

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Tuesday, 19th July, 2016**

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

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

PRAYERS**PAPER LAID**

THE PFM SENATE MONITORING
AND EVALUATION REGULATIONS 2016

Sen. Sang: Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-
The Public Finance Management Senate Monitoring and Evaluation Regulations
2016.

(Sen. Sang laid the document on the Table)

STATEMENTS

IMPLEMENTATION OF SENATE RESOLUTION
ON STATE OF AFFAIRS IN KENYA AIRWAYS LIMITED

Sen. Wangari: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.45(2)(b) to seek a Statement from the Chairperson of the Sessional Committee on Implementation regarding the status of the implementation of the resolution of the Senate on the state of affairs in Kenya Airways Limited. In the Statement, I would like the Chairperson to apprise the House on the status of implementation of each of the recommendations made by the *ad hoc* select Committee of the inquiry into the affairs of the company and its subsidiaries in its report on the matter as tabled on 1st December, 2015 and adopted by the Senate on 3rd December, 2015.

Mr. Speaker, Sir, I have another Statement. I do not know---

The Speaker (Hon. Ethuro): Proceed, Sen. Wangari. Was the first one addressed to the Sessional Committee on Implementation?

Sen. Wangari: Yes, Mr. Speaker, Sir.

IMPLEMENTATION OF SENATE RESOLUTION ON THE DISAPPEARANCE
OF TWINS AT PUMWANI MATERNITY HOSPITAL

Sen. Wangari: Mr. Speaker, Sir, the second Statement is directed to the same Committee.

I rise pursuant to Standing Order No.45(2)(b) to seek a Statement from the Chairperson of the Sessional Committee on Implementation regarding the status of the implementation of the resolution of the Senate on the disappearance of twins at Pumwani Maternity Hospital on 6th January, 2015.

In the Statement, I would like the Chairperson to apprise the House on the status of implementation of the recommendations made by the Standing Committee on Health in its report on the matter as tabled on 15th September, 2015 and adopted by the Senate on 2nd December, 2015.

Thank you.

The Speaker (Hon. Ethuro): Could we hear from the Chairperson of the Sessional Committee on Implementation, the Vice-Chairperson, Member or the Senate Majority Whip?

Sen. Elachi: Mr. Speaker, Sir, on behalf of the Committee, I would request the Senator to give us two weeks to bring both statements.

The Speaker (Hon. Ethuro): So directed. The statement should be ready in two weeks' time.

MANAGEMENT OF COMMUNITY AND PUBLIC
LAND IN MACHAKOS COUNTY

There are several statements to be issued. One is from the Chairperson Standing Committee on Lands and Natural Resources? Sen. Muthama is not here.

(Statement deferred)

VOLATILE SITUATION IN SOUTH SUDAN

Where is the Chairperson, Standing Committee on National Security and Foreign Relations? The Chairperson and the Vice-Chairperson are not present. Could we hear from any Member of the Committee?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I am surprised that the Chairperson or his Vice-Chairperson is not here. You gave a very clear direction that this statement has to be responded to today. The news coming in is not very encouraging. While Uganda has sent its troops to protect its nationals in Juba, Kenyans are left at the mercy of anybody and everybody. They brought in a load in a commercial airline. We want the leadership of Jubilee - I can see the Senate Majority Whip smiling as she sits there - to tell us why the Government is not being responsive to the plight of Kenyans.

I say this because we have 12,300 primary school teachers in South Sudan from my county alone before we even talk about others. There are Kenyans who are doing

business and the oil traders in Juba are investors who come from the county and the community of the distinguished Chairman of Finance Committee.

How are we going to help Kenyans get out of a situation where two warring protagonists, the President and his Deputy, have each a vicious standing army armed to the teeth? As I speak, an informed and undisclosed information that is in the public domain is that in the last one month over 5,000 people have been killed in Juba. How many Kenyans are part of this figure? Are Kenyans safe? Where is the Government to give us the answer?

Sen. Sijjny: Sorry, Mr. Speaker, Sir. It is on another point of order.

Sen. (Dr.) Machage: Mr. Speaker, Sir, you will agree with me that since this Statement was sought, a lot of water has gone under the bridge. I will, therefore, request that you allow me to make an addendum to the Senate Majority Whip who is now representing that Committee on these issues. In the Statement, I would like to know the following:-

- 1) How many Kenyans have lost their lives so far in South Sudan?
- 2) What is the estimated population of Kenyans in South Sudan as per now less the 200 that have been transported to Kenya?

Sen. Billow: Mr. Speaker, Sir, this is a very important matter. We do not have a good record as a nation and this happened even when our distinguished Senator for Bungoma was a Minister for Foreign Affairs. We do not have a record of caring for Kenyans who are in countries that have problems. We are always the last country and we do not respond as fast and as efficiently as other countries do.

I know of people who have been injured and are in hospitals in Kampala. When they were crossing the border by bus, the South Sudanese guys opened fire and several of them were injured. Those people are now held in hospitals in another country. It is important that the Foreign Ministry has a desk where the relatives and friends of those people who are working in that country can get information and even give their names. There has to be a contingency plan for evacuation in a country when there is a crisis like this one. The Government must tell us whether there is such a plan and where can Kenyans go and register their concerns regarding their people who are in such countries, particularly South Sudan.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, noting that South Sudan is neighbouring Kenya, particularly Turkana county, could the Chairman also tell us what steps the Government has taken to protect the people of Kenya who are living along the border, given that there is loose flow of guns in that country at this time. Has the army been stationed at the border point to protect Kenyans?

Sen. Omondi: Mr. Speaker, Sir, I also want to ride on that. My concern is on the priority that the Government gives to the people. The Government has failed to protect its people. This issue is very serious. As we get the response, we should also get the way forward on what plans the Government has in regards to the security of the people of Kenya. When you connect the two, you see that hijacking of Kenyans is connected to other---

The Speaker (Hon. Ethuro): Order, Senator! If you are so convinced that the Government has failed, then you would not be seeking the statement. This is not a statement to contribute. This is a statement to be responded to.

Sen. Omondi: Mr. Speaker, Sir, the Government should prove that it has not failed. That is the statement that I want.

(Laughter)

The Speaker (Hon. Ethuro): Fair enough.

Sen. Karaba: Mr. Speaker, Sir, we have very many Sudanese in Kenya and more so where Hon. Garang used to teach. He was a headmaster of a school in Karatina, Nyeri County. The Government can also retaliate by doing something!

Hon. Senators: No! No! How can he say so?

Sen. Karaba: We are just contributing to this debate.

The Speaker (Hon. Ethuro): Order, Senator! What are you suggesting?

Sen. Karaba: Mr. Speaker, Sir, we are harboring very many Sudanese here. I am suggesting that talks be held by the Opposition. Hon. Kalonzo Musyoka is the roving ambassador for the other side. What is he doing to make sure the talks are up the gear? They should not blame the Jubilee Government for failing. He is the Ambassador of South Sudan Peace Talks.

The Speaker (Hon. Ethuro): What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is the distinguished Senator for Kirinyaga in order to openly and blatantly display a total lack of knowledge on the issue of South Sudan by suggesting that my brother and partner in the Coalition for Reforms and Democracy (CORD), Kalonzo Musyoka is a roving ambassador for South Sudan? We are not talking of the past; we are talking of the present. By then Hon. Kalonzo Musyoka was the Foreign Minister who spearheaded the process of negotiation of peace between (Sudan People's Liberation Movement) SPLM and the Government of Sudan. He performed that job with distinction. I came and finished it with even greater distinction.

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! Men of distinction should also learn to be very brief, including when you refer to Sen. Karaba as a man whose knowledge of South Sudan is completely limited.

What is it, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, I rise on Standing Order No.91. Could the Senator for Kirinyaga withdraw his remarks that have thrown this country to bad repute? Those are exceptional words that cannot be accepted in this House. He should withdraw and apologize.

The Speaker (Hon. Ethuro): Which words?

Sen. (Dr.) Machage: Mr. Speaker, Sir, he talked of retaliation towards Sudanese people in Kirinyaga County.

The Speaker (Hon. Ethuro): Sen. Karaba, what did you say?

Sen. Karaba: Mr. Speaker, Sir, I did not explain whether they will be---

(Laughter)

The Speaker (Hon. Ethuro): Order, Members! There is what we call a contextual meaning of a word. There is no war between South Sudan and Kenya. The problem is internal within South Sudan. You should understand the use of the word in that context,

especially when the word was never extended anywhere. It was just thrown and left hanging. His understanding of retaliation is that those who had worked previously may wish to revisit their subject, including the two gentlemen with distinction who were partners.

(Laughter)

Order, Members! The Chairperson and the Vice Chairperson are here, and the smiling Majority Chief Whip is also present. Since you are holding brief, I will invite the Majority Whip to go first.

Sen. Elachi: Mr. Speaker, Sir, I was not holding brief since they are here. Let me remind the House that last year in this Senate we passed a Motion urging the Ministry of Foreign Affairs and Trade to ensure they put up an institution in every Embassy; an institution to deal with issues like what is happening in South Sudan. At that time, we had a lot of hue and cry on the issue of domestic violence against workers in Saudi Arabia. I do not know what happened. I urge the chairpersons, as they answer this question, to go back and look at the Motion we passed.

