the County Printer Bill. This is an important Bill because of the delays that occur at the Government Printer. You know that all the Bills that are processed through county assemblies are supposed to be published. However, it takes a very long time before they are published. This Office of the County Printer Bill seeks to devolve the Government Printer so that we lessen the time to publish these important Bills and documents.

One time I asked my county assembly why they had processed very few Bills. In fact, for the first five years, they published only three Bills apart from, of course, the Budgets and Appropriation Bills. The answer they gave me was that they were unable to process the Bills because they are not published at the Government Printer. This is a panacea to this problem because then that queuing at the Government Printer will be lessened.

Mr. Speaker, Sir, governments are run through policies and laws. If it take a lot of time before the publishing of the Bills is done, then it means whatever activities, regulations and controls are supposed to be undertaken by governments through legislation will delay. I am looking at a situation where governments are supposed to generate revenue through particular Bills and the Bills are not processed because they are not published at the Government Printer. Obviously, the rate of development will be lessened.

I have an example where a Bill was supposed to be processed in Kitui which had to do with value addition for textiles. It took a very long time and we were questioning it

at the Committee on Public Accounts and Investments why it had taken a very long time to publish or process that Bill. The answer we were given by the executive was that there are delays at the Government Printer. Definitely, if we have devolution or decentralization of the Government Printer then this is a solution to some of these problems.

Mr. Speaker, Sir, I was following up a Bill in my county called the County Alcoholic Drinks and Beverages Bill. This Bill was supposed to control the way alcohol is taken and the time it is taken in my county. Again, that Bill took about three years to be published. That Bill was supposed to regulate the time for drinking in my county and generate revenue. It took a very long time and that was an important Bill. This is because in my county, drinking of alcohol is quite a problem.

It does not only lessen the time for generating income in terms of people getting to work, but also the boys are overdoing it. They do not have time to get children. They do not have time to work on getting families. They do not have time to work to feed their families. That was an important Bill and I know finally it passed. However, there are very many other important Bills being delayed as a result of this Government Printer being at the national level.

Mr. Speaker, Sir, I also have another example of a fund that was supposed to be created through a Bill of our county government called DATU Sawazisha Fund. It took a very long time because of the queuing at the Government Printer. This fund was supposed to provide funds or money for the youth, women and people living with disabilities to get funds for doing business. It delayed for about two years. Obviously, our young men, women and youths could not access funds to do business with the county government.

I support the Bill fully. I have gone through the Bill. I was involved in the processing of the Bill by Sen. Were. We went to Naivasha and looked at the Bill at length. I am happy and pray that it goes through this Senate. I know when it goes through the National Assembly, they will also expeditiously process the Bill so that it can be used by our counties. I thank you.

The Speaker (Hon. Lusaka): Sen. (Prof.) Kindiki, proceed.

Sen. (Prof.) Kindiki: Mr. Speaker, Sir, thank you. I almost said it is good to see you, but I realized it will be out of order.

The Speaker (Hon. Lusaka): It should be the other way round.

Sen. (Prof.) Kindiki: Mr. Speaker, Sir, thank you for this opportunity. I want to support this Bill for the following reasons.

This Bill gives effect to Article 6(2) of the Constitution that demands that Government services be decentralized to the lowest level. It also amplifies the whole concept of devolution. Therefore, it is important that each county has its own printer to avoid a situation that is prevailing at the moment where there is a very long queue of legislation pending as a result of moving this country in 2010 from having one Parliament to 48 county assemblies. In fact, 49 parliaments because you have two Houses at the national level. You can imagine the level of printing required for legislation alone not to mention even delegated legislation, notices *et cetera*.

Thirdly, the Constitution has demanded a lot of policy and administrative actions to be gazetted and be done in a regular and formal way. Therefore, printing services by

county governments is a major function that requires the office of the Government printer in each county.

Recently this Senate passed the County Attorney Bill which I believe is now an Act of Parliament. It is hoped that every county attorney in the 47 counties will align the legislation that is being churned in each county assembly with the national legislation. I say so because if you look at Article 191 of the Constitution, legislation in counties is supposed to be aligned to legislation at the national level. I hope as much as it is a good thing to devolve Government printing services and have them located in each county, this will not generate conflict between roles being published at the county level and those we pass at the national Parliament level.

It will be the work of each county attorney to ensure county level legislation which is printed - whether statutes or delegated legislation - is aligned to the legislation and delegated legislation published at the national level. That way, the purposes for which Article 190 of the Constitution speaks to can be achieved.

Without much ado, I support this Bill. It is a good Bill and it will help achieve the objects and purposes of devolution.

The Speaker (Hon. Lusaka): Sen. (Dr.) Musuruve, proceed.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for this opportunity to support this Bill by Sen. Were. It is actually late. It ought to have come when power was devolved and the 47 counties were established. The Fourth Schedule of our Constitution is clear that county governments have functions. In Part II of the Fourth Schedule, the county government has 14 specific functions. For instance, functions of agriculture, farmers, fisheries, health services and promotion of healthcare services. When you talk about cultural activities, libraries, sports, transport and *bodaboda* issues, all these are devolved. The Constitution clearly mandated county governments to ensure they play these functions.

Article 185 of the Constitution connotes that county Assemblies can come up with laws to help them manage these functions. It is unfortunate that county governments are not allowed to come up with and gazette laws that can help them in governance. County governments are like a toothless bulldog. When this Bill by Sen. Were becomes law, it will empower them in the way they will legislate. They will come up with laws that will help them perform their constitutional function well.

Mr. Speaker, Sir, we are devolved. We have 47 counties which cannot function without laws. The laws that help in ensuring things are properly done in counties and that whatever is said is legislated and also becomes law. There is need for this Bill to see the end of the tunnel so that county governments can eventually have the authority to come up with laws to help them perform their duties.

A gazette notice can give authority to whatever is discussed. It can even ensure what is said about counties is authentic and can even be used in legal proceedings and even the future. It can be quoted that this county assembly came up with a law to help farmers and it should be followed to the letter.

It is important for county government to come up with their own publications in order to serve that *mwananchi* effectively. When something becomes law, everybody is mandated to follow it. We have heard farmers and *bodaboda* riders lament that they are not getting services. As the Senate, it is our mandate to ensure this Bill become law so

that eventually county assemblies can come up with and gazette the Bills, which can then be followed to the letter.

As the Senate, we have no option to ensure this Bill becomes law. Unless a Bill is published, it cannot become law. It means what county governments do cannot be effective. Even going to the National Government Printer is a harrowing experience because theirs is skeleton work considering that they have to serve all the 47 counties. So, they may not be able to manage the bulk of work that comes before them.

Mr. Speaker, Sir, there is need to devolve Government printing services to county governments and ensure all counties do their work. All counties have their own preferences and priorities. Some counties are keen on fishery and others on sugarcane, coffee and so on. When Bills regarding what people value in counties are passed and assented to and published in the Kenya Gazette, they become laws that are authentic and valid. It also becomes an encouragement to county executives and also available to county assemblies. If county assemblies just legislate and what they legislate does not or takes long to become law, it becomes very discouraging.

Mr. Speaker, Sir, this Bill by Sen. Were may look like a small thing, but it is heavily loaded because it touches on each and every aspect that we do at the Senate. We represent the counties and their interests. Whatever we do has to be for the best interest of the counties. It is in the interest of the Senate that everything we do should be supported in the counties. Communication has to be in the counties so that whatever happens in the counties is communicated, gazetted before it becomes law. If that is done, the counties will have the strength to do what they are expected to do.

We must also remember that when people are overworked, they cannot be effective. For example, the National Government Printer is overwhelmed. What they are doing can be devolved so that every county government has an office that deals with its own Bills and legislation. An officer should also be put in place in charge of printing all Bills in counties. That Office should also have a secretariat. I support that this Bill needs to made law so that we serve the common man effectively according to our mandate as a Senate.

Mr. Speaker, Sir, we are here because of the common *mwananchi* and the county governments. We should ensure that all the common *wananchi* in the county governments are represented and satisfied that there is service delivery in the counties. We need to find solutions to land disputes that occur on a daily basis in the counties. If the counties come up with laws stating the actions to be taken in the event of land disputes, such as the gazettement of the land in question, it should be done immediately so that people live harmoniously. This piece of legislation will ensure that everyone in our counties is satisfied.

I hope that once this Bill goes to the National Assembly, it will see the light of day and eventually become law. I support this Bill because it is going to ensure that county governments come up with an authentic document that will be permanent, official, help in governance, help county executives and county governments execute their mandates constitutionally as mentioned the Fourth Schedule, Part IV of our Constitution which speaks to the functions of the county governments.

Mr. Speaker, Sir, I support this Bill.

The Speaker (Hon. Lusaka): Proceed, Sen. (Eng.) Hargura.

Sen. (Eng.) Hargura: Mr. Speaker, Sir, I thank Sen. Were for coming up with this Bill which serves a very important purpose and fills a very important gap in law. It is very clear that the whole essence of devolution is to devolve service delivery to the lowest level part of which is legislation that is being done by the county assemblies. As the Constitution has clearly stated, for the county assemblies to legislate as stated in Article 199 of the Constitution, it does not take effect until it is published in the county and National Government gazette.

The county gazette is referred to in the Constitution, which was promulgated in 2010, but it is still not in effect. The National Government Printers is being overworked and that affects their service delivery at the county level because they have to queue before they can get their laws published or gazetted. The county gazette will serve a very important purpose in fulfilling the loophole or vacuum that exists of an institution being referred in law, but it is not in existence.

Due to lack of county gazette, people in the counties who seek services from the county governments still have to come to the National Government Printers in Nairobi to gazette anything. This is an important Bill which serves a very important purpose. I hope that once this Bill is passed, the counties can operate smoothly without having to come to Nairobi to queue for publication services.

Mr. Speaker, Sir, the only thing that I would like the sponsor of the Bill to look into is the issue of having that office under a CEC because that make it prone to manipulation by the Governor. Because the Governor may sometimes be an interested party, the county printer needs to have some independence. I have also seen that the recruitment of officers to work in the county printers will be done by the county public service boards which is an independent level.

Sometimes the members of the public may want to publish something that has a negative impact on the governor or the county government itself. If the county printer is under a CEC, it may be manipulated. For instance, if a publication is to be made concerning the impeachment of a Governor and the speaker of a county assembly is calling for a special sitting, the Governor may have his or her way by stopping the publication of such a gazette notice. If the governor in in charge of the county printer, it may have an effect on the performance of its function. There is need to look for way on how the county printer can be independent.

This Bill is very important so I hope that we will support it and that it will go through the other House in a short time so that the counties have autonomy to plan their legislations. As fellow Senators have stated, there is need to link the county gazette with the national gazette. For example, they could be titles, the Kenya Gazette, Marsabit County Edition or any other edition. However, all the editions should be available to all Kenyans because a law enacted in any part of the country will affect all Kenyans because one may want to get a service in another part of the county. Even if I am in Nairobi, I should be made aware that a law has been passed in Marsabit that may affect me if I want to get a service from there. The county gazette notices, therefore, need to have countrywide circulation. It will also be important to have that anchored in law so that once it is published at the county level, it will also be available at the national level. A way should be found to help the publications of the county gazettes in the National Government Printers so that they are easily available to all Kenyans.