We have around 37,000 Kenyans working in South Sudan. We need a way of ensuring either we use the Kenya Defence Forces (KDF) to go with buses and bring those Kenyans who want to come back home---. We have very serious investors who would want to stay and protect their own investments or wait for calm to return to the country in order to continue with their businesses. I hope we can use KDF with buses for just two days and bring back our brothers to this country.

The Speaker (Hon. Ethuro): I am not getting any indication from the chairperson or the vice chairperson. I will give the Chairperson first. In addition to what the Majority Whip has said, chairperson, there was a suggestion by Sen. Billow about not just a desk at the Embassy in Juba, but also a desk here at the Ministry of Foreign Affairs and Trade. Any Kenyan, who wants to find out, can be given that information. The statistics that have been shared by Sen. Elachi are the ones she got here from Bungoma and Mandera counties. There are many more than those figures.

Proceed, Chairperson!

Sen. Haji: Mr. Speaker, Sir, the statement sought by my colleague in the committee, Sen. Wetangula is being addressed. We have been in touch with the Ministry and they have promised the Statement will be given on Thursday. I am sure the additional information that has been requested will be passed on to them. It will be included in the statement when we issue it.

The Speaker (Hon. Ethuro): What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. The distinguished chairperson of the Committee may wish to consult with his Vice Chairperson who was in the House when you gave direction. Your considered view which was very correct in my consideration was that the matter was very urgent. It involved possible loss of human lives, people losing their investments and being in line of danger.

Today, the Chairperson was to give, at the very least, preliminary information to the House and the country as to what emergency measures are being taken to evacuate Kenyans from South Sudan. Since the hostilities broke up, it is only yesterday that the

Government announced that one aircraft had landed at the Jomo Kenyatta International Airport (JKIA) with an unspecified numbers of Kenyans. This could be a 50 passanger carrier because the airport in Khartoum does not take Jumbo jets. It takes embraers and other small aircrafts.

I informed the House that globally, Uganda has much fewer people in South Sudan than Kenya. However, they have sent in their troops to protect their nationals and superintend over their evacuation back home. We have been told by the distinguished Senator for Mandera of Kenyans who have been injured and are lying in hospitals in a neighbouring country. This is a not a matter to wait. We have an army with equipment, including aerial services. Why have they not gone to Juba to airlift Kenyans who are marooned? From reliable information, some are marooned in banks and others are marooned in hotels with very little services. If we cannot help our nationals across the border, how shall we help those who are even further if such situations happen?

Other issues like why the international community has allowed Gen. Salva Kiir and Gen. Riek Machar to have combatants fully armed as standing armies in a little town such as Juba can come later. What are we doing to save the lives of Kenyans from this troubled country? We wish Sudanese people well. However, when there is trouble, our first port of call and duty is to save our nationals.

The Speaker (Hon. Ethuro): I cannot agree more with the Senate Minority Leader. This is a security matter and we expect the Ministry to give it its full attention. Instead of going to the media and all the places, the right place to report is Parliament. Chairperson, you need to impress upon them the seriousness with which this House is taking this very matter, on behalf of many Kenyan families and relatives of those in South Sudan.

Sen. Haji: Mr. Speaker, Sir, we shall do what you have directed. Hopefully, by Thursday, as they have promised, we shall give the statement here.

The Speaker (Hon. Ethuro): Chairperson, I direct that you work double so that if you can get the statement tomorrow, the better. Definitely, Thursday, latest. We will not accept any delay beyond Thursday.

Sen. Haji: Much obliged, Mr. Speaker, Sir.

IMPLEMENTATION OF GOVERNMENT POLICY ON FREE MATERNITY SERVICES

Sen. Sijeny: Mr. Speaker, Sir, on 16th June, I sought for a Statement from the chairperson on the Standing Committee on Health. The last time we were in Session you ordered that it be given today. However, I have not seen it on the Order Paper. We have not even been informed whether it is ready or not. It concerns maternal care in Kisumu County.

The Speaker (Hon. Ethuro): Chairperson, Vice Chairperson, Committee Member of the Standing Committee on Health?

Sen. (Dr.) Machage: Mr. Speaker, Sir, I beg for the indulgence of the House that I have not been given that statement to present of the House. However, I will follow it up and present it on Thursday if possible.

The Speaker (Hon. Ethuro): Order, Members! That should be the end of Statement time.

What is it, Sen. (Prof.) Lonyangapuo?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I sought a number of Statements in May and June. One of them was about the compensation level that would be given to the people who are affected by cattle rustling menace for a long time now that they have returned home. That Statement needs to be given.

The Speaker (Hon. Ethuro): I order that, that Statement be issued on Thursday, this week.

DISAPPEARANCE AND BRUTAL MURDER OF
CHILDREN IN CHESUE VILLAGE, NANDI HILLS

Sen. Sang: Mr. Speaker, Sir, last week on Wednesday, I sought a Statement with regard to the disappearance and murder of children in my county. The Chair directed that the Statement be responded to today. This is a serious issue because as I speak, out of the five children who disappeared, we have only managed to trace two who we found murdered. The whereabouts of the other three is still unknown up to now. The families are suffering. The two children have been buried through the support of the community and *harambee*. I request that the Chairperson of the Committee on National Security and Foreign Relations goes ahead to respond to this particular Statement because it was an emergency situation.

Sen. Haji: Mr. Speaker, Sir, I was not here last Thursday. The hon. Senator has just informed me that he sought this Statement. We will do everything possible to get that Statement latest by Thursday, this week.

The Speaker (Hon. Ethuro): It is so directed; Thursday this week.

(Statement deferred)

Sen. (Dr.) Machage, when will the Statement sought by Sen. Sijeny be available?

Sen. (Dr.) Machage: Mr. Speaker, Sir, it will be available on Thursday, this week.

The Speaker (Hon. Ethuro): It is so directed.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM LAIKIPIA
UNIVERSITY AND KILILI GIRL'S HIGH SCHOOL

The Speaker (Hon. Ethuro): Order, hon. Senators, before we move on to the next Order, I wish to recognize the presence of visiting students and lecturers from the following institutions-

- (1) Laikipia University, Embu Campus, Embu County.
- (2) Kilili Girl's High School, Machakos County.

Both delegations are seated at the Public Gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I wish to extend a warm welcome to

them. On behalf of the Senate and my own behalf, I wish them a fruitful visit to our Parliament.

Thank you.

Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Chairperson (Sen. (Dr.) Machage) took the Chair]

REPRODUCTIVE HEALTHCARE BILL (SENATE BILL NO.17 OF 2014)

(Resumption of Debate interrupted on 30.6.2016)

The Temporary Chairperson (Sen. (Dr.) Machage): Hon. Members, we are in the Committee of the Whole to consider Order No. 8, The Reproductive HealthCare Bill (Senate Bill No.17 of 2014).

(Loud Consultations)

Order! Sen. Sang and the others, I want you to pay attention to this. In the last Sitting the Committee of the Whole had considered up to New Clause 12A. However, there have been some editorial amendments affecting New Clause 6A to 6D. For that reason, I will annul the process of discussion of these Clauses and re-start today from New Clause 6A, so that there is continuity in these amendments and considerations. We will continue that way.

New Clause 6A

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 6.

^{Consent}

(1) An assisted reproduction health care provider shall not perform any treatment or procedure of assisted reproduction without the consent in writing of all parties seeking assisted reproduction services.

(2) An assisted reproduction health care provider shall not freeze any human embryos without specific instructions and consent in writing from all the parties seeking assisted

reproduction in respect of what should be done with the gametes or embryos in case of death or in capacity of any of the parties.

(3) An assisted reproduction health care provider and facility shall not use any human reproductive material to create an embryo or use an in vitro embryo for any purpose without the specific consent in writing of all the parties to whom the assisted reproduction facility relates.

(4) The consent of any of the parties obtained under in- vitro fertilization may be withdrawn at any time before implantation of the embryos or the gametes to the woman's uterus.

(New Clause 6A was read a First Time)

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-
That, New Clause 6A be read a Second Time.

The purpose for this was to ensure that the consent of the right people is provided for.

(Question that New Clause 6A be read a Second Time, proposed)

New Clause 6B

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 6.

Conditions for assisted
reproduction.

A trained health professional specializing in in-vitro fertilization shall before carrying out any procedure ensure that-

- (a) consent to the collection and use of gametes is obtained from the gamete provider;
- (b) in cases where the gamete provider is deceased, the gamete provider had given their consent for the use of the gametes before their demise;
- (c) gametes to be used for the procedure have been stored for less than ten years after being obtained from a gamete provider;
- (d) the donor has been medically tested for such diseases as may be prescribed and all other communicable diseases which may endanger the health of the parents, surrogate or child;
- (e) all parties to the agreement are aware of the rights of a child born through the use of assisted reproduction service; and
- (f) Information about clients, donors and surrogate mothers is kept confidential unless with the consent of the person to whom the information relates, or in a medical emergency

(New Clause 6B was read a First Time)

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, New Clause 6B be read a Second Time.

This is to ensure that the right conditions are met when the assisted reproduction fertilization is being undertaken.

(Question that New Clause 6B be read a Second Time, proposed)

New Clause 6C

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 6

Register

(1) (a) A register with information on full names of the donor, physical characteristics of the donor, ethnic origin, family medical history, interests, hobbies and skills of the donor shall be kept at all assisted reproduction facility.

(b)The register shall be strictly confidential.

(2) A donor shall remain anonymous to both the person using the gametes and the child born out of the use of the donated gametes.

(3) A donor shall not acquire any parental responsibility to the child born out of the use of the donated gametes.

(4) Parties using a donated egg or sperm have a right to choose their donor should they wish to do so.

(5) A donor shall not receive any form of compensation for the use of their donated gametes.

(6)An assisted reproduction health specialist shall provide information to the donor to allow the donor make an informed decision.

(New Clause 6B was read a First Time)

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-
That, New Clause 6C be read a Second Time.

(Question that New Clause 6C be read a Second Time, proposed)

This is to ensure data collection and all information that is required for future use.

New Clause 6 D

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 6

Limitations

The following limitations shall apply to assisted reproduction services-

(a) gametes shall not be used in research except with the consent

- of the gamete provider;
- (b) an assisted reproduction health specialist shall not use, supply or export a gamete except with the written consent of the donor and in a manner consistent with the donor's consent;
 - (c) gametes shall not be used in assisted reproduction treatment if the gamete provider is deceased unless the gamete provider had given consent to the use of gametes before death; and
 - (d) an assisted reproduction health professional shall not use a gamete to create an embryo if the assisted reproduction health specialist has knowledge that the donor is a close family member of the recipient to avoid genetic complications.

(New Clause 6B was read a First Time)

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, New Clause 6D be read a Second Time.

This is to ensure that limitations are provided for while transacting the assisted reproduction process.

*(Question that New Clause 6D be read a
Second Time, proposed)*

New Clause 12A

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 12-

12A. (1) Each party shall have a different lawyer and the agreement shall be witnessed by different persons to protect each party's interest.

(2) Any legal fees to the surrogate mother shall be paid by the commissioning parents.

(3) Before the signing of the surrogacy agreement, the parties and their respective lawyers shall be present at the signing of the informed consent in the presence of a qualified medical practitioner, who shall explain to the parties the implications of the surrogacy agreement.

Mr. Temporary Chairman, Sir, this is to ensure that all parties pay their legal fees and the surrogate mothers have the fees provided for by the commissioning parents.

(New Clause 12A was read a First Time)

*(Question, that New Clause 12A be read
a Second Time, proposed)*

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 13A

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after clause 13-

- 13A. A valid surrogate parenthood agreement shall provide that-
- (a) any child born of a surrogate mother in accordance with the agreement is for all purposes the legal child of the commissioning parent or parents from the moment of conception;
 - (b) the surrogate mother shall not terminate the pregnancy except as provided or by law;
 - (c) the surrogate mother is obliged to hand the child over to the commissioning parent or parents as soon as is reasonably possible after the birth;
 - (d) the commissioning parents shall not reject or discriminate against the child under any circumstances;
 - (e) the surrogate mother, her spouse, partner or relative shall have no right of parenthood or care of the child;
 - (f) the surrogate mother, her spouse, partner or relative shall have no right of contact with the child unless provided for in the agreement between the parties;
 - (g) the surrogate parenthood agreement shall not be terminated after the artificial fertilisation of the surrogate mother has taken place; and
 - (h) a child born to a surrogate mother shall have no claim for maintenance or succession against the surrogate mother, her spouse, partner, the surrogatemother's relative or surrogate mother spouse's relative.

Mr. Chairman, Sir, this is for the purposes of dealing with the paternity issue of the child born out of the commissioning parents so that they remain as the legal parents of the child.

(New Clause 13A was read a First Time)

(Question, that New Clause 13A be read a Second Time, proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 13B

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after clause 13-

Obligations 13B. In the event of multiple pregnancies, the obligations of the surrogate mother and the commissioning parents remain as provided in this Act.

Mr. Chairman, Sir, this is to cater for the children in case there are multiple pregnancies, and the obligations do remain with the commissioning parents and not with the surrogate mother.

(New Clause 13B was read a First Time)

(Question, that New Clause 13B be read a Second Time, proposed)

New Clause 13C

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after clause 13-

Citizenship of child

13C. (1) The commissioning parents shall be named as the parents of the child in the birth notification, birth certificate and any other official document that requires the names of the parents of the child.

(2) The child shall acquire the citizenship of the commissioning parents in line with Article 14(1) of the Constitution of Kenya.

Mr. Chairman, Sir, this is to cater for the citizenship of the child born out of the assisted reproduction process and to ensure that the commissioning parents be the parents whose names should be reflected in the birth notification and to give citizenship to such children.

(New Clause 13C was read a First Time)

(Question, that New Clause 13C be read a Second Time, proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 13D

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after clause 13-

Compensation 13D (1) Subject to subsection (2), a person may not in connection with a surrogate parenthood agreement give or promise to give to any person, or receive from any person, a reward or compensation in cash or in kind.

(2) A promise or agreement for the payment of any compensation to a surrogate mother or any other person in connection with a surrogate parenthood agreement or the execution of such an agreement is not enforceable, except a claim for –

(a) compensation for expenses that relate directly to the artificial fertilization and pregnancy of the surrogate mother, the birth of the child and post-delivery complications;

(b) loss of earnings suffered by the surrogate mother as a result of the surrogacy; or

(c) insurance to cover the surrogate mother for any acts that may lead to death or disability brought about by the pregnancy.

Mr. Temporary Chairman, Sir, this is to ensure that people do not use or misuse the assisted reproduction process to make money. This will ensure that there will be no monetary compensation when one volunteers to partake in the process.

(New Clause 13D was read a First Time)

(Question, that New Clause 13D be read a Second Time, proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 17A

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after clause 17-

17A. The National and County governments shall provide free ante-natal care, delivery services and post-partum care.

Mr. Chairman, Sir, this in line with the devolution of healthcare and to ensure that both the national and county governments provide free antenatal care delivery services and postnatal care and not just the policy.

(New Clause 17 was read a First Time)

(Question, that New Clause 17A be read a Second Time, proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 17B

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after clause 17-

The county governments shall ensure access to-

- (a) emergency obstetric and gynecological emergency services; and
- (b) information and treatment of –
 - (i) communicable and non-communicable diseases of pregnancy;
 - (ii) sexually transmitted infections; and reproductive tract infections.

NEW PART

THAT, the following new part be inserted immediately after Part IV-

PART IVA—ACCESS TO PRODUCTIVE HEALTH CARE SERVICES FOR PERSONS LIVING WITH DISABILITIES

Mr. Chairman, Sir, this is to ensure that the county governments provide all the necessary emergency obstetrics and gynecological treatment or services so that women and children lives are protected.

(New Clause 17B was read a First Time)

(Question, that New Clause 17B be read a Second Time, proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 18A

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after clause 18-

Right to productive health rights 18A. The County Executive Member for the time being in charge of health shall-

- (a) provide physical access and resolve transportation and proximity issues to clinics, hospitals and places where public health education is provided, contraceptives are sold or distributed or other places where reproductive health services are provided;
- (b) increase access to information and communication materials on sexual and reproductive health in braille, large print, simple language, sign language and pictures;
- (c) provide continuing education and inclusion of rights of persons with disabilities among health care providers; and
- (d) undertake activities to raise awareness and address misconceptions among the general public on the stigma and

their lack of knowledge on the sexual and reproductive health needs and rights of persons living with disabilities.

Mr. Chairman, Sir, this is to make sure that the county government do ensure that the persons leaving with disabilities are given the right to reproductive healthcare services in accordance with the conditions that they have.

(New Clause 18A was read a First Time)

(Question, that New Clause 18A be read a Second Time, proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 18B

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after clause 18-

Sterilization 18B. Sterilization shall not be carried out to persons with mental disability

Mr. Chairman, Sir, this is to ensure that persons with mental disabilities are not sterilised just because of their mental status.

(New Clause 18B was read a First Time)

(Question, that New Clause 18B be read a Second Time, proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 19A

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 19-

Duty to refer 19A. (1) A trained health professional who has a conscientious objection to the termination of pregnancy as envisaged under this Act has a legal duty to refer the pregnant woman to a trained health professional who is willing to provide this service except in case of emergency treatment.

(2) A trained health professional in subsection (1) who does not refer a pregnant woman as provided, commits an offence and is liable to three years imprisonment or a fine of one million Shillings or to both fine and imprisonment.

Mr. Temporary Chairman, Sir, this is to ensure that only the trained health professionals have the right and duty to perform the health services required for the pregnant women and it is not abused. It also ensures that those who violate the law are

punished according to the law. This is to protect the persons who have been given the healthcare services.

(New Clause 19A was read a First Time)

*(Question, that New Clause 19A be read
a Second Time, proposed)*

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 21A

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 21-

21A. A trained health professional shall provide post-abortion care for cases of incomplete abortion and related complications.

Mr. Temporary Chairman, Sir, this is to ensure that no loss to lives occurs because of lack of professional healthcare services post-abortion.