The Speaker (Hon. Lusaka): Proceed, Sen. Orenge, The Senate Minority Leader.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I thank you for giving me this opportunity. I commend this Bill and thank Sen. Were for coming up with it. It will create a legal framework for the enforcement of the provisions of the County Governments Act No. 17 of 2012 in relation to the need to have a county gazette and also generally under the Constitution that the publication of Bills is a necessary instrumentality for decisions to be effected. This Bill should have come earlier. It is unfortunate that it is coming nine years after the establishment of county governments.

There is nothing to criticize about this Bill, but I have one fear. I think I heard Sen. Wetangula say some things, which would point to mischief, which may be committed by certain people in ensuring that the operations of the county gazette do not take place as they should. Looking at Clause 5(a), I think this may be dangerous if left in this form. Let me read it for clarity.

It says-

“The office of the county printer shall be responsible for the printing and publication of the county gazette and shall –

(a) Publish in the county gazette such documents and information as are approved by an authorized officer within seven days of such authorization.”

That is a dangerous provision because it means that nothing will get in the county gazette until an officer who is a public officer within the county approves such a publication. If it is a matter required by the law to be published in the *Kenya Gazette*, nobody should seek an approval. It should be self-executing.

I see a danger I see here which I think Sen. Wetangula talked about, a little bit. You may go to a county where there is a problem between the county assembly and the governor and there is a publication that is required to be made in the county gazette at the behest of the county assembly. If such has to await an approval of an officer sitting within the executive, I am sure such an officer will frustrate such publication from taking place.

Therefore, there is need to re-word that Clause that if there is anything needed to be done by law, no approval should be required from an officer said to be acting under the office of a CECM. I propose that the Clause be reframed so that no one within the county executive can frustrate any publication that is required by law, be it national or laws made by the county assembly.

Going into the future, may be even Parliament may require its own printer. I am not talking about a gazette. With the bulk of printing in terms of legislation that normally accompanies the enactment of legislation of both Houses, for purposes of accuracy and record, we may need to think whether we need such an office within Parliament.

Of course, that may be necessary going by history. Sometimes we do not realize the number of times when wrong notices are put in the gazette to mislead. Issues have arisen with the Government Printer when gazette notices or even enactments made by Parliament are altered.

For that matter and in order for Parliament to have its record of laws we enact and the subsidiary legislation that goes through it, we need a printer just like a university normally has a printer. For example, Oxford University Press is a printer for the university.

Looking into the future and knowing that Parliament is going to consist of very many people – if certain things happen - we may end up with 400 to 500 Members of

Parliament. We need a repository of our products which is legislation so that we do not have to go the Government Printer to get a piece of legislation which has come from us. For the very purpose that counties also require printers, I think Parliament may also require a printer going to the future.

This also goes in tandem with the need to devolve. The office of the Government Printer is being devolved by effect of the County Governments Act as operationalized through this Bill.

I commend this Bill and support it fully.

Sen. Shiyonga: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support Sen. Were's Bill.

It is important that everyone gets to understand that when you access information you are free of contradiction. This Bill gives us opportunity for decentralizing most of the work done by the Government Printer.

It facilitates the effectiveness, transparency and accountability of the work done at the county. Decentralizing means more work being devolved. There is so much work at the Government Printer. Devolving it will give better and faster access to the citizens.

If the budget does not allow, we can introduce the idea of regional printers just as we have about 10 regional government printers so that we can facilitate the documentation done at the county. Several counties can come together and get one regional printer.

There is much that has been done with our county assemblies in legislation. All this needs to be documented especially as soft copies and access to the people who are responsible for them. With this Bill, we get a proper framework that will enable those legislations that had been done by our county assemblies to be fastracked.

Regarding the budget, not all counties will be in a position to plan for this office, but with the law in place, they will be forced to budget for their printer.

Most of the county documents come all the way to Nairobi to the Government Printer to be processed. Counties will be properly facilitated the same way a person has a printer in their office. Work will be processed effectively.

Mr. Speaker, Sir, I support this Bill and encourage Sen. Were that when this Bill is passed, we shall have more of the work being processed at the county level. More counties will also be responsible for their documentation.

Thank you, Mr. Speaker, Sir.

I support.

The Speaker (Hon. Lusaka): Sen. Madzayo.

Sen. Madzayo: Asante, Bw. Spika. Kwanza nampa shukrani Sen. Were kwa kuleta Mswada huu wa uchapishaji wa taarifa na magazeti inayohusu yanayojiri katika serikali za kaunti. Ni jamabo lililokuja wakati unaofaa. Tunahitaji kuona kwamba sheria za kaunti zimeweza kukimu ili zisaidie watu walio nyumbani.

Mara nyingi kumekuwa na ucheleweshaji wa kuchapisha taarifa katika serikali za ugatuzi. Imekuwa ni lazima waje Nairobi wapate kibali kutoka kwa mchapishaji wa Serikali ya Kitaifa ili taarifa zao zichapishwe katika gazeti la Serikali. Hivi sasa, tunasema kwamba pia kaunti ziwe na uwezo--- Ikiwa ndani ya serikali zao kuna mambo yanayo hijitaji kuchapishwa, itakua rahisi zaidi.

Bw. Spika, hii ni sawa kabisa, na hakuna ukiukaji wa sheria. Mkondo kama huu unaweza kusaidia sana katika kaunti. Hapo kitambo kidogo tulipitisha kwamba kuwe na

mkuu wa sheria katika serikali za ugatuzi ambaye ni *county attorney*. Tunapo ongea sasa, kuna wakuu wa sheria katika kaunti zote 47 Kenya. Hivi basi, ikiwa uchapishaji utapata kiongozi wa uchapishaji taarifa ambazo zitakuwa zinalemea kaunti 47, itakuwa ni sawa kabisa.

Bw. Spika, imekuwa bora kuwa katika uchapishaji wa Mswada huu, kuna watu wengi wana njia nyingi za kufanya ukora ama ufisadi. Wanaweza kuleta mambo ambayo yanaweza kuchapishwa na hatimaye hayo mambo yawe ni uongo ama hayawezi kufanyika, ilhali yanapatikana katika lile gazeti.

Adhabu imepeanwa. Ikiwa mtu atakiuka sheria hii ama kutakua na uchapishaji bila ruhusa ya yule anapeana ruhusa ya kuchapisha, basi huyo huenda akalipa zaidi ya laki nzima, ama awe na kifungo. Hii itakuwa onyo kali sana. Mswada huu ukipita utasimamisha wale ambao wana nia kama hiyo.

Bw. Spika, tunaona kuwa mchapishaji wa gazeti la kaunti ni lazima awe amesoma. Lazima awe na shadaha ambayo inahusiana na uchapishaji wa magazeti ya Serikali. Hili hi jambo muhimu kwa sababu si kila mtu anaweza kuwa mchapishaji. Kila uchapishaji unakua na taaluma yake. Ni vizuri kwamba kutakuwa na mtu ambaye amesoma katika kila kaunti. Atakua na uwezo wa kupitisha uchapishaji wa taarifa yoyote ambayo itachapishwa.

Bw. Spika, la mwisho kabisa ni uzuri wa Mswada huu ambao unaleta mwelekeo katika kaunti. Hakuna chochote kinaweza kufayika katika kaunti bila kuchapishwa. Wananchi watapewa taarifa ili wajue ni nini inayojiri na ni nini ilichapishwa na inahijati maono ya wananchi ili wajue ni njia gani watafuata katika siku za usoni.

Asante, Bw. Spika.

Ninaunga mkono Mswada huu.

The Speaker (Hon. Lusaka): Sen. Kavindu Muthama.

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this Bill. I congratulate Sen. Were for this Bill.

Devolution was meant to bring services to the local people at the counties. Devolving the Government Printer to the counties will enable counties to do publications very fast. It will also enable all the citizens to access and read legislations passed by their leaders and understand what their leaders are legislating. This will move the Bills of the counties faster than it has been.

Mr. Speaker, Sir, this will also enable the counties to have communication accountability. It will also provide jobs like we have the attorneys at the county level. This will also provide jobs for the citizens, so I support this Bill.

Thank you.

The Speaker (Hon. Lusaka): Sen. Wario.

Sen. Wario: Asante Bw. Spika kwa nafasi hii ya kuunga mkono Mswada ulioletwa na Sen. Were wa kupeleka nakala za uchapishaji katika sehemu za ugatuzi. Vile unavyojua ofisi ya Government Printer iko na kazi nyingi sana. Uchapishaji umerundika sana na umekuwa mwingi.

Kwa hakika, Mswada utapunguza kazi mingi ambayo iko kwa *Government Printer*. Kazi ambazo zimerundika zitapata uchapishaji katika sehemu tofauti tofauti za ugatuzi.

Wale watataka kupata nakala za siku zilizopita watazipata zikiwa tayari kwa urahisi kwa sababu wataweza kuangalia uchapishaji huo ulikuwa wa tarehe gani. Kwa hivyo, itafuatiliwa na kupata rekodi ya uchapishaji huo na kurahisisha kazi.

Unavyojua, ugatuzi umeletwa kwa sababu ya mambo kama hayo ili kila kaunti iweze kujisimamia na kujifanyia mambo yake. Pia, watu watapata kazi kwa wingi kwa sababu ofisi ya uchapishaji ikifunguliwa, itaajiri wafanyikazi wengi. Hii itawapa fursa watu fulani kupata kazi katika ofisi za uchapishaji.

Bw. Spika, ninaunga mkono.

Sen. Faki: Asante Bw. Spika kwa kunipa fursa hii kuchangia Mswada wa Mchapishaji wa Serikali za Kaunti. Ninaunga mkono kwa sababu umekuja katika wakati mwafaka. Tumeona kutoka ugatuzi uanze karibu miaka nane sasa, tumekuwa na changamoto nyingi za serikali za kaunti kuweza kuchapisha Miswada yao kwa wakati na kuwasilisha stakabadhi muhimu ambazo zinatumiwa kuendesha Serikali ya nchi.

Kwa mfano, serikali nyingi za kaunti zinapata shida kuwasilisha Miswada yake kwa mchapishaji mkuu wa Serikali na kuchapishwa kwa wakati. Swala la kuchunga sheria lina wakati maalum ambao unatakikana kufanyika. Kwa hivyo, iwapo mchapishaji wa Serikali atachelewea kuchapisha Miswada ile, taratibu zinazotakikana kufuatwa ili Mswada ule uwe sheria unachelewa na kupunguza nafasi ya serikali za kaunti kufanya kazi na kutumikia wananchi wake.

Kwa hivyo, kuwepo kwa mchapishaji katika serikali za kaunti utasaidia pakubwa msongamano wa Miswada na notisi katika ofisi ya mchapishaji mkuu wa Serikali. Vile vile, itazipa fursa serikali za kaunti kuwasilisha Miswada yake kwa wakati katika bunge za kaunti na wananchi kujua ni arifa gani zimetolewa kuhusiana na malipo na nyingine muhimu katika maisha yao.