(New Clause 21A was read a First Time)

*(Question, that New Clause 21A be read
a Second Time, proposed)*

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 21B

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 21-

Data 21B. A trained health professional who prescribes termination of pregnancy and post-abortion care shall collate the data and forward it to the board in confidentiality.

This is to facilitate collection of data and to help the relevant governments make informed choices in future.

(New Clause 21B was read a First Time)

*(Question, that New Clause 21B be read
a Second Time, proposed)*

New Clause 34A

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 34-
34A. In the provision of adolescent friendly reproductive health services-

Consent

- (a) parental consent shall be required for adolescents aged below 18 years;
- (b) due consideration shall be made on issue of parental consent to children as provided for under section 119 of the Children Act;
- (c) due consideration shall be made as to the provision of age-appropriate information, education and reproductive health services.

Mr. Temporary Chairman, Sir, this is to ensure that the parents of the adopted child are informed and take care and give protection and consent when the adolescent women are getting the healthcare services.

(New Clause 34A read a First Time)

(Question, that New Clause 34A be read a Second Time, proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be done later.

New Clause 34B

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT the Bill be amended by inserting the following New Clause-
Adolescent –
friendly facility

34B.(1) An adolescent friendly health care facility shall-

- (a) provide adolescent-friendly reproductive health services; and
- (b) facilitate the provision to adolescents of confidential, comprehensive, non-judgmental and accessible reproductive health services.

(2) A health care provider from whom reproductive health services are sought by an adolescent is obligated to refer the adolescent to a qualified person for provision of the necessary services.

The purpose of this amendment is to define and facilitate the appropriate adolescent friendly reproductive healthcare services that are to be provided to the adolescents freely and that they may embrace the facility.

(New Clause 34B was read a First Time)

(Question, that New Clause 34B be read a Second Time, proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): The Division will be at the end.

Clause 2

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 2 be deleted and substituted therefor with the following clause –

In this Act-

“access to” means the ability of an individual to obtain or receive appropriate, safe, accountable, effective, quality health information and services;

“adolescent” means any person aged between ten and eighteen years;

“adolescent-friendly reproductive health services” means reproductive health services that are accessible, age-appropriate, and safe for adolescents and are designed to attract interest and sustain adolescent motivation to utilize such services;

“antenatal care” includes the correct diagnosis of pregnancy, followed by periodic examinations, screening and management of complications during pregnancy;

“authorized facility” means a facility authorized by the Medical Practitioners and Dentists Board for the purposes of this Act;

"assisted reproduction" means a technique that is used to attempt to obtain a pregnancy by handling or manipulating the sperm or the oocyte outside the human body, and transferring the gamete or the embryo into the reproductive tract;

"assisted reproduction facility" means any premises used for procedures related to assisted reproduction;

“board” means the Board of Directors established under section 4;

CAP141

“cabinet Secretary” means the Cabinet Secretary for the time being responsible for health;

"child" has the meaning assigned to it in the Children's Act;

CAP 260

“clinical officer” means a person registered as a clinical officer under the Clinical Officers (Training, Registration and Licensing) Act;

“commissioning parents” means a married couple of opposite gender who seek the help of a surrogate mother to bear them a child through artificial insemination;

“contraception” means the deliberate prevention of pregnancy by measures that prevent the normal process of ovulation, fertilization and implantation;

“contraceptive methods” refers to the means by which deliberate prevention of pregnancy is achieved by use of devices, drugs, or surgery;

‘emergency obstetric care’ means the basic and comprehensive life-saving interventions performed to treat major birth complications,

“emergency treatment” means treatment immediately necessary to preserve life or prevent a permanent disability;

“family planning” means the conscious effort by a person to plan for and attain the person’s desired number of children and to regulate the spacing and timing of the births of the children with the use of contraceptives or natural family planning;

CAP 62B

- “female genital mutilation” means female genital mutilation as defined in the Prohibition of Female Genital Mutilation Act;
- “health care provider” means any person or institution that has been authorized to deliver health care services;
- “health regulatory bodies” refer to an institution authorized by law to regulate the practice of medicine or health care provision;
- “in vitro fertilization means” means the process by which an ovum is fertilised by a sperm outside the body;
- “informed choice” means a voluntary decision by a patient to use or not to use a reproductive health care service, after receiving adequate information regarding the options, risks, advantages and disadvantages of that service;
- “informed consent” means consent obtained freely, without threats or improper inducement, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient;
- “intra-partum services” means the correct diagnosis, followed by periodic examinations, screening and management of complications in the period from onset of labour to the completed delivery of the newborn and the completed delivery of the placenta;
- “life skills education” means a structured programme of needs and outcomes based on participatory learning that aims to increase positive and adaptive behavior by assisting individuals to develop and practice psycho-social skills that minimize risk factors and maximize protective factors;
- “maternal care” includes health care of a woman during pregnancy, childbirth and forty two days after childbirth;
- “medical practitioner” means a person registered under the Medical Practitioners and Dentist Act, Cap 253;
- “natural family-planning” means a method of planning or avoiding pregnancies by observation of the natural signs and symptoms of the fertile and infertile phase of the menstrual cycle;
- “neonatal services” means the correct diagnosis of, screening and management of complications in the first four weeks of life;
- “parent” means a biological parent, an adoptive parent of a child, a commissioning parent, or a legal guardian;
- “post abortion care” means the correct diagnosis and management of incomplete abortion and related complications;
- “post-natal” means the first six weeks after birth;
- “post-natal services” means the correct diagnosis, followed by periodic examinations, screening and management of complications in the first six weeks after birth;

“post-partum” means the correct diagnosis, followed by periodic examinations, screening and management of complications in the period immediately after the complete delivery of a newborn and the placenta;

“pregnancy” means the presence of a foetus in the womb;

“provider-initiated health care” means the provision of care or testing to ensure public health or advancement of medicine;

“referral services” means the process of seeking appropriate treatment in which a health worker at one level of the health system, having insufficient resources to manage a condition, seeks the assistance of an adequately resourced facility;

“reproductive health” means a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes;

“reproductive rights” include the right of all individuals to attain the highest standard of sexual and reproductive health and to make informed decisions regarding their reproductive lives free from discrimination, coercion or violence;

“right to safe motherhood” means the right to access information and quality service by women throughout pregnancy and childbirth with the desired outcome of a live and healthy mother and baby;

“surrogacy” means the process of a woman carrying and giving birth to a baby for another woman and man who want to have a child, but are unable to have a child;

“termination of pregnancy” means ending a pregnancy before the foetus is viable;

“tier of care” refers to the organization of devolved healthcare services into: community health services, primary care services, county referral services and national referral services; and

“trained health professional” means a registered clinical officer, a registered nurse and a registered midwife who has acquired the relevant skills for decision-making and provision of reproductive health services.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): The Division will be at the end.

Long Title

Sen. Sijeny: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the long title of the Bill be amended by deleting the words “free from discrimination, coercion and violence” appearing immediately after the words “regarding reproduction”.

The purpose of the amendment is to ensure that it is in line with the Constitution without discrimination, coercion or violence.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): The Division will be at the end.

(Question that Clause 1 be part of the Bill, proposed)

Sen. Sijeny: Mr. Temporary Chairman, Sir, pursuant to Standing Order No.139, I beg to move that the Committee do report to the House its consideration of the Reproductive Health Care Bill (Senate Bill No. 17 of 2014) and seek to leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

REPRODUCTIVE HEALTH CARE BILL
(SENATE BILL NO.17 OF 2014)

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, I beg to report that a Committee of the Whole has considered the Reproductive Health Care Bill (Senate Bill No.17 of 2014) and seeks leave to sit again tomorrow.

Sen. Sijeny: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said report.

Sen. Wangari seconded.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. Mositet) left the Chair]

IN THE COMMITTEE

[The Chairperson (Sen. (Dr.) Machage) took the Chair]

THE COUNTY OUTDOOR ADVERTISING CONTROL BILL
(SENATE BILL NO.11 OF 2015)

Clause 3

Sen. Gwendo: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, Clause 3(1) of the Bill be amended in paragraph (d) by deleting subparagraph (ii) and substituting therefor the following new sub-paragraphs-
(ii) relating to the location or direction of a religious institution;
(iia) relating to a public education institution or public medical institution;

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): The Division will be at the end.

Clause 4

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT Clause 4 of the Bill be amended in sub-clause (1) by-
(a) inserting the words “and who shall be the chairperson” immediately after the word “writing” appearing in paragraph (a);
(b) inserting the words “nominated by the Kenya National Chamber of Commerce and Industry and” immediately after the words “business community in the county” appearing in paragraph (c);
(c) inserting the following new paragraph immediately after paragraph (c)-
(ca) one person nominated by the most representative association of outdoor advertisers and appointed by the Governor; and

(Question of the amendment proposed)

Clause 5

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT clause 5 of the Bill be amended
(a) in sub-clause (1) by deleting the word “a” appearing immediately after the words “application for” and substituting therefor the words “an outdoor advertising”; and
(b) in sub-clause (2)-
(i) by deleting the word “registration” appearing immediately after the words “an application for” and substituting therefor the words “an outdoor advertising license” appearing in the introductory phrase;
(ii) by inserting the word “application” immediately after the words “the prescribed” appearing in paragraph (a);
(iii) deleting paragraph (c); and
(iv) deleting paragraph (d).

(Question of the amendment proposed)

Clause 6

(Question, that Clause 6 be part of the Bill, proposed)

Clause 7

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 7 of the Bill be amended-

(a) by inserting the following new sub-clause immediately after sub-clause (1)-

(1A) Where the committee receives more than one application for the same advertisement space, the committee shall consider the applications in the order of presentation of the applications.

(b) in subsection (2) by deleting the word “fourteen” appearing immediately after the words “under subsection (1) within” and substituting therefor the word “seven”;

(c) by deleting subsection (3);

(Question of the amendment proposed)

Clause 8

(Question, that Clause 8 be part of the Bill, proposed)

Clause 9

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 9 of the Bill be amended in paragraph (a) by inserting the words “and upon payment of the prescribed outdoor advertisement fee” immediately after the words “which it is issued”.

(Question of the amendment proposed)

Clause 10

(Question, that Clause 10 be part of the Bill proposed)

Clause 11

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 11 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “the holder of an outdoor advertising license” at the beginning of the sub-clause and substituting therefor the words “The licensee”; and

(b) in sub-clause (3) by inserting the word “application” immediately after the words “pay the prescribed”.

(Question of the amendment proposed)

Clauses 12 and 13

(Question, that Clauses 12 and 13 be part of the Bill, proposed)

Clause 14

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT the Bill be amended in the introductory phrase of clause 14 by deleting the words “the owner of an advertisement” appearing at the beginning of the phrase and substituting therefor the words “the licensee”.

(Question of the amendment proposed)

Clause 15

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT clause 15 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause-

(1) The committee shall cause a notice of an application made under section 4 to be published in the prescribed form on the county website and a place accessible to the public at the premises of the committee.

(Question of the amendment proposed)

Clauses 16-20

(Question, that Clauses 16-20 be part of the Bill, proposed)

New Clause 13A

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT the Bill be amended by inserting the following new clause immediately after clause 13-

Removal of **13A.** A licensee shall remove an advertisement advertisement. within seven days of the revocation or expiry of an outdoor advertising license.

(Question of the New Clause proposed)

(New Clause 13A was read a First Time)

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, New Clause 13A be read a Second Time.

*(Question that New Clause 13A be now read
Second Time, proposed)*

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be at the end.

New Clause 16A

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT the Bill be amended by inserting the following new clause immediately after clause 16-

Vandalism of **16A.** Any person who willfully or recklessly destroys advertisement or damages any advertisement belonging to another person commits the offence of vandalism and is liable, upon conviction –

(a) in the case of a first offence, to imprisonment for a term not exceeding nine months, or to a fine

not exceeding two hundred thousand shillings, or to both; and

(b) for any subsequent offence, to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred thousand shillings, or to both

(Question of the New Clause proposed)

(New Clause 16A was read a First Time)

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, New Clause 16A be read a Second Time.

*(Question that New Clause 16A be now read
Second Time, proposed)*

The Temporary Chairperson (Sen. (Dr.) Machage): Division will be at the end.

Clause 2

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended -

(a) in the definition of the term “advertisement” by inserting the words “including advertisements projected on screens carried on motor vehicles” immediately after the words “whether illuminated or not”;

(b) deleting the definition of the term “county executive committee member”; and

(c) inserting the following new definition immediately after the definition of the term “hoarding” -

“licensee” means a person who has been licensed to carry out outdoor advertising under this Act;

(Question of the amendment proposed)

The Title and Clause 1

(Question, that the Title and Clause 1 be part of the Bill, proposed)

Sen. Gwendo: Mr. Temporary Chairperson, Sir, I beg to move that pursuant to the Standing Order No. 139, the Committee do report progress on its consideration of the County Outdoor Advertising Control Bill (Senate Bill NO. 11 of 2015) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Speaker Sen. (Dr.) Machage): Let us have the Committee Chairperson.

PROGRESS REPORTED

Sen. Obure: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the County Outdoor Advertising Control Bill (Senate Bill No. 11 of 2015) and seeks leave to sit again tomorrow.

Sen. Gwendo: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

Sen. Sijeny seconded.

(Question proposed)

(Question put and agreed to)

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

*Second Reading*THE COUNTY GOVERNMENTS (AMENDMENT) BILL
(SENATE BILL NO. 21 OF 2015)*(Resumption of debate interrupted on 14.7.2016)*

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Hargura, you have fourteen minutes to contribute.

Sen. Hargura: Mr. Temporary Speaker, Sir, this Bill by Sen. (Prof.) Lonyangapuo seeks to amend Sections 50, 51 and 52 of the County Governments Act in order to bind the County Public Service to employ sub-county administrators, ward administrators and village administrators every general election year.

I oppose this Bill because first of all, it is discriminatory in terms of targeting only a particular cadre of the county employees. This is because we need to have effective devolution by making sure that services are taken closer to the people at the lowest level, that is, the village level. That is why in the County Governments Act, these positions are created to make sure that we have people up to the village level to ensure that the public participates in decision making as to what should be done for them.

Mr. Temporary Speaker, Sir, the Constitution states that we have two levels of Government; the county and the national Government and Article 60 of the Constitution states that governments at the national and county level are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation.

What is envisaged here is that there will be government structures which might be parallel because as we have the administration from the national government which goes all the way up to the village level where we have a sub chief, the county government must have its own structures up to that level. The two levels of government also have similar arms. The national Government has three arms while the county government has two arms. I am interested in the executive arm which has the President as the chief at the national level, and the governor as the chief at the county level.

Mr. Temporary Speaker, Sir, the national Government has been in existence since Independence so the structures are clear. We also have the county government in which we are now having the first governor serving and they have established their government from executive committee members, chief officers and directors. In the case of the administration department, we have sub-county administrators, town administrators, ward administrators and we are supposed to be having the village administrators. From what has happened now, most counties are yet to establish the village administration units. Below them we have the Council of Elders which will enable the public at that level to have a channel through which they can participate in bringing up their proposal in terms of development agenda.

Mr. Temporary Speaker, Sir, we expect all the governors to move with speed to make sure that they have their representation at that level so that the county government can be felt and we will have smooth flow of information both from the public in a bottom-up system and also from the county government from the governor downwards.

Mr. Temporary Speaker Sir, the other departments do have the same structures. If it is education or health, it goes up to sub-county or even in some cases to ward level. If

you look at what happens at the national Government, when a new President is sworn in, it is only Cabinet Secretaries (CSs) and Principal Secretaries (PSs) who are supposed to be employed by a new president. That means that other systems all the way up to the district level remain in place. In the Provincial Administration structure, we have sub-chiefs, chiefs, District Officers (DOs) going all the way to below the CS in the Ministry of Interior and Coordination of National Government.

Mr. Temporary Speaker, Sir, there is no time where these administrators have been asked to leave because they had been serving a particular president. In this Bill, there is nowhere where it is said that the county government which has been created by a particular governor should leave with him so that we form another government. Why do we target only some particular cadres in the county governments? If it is because of the way they conduct themselves, because that is what was coming out when the Mover was moving this Bill; that should not be the case because they are supposed to be serving the government in place.

When a new governor comes in, we expect them to serve the next government the way they used to serve the previous one. So, we cannot target particular officers because they are loyal to the governor. They might not be doing the right thing by equally not serving well the other county leadership but they are supposed to implement the programmes and policies of a particular individual who is the governor in the county government. They are supposed to make sure that they oversight whatever activities that government is doing.

Mr. Temporary Speaker, Sir, therefore, targeting these particular officers in my case will be discriminatory. If a new governor wants to employ his own staff, then it should be everybody right from the directors downwards. That means that all of them should leave office once the governor leaves and that will not be practical because we will be reinventing the wheel each and every time. There will be no continuity. The public will be subjected to one year of formation of government every five years. The programmes that another government had started implementing will have to stop before the new government comes in. They will have to start learning the ropes of the works and that will always disrupt service delivery. That is why even in the national Government, only the top cadre that deals with policy formulation is the one supposed to change because when a new Government comes in, it might have a different manifesto and policy.

That is why the new president has to have new sets of CSs and PSs. The same case should apply to counties. If you look at the law, the County Executive Committee (CEC) members and the Chief Officers (COs) may have to leave office with the governor so that both the two executive arms of government at the county and national level have similar structures.

The Bill also seeks to include academic qualification for the offices of sub-county administrator, ward administrator and village administrator. As the initial Bill is, it does not clearly specify what qualifications the holder of each of these offices should have. So, in this case, the Bill has gone ahead to clearly state that for you to be engaged as a sub-county administrator, you must have a minimum of a degree from a recognised institution in Kenya and have qualifications and knowledge in administration or management. The initial Bill did not specify that academic qualification.

The principal Act only stated that a sub-county administrator shall have qualifications and knowledge in administration or management and shall be competitively appointed by the County Public Service Board (CPSB) in accordance with the provisions of the Act. This particular part of the Bill clarifies the requirements and we agree with that bit. In the case of the ward administrator, it says that the person must have a diploma. In case of a village administrator, it states that the person must have completed secondary education. Therefore, it qualifies in that case.