Bw. Spika, uwepo wa mchapishaji wa kaunti utasaidia kuelimisha umma katika kaunti zetu. Kupata gazeti ya Serikali rasmi Mombasa inachukuwa wiki moja kutoka Nairobi. Lakini ikichapishwa pale, itapatikana kwa haraka na wananchi watajua ni Mswada au sheria gani zimechapishwa ili wachangie wakati wa mikutano wahusika.

Hii itasaidia kuchapisha Miswada kwa lugha ya Kiswahili au za wenyeji. Kwa mfano, Miswada mingi ambayo inachapishwa na mchapishaji mkuu wa Serikali inatumia lugha ya Kingereza wakati wengi hawawelewi na hawawezi kuchangia kikamilifu yanayozungumziwa katika Miswada inayopelekwa katika bunge za kaunti. Kwa hivyo, mchapishaji wa serikali za kaunti, atatoa fursa Miswada ichapiswe kwa lugha za kienyeji au Kiswahili katika maeneo yale ili wananchi waweze kuelewa yanayozungumziwa.

Bw. Spika, nimeona kuna fursa ya *Kenya National Law Reporting Council* kuwa na rejista ya Miswada ambayo imechapishwa na bunge za kuanti. Hili ni jambo nzuri kwa sababu atakayetaka kuangalia Miswada hii itakuwa rahisi kupata kupitia kwa taasisi ya Kiserikali ambayo ina uwezo na taratibu ya kuweka rekodi.

Ninaunga mkono Mswada huu ambao utasaidia pakubwa kuboresha huduma za serikali za kaunti zetu katika jamhuri ya Kenya.

Sen. Farhiya: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this Bill. I thank my sister, Sen. Were, for sponsoring this Bill. It is an idea whose time has come. It is a good Bill that will make everybody's life easier.

Without belabouring what other Senators have spoken about on the added value for this Bill, I will bring an amendment to Section 2 which says-

“In this Act authorized officers means a governor of a county, a speaker of the county, a County Executive Committee (CEC) member”

In all the three, there must be a caveat that says if it is an impeachment, they cannot gazette in the county printer. This is because no governor, speaker or CEC will authorize their own impeachment. This is an important thing.

Otherwise, in terms of oversight, it will be difficult for everybody. There have been many ideas that have been contributed. I do not want to repeat what other people have said. However, that is the gap that I have seen. I intend to bring an amendment. In case I do not, Sen. Were, make sure to sponsor the amendment.

Sen. Zawadi: Asante Bw. Spika kwa kunipa nafasi ili niweze kuchangia Mswada huu. Yangu yatakuwa machache kwa sababu mengi yamezungumzwa.

Kuna Miswada ambayo iko katika serikali za kaunti ambayo haijaona mwanga wa jua kwa sababu ya msongamano wa Miswada mingi. Lakini, kuna Mswada mmoja kule Kilifi ambao utakuwa na shida kuchapishwa. Kwa mfano, *muguka* unapendwa sana kule Kilifi lakini kuna Mswada ambao utachapishwa kusema kwamba watakoleta *Muguka* wabandikwe magunia ya nazi wapeleka wanapotoka ili pia sisi tufaidike kutokana na bidhaa zinazotoka kaunti zingine.

Pili, kuna wale ambao wanaoana kuwa *District Commissioner (DC)* na kuna muda unaopeanwa ili waweze kuoana. Mara nyingi, muda ule huwachwa ili ndoa ichapishwe halafu baadaye watu wanaruhisiwa kuoana. Uchapishaji huchukua muda na wengine huamua kuoana na baadaye inajulikana mmoja wao ameo au ako na familia ingine. Hii inaweza kuepukwa kama uchapishaji ungetoka wakati unaofaa ili watu wajipange kifamilia.

Kama vile wenzangu walivyochangia, ninaunga mkono kwamba kazi zita ongezekwa kwa sababu kuna wasomi wengi wenye vipaji lakini hawana kazi. Kwa hivyo, nina amini itaongeza kazi na Miswada yetu itapita haraka. Serikali za kaunti pia zitakuwa na Miswada mingi ya kisheria ambayo itasaidia wananchi wetu. Vile vile, tutapeleka huduma mashinani. Hiyo ndio maana ya ugatuzi.

The Speaker (Hon. Lusaka): Sen. Kang’ata, next time, make sure you get a card. It is easier. You are the last one on this.

Sen. Kang’ata: Thank you, Mr. Speaker, Sir. I apologize for that. Let me take this opportunity to endorse this Bill. It is a timely Bill as correctly stated by other colleagues. It will ensure counties process many legislations at a shorter timeframe the reason being that currently, every time a county makes law, it has to bring it to the Government Printer. The Government Printer has so many other businesses it has to publish from various organizations of Government like the Executive, Judiciary and Parliament. Therefore, it makes sense if you were to devolve these services.

When you look at Article 6 of the Constitution, it expressly provides that the national Government and county governments are independent and also interdependent. That means strictly speaking every county should have several matters devolved at their level. You do not have to keep on making reference to the national Government particularly when you look at the several important functions that have been bestowed on the county governments.

Mr. Speaker, Sir, the Fourth Schedule of the Constitution indicates amongst other duties or roles of the county governments. They include agriculture that is coffee, tea and milk. They include health services. For such important functions, you need to give

counties the power to make decisions and legally gazette those decisions. That is why I support this Bill.

However, there are areas that can be improved. One area is who are the officials who have the legal duties to issue a gazette notice at the county level? According to this Bill, it is proposing the governor, some County Executive Committee (CEC) Members and the speaker. Some of those officials may be subject to adverse gazette notices. Take for instance an impeachment of a speaker or governor.

Mr. Speaker, Sir, therefore, it goes without saying that a governor or speaker most likely will not gazette his own removal from office. Therefore, in such instances, we need to amend this Bill so that you either transfer that function to the national level where adverse gazette notices need to be signed. Otherwise they will most likely sit on those decisions and that will not happen.

The second issue is publicity surrounding gazette notices. For a gazette notice to have some social, political and economic effect it needs to be publicized. We have looked at this Bill. It provides that these gazette notices can be in electronic form. The word used there is “may” meaning there is no legal compulsion for various counties to be gazetting these notices electronically. I would propose that we amend and drop the word “may” in its place we insert the word “shall”. This is so that these gazette notices can be available electronically. That way, we increase the number of people who can access these notices once this Bill becomes law.

Mr. Speaker, Sir, another area we need to consider is who is going to foot the cost for establishing these offices. Is it the national Government or respective county governments? That needs to be expressly provided for. I would imagine it is respective county governments so that it does not entail an extra burden on the national Government.

Finally, county governments play an important role particularly on matters agriculture. I come from an area that coffee and tea are very important in Murang’a County. Also, the people of Murang’a County are very good business people. Milk is also one of our most important agricultural products. I look forward to the day when this Bill will be law so that the CEC Member in charge of Agriculture in Murang’a County can print or issue a gazette notice as soon as possible whenever a progressive Bill concerning matters agriculture has been passed by the respective county assembly.

Mr. Speaker, Sir, I also look forward to the passage of this Bill so that Murang’a County whenever there are issues concerning health that need to be gazetted, those issues can be done as soon as possible without awaiting ratification by the Government Printer here in Nairobi. That way, we will make Murang’a County more efficient and services to the people of Murang’a County will be easily available as opposed to making reference to an office that is way up here in Nairobi.

As I finalize, when I look at Murang’a County Government the way it has been mismanaged and the problems it is currently having, I strongly believe that a government that is fully in charge of its affairs at that local level would definitely improve services at the county level.

With those few remarks, I support but propose those amendments. Thank you.

The Speaker (Hon. Lusaka): I now call upon the Mover to reply. Sen. Were, proceed.

Sen. Were: Mr. Speaker, Sir, thank you. I beg to reply and thank the following Senators for their worthy contributions to this Bill, Sen. Mutula Kilonzo Jnr. who was magnanimous enough to second the Bill. Sen. Wetangula, Sen. (Dr.) Lang'at, Sen. Mwaruma, Sen. (Prof.) Kindiki, Sen. (Dr.) Musuruve, Sen. (Eng.) Hargura, Sen. Orengo Senior Counsel, Sen. Shiyonga, Sen. Madzayo, Sen. Kavindu Muthama, Sen. Wario, Sen. Faki, Sen. Farhiya, Sen. Gona, and last but not least Sen. Kang'ata.

These Senators have expressed themselves on this Bill because as the people in charge of the counties, they have experienced the various frustrations that counties are going through. They have expressed themselves on the issue of authenticity of the documents that county governments produce or publish. They have stated that having the county printer in place will also give authenticity to those documents. The Office of the County Attorney that is already established by a law that was passed by this House will be working closely with the Office of the County Printer to ensure the constitutionality of the Bills that will be published by the County Printer.

Most of the Senators have expressed the frustrations of the heavy load that is at the Government Printer that makes them very draconian in their way of operation. They actually give least priority to the county business in the job cuts that they provide.

There were also suggestions on having a Kenya Gazette that is decentralized in a manner that has Kenya Gazette Isiolo, Bungoma, Busia and other county editions. We shall consider this as we shall be looking at the various amendments that have been proposed by various Senators.

Mr. Speaker, Sir, the Senators also indicated that Article 6 of the Constitution, this was proffered by Sen. (Prof.) Kindiki, provides for decentralization of Government services. Decentralization or devolution is a reality of the Constitution since we promulgated it in 2010. Therefore, citizens have a right to access public information and having a government printer gives them that right. That administrative action therefore requires to be formalized so that we have opportunity to access authorized documents.

Mr. Speaker, Sir, most Senators also indicated how late this Bill is nine years after and in the second edition of devolution. They said we should not get into the third edition of devolution without this Bill in place.

Sen. (Eng.) Hargura emphasized the fact that there is already a constitutional requirement for Parliament to enact such a law to actualize the establishment of a County Printer. This is the essence of this law. He requested for collaboration between the national Government Printer, which is already in this law as passed, and the various reports that will be passed to the National Law Reporting Council (NLRC) to ensure standardization and some quality control.

There were also calls to work on the authorised person. The amendments proposed by Sen. Farhiya and Sen. Faki are to ensure on the list of authorised officers with the exemptions for cases of impeachment. The Senators also emphasized on the need for the County Printer for the access to information by the public. I have already outlined that.

Sen. Faki emphasized the timely publications that we shall soon see once this comes into place. Sen. Zawadi expressed the frustration of the county assembly having been once a Member of the County Assembly (MCA), on the issue of annulment of marriages that I presume is common in that area.

This Bill calls for various applications to ensure the uniqueness of each county is expressed in the publications that will be in the County Printer. I thank Senators for their contributions to this Bill. I assure them the amendments they have proposed will be considered and included in the Bill at the amendments stage.

I beg to reply and pursuant to Standing Order No.61(3), I beg that putting of the question be deferred to a later day.

The Speaker (Hon. Lusaka): Thank you, Sen. Were. I actually appoint tomorrow afternoon as the time for putting the question.

(Putting of the Question on the Bill deferred)

Next Order.