Mr. Temporary Speaker, Sir, looking at how the administrators were engaged, I know for sure that in my county when the advertisements were done, a sub-county administrator was required to have at least a degree with some years of experience and a ward administrator was required to have a diploma with some years of experience. So, the CPSBs went ahead and specified this. Putting this in law is good because we are clarifying what the qualification is. However, saying that they have to leave office every five years is unfair and discriminatory and I do not agree with that part of the Bill.

Therefore, I oppose the Bill as it is. I thank you.

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

[The Temporary Speaker (Sen. Mositet) took the Chair]

Sen. Nabwala: Mr. Temporary Speaker, Sir, I also rise to disagree with this Bill because I do not support the County Governments (Amendment) Bill (Senate Bill No.21 of 2015) as it seeks to discriminate against the ward structures in the county governments. We are well aware that there are two levels of Government. We have the national Government and county governments. These are all independent. I think it is the people who should set up structures and laws of how they want to administer their counties.

The objective of the Bill is to amend Sections 50, 51 and 52 of the County Governments Act in order to bind the CPSBs to employ sub-county administrators, ward administrators and village administrators after every general election. This will be very expensive in terms of training and, therefore, it will be costly to county governments. In my view, the existing sub-county administrators, ward administrators and village administrators should be given an opportunity to reapply for the jobs so that they are vetted first on a priority basis before other new staff are considered. That will help to cut down on the cost of training by county governments.

We know that county governments have had difficulties and challenges in setting up structures and also training their staff. If we have to roll out the staff every five years, then it means that county governments will never settle because it is after five years that a person starts grasping what he or she has been doing. How do you think of changing that person before the expiry of five years? When you remove a person from a position or a job, there must be good reasons why you do so. You should ask yourself whether that person failed to perform their job. If they have failed, then there are other avenues in which we can vet such a member of staff.

I oppose this Bill on that basis but introducing academic qualification is a good idea. That is almost everywhere because what we are looking for is quality performance. I have no objection to introducing the qualifications because they already exist. What I do

not support are Clauses 50, 51 and 52 that talk of re-employing administrators at the county level every five years.

I think we should let the county governments run their affairs and if they have any difficulties, then the Senate is there to offer support or help in training some of these administrators. We can also appoint technical staff to improve the oversight at the county level.

I do not support.

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, whereas I appreciate the efforts by Sen. (Prof.) Lonyangapuo in the endeavor to streamline the efficiency of the management of services at the county government level, and his endeavor to come up with a Bill that if passed would be an Act of Parliament stating the conditions of employment mainly of the staff at that level, I am a bit concerned with a few clauses in the Bill that would completely negate what the Constitution envisaged.

Nevertheless, there are a few areas that I am really in support of, especially in his suggestion that county administrators should be employed competitively and, thereafter, appointed by the County Public Service Board. That is quite healthy. I also accept that they have a minimum qualification of a degree from a recognized university besides qualification and knowledge of administration and management. That is quite healthy.

Mr. Temporary Speaker, Sir, however, I am a bit concerned with the suggestion in part (b) of Clause 2A that after a general election, the outgoing sub-county administrator shall remain in office until the new sub-county administrator is appointed. In other words, this Clause is saying there will be exit of administration at every general election to follow the exit of governors, senators, Members of County Assembly (MCAs) or those positions that have been prescribed by the law or as is in Chapter 11 of the Constitution. These are positions that have to be filled at every election in five years.

Mr. Temporary Speaker, Sir, in the national Government, civil servants that have been employed by a government are never sent away from their duties after every election. This is intentionally done because there has to be continuity of administration after every election. It also depolarizes the thinking and functioning of the civil service not to be dependent on the sitting administrator, governor or president.

It is important because if it was made so, then you would have partisan application of the laws of administration for the purposes of pleasing governors who may have the upper hand retaining their seats for a second round and, therefore, completely polarizing the whole purpose of devolution and administration.

Mr. Temporary Speaker, Sir, I think here, Professor goofed a little. It totally spoils the honey or the sweetness he had instilled into this Bill that he had made it one of the best Bills to be passed by this House. Unless there is an amendment to that section of this Bill, then it is destined and doomed to fail.

For only that reason, I will oppose this Bill.

Sen. Sang: Mr. Temporary Speaker, Sir, I rise to support this Bill, however, not in its entirety. There are certain sections that are quite progressive and mean well for administration in our counties.

Mr. Temporary Speaker, Sir, I get a little bit concerned when Members of this House raise valid issues on a Bill that gives an indication that they support about 70 per cent of the Bill except one or two provisions. The law and the procedures in this House

are clear that you can amend a Bill. Therefore, the areas that I have concern with, I am sure in the Third Reading stage of this Bill, we can bring those amendments.

Mr. Temporary Speaker, Sir, it could be quite unfortunate if this House is going to preside over a process that ends up throwing the baby and the bath water. Devolution is a concept that is trying to ensure that we have proper administration and governance in our counties. The concept of devolution will not be complete if you just devolve power and resources from Nairobi to the county headquarters. Power has to be devolved also from the county headquarters down to the village level.

This was anticipated if you look at the devolution laws including the County Governments Act, in terms of providing for administration from the county to the sub-county, to the ward and to the village. That was for a good reason that you want the Government to be closer to *wananchi*. You want the county government to be felt at the local level.

Again, the County Governments Act provided for the system of administration with the kind of administrator that needs to be appointed or installed at those levels. The sub-county administration will be headed by the sub-county administrator. At the ward level, we have the ward administrator. At the village level, we have the village administrator together with the village council. These structures are meant to ensure that people are able to participate in governance.

We have raised concerns and valid issues in this House about the cosmetic public participation processes that are going on in the counties. We have seen in our counties misplaced priorities. In my county, for example, we have situations where a lot of resources are allocated to very useless projects yet the very serious issues that need to be addressed and our resources at the county level to be disbursed into supporting those programmes, are never done. For example, we have a gate that cost millions of money in my county, that is, the Kshs50 million gate.

Mr. Temporary Speaker, Sir, if a county government can spend resources to build a gate telling us that we are welcome to Nandi County, source of champions, yet in the same county we have children who are unable to go to school because resources allocated to bursary were not disbursed, it could be an indication that the bursary funds were directed to building a gate which some of us in the village have always called “*sanamu*”

Mr. Temporary Speaker, Sir, the prioritization of projects in the counties is wanting. One of the major contributing factors is lack of proper public participation. How do you carry out public participation if you do not have proper structures at the county level and below all the way to the village level? For you to have efficient structures at the county level, you must get the right people. That is why I support a professional county administration down to the village level.

As we speak, there are situations where a County Public Service Board (CPSB) employed a sub-county administrator with a degree and another one a Class Seven drop out. Both of them are county administrators because as it is right now, the law does not provide for the minimum academic qualifications. So, you have somebody who has no understanding of devolution, neither can he articulate himself as a county administrator. He was appointed just because he was politically correct.

This Bill clearly indicates there is an indictment on the part of the CPSB. The intention of the law that set up the CPSBs was to have a CPSB that is autonomous and able to professionalize the county administration in terms of recruitment. However, many

of them are an appendage of the governor's office and what they do is to regularize appointments made by the governor. The governor will say he needs so and so in charge of this and that ward as an administrator or in this position. The work of the CPSB is to regularize and ensure that they do what needs to be done to ensure that that outcome by the governor is achieved. That is the unfortunate situation. We have seen situations where Senators attempt to carry out some civic engagements which county governments are uncomfortable with. The next thing is that goons are hired to disrupt that function. If you care to know who are being used by governors to carry out this kind of business, you will find that it is the sub-county, ward and village administrators.

Mr. Temporary Speaker, Sir, that is why as a House, we must strive not to just appear to look good and say that if you disagree with one provision of this Bill, well and good, you can bring an amendment. You cannot be supporting an entire Bill and then when one question is raised, you want to throw away the Bill. What is the role of the Senate in ensuring that devolution works? We are supposed to protect devolution and be critical. If we can amend a section of the law, let us do so but retain the good provisions in the Bill that try to professionalize the management of counties. Therefore, I call upon my colleagues that there comes a time when you have to show courage. I have seen many Short Message Services (SMSs) from the Associations of Ward Administrators (AWAs) or whatever they call themselves. I appreciate it because that is part and parcel of their right. They should be able to communicate with us.

As Senators, let us look at it critically. If we disagree that we should not have minimum qualifications, then let us throw away the entire Bill. However, if we have a belief that each and every sub-county, village and ward administrator should have some minimum academic qualifications, let us look at it and ensure that we anchor it in this Bill. If we have a problem with that particular element of sending off existing sub-county administrators, we need to pause and think that all these sub-county administrators will not be there for good. Some of them will resign or vacate office for various reasons. However, we need to have a proper law that ensures a professional manner of appointment and recruitment of subsequent administrators.

There is a continuous shift from employing people on permanent and pensionable terms towards contract basis in Government. This is because the best results are achieved when people are put on contract. We agree that there was a lacuna. I sit in that Committee where we carried out public participation and received views from these administrators. In this country, we have two sets of ward administrators in the counties. Some were employed on permanent and pensionable basis and others on contract. That is what is happening right now. We need to standardize this.

Mr. Temporary Speaker, Sir, I call on my colleagues that we should not shy away from making the most of difficult decisions. They may look unpopular. You will remember I brought a Bill in this House; the County Development Boards Bill; we passed it and the National Assembly approved it. It was even assented to by the President and made law. However, Governors went to court because they were uncomfortable with it. As we speak, counties are in a mess and we would not be where we are if we had the CDBs to help prioritize development in the counties. I can tell you for a fact that in the next dispensation, with or without the law, any governor who will be elected will be that one who will want to ensure that everybody is part and parcel of the running of counties.

Sometimes a Bill may look very unpopular unless you take time to understand it. Every Member comes in this House working towards ensuring that devolution works. Most of you have already sponsored one or two Bills. It takes a lot of time to develop a Bill. So, I call upon my colleagues, that whereas we may have a strong position on one or two clauses, these are issues that we can address in the Third Reading of this Bill, amend those provisions but retain the very good provisions that ensure that county administrations right from the village administrations, are professionally managed. We will then have a legacy that will preside over the making of legislations that transform the management of our counties and make it professional in terms of hiring and engaging sub-county, village and ward administrators. Therefore, I am willing to be persuaded by Members with regard to those provisions and then we address them in the Third Reading.

Mr. Temporary Speaker, Sir, however, I support the Bill in terms of ensuring that we have a professional administration at the county level so that we have members of staff in the county who respect the law. I am wondering at what point ward administrators who are now sending us SMSs realized that their Senators exist? It is now that you are sending the SMSs for the first time.

Some of us have been called for the first time by our administrators three years down the line. Some of them have been used to hire hooligans and coordinate attacks and disruption of meetings called by Senators. Right now, they are on their knees. Why are they realizing now that Senators are important? It is because we are discussing this Bill. I call upon them to respect every elected leader in the counties. They need to appreciate that the salaries that they earn are courtesy of the work that their Senators have done in ensuring that the County Allocation of Revenue Bill is passed in this House. It is because of their Senators that county governments even have the resources to employ them. Respect is most important and expected from these administrators.

We need to make the difficult decision; engage our minds on this issue and look at where we can amend the good provisions of this Bill and carry on with them. I congratulate Sen. (Prof.) Lonyangapuo for bringing this Bill. Very few Senators would take the courage to deal with this kind of matter. He has been fought just like I was when I brought the County Development Board Bill. I know what he is going through and how he is being attacked by governors who do not want a professional administration. It will be unfortunate if colleagues in the Senate will also fall prey to that situation. Let us look at the Bill, amend the issues we are uncomfortable with and ensure that we have a Bill that will help counties to move forward.

With those remarks, I support.

Sen. Obure: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mositet): Is it concerning his contribution?

Sen. Obure: Mr. Temporary Speaker, Sir, yes.

The Temporary Speaker (Sen. Mositet): You are late.

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, I stand to support this Bill. Whether we agree with this Bill or not, we must all congratulate Sen. (Prof.) Lonyangapuo for bringing out these issues for discussion. Our Constitution is skeletal in nature like all constitutions and it includes this aspect of county Governments. Within the County Government Act, we have the Sub-County, Ward and Village administrators. However, we do not have functions of these administrators clearly spelt out.

The end result of it is that, at the moment, not only are we competing with the administrators; District Officers, District Commissioners and the chiefs from the National Government, they do not have, in practice, any function. The only ones we see on the ground are part of the campaign machinery of the current governors. To that extent, it is important for this Senate to discuss the issue and come to a conclusion whether we agree with Sen. (Prof.) Lonyangapuo in full or in part. This is a topical subject which the nation requires to look into.

Mr. Temporary Speaker, Sir, among the things which the Bill has brought out is the way these administrators are recruited and the kind of qualifications they should have. The fact that the Bill has proposed that they exit with the governor at the end of the term of the governor is a small issue. Even in the national Government, we have had people like D.C or County Commissioners in the past, who have been recalled to occupy any other Government office.

I urge the sponsor of this Bill, Sen. (Prof.) Lonyangapuo, to consider an amendment so that instead of these officers exiting at the end of five years, they should be retained in the service. This is a government. The County Government has probably 3,000 to 4,000 members of staff. These officers who are either diploma or degree holders can occupy any other position. However, they should continue being ward administrators without the concurrence of the incoming governor. I urge the sponsor of the Bill to reconsider sending them home.

The other option could have been for the Bill to spell out clearly the send-off package. In any case, we should do it for many more members of the county governments. As we have them now, the county governments are not like the national government where an officer can go to many other positions. Many of them would like to leave and do something else. If we have a proper good package for these administrators or any other officers in the county governments, it is quite in order.

We are at Second Reading Stage. I call upon my colleagues to pass this Bill the way it is. In principle, let us say yes to the Bill. Many Members have issues with Clause No.139, the one of going home. If any of us has reservations about a particular clause, let us consider it at the Committee Stage before we go to the Third Reading. This way, we will not have to do away with the rest of the very good provisions in this Bill. If we kill it at this stage, we shall have killed everything.

If anything, I urge Sen. (Prof.) Lonyangapuo, at the Committee stage, to look at whether or not we as the Senate should go into defining the functions of the county administrators. These function are skeletal. They are unclear just like the Constitution. What the chief and the ward administrator do is not clear at the moment. The sponsor should consider that. However, as far as the Bill is concerned, let us be called upon to stand up. We need this Bill and its provisions. The particular provisions any of us does not like will be handled at the Committee Stage.

With this few words, I beg to support.

The Temporary Speaker (Sen. Mositet): Sen. Abdirahman!

Sen. Abdirahman: Mr. Temporary Speaker, Sir, I want to add my voice to the debate on this Bill sponsored by Sen. (Prof.) Lonyangapuo. Indeed, it is a great effort to prepare a Bill. However, when there are certain issues which may not really serve the people, in the near future, it is good to take precautions. We should look at exactly what may not be useful. A number of my colleagues have canvassed with a view to reject it. I

belong to the category who may want to reject it, not in its entirety but certain aspects that may not be right.

Indeed, Sub-County Administrators are the equivalent of either the DCs and DOs in the national Government structure. Sending them home after every five years will impact negatively on the county civil service structure. Governors may not be very good people. They have a very bad approach in terms of running affairs of county governments. They do not consult on priorities in terms of development and a number of them have assumed that the executive at the county level is more or less like some place they manage like their own.

In the operations of the national Government, now and in the past, it is only the Ministers, Assistant Ministers and the Permanent Secretaries who go home after every five years. The reason is that the remaining number of civil servants have institutional memory and even for career progression. For example, if one is recruited today, within a minimum of five years, they are expected to grow to the next level in terms of job grades and professional expertise and experience. If people are recruited every five years, that is politicizing the civil service at the county level. It does not help.

[The Temporary Speaker (Sen. Mositet) left the Chair]

[The Temporary Speaker (Sen. Sang) took the Chair]

I totally reject the clause that says that they should go home every five years. If we do that, there is going to be low morale of staff at that level; merit will be thrown out of the window. We will create thousands of jobless people every five years. These people will have nowhere to go. These are the counties they come from. We can reshuffle them if there are issues or have other proposals.

The Temporary Speaker (Sen. Sang): What is it, Sen. (Eng.) Muriuki?

Sen. (Eng.) Muriuki: On a point of order, Mr. Temporary Speaker, Sir. Is the Senator for Wajir in order to say that they are going home when the voice in this House is that they stop being administrators so that they can be employed into anything less within the county governments? Just like the administrators in the national government, one can stop being a DC and proceed to be a director somewhere. They are not going home.

The Temporary Speaker (Sen. Sang): Sen. Abdirahman, respond to that.

Sen. Abdirahman: Mr. Temporary Speaker, Sir, I am in doubt whether my good friend, Sen. (Eng.) Muriuki has understood the concept. He is talking about deployment. Sending them home means recruiting new people. If one is recruiting new ward administrators, it is not as good as deploying them. That is my understanding. They can be deployed. How can one redeploy all ward administrators? There is no logic.

I appreciate the lack of proper schemes of service and a mismatch of grades. In terms of salaries, there could be people who have been employed without the requisite educational qualifications in one instance or the other. That, however, does not warrant the total sending away of ward administrators. We can demand an audit to ensure the county executive takes stock of how many of these ward or sub-county administrators lack the requisite skills, expertise and necessary qualifications to stay in these positions.

For those important reasons, I do not agree with that bit of the Bill. I have heard colleagues complaining about some ward and county administrators who are used by

governors to run errands and prepare rallies for them with a view to blocking Senators or disrupting rallies. I would propose that we establish a code of conduct. What manages the Civil Service is the establishment of a code of conduct that helps maintain morality, ethics and all that a civil servant is expected to have. We have many possible options that we can use to curb excesses of people at any level of the civil structure.

Mr. Temporary Speaker, Sir, I support the bit of the Bill that talks about qualifications for sub-county administrators, that pegs it at a university degree level and a diploma level for the ward administrators. However, I do not support the bit that seeks to render jobless thousands of employees of county governments.