Second Reading

THE SALARIES AND REMUNERATION COMMISSION
(AMENDMENT) BILL (SENATE BILLS NO.31 OF 2020)

Sen. Kibiru: Thank you, Mr. Speaker, Sir. I beg to move that the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No.31 of 2020) be now read the Second Time.

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

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

Mr. Temporary Speaker, Sir, the principal object of the Bill is to amend Section 7 and 9 of the Salaries and Remuneration Commission (SRC) Act No.10 of 2011 to provide for notification in the gazette of the expiry of the term for the commissioners of the SRC that had been nominated in the original Bill. It is also to provide for timelines for filling vacancies in the Commission upon the expiry of the term of the commissioners. You realise we normally have a lacuna whenever that position has arisen before because there were no timelines in executing the above issue.

Clause 2 of the Bill proposes to amend Section 7(2) of the Act to require that nominating bodies undertake their respective selection exercises within 21 days of publication of an advertisement for a vacancy in the Commission. Further, Clause 3 of the Bill proposes to amend Section 9 of the Act to list expiry of the term of the office holder under Article 250(6)(a) of the Constitution, as a ground upon which a vacancy in the Commission occurs. This will, therefore, mean that under Section 10 of the Act, the President will be required to give notice of the vacancy in the Gazette Notice within 14 days.

Mr. Temporary Speaker, Sir, the SRC as established under Article 230 of the Constitution is mandated to set and regularly review the remuneration and benefits of all state officers. It should also advise the national and county governments on the remuneration and benefits of all public officers.

The composition of SRC ensures that each sector affected by the decisions of the Commission nominates members to serve on it. In this regard, Article 230(2) provides

that the Commission is to comprise the chairperson of any gender. Composition will also include one person nominated by each the following bodies from among persons who are not members or employees of those bodies: the Parliamentary Service Commission (PSC); the Public Service Commission (PSC); the Judicial Service Commission (JSC); the Teachers Service Commission (TSC); the National Police Service Commission (NPSC); and, the Defense Council (DC).

In addition, the Senate on behalf of the county governments will nominate one person each nominated by an umbrella body representing trade unions; an umbrella body representing employers; and, joint forum of professional bodies as provided by legislation.

Finally, the Committee will also be composed of one person each nominated by the Cabinet Secretary (CS) responsible for finance; and the Attorney-General; and one person who has experience in the management of human resources in the public service nominated by the CS responsible for public service.

Section 9 of the Salaries and Remuneration Commission Act provides for vacancy in the membership of the commission as follows:

“9. vacancy in the office of chairperson and member

(1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

(a) dies;

(b) by notice in writing addressed to the President resigns from office;

(c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(2) The President shall notify every resignation, vacancy or termination in the Gazette within fourteen days.”

Mr. Temporary Speaker, Sir, it may be noted that expiry of the term of commissioners is not listed as one of the grounds which may occasion a vacancy in the office of commissioner or chairperson. As such, there was no specific requirement for notification of vacancy resulting from expiry of term, in the *gazette* within 14 days as is provided for vacancies arising from the circumstances contemplated under section 9(1).

In 2018, the Senate participated in nomination of a representative to SRC on behalf of counties. It is during this exercise that the Committee on Finance and Budget noted this legislative gap within the law. It was noted that once the term of the commissioners expires there is no common communication notify the relevant bodies to start the nomination process. In fact, each nominating body conducted its process at different times depending on when they got information on the need to nominate a representative.

It is this background that led the Committee resolved to institute the amendments to the SRC Act to ensure when the term of the commissioner expires, there is gazettelement of the same and notification of the nominating bodies to conduct the process within a set timeline. The procedure for nomination of a members of SRC is set out in the Salaries and Remuneration Act.

In this regard, Section 6 of the Act provides as follows-

“Every nominating body under Article 230(2)(b) and (c) of the Constitution shall nominate its representative to the Commission in an competitive and transparent manner in a accordance with Section 7.

A person shall not be qualified for nomination under Article 230(2) (d) or (e) of the Constitution unless such persons hold the qualifications specified in Section 7.”

Section 7(1) of the Salaries and Remuneration Commission (SRC) Act provides that within 14 days of the commencement of this Act or the occurrence of a vacancy in the commission relating to the members under Article 232 (b) and (c) of the Constitution, the relevant nominating body shall advertise at least in two local daily newspapers of national circulation, invite applications from persons who qualify for nomination under the Constitution and this acts as a nomination as a member of the commission.

Mr. Temporary Speaker, Sir, Section 7(2) of the Act further provides that the relevant nominating body shall consider the applications received under sub-section 1 to determine their compliance within the provisions of the Constitution and this Act, interview the applicants and forward the names of two persons who qualified who shall be of opposite gender to the Cabinet Secretary for onward transmission for the President.

Section 10 of the Salaries and Remuneration Commission (SRC) Act provide for the filling of the vacancies of the membership of the commission as follows;

“Filling of the vacancy where a vacancy occurs in the membership of the Commission under Section 9, the appointment procedures provided for under the Constitution and the Act shall apply.

A member appointed under Section 1 shall serve for a term of six years but shall not be eligible for reappointment while Section 7 requires that the selection process commences 14 days of the occurrence of the vacancy. The Act did not provide a mechanism for notification of the vacancy to nominating bodies when the term of the commissioners expires. Without a single notice to nominating bodies, each body took note of the vacancy (at its own time) and then commenced the nomination process. A notification of vacancy in the Gazette was therefore necessary to prompt the simultaneous nomination processes by all bodies required to nominate Commissioners to the Salaries and Remuneration Commission.

In addition, the Salaries and Remuneration Act did not provide for timelines for the process of selection of the commissioners. That was indeed evidenced by the selection process that followed the expiry of the term for the immediate former Commission on 15th December, 2017. The various nominating bodies commenced the selection process at different times and by 12th June, 2018, six months later, the selection of all nominees under Article 230 of the Constitution, had not been completed. Additionally, all the nominees would be required to be approved by the National Assembly under Article 250 of the Constitution. A delay in the selection process therefore delayed the entire appointment process.

Mr. Temporary Speaker, Sir, the Bill therefore sought to provide for timely appointment of Commissioners following the expiry of the term of the preceding Commission so as to ensure that matters relating to salaries and remuneration of State and public officers were not unduly delayed due to the absence of commissioners.

Mr. Temporary Speaker, Sir, this is a straight forward amendment which the Committee on Finance and Budget realize is very critical. As you have noted, there was a lapse of about six months before we could get new commissioners and that meant that people who were employed by some institutions could not get their due letters or processed so as to commence working for this nation.

I thank the Member of the Committee on Finance and Budget and the secretariat for identifying this gap after carrying out the process that was tedious. We did not have timelines so it was a *Laissez-faire*. The Committee decided to work hard to fill that gap. This is a milestone for the Senate because we saw a gap that had existed for some time and we are up to the task. We request the Senators to support this amendment so that we can fill that gap.

In conclusion, it is important to acknowledge the submissions by the various stakeholders. As a requirement by law, in every law that we intend to pass it has always been mandatory to carry out public participation as we did on this Bill. We carried out public participation and in that regard, I would like to recognize and acknowledge the submissions made by the following stakeholder-

- (a) The National Treasury and Planning;
- (b) The Kenya National Commission on Human Rights (KNCHR);
- (c) The African Women Studies Centre (AWSC), the University of Nairobi;
- (d) The Salaries and Remuneration Commission (SRC), and,
- (e) Mr. John Gachoki, a member of public who sounds like a man from my home area. We are always very diligent when looking into these issues.

(Laughter)

Mr. Temporary Speaker, Sir, without much ado, I beg to move that the Bill be read a second time and request Sen. Farhiya to second.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed Sen. Farhiya.

Sen. Farhiya: Mr. Temporary Speaker, Sir, I thank you for allowing me to second this Bill. As the Chairman has submitted, this is a very simple amendment. When we were doing the recruitment for the Salaries and Remuneration Commission (SRC) on behalf of the counties, we realized that there was no procedure for notification. For example, if a position fell vacant, there is no procedure for the appointing body to know that there is a vacancy in the first place. That means that there is delayed recruitment. The other issue that we noted is that there is no timeline within which the process should take place and end.

This is a very simple amendment but it is a milestone for the Commission. The SRC is a critical commission even when a new position is created within the national Government or the county governments, they have to do mapping in terms of where such positions will fit in the salary scales. If nominating institutions are not notified about the vacancies at the Salaries and Remuneration Commission (SRC) for two years, then what happens? There are clear gaps and the people of Kenya will be denied services that they require. All the functions that are performed by the SRC will remain pending. This Bill is very simple with only two amendments. I therefore do not want to belabor the point. This Bill is fundamental in the functioning of the SRC. I therefore wish to join my Chairman in thanking the Committee on Finance and Budget as well as the secretariat for always being top notch in terms of performance in this Senate.

I support and second. Thank you.

(Question proposed)

Sen. Kang'ata: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill, the reason being that the SRC is an important Commission in this Republic of Kenya.

There are several constitutional commissions that were established by the Kenya Constitution, 2010. They include the Teachers Service Commission (TSC), the Kenya National Commission on Human Rights (KNCHR) and now the SRC.

The key role of this Commission is to ensure public wages do not spiral out of control. It does a review of public servants, analyses the amount of money they need to be paid and makes a recommendation to the National Treasury and the National Assembly. It is usually involved in collecting bargaining agreements (CBAs) between unions and the Government.

Without this Commission, you would find a situation where the highest proportion of our taxes go to paying recurrent expenditure as opposed to capital expenditure. As a result, there will be no development, no roads, no new hospitals and bursaries. All monies would be going to pay recurrent expenditure. You would also find a situation where public wages constitute a very huge proportion of the country's Gross Domestic Product (GDP). The Government then becomes so expansive while the private sector is crowded.

This Commission ensures that there is need to have demarcation of the extent to which the country's monies can go towards paying public emoluments.

This Amendment is proposing to establish clear timelines within which commissioners should be appointed, recruited, vetted and be in office.

I am aware there was a time when for eight months Kenya did not have commissioners. The whole idea which has been brought by the Chair of the relevant Committee is to create and establish timelines within which we should be having commissioners already settled into place.

Public sector unions play a very important role. These are the Kenya National Union of Teachers (KNUT), University Academic Staff Union (UASU) and others. On the other hand, we must also remember that the monies we have which we keep in the Consolidated Fund are not a bottomless pit; there is a limit. We need to have this Commission functioning properly and constituted as soon as there exists a vacancy, to avoid a situation where we do not have a commission to set ceilings for public wages.

I am also aware even this Parliament has been pushing for higher salaries. With all due respect, of course, Members have the right to agitate for higher salaries but we must allow Parliament to push for salaries that do not oppress the common *mwananchi* who is the taxpayer.

My heart goes out to the millions of unemployed young people who do not even have a salary. It also goes out to the millions of *boda boda* riders, millions of hawkers and farmers who do not have a constant salary.

Those of us in public service such as Parliamentarians and civil servants should be thanking God that we have a salary at the end of the month. Even as those of us in Parliament push for higher salaries let us also remember the majority of taxpayers who pay Value Added Tax (VAT) - I do not know - Sales Tax and Income Tax and do not have a regular salary.

Therefore, the work of the SRC needs to be appreciated otherwise we will have cosseted insiders. That is a situation where those of us who are in regular Government

jobs will have our salaries so much enhanced to the detriment of the common taxpayers such as the *mama mboga*, *boda boda* riders, the avocado farmer, the macadamia farmer in Murang'a, the tea farmer and coffee farmers who will be over taxed.

We will have a situation where all those taxes are going to pay public servants. That is why I strongly support the work of SRC to ensure they do a good evaluation and salaries are being paid on the basis of productivity not on the basis of the power to push Government.

Let us pass this amendment so that we encourage the Commission to set salaries based on productivity and how many hours you work in your office. I love the people who have small kiosks or shops. Think of that shopkeeper near your estate. That shopkeeper often opens from 5.00 a.m., and closes at about 10.00 p.m. or 11.00 p.m. He does not have a regular income or fixed salary unlike those of us who have a regular income that is paid by the taxes collected from the same shopkeeper.

To the extent that SRC caps our salaries, it makes sense. It is to champion the interests of that shopkeeper who opens from 5.00 a.m., to 10.00 p.m., and does not know where the customers will come from and without a guaranteed income at the end of the month. Let us support this amendment to strengthen the work of SRC.

As I finalize, I urge this country to mind the common *wananchi* who are suffering out there. Let us think of unemployed young people even as we push for salaries. Those of us who are pushing for higher salaries at least have an income. What about the millions of unemployed young people? It is okay, of course, you need to be well paid, but what about those people who work seven days a week almost 24 hours a day?

Think of a *boda boda* rider whose income is not guaranteed. He wakes up at about 4.00 a.m., and sleeps at about midnight and works from Monday to Monday. When that rider goes to purchase fuel there will be VAT which is going to be used to pay our salaries.

Please let us allow SRC to peg our income on productivity so that I am paid according to my work out put. I wish the SRC chairperson was here.

All Senators who are not here should not get something. I wish the Salaries and Remuneration Commission (SRC) would come here and take a duty roster. I am serious.

The Temporary Speaker (Sen. (Dr.) Lelegwe): What it is, Sen. Farhiya?

Sen. Farhiya: On a point of order, Mr. Temporary Speaker, Sir. Is Sen. Kang'ata in order to say that Members who are not here should not be paid yet he is usually not here most of the time? He was not here last time. We said that these are Bills that are coming back for the second time. We should stick to the relevance of the amendment so that we pass most of the Bills on time. I therefore request Sen. Kang'ata to be relevant to this amendment.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Kibiru, I see an intervention. Proceed.

Sen. Kibiru: Mr. Temporary Speaker, Sir, is it in order for my very good friend, Sen. Kang'ata, to insinuate that Members are not in the Senate when he is aware that he was absent? When he was away we agreed that we would be doing hybrid meetings. If you look at the Zoom online platform, we must be having half of the Senators there because of the COVID-19 protocols. Since this is a House of records, it is very important that Sen. Kang'ata acknowledges that we are operating a hybrid system.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. Kang'ata.

Sen. Kang'ata: Thank you, Mr. Temporary Speaker, Sir. When I spoke, I said both physically and virtually. To respond to my leader, *Mzalendo* issued a report and I was ranked among the most active Senators last year. I can assure you that I will also be in that list this year. So, do not worry.

Be that as it may, I think that it is important that we support this Commission. I am building into my rationale of supporting this proposal which is that this Commission is important. Those of us who are in Government should be paid as per our productivity.

Mr. Temporary Speaker, Sir, I also support the effort that if you want to create more employment opportunities for the young people, you should allow for what we call short term contractual public employment. You allow for a 24-hour economy where even Government offices are open for 24 hours. The whole rationale is to urge Senators to support this amendment.

Thank you.

I support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker Sir, for giving me this opportunity to support this amendment by Sen. Kibiru, the Chairperson of the Committee on Finance and Budget. It amends Section 7 and 9 of the Act.

I support this amendment because it is important that if there arises a vacancy in the Commission, it should be something that is very transparent. It should even be in the *Kenya Gazette* that a vacancy has arisen. It is that publication in the gazette that will trigger the next step that will eventually lead to the nomination of a candidate. When it is--

(Loud consultations)

Mr. Temporary Speaker, Sir, kindly protect me. I need to be heard because this Bill is very important and Kenyans are listening.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Senators! Consult in low tones.

Proceed, Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir. This Bill is very important. There is an issue that Sen. Kibiru is bringing on the Floor of this House that needs a lot of interrogation and eventually implementation. When there is a vacancy among commissioners, not just for the SRC, but also for other commissions, this vacancy should be published in the *Kenya Gazette* because it is a valid instrument that can be supported in a court of law. The *Kenya Gazette* is a permanent instrument which informs and is authentic. When this information is in the *Kenya Gazette*, that is when other procedures can follow.

Mr. Temporary Speaker, Sir, I am happy that the Bill says that when it comes to filling this vacancy, it should be in the *Kenya Gazette* within 28 days of the vacancy arising. It is very clear on when a vacancy can arise. It can arise if a commissioner dies, resigns, or if he or she does not comply with Article Six of the Constitution. When such a vacancy arises, the process should be transparent. It should be published in the *Kenya Gazette* that a vacancy has come up.

There must also be a timeframe within which a commissioner should be replaced. It should not just be that a vacancy is there and a timeline is not given. When a vacancy arises, it should be filled as fast as possible so that there is no lacuna when it comes to executing duties. Commissioners have duties that they are assigned. Therefore, we must have the appropriate number to constitute who can delegate duties as required by the law.

Mr. Temporary Speaker, Sir, I mentioned that the catalyst of beginning the nomination process, the *Kenya Gazette*, is important. Once the catalyst is there, the procedure can go on. The names are then given in the National Assembly, and then they are gazetted by the President then the appointments are done.

Even as we talk about appointment of commissioners, we must adhere to the principles that are very important. We must adhere to the two-thirds gender rule. This is so that every gender is represented. We must also adhere to the principle of equity.

I want to see a situation where we even have a deserving Person with Disabilities (PwDs) as a commissioner. That is the equity that we are talking about. PwDs should be mainstreamed. We need to have a situation where deserving PwDs who have papers and have been interviewed and shortlisted are appointed by the President to be in the Commission. That is where the entire world is headed, mainstreaming PwDs. Kenya is among the signatories that signed all the laws that deal with disability rights. It will be a good thing to ensure that the principle of equity is adhered to.

Mr. Temporary Speaker, Sir, apart from the principle of equity, we must also adhere to the principle of regional balance. The Commission should have the face of Kenya. When people look at the commissioners, they should see that Kenya is fully represented.

I support this Bill and hope that it will see the light of day and is effected so that there is no gap when it comes to commissioners. I am not only talking about the SRC, but about all commissioners. Where there is a gap after a commissioner has exited, let it be filed very fast. It should be procedural and done in a consistent manner so that commissioners from different organizations are filled in the same way.

Mr. Temporary Speaker, Sir I am happy that there has been public participation on this Bill. Other commissions and organizations came on board, so it is a Bill that has the goodwill of Kenyans.

I support this Bill. Thank you, Mr. Temporary Speaker, Sir for the opportunity.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Dr.) Milgo.

Sen. (Dr.) Milgo: Thank you, Mr. Temporary Speaker, Sir, for giving me this chance to support this Bill.

I thank the Committee on Finance and Budget, led by the able Chairperson, Sen. Kibiru, for coming up with this amendment which is short but critical. It is an amendment to Section 7 and 9 of the Salaries and Remuneration Commission Act, 2011.

Mr. Temporary Speaker, Sir, the SRC is one of the many semi-automatous commissions that plays a critical role in the country. It falls into the same category with the Teacher Service Commission (TSC), the Public Service Commission (PSC), Independent Electoral and Boundaries Commission (IEBC) and others which are critical. In fact, this Committee identified the gap which existed in this Act.

The SRC came into place to assist this country. Before I came to Parliament, I remember that parliamentarians used to add their own salaries at will. It was unfortunate.

I know it is interesting to have high salaries but it is important to have some kind of checks.

There was an oversight earlier on when this particular Act came into play. This is because there was no notification to know the expiry term of commissioners. In such a case, some rogue commissioners would continue to be in office for years on end. In addition to that, there were no timelines on retirement, filling of vacancies or retiring.

The first chairperson of SRC, Ms. Sarah Serem, was painted black and blue all the time. However, she was a strong woman. She stood her ground and now SRC is a strong body. I am sure this amendment will go a long way to strengthen its job so that it is refined. If you go to any area lately, jobs are fully evaluated.

I remember a case of one housewife who was married for over 15 years. She went to court after she was chased away by her husband and the court used evaluation from the SRC to pay what is accrued to her for the 15 years. Therefore, the SRC should continue to evaluate all the various jobs. We were excited to see that housewives are now evaluated just like any other job. This is because the SRC is setting aside equal pay for equal job done.

Mr. Temporary Speaker, Sir, Section 7 states that within 14 days when a vacancy arises, there should be a mode of advertising. It goes all the way up to number three to say within the 14 days when a vacancy arises, there must be an advert. It has gone on to specify where the advert will be placed, that is, in the newspaper. By so doing, it will ensure that there will be no corruption when it comes to filling the vacancies because it will be displayed for all to see.

This particular amendment has also specified how many days the National Assembly will have to take to scrutinize those that have been interviewed before forwarding the names to the President for appointment.

Further, the President has also been given seven days before nominating those that have qualified. In this case, the names of three people will be sent to the President to choose.

Despite the fact that this is a small amendment, it will fill the lacuna that has existed for a long time.

I wish we had a commission which will check on issues of borrowing and debts. The SRC has squeezed and ensured that there is no overpayment or wastage of public funds.

I saw someone come up with their 2022 manifesto. I wish they would come up with a commission that will check on debt borrowing to limit the amount of money that a country can borrow so that it does not borrow too much yet there is lack of implementation and corruption. At the end, the people who are at the receiving end, pay high taxes in order to repay the loans but there is no service to show for it.

I thank this Committee for coming up with this amendment.

I support.

Sen. Mutula Kilonzo Jr.: Thank you, Mr. Temporary Speaker, Sir. Mine will be brief because my good chairman has spoken on behalf of the Committee where we sit. This is basically innocuous amendment on an omission to the Bill on vacancies that occur in the commission.

At some point, the chairman will lead us to a discussion as to whether we still need this commission. I am not sure whether it has served its purpose in so far as the wage bill is concerned. So, the discussion should be done at the earliest opportunity.

I am little disappointed that when we had the opportunity as the Senate to have one of our Members sit in the SRC, we chose a Member of the National Assembly without knowing. I shall not mention the criteria but it was, in my honest opinion, fickle. This is because if a Member of the National Assembly has served for five years can qualify for a position that requires 10 years' experience, a Senator who has served for 10 years should equally qualify. However, I have one vote in the Senate and that is that.

Thank you, chairman for this amendments. This should be fairly quite simple.

Mr. Temporary Speaker, Sir, I support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I now call upon the Mover to reply.

Sen. Kibiru: Mr. Temporary Speaker, Sir, I beg to reply. In so doing, I thank Members who have contributed. Thank you, Sen. Farhiya for seconding and highlighting critical issues. I also thank Sen. (Dr.) Musuruve and Sen. Kang'ata and others who are online.

This is a House of records. There are many of the Senators especially, Members of the Committee on Finance and Budget who are online. Thank you, Sen. Mutula Kilonzo Jr.

The SRC is an important entity in the country. As Sen. Kang'ata said, they are trying to moderate our salaries but it is in the spirit of taming the wage bill.

This is a straightforward amendment. Without wasting much of the Senators and Senate time and pursuant to Standing Order No. 61(8), I request that putting of the question be deferred to a later date.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Honorable Senators, upon request by the Mover, I therefore appoint tomorrow Thursday as the date to put the question.

(Putting of the question on the Bill deferred)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Next Order.

Second Reading

THE COUNTY LICENSING (UNIFORM PROCEDURES) BILL (SENATE BILLS NO. 32 OF 2020)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Chebeni proceed.

Sen. Chebeni: Thank you, Mr. Temporary Speaker, Sir. I beg to move that the County Licensing (Uniform Procedures) Bill (Senate Bills No. 32 of 2020) be now read a Second Time.

The principle object of this Bill is to put in place uniform procedures for licensing of various activities in the counties. You realize that one of the ways that county governments generate revenue is through the issuance of licenses for various activities related to the functions of county governments.

However, you also realize that we have 47 county governments. It means that we have different licensing procedures in these governments. It makes it very difficult to do business across the counties. Let us say a person wants to do a business in county A, then it means that he or she will not because the procedures there are different from the county they are coming from. With lack of uniformity in the procedures, it creates a lot of---

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Farhiya, what is it?

Sen. Farhiya: Mr. Temporary Speaker, Sir, thank you. I just want to request my sister to be a bit loud because we cannot hear from where I am seated. She is moving a very important Bill that is very much relevant to this country.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Senator.

Sen. Chebeni: Thank you, Mr. Temporary Speaker, Sir. I hope now you can hear me.

As I was saying, this is a very important Bill that seeks to create certainty when it comes to licensing procedures at the county governments so that we have one that cuts across the various counties.

Mr. Temporary Speaker, Sir, allow me to now go to the salient provisions of this Bill. At the outset, the Bill proposes to set out general duties for licensing authorities which includes providing for mechanisms for simultaneous applications for more than one license. It means that one can apply for the various licenses at the same time. It also seeks to prevent multiple licensing procedures and ensuring that applicants are given adequate opportunity to make representations on an application for a license.

Mr. Temporary Speaker, Sir, furthermore, it seeks to ensure that the licensing authority adjust to timelines. When it comes to timeliness, it is important for any business. When it takes too long for someone to get their licenses, it means that they are losing so much time and it is not good for any business. Yesterday we were looking at the Start-Up Bill. We realized that there is so much time wastage. This Bill seeks to ensure that licensing authorities stick to the very timelines set out in this Bill.

Mr. Temporary Speaker, Sir, Clause 6 of the Bill provides for the duties and obligations of the county government in exercise of their power to issue licenses. These duties include protecting the rights of consumers in respective counties. This means that as the licensee is proceeding with their business, consumer rights are protected.

Mr. Temporary Speaker, Sir, the other duty of the county government is to support regulations of developing markets to ensure that the quality of goods produced and services delivered are of high standards to effectively administer control over persons engaged in types of activities that may pose a risk to the general public.

Lastly, is to ensure that licensing fees imposed are not prohibitive. Yesterday as I said, we were talking about the Start-Up Bill and the way they are struggling with capital. If we make them pay a lot of licensing fees, it means that we are prohibiting their growth. This Bill ensures that while administering the licensing fees, they do not prohibit the growth of these start-ups.

Mr. Temporary Speaker, Sir, when you look at Clause 7, the Bill provides for applicable procedures in the process of licensing by county governments. These procedures include a requirement for county governments to put in place a single application process with respect to an application for more than one license. It means that a person is able to do multiple licensing at the same time. There is no need to have different application processes.

The county government is also required to make a determination on an application for a license within 28 days of the application. In the absence of such determination, the application will be deemed to have been allowed. You realize that the issue of timeliness is critical. With this Bill, it is very strict that they will adhere to 28 days so that the procedure does not take too long before one is given the determination of the application.

Mr. Temporary Speaker, Sir, when you look at Clause 14, the Bill provides that upon an application being made, the county government may grant a license and conditionally grant the application subject to conditions authorized by the relevant licensing legislation or refuse the application. There are three ways of going about it. You either grant it or grant it conditionally meaning that there are things that need to be done.

In any event, the licensing authority will be required to inform the applicant of the decision within seven days. Again, it is very critical when it comes to timeliness. Seven days is key to ensure the licensee is informed of the decision of the authority whether they have been granted the license or not.

Mr. Temporary Speaker, Sir, further, licensing authorities are required to maintain a register of all licenses issued indicating the pertinent particulars of the license holder and the nature of the license. This is very crucial again so that we understand the nature of the businesses that are being done by the licensee or the goods and services done by the licensee.

Another provision is that the Bill requires the holder of a license to provide the service or carry out the business specified in the license. There is no shortcut here. The licensee should carry out what they had applied for to comply with all applicable laws and conditions for the issuance of the license. To provide the licensing authority with information with respect to any change in its directorship or shareholding in accordance with Clause 16.

Mr. Temporary Speaker, Sir, the applicant will also be required to pay such fees as may be prescribed and maintain and where required submit to the licensing authority such information as may be necessary for the continued licensing of the license holder. This is key because it sets out the responsibilities of the license holder. They are supposed to adhere to certain things even as they are being granted the license.

The Bill also provides that a licensing authority be guided by the following principles in setting out the license fee. There is the need to ensure efficiency in the delivery of goods and services, accountability, public participation, and cross subsidization. This is where fees collected for providing a category of goods or services covers the cost incurred in providing the goods and services in other category in accordance with the existing legislation. Adherence to the existing policy on the charging and collection of fees and avoidance of multiple licensing in a specific sector.

Mr. Temporary Speaker, Sir, lastly, even as I move and ask Sen. (Dr.) Musuruve to second the Bill, the Bill seeks to create a uniform framework which shall form the basis of licensing processes in the counties. This will guarantee certainty and predictability for business owners trading within counties. It is vital for the ease of doing business at the county level. All the time we talk about ease of doing business in this country.

This Bill will go a long way to ensure we set up a good environment for our businesses in county governments.

Business environment underpinned by certainty and predictability will definitely boost entrepreneurship. It also will create employment opportunities, reduce the cost of doing business and promote regular and reliable revenue streams for county governments.

Mr. Temporary Speaker, Sir, I beg to move and request Sen. (Dr.) Musuruve to second.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Dr.) Musuruve, proceed.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to second this Bill by Sen. Chebeni. I thank her for coming up with this Bill that will bring orderliness in counties and ensure a conducive business environment at the county level and in a predictable manner.

From our Constitution, county governments have many activities. In Part II of the Fourth Schedule, county governments have 14 specified functions. If they have these functions, this means they will have many activities. There will be more activities to do with health, Technical and Vocational Education Training (TVET), transportation, agriculture and many others. If these activities are done haphazardly, there will be disorganization. It means even the business environment will not be conducive for business.

What Sen. Chebeni is bringing forth is a predictable way in which activities in counties can be done; that is, registration of licences. For example, you will find fishmongers, vegetable and other merchandise traders in counties. All these people need licences. There are also people who have started TVETs and Early Childhood Development Education (ECDE) and they need licences too. If they are not licensed, they will run their activities in a demeaning and confusing way.

Some years when I was growing up, I remember a St. Mary's Girls' Secondary School which was started on top of a business premise which had a bar. That environment was not conducive for learners as there was no playing field. This Bill will bring sanity to business owners in different activities they want to run in counties. For instance, if someone wants to start an ECDE centre, there must definitely be a playing field and qualified teachers registered by the TSC. To start a barber shop, there has to be a procedure that will entail how they will go about getting a license. This Bill will ensure traders are doing the businesses in a predictable manner without having problems with county governments.

Mr. Temporary Speaker, Sir, licences should be uniform across the 47 counties. For instance, to start an ECDE centre, there should be a predictable procedure for the same in all counties. This way, someone starting an ECDE centre in Makueni or Lugari where I come from or any other county constituency, can just click a button and see the procedure and conditions that must be complied with. This will make people do their work in a better way and service delivery to wananchi will be easy.

For licensing, it is important that specific activities should have specific licences. For example, licensing for TVET will be different for a salon, shoe shining or fishmongering. They cannot be the same, but for that particular activity being undertaken, licences should be uniform across the 47 counties. That way, someone in Meru County will know the conditions for setting up such a business in order to get a license.

County governments have the provision to generate income going by the Constitution. One of the ways to generate income is fees from licences. This must be in a way that helps the county government, consumers and those starting business. The fees

should not be too prohibitive such that you want to start a salon and the licence fees is about Kshs50,000. This is way above saloonist and they cannot afford it. In Lugari Constituency, for example, I see three or four salons and I do not think the owners would earn Kshs50,000 to acquire a licence to start their business.

The fees should be accommodative of *mwananchi*. It should be an amount that *mwananchi* can easily raise and pay. We are looking at ways to create jobs in counties. If someone wants to start a barber shop and the license is way above what he is able to afford, it means they cannot start a barber shop. If he does not start, he will be in the bracket of the unemployed. So, if the licences and bearable accommodating, the people will be able to fulfil the conditions set and get the licences.

Mr. Temporary Speaker, Sir, I am happy that this Bill sets the timeframe for a licence ought to be given. When someone applies for a licence, they should be given it in 28 days. I dare say sometimes you find moody people in offices and you want a licence. You then encounter hurdles until some give up. It should not be a situation where people give up on licences. Licenses should be given in 28 days. Should the process start and a document is missing, the applicant should be notified in seven days. The licensee should even be updated on the status of the license application process.

Mr. Temporary Speaker, Sir, the licensee should be told whether the license has been approved or not, what is pending. If that is done, the people can continue with their businesses as they wait for the full approval of the license. This Bill states clearly that if 28 days' lapse and the license has not been approved or communication has not been received from the licensing authority, it will automatically mean that the license has been approved. That will condition the licensing officers to ensure that they do their work effectively and efficiently for purposes of ensuring service delivery so that Kenyans can carry on with their businesses.

It is important for us to consider ways of expediting this Bill so that it sees the light of day. I urge the county governments to take this Bill seriously because it will add to their income. Constitutionally, counties are allowed to generate their own revenue. If counties can create an enabling environment for business, that means that more people in the counties will engage in activities that will add to the revenue of the counties.

It is also important for county government to be empathetic to PwDs who want to do businesses. Sometimes PwDs may want to do business but even getting a license can be a big hurdle. There is a need for county governments to ensure that they look for mechanisms to ensure that there is an inclusive environment that will ensure that even PwDs are licensed. It is the onus of the county governments to ensure that they create a percentage of sorts for PwDs so that they can also get an income just like anybody else. I know that there are so many PwDs out there who would like to do business but sometimes, lack the money for licenses.

The county governments get a mechanism to ensure that they give a percentage of the licenses to PwD. For example, if a license is Kshs3,000, a PwDs may be told to pay 20 per cent of the Kshs3,000 so that they can easily access licenses to operate. I am clearly aware of the fact that there are PwDs in the counties who are barbers and who want licenses to do business but they may not have the capital or money to buy licenses. The county governments need to identify such PwDs so that they support them to get the licenses as well as facilitate them to carry out their businesses.

Mr. Temporary Speaker, Sir, this Bill is timely because it cuts across many other Bills that have been brought to the Floor of the Senate like the Start-Up Bill (Senate Bills No. 1 of 2021) that was sponsored by Sen. Sakaja. That Bill blends well with this Bill, the County Licensing (Uniform Procedures) Bill (Senate Bills No. 32 of 2020). If the two Bills marry, it will be easy for the people in *mashinani* to conduct their activities in a harmonious way.

This Bill also states that someone should take a license for a specific purpose. For example, someone may take a license to run an M-Pesa shop but you will find that they also sell other goods there. A business person could be selling many other goods or doing many other businesses which are not licensed under a single business license. This Bill speaks to having specific licenses for specific businesses. For instance, if someone is running an M-Pesa shop, it should strictly only run M-Pesa services. If someone has a license to run a hair salon, it should strictly be a salon.

If this Bill is passed, it will be good for all the counties. The conditions will be clearly set out for anyone who may want to start a business. Once the conditions are clearly, I believe that business persons will no longer be harassed as we have seen before in major towns and cities where council workers are known to arrest business persons and bundle them in their vehicles. This Bill will protect us from the shame that we keep seeing in our towns. I have also witnessed in the past PwDs being bundled like garbage by council *askaris* into the county council vehicles whenever they do not have the licenses or permits to run their businesses.

This Bill will bring sanity in licensing by ensuring the wrongs in the counties with regards to licensing are corrected. It is our onus as the Senate to ensure that we correct the wrongs that are in the counties because we are answerable to the counties so we should ensure service delivery to *wananchi*.

Mr. Temporary Speaker, Sir, I beg to second this Bill.

(Question proposed)

The Temporary Speaker (Sen.(Dr.) Lelegwe): Proceed, Sen. Were.

Sen. Were: Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to contribute to the County Licensing (Uniform Procedures) Bill (Senate Bills No. 32 of 2020) that is ably sponsored by Sen. Chebeni and has been properly seconded by Sen. (Dr.) Musuruve. The objective of this Bill is to put in place uniform procedures for the licensing of various activities by counties.

Presently, there are varied procedures in applying for licenses which has a negative impact on the ease of doing business in the counties. This Bill will ensure that there is some form of sanity in the process of issuing procedures to applicants and ultimately encourage the players in the private sector to do business in the counties.

Mr. Temporary Speaker, Sir, other than just the ease of doing business, I would like to illustrate the kind of frustration a business person goes through when they are going through various counties in the line of their business. I will give an example of a potatoes trader who picks his potatoes from Nyandarua County which is the place that produces the most Irish potatoes in this country. When the trader leaves Nyandarua with his potatoes to transport them to Mombasa County, he will require a license from Nyandarua County. When he gets to Laikipia County, he will be required to get another

license. Once he is through with that, he has to pass through Nakuru County where he will go through a different process of licensing. After that, he will have to pass through Kiambu County and go through a different process of licensing before getting to Nairobi City County where he will also be expected to go through a different process of licensing. There are also other counties including Machakos, Makueni and Taita Taveta which also have different licensing procedures before they get to Mombasa County.

Those kinds of frustrations discourage trade. By the time the potatoes reach Mombasa County, their price is exorbitant for the people who require them. That will then affect the nutrition of Kenyans in the long run. By putting up these uniform procedures, you may think that it is a simple Act, but the ripple effect is significant to this country.

This Bill provides for timelines that should be adhered to in providing a license to a trader. It states that it must be within 28 days across the counties and where it is not provided within the 28 days, then the license is deemed to have been approved. The imposition of licensing fees is currently carried out in a manner that hampers the respective business or the industry. A uniform mechanism will therefore ensure that there is a simultaneous application for licensing.

If one requires to have more than once license, they are then able to do it at once and not in different areas. If you are doing a health department license or an environmental impact license, you are able to do that application at once. That will provide some form of efficiency in addition to the simplicity of the process.

With those very many remarks, I thank Sen. Chebeni for coming up with this Bill. I remind Members that this is also one of the Bills that had suffered the effect of sibling rivalry between the Senate and the National Assembly. We should dispose of it as soon as possible so that we can serve Kenyans effectively.

I support.

Sen. Farhiya: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute. I thank Sen. Chebeni for sponsoring this Bill.

Doing business in Kenya has always been difficult in terms of getting licenses, the requirements and the time it takes. It is like trying to navigate a very dangerous jungle. By the time you reach your destination, you are almost giving up whatever you were pursuing.

Sen. Chebeni has encouraged investors to invest in this country. Imagine having a licensing procedure in all the 47 counties being different. If somebody wanted to invest in all the 47 counties in the absence of this Bill, it would be so difficult for somebody to get a license in each of those counties.

Now that this procedure exists, I think people will know that if, for example, I am in the county of Wajir, Nairobi or Mombasa, I know exactly what to expect. I can do business through those different applications that follow a specific procedure.

This Bill also addresses timeliness in which licenses must be approved and one must get a response on why their application was rejected and the reason for the rejection. It also sits in specific departments.

I urge Sen. Chebeni to add another amendment so that we avoid the idea of asking a secretary or receptionist where I can get certain licenses. We should have an online platform for each department in the county within the website of that county. For example, under the County of Wajir, the department of trade, these are the licenses that

are available and the online means of how to apply so that those who are techno savvy can have better lives.

They should also tell you what is required so that by the time you arrive at that department, everything is ready for you to submit, so that you do not have to ask extra information from different people as Sen. (Dr.) Musuruve has submitted. The people who wake up in different moods will not affect you having a systematic way of doing business.

There are licenses that cut across the national Government and county governments. Imagine when there is no procedure in the county government, by the time you finish with the national Government and you are tired, then somebody expects you to also submit the other requirement for the county government which is different. It would have made doing business across counties extremely challenging. This Bill, which is timely, has addressed those fears.

I support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): I now call upon the Mover to reply.

Sen. Chebeni: Mr. Temporary Speaker, Sir, I beg to reply.

I thank all the Senators who have contributed to this Bill and Sen. (Dr.) Musuruve who seconded and talked of ensuring that PWDs get licenses on time. I thank Sen. Were who said that this Bill is going to be effective in ensuring we have proper guidelines and structures when it comes to licensing and Sen. Farhiya who talked about online links that will allow people to access this information on online platforms.

I agree with all those proposals. As we go to the other stage, we will look at how we can amend this Bill. People in this country suffer when they want to start up their businesses. With this Bill, we will have procedures that are very clear for Kenyans to know what is expected of them when they want to do business so that they do not suffer the consequences of time wastage.

This Bill will ensure that we have inter-county transactions, which will grow our economy, more so, locally. That will ensure our counties get own-source revenue. This will also encourage local investors to invest in the various counties because of the certainty of procedures.

I request that pursuant to Standing Order No.61(3), you defer the putting of the question to a later date.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I now appoint tomorrow afternoon as the date for putting the question on that order.

(Putting of the question on the Bill deferred)

Next order.

Second Reading

THE COUNTY HALL OF FAME BILL
(SENATE BILLS NO. 9 OF 2021)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I defer that order.

(Bill deferred)

*Second Reading*THE LAW OF SUCCESSION (AMENDMENT) BILL
(SENATE BILLS NO. 15 OF 2021)*(Bill deferred)**Second Reading*THE DISASTER RISK MANAGEMENT BILL
(SENATE BILLS NO. 14 OF 2021)*(Bill deferred)**Second Reading*THE PROMPT PAYMENT BILL
(SENATE BILLS NO. 16 OF 2021)

Sen. Farhiya: Thank you, Mr. Temporary Speaker, Sir, for allowing me to move this Bill.

I beg to move that the Prompt Payment Bill (Senate Bills No. 16 of 2021) be read a Second Time.

What prompted me and Sen. Sakaja to develop this Bill was that in December 2018, there was a Petition from Kitui County regarding some pending bills of some suppliers who were not paid for a very long time but had already done the work.

Some of them were auctioned by banks while others committed suicide once their property was sold. How do you tell your family that you owned a maisonette and lived somewhere comfortably having bread on your table, then suddenly you have absolutely nothing to eat because all your money is owed by the county government? You are then evicted from the home that you probably inherited from your grandparents.

Mr. Temporary Speaker, Sir, at that time I sat listening to submissions from people who had those pending bills. It really pained me and I felt like we need to do something about pending bills in this country. As a result of that Petition, I agreed with Sen. Sakaja that we were going to solve that problem by developing a Bill that would ensure suppliers are paid on time.

Our initial idea was for only the county and national governments to pay promptly. However, as we got submissions from other stakeholders, the private sector told us that as much as we think that public institutions do not pay, the big boys in the private sector do not pay the small boys. They also lose money like that. They borrow loans and are also declared bankrupt on something that they have used their money to perform and yet are not paid on time.

Mr. Temporary Speaker, Sir, there are a lot of good things in this Bill to ensure that people are paid. One of the issues that is clearly identified and defined in this Bill is an accounting officer. An accounting officer of a national Government entity is as referred to in Section 67 of the Public Finance Management Act (PFM). It also refers to

an accounting officer of a county government entity referred to in Section 148 of the PFM Act. When it comes to the Judiciary, it is the registrar of the Judiciary. In the case of the Parliamentary Service Commission (PSC), it is the Clerk of the Senate or the Clerk of the National Assembly. These are the accounting officers.

The other thing defined is the “amount due.” It is the means the principal sum owed through a commercial transaction. The words “Cabinet Secretary” (CS), and “commercial transaction” are also defined. I do not think that I need to belabour on that. The other term that is defined is “interest”, which means the prevailing Central Bank of Kenya interest rate provided for under Clause 6 of this Bill.

Mr. Temporary Speaker, Sir, where there is no written contract or the contract does not provide for a date for payments, this Bill ensures that payments are due 90 days after. Once you have submitted all the documentation required, a payment becomes due after 90 days. For example, if you are delivering goods and have provided the invoice, the delivery notes, the Local Purchase Order (LPO) and all the other requirements according to the Public Procurement and Assets Disposal (PPAD) Act, the payments become due 90 days after that.

Let me just list a few of those requirements-

(1) Receipt by the purchaser of an invoice for the amount due, where the invoice is received after the completion of works or completed delivery of the goods or provision services;

(2) The completion of works, delivery of the goods or provision of services, where the completion or delivery is made at the time of or after receipt by the purchaser of an invoice;

(3) Such a lesser number of days as the Cabinet Secretary may, by notice in the Kenya Gazette, under Section 10 (2) prescribe.

Mr. Temporary Speaker, “procuring entity” means a public entity making a procurement to which the PPPAD Act applies.

“Services” means any objects of procurement or disposal other than works and goods and includes professional, consultancy services, technical services, non-professional and commercial types of services as well as goods and works which are incidental to but not exceeding the value of those services.

“Supplier” means a person who enters into a procurement contract with a procuring entity to supply goods, works or services.

Mr. Temporary Speaker, Sir, you will allow me to read some of these things because some of them are so technical and people who are listening need to understand them properly.

“Works” means a combination of goods and services for the construction, repair, renovation, extension, alteration, dismantling or demolition of buildings, roads or other structures including-

(1) The designing, building, installation, testing, commissioning and setting up of equipment and plant

(2) Site preparation

(3) Other incidental services.

Mr. Temporary Speaker, Sir, Clause 3 of this Bill provides that this Bill shall apply to payment due for all goods, works, and services procured by the national Government, county governments and private entities. What that basically means is that

this Bill applies to all the commercial sectors of this country. I beg other countries in this region to emulate this Bill because I think that this is a game changer.

Mr. Temporary Speaker, Sir, a procuring entity shall pay a supplier by the prescribed payment date. A procuring entity who fails to pay a supplier by the prescribed payment date shall, unless otherwise agreed to and subject to Clauses 5 and 6 of this Bill, pay an interest to the supplier in accordance with the Clause on the amount due under the contract for the supply of goods, works, or services.

A procuring entity shall pay an interest under this Bill for the period beginning on the day after the prescribed payment date and ending on the date on which the payment of the amount due is made. We already said that the prescribed payment date is 90 days after you have all the documentation. After that, the interest starts accruing.

Mr. Temporary Speaker, Sir, it is illegal to procure for either goods or services for things that you do not have a budget for. If you have a budget for it, then you must have the finances to pay.

The other issue that brings about pending bills is when county governments inflate their local revenue collection. That way, their budget becomes bigger and they under perform in revenue collection. After they under perform on revenue collection, they do not have money to pay suppliers. They probably collected 10 per cent from people, it is time to make payment, and yet there is no money to pay.

The Committee on Finance and Budget is planning to cure this through an amendment to the PFM Act by making a clear criterion for estimating revenue. We said that the average of the actual collection of the last three years is the maximum that you can estimate as your local revenue collection.

For example, where I worked before, if you failed to stay within your budget, it was a clear disciplinary action that could lead you to lose your job. However, in Government institutions, people do that all the time and nothing happens to them, which is sad.

The economy can only grow if money circulates within counties. So, when people supply to either the national Government or county government and they are not paid yet they had borrowed the money, they default on their interest. This becomes a big problem for the economy. The country can only generate revenue if people make profits. The people who are not paid cannot make profit, they only make losses. This is because the interest will over-shoot the profit that they were expecting. Banks will charge interests because they do not exist to do favours but to do business of collecting interest. If the interest continue to accumulate, it eats into the profit and capital base.

So, businesses are supposed to make profits which pay the principal borrowed plus interest then have something left for either reinvestment or personal use.

The National Treasury does not meet its target, year in, year out because people do not make profit yet the Government is taxing. Government relies on Value Added Tax (VAT) or Pay as you Earn (PAYE) because people must have salaries.

If there is no money circulating within the economy, it means jobs are not created. This is because jobs are created by the same people who are not paid.

As a country, we cannot develop if the current level of pending bills continues. In my county, right now, pending bills are estimated to be Kshs4 million. Can you imagine a county like Wajir owing that amount of money to its people? Now, populate that to other counties and Government institutions. We are in for a disaster unless we address this issue of prompt payment. That is where this Bill comes in.

Mr. Temporary Speaker, Sir, after 90 days, the interest start to accrue until it is paid. Once a person knows that they have submitted everything and finished all the work, three months down the line, they get paid. If they do not, the interest from the bank will be paid by the interest from whatever accrues from the person who has not paid. So, it is a fair process.

There is also a penalty clause in the Bill which I will state. It states that interest shall not be waived. There is also a caveat. Once this interest is accrued, according to the Bill, the supplier is not allowed to waive that interest.

I felt that this should be so because in a business transaction people can agree to waive. The reason that I kept that clause and I was supported by the Committee on Finance and Budget, is because there is what we call balance of power. For example, they say he who pays the piper, calls the tune. So, the procuring entity always has an upper hand. So, if we left this interest to be negotiated, nothing would have changed. Government institutions have an upper hand and have much more financial muscle and are providers of business. So, small-scale suppliers would be waiving these interests all the time.

I got a little bit of backlash on this Bill from people of my faith because they do not believe in interests. We are not allowed to earn interest. However, we do not follow religious laws in the country. Besides, the interest will not be used for people to earn interest but as a deterrent. Therefore, if people of my faith do not want interest, they can pay it to banks to offset other interest or if not, they can pay school fees for a poor person.

Mr. Temporary Speaker, Sir, the essence of interests is for it to be a deterrent for people who are not paying other people. However, if they pay within the 90 days, there is no need for anybody to charge it. Due to power imbalances, they are not on equal terms. So, I want to protect the small person who is requesting for business from service users or Government entity from exploitation by making them waive the interest. So, this interest is not waivable.

When an entity receives an invoice that is complete, they are supposed to put it in a log and payment, besides the interest accruing after 90 days, is supposed to be first in, first out. The first person who submitted their invoice, should be paid for valid reasons. One, it prevents accruing of interests. It is not the interest of legislators to burden Government institutions. It is the interest of legislators not to burden the institution and the supplier. That is clear.

In terms of the due date, the first invoice to arrive is the first invoice to be paid and it is clear in the Bill. So there is a log and there will be a stamp on the invoice to show the date the invoice was submitted.

I like the first in, first out approach because it prevents corruption. As it is, people pay 10 per cent when they are given a business. When it is time for payment, unless they part with some money, nobody will pay them. Therefore, this Bill takes care of one end of corruption. So, as a result, you cannot negotiate the interest and it is first in, fast out. So, if your crony's invoice came yesterday and there is Sen. Were's which came three months earlier, please pay her first before paying your crony who has bribed you.

This Bill has also created space for dispute resolution in regards to invoice. We are all human beings and invoices can be defective. So, that is taken care of. The procuring agent is supposed to give feedback to the person within 14 days. However, at

the same time, pay them 50 per cent of the value of the invoice. Interest start to accrue if the three months would have lapsed 14 days thereafter once it is rectified.

If we leave it at that, every entity will have its interpretation of the amount of interest. We have made it clear so that even in the courts and everywhere, it is easier. It is the best lending rate that is published by the Central Bank of Kenya (CBK). If this month the CBK rate was 15 per cent, that is what you will get divide by 12 months because you cannot get an interest of the whole amount. The next month if it is 16 per cent, that is what you get until now you get paid.

Mr. Temporary Speaker, Sir, a person who wishes to enter into a contract for supply of goods, works and services with a national or county government entity shall make a declaration to the accounting officer of the entity on any pending payment owed to a small micro enterprise (SME).

This Bill has taken care of the special groups as well. Like 70 per cent of the economy of Kenya at least the last time I checked the statistics is through SMEs. If those are the ones that are the drivers of the economy, then there is need to also let the accounting officer know. This is because they can even be paid before the 90 days.

A declaration under Clause 1 shall be made in writing and include details when the outstanding payments fell due, reasons for the delay of payment and any agreement entered into between the supplier and procuring entity for the settlement of the outstanding amount.

Mr. Temporary Speaker, Sir, so that we avoid people who will owe money to people for the sake of it. Where a supplier has delivered an invoice to the procuring entity, and the accounting officer of the procuring entity negligently, maliciously or without a reasonable cause fails to return the invoice as provided under Clause 5. That is talking about the defects.

Then payment amount due by the prescribed payment date of the interest, commits an offense and is liable to a conviction of a fine not exceeding Kshs5 million and imprisonment of a term not exceeding five years or both. The Cabinet Secretary (CS) is also required to make regulation for this so that it is not open ended.

Mr. Temporary Speaker, Sir, because of time and this Bill was already moved before, I wish to move.

I wish to ask Sen. Were to second the Bill.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen Were, proceed

Sen. Were: Thank you, Mr. Temporary Speaker, Sir, I also rise to second the Prompt Payment Bill dully sponsored by Sen. Farhiya and Sen. Sakaja. This Bill again that has been delayed was also long overdue on the issues of prompt payment to suppliers. We have problems of pending bills that were close to Kshs90 billion. It was mainly because of abuse of the procurement process especially when it comes to payment.

Providing a law that ensures that there is order and discipline in the procurement process in the payment of services, goods and work done not only at the national but at the county level and even private entities was necessary. This Bill is here and we want to dispense with it also as fast as we can so that it can go and serve people. It was already debated on, public participation done and right now we do not want to delay it any further.

Mr. Temporary Speaker, Sir, this Bill provides for resolutions of disputes in relation to a defective invoice presented by a supplier or a procurement entity in government and as I have said in private entities. Where there is a dispute which is the reason why we have very many pending bills. This law will provide that 50 per cent is paid to the supplier as you resolve that issue. Even as you resolve it, there are timelines. You have been given 14 days within which you must have resolved that problem.

If you do not pay within the prescribed date, interest will accrue to the supplier. This will bring a lot of discipline in this sector. We will not ask for procurement of goods, services or work until we have the money with us if at all we are the Government. We shall not allow haphazard tendering that is not based on any budget.

Mr. Temporary Speaker, Sir, this Bill also provides that those who are the first in will also be paid first. That will create some form of fairness unlike now where cronies, relatives and we have seen in various impeachment reports, Auditor General's reports that have come to us. There has been proof that cronies and relatives have been paid ahead of other suppliers. The first in is first out and that will create some fairness.

This Bill also makes the accounting officer responsible directly. They will not say I got direct orders or orders from above that is why I did this. They know that they will be the ones to take responsibility for what they do. They will be careful as they undertake this process. The County Executive Committee (CEC) Member, Chief Officer, procurement officers in charge if he is the accounting officer by law will take the responsibility.

Mr. Temporary Speaker, Sir, this Bill has also provided for the CS to make regulations to facilitate this Bill. That will deal with the operational issues that are in this Bill. I request the sponsors of this Bill that is Sen. Farhiya and Sen. Sakaja to have a definition of the word "prompt" in the definition of terms for this Bill. If you are going to call it a prescribed payment date that is fine. Let us have it defined so that there is no ambiguity into what we mean by 'prompt' by just looking at the Bill.

Thank you and with those remarks I beg to second.

(Question proposed)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Chebeni, proceed.

Sen. Chebeni: Thank you, Mr. Temporary Speaker Sir, for giving me this opportunity to contribute to this Bill.

I thank Sen. Farhiya and Sen. Sakaja for coming up with this Bill. It is a very timely and important Bill at that. The issue of pending bills---

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Senator! Sen. Chebeni, you will have 19 more minutes to contribute when this Order appears on the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Lelegwe): Honorable Senators, it is now 6.30 p.m. time to adjourn the House. The Senate, therefore, stands adjourned until Thursday, 29th July, 2021 at 2.30 pm.

The Senate rose at 6.30 p.m.