The unemployment rate in this country is high and devolution was a Godsend. It has helped to employ thousands, but the drivers of those seats at the county level – the governors - who many at times have decided not to listen are to blame for the number of the messes in our counties.

I will stop at this and hope that we will have the necessary amendments. I support that small bit, but oppose the other one.

Sen. Omondi: Mr. Temporary Speaker, Sir, thank you for giving me the opportunity. I want to thank the Mover of the Bill who is my friend. However, on this, we are not friends. I do not support the Bill with reasons.

This Bill will bring challenges in terms of continuity of service delivery in the county governments. As my able Senate Deputy Minority Leader said, institutional memory will be lost. For us to protect the institutional memory, we should not tamper with the staff working for county governments, including administrators. I do not agree with the Bill simply because it will bring a lot of challenges and deny the marginalized groups, including people with disabilities, employment opportunities.

If the sponsor of the Bill could bring an amendment that will retain employees who are disabled, I may be convinced to support. As it is, I must protect the interests of marginalized groups who are employed as ward and sub-county administrators.

Mr. Temporary Speaker, Sir, I oppose this Bill because instead of pegging the appointment of county government workers to public service, it pegs it on the political environment. This is unhealthy when it comes to service delivery. The route that we want to take will not help devolution to grow, because administration is different from politics. If we send home people every end of the five-year term, it will be like closing service delivery from the people. It will take time for other people to be recruited and understand the running of county governments.

I support the idea of improving the academic qualifications of administrators. However, we should not introduce challenges so as to sort out other challenges. We should amend the section that deals with academic qualifications, but not overhaul the whole administration which is the backbone of devolution right from the grassroots up to the county level.

How will we deal with administrators who are employed and pensionable? We do not need to bring problems into people's lives simply because we are in power. We must protect the people we are leading. These are our voters and we must protect their interests.

I oppose the Bill.

(Sen. Bule stood in his place)

The Temporary Speaker (Sen. Sang): What is it Sen. Bule?

(Sen. Bule spoke off-record)

The Temporary Speaker (Sen. Sang): Sen. Bule, hold your horses. You are completely out of order.

Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Temporary Speaker, Sir, for giving me this chance. I rise to support this Bill. Today, I have learnt something. Many times I refer to the Senate as the House of the slightly aged or the elderly. I have realised how useful they are, especially to us, young parliamentarians. I walked into this Chamber today with the intention of opposing this Bill. However, I had a chat with one of the slightly elderly Senators and he inducted me well into the practices of Parliament.

Sen. (Eng.) Muriuki asked me two questions which informed my position on this Bill. One, was whether I am opposed to this Bill in its entirety, which I am not. He also asked me if there are any good things that I see out of this Bill. Having answered in the affirmative, he informed me that when I am faced with such a dilemma, a smart parliamentarian - I wish to encourage other Members who find themselves in a similar dilemma – would support the Bill at this stage and then push for the amendments at the Committee Stage. That is what I have opted to do.

Many of us have had the opportunity to listen to ward administrators. I remember one time when I was in my county and ward administrators from my county asked for an appointment to see me. They raised some of their concerns and I listened to them. Part of the information that they are sending out is also the concern of many Senators that are opposed to this Bill. It has to do with a particular clause in the Bill, where the sponsor of this Bill seems to be interested in “sending home” ward administrators at the end of the five-year term.

If you listen to those of us who believe that at the end of a particular term--- For example, if a new governor has been elected into office, for their tenure to be successful, they need a fresh administration of people that believe in their ideals, manifesto and things that they want to achieve for a certain county.

Mr. Temporary Speaker, Sir, having said that, I know that this is the first county government of the many that we will have in this country. As we legislate, it is prudent to have a broader view to issues as opposed to what we are currently experiencing. We are hearing about the ward administrators who have been used to plan rallies by the governors or being sent to functions where the only duty they are performing is political. These are things that exist but we do not want to throw out the baby together with its bath water. We need to appreciate what we all know; that this being the first set of county governments, challenges are anticipated.

Therefore, the only thing that we can do is to try and better the situation other than come up with laws that when looked at, one would realise that a dream was killed because of the misbehaviour of few individuals. The misbehaviour that we are trying to cure here is where we have seen ward administrators not living up to the dream of the drafters of the Constitution.

Mr. Temporary Speaker, Sir, the drafters of the Constitution envisaged a public service in the county government that is free from the interference of the political forces there. However, we live in a world of reality. I do not want us to live in a certain ideal world than what is practical. We all know that many county government appointees, especially being the first set of county governments, there is the influence by the governors. The County Public Service Board members were appointed under the influence of the governors. To a great extent, they are controlled by the executive.

As we legislate, let us imagine what we will have done especially being the first Senate. There should be a legislation that people will look at and consider it a wise legislation from the Senate during our time.

Mr. Temporary Speaker, Sir, I appreciate the fact that the sponsor of the Bill has set up a bar on the minimum requirements in terms of education. The county governments should borrow best practices in the national Government. If they cannot manage a small unit of about 4,000 people, then how will they manage the national public service?

One of the hallmarks of a proper functioning public service is a life that is dedicated to the service of a community and not an individual or the appointing authority. There are certain ideals that we can structure in this legislation at the Committee Stage. Let us give views that will help those serving and those who will serve in future under this legislation. Let us set rules and regulations of the things that they are supposed to do.

Mr. Temporary Speaker, Sir, the current legislation must have been a learning experience. I am sure they have listened to this debate and they know Senators are disappointed with them. I am also sure that they have realised the important role that a Senator plays. As had been observed earlier by one of the Senators, they will start keeping a good relationship with the Senators and not only calling them at times when they are facing such challenges.

It is our dream and desire that many of these ward administrators will live up to the dreams of the drafters of our Constitution. They have to achieve those issues that are listed. May I read a particular phrase on the office of the sub-county administrators. One of their core functions is that, the sub-county administrator shall be responsible for coordination, management, supervision and general administration of the functions of the sub-county which include the development of policies, plans and service delivery.

Mr. Temporary Speaker, Sir, one of the challenges that we, as Senators, have always cited is the issue of public participation. This falls right in the foot of a ward administrator. Most of these public participations are held at the sub-county and not at the ward levels. It is upon them to ensure that professionals not only those based in the counties but also those working in the cities have an interest in the counties.

If I were a sub-county administrator and I know that a decision will be made at a public participation forum, then it is my duty to ensure that I see to it that all the well-educated members of that community are invited. I have witnessed instances where two or three idlers that are loitering in the centres are invited to a public forum that has been convened by the county government. When asked what they want, they state that they want to establish a cattle dip or a library amongst others. Three or four drunkards will vote on it and the whole community will have to live by the decision that has been made by a few. The biggest challenge that the sub-county and ward administrators are facing is

that, they know they only have to please the governor. We want to move away from that. One of the dangers that this Bill presents on the clauses that I disagree with is how to ensure that we create an environment where ward administrators do not turn out to be campaigners.

Mr. Temporary Speaker, Sir, if the only way I am assured of keeping my job is having the governor retain his, then I will push as hard as possible to be re-elected even if he is not doing the right thing. These are the pitfalls that we have to legislate and find ways to avoid them.

In conclusion, this is my advice to the sponsor of the Bill. Listen carefully professor. Some of us are supporting but with a heavy heart. May I commend Sen. (Prof.) Lonyangapuo because one, we share a unique relationship with him. His wife taught me in the university. There is a poem that your dear wife taught me. It is called *'The Road Less Travelled'* by Robert Foster. If you ask her about it tonight, she will give you the poem. It talks about those who dare. Sen. (Prof.) Lonyangapuo has dared as a Senator because not many Senators will have thought about coming up with a legislation that may be unpopular.

The Temporary Speaker (Sen. Sang): Sen. Cheruiyot, we are not discussing persons who are not part of this House.

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, I was referring to a poem and I was giving directions to the good professor on how he may get the poem. He may have a challenge and being a mathematician, he may not know many things about poems.

(Laughter)

The Temporary Speaker (Sen. Sang): Proceed.

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, I commend Sen. (Prof.) Lonyangapuo for thinking outside the box as may be put. The Bill may not be popular in some quotas but its implications are far reaching because it is about reforming the public service in the counties.

With those many observations, I beg to support though with the promissory note handed over to the sponsor of the Bill and the Committee that some of the concerns that have been raised are addressed.

Thank you.

The Temporary Speaker (Sen. Sang): Sen. Cheruiyot, you can move those amendments yourself. The amendments can be moved by the sponsor of the Bill or by any other Senator. Therefore, you have the latitude to move the amendments yourself.

(Interruption of Debate on Bill)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM OLODARIAK
BOYS SECONDARY SCHOOL

Hon. Senators, I wish to recognize the presence of visiting students and teachers from Olodariak Boys Secondary School from Kajiado County. They are seated at the

Public Gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

Sen. Mositet: Mr. Temporary Speaker, Sir, I acknowledge the presence of the students and teachers from Olodariak Boys Secondary School which is one of the schools in my county. It is situated below the escarpment of the Rift Valley. It is one of the areas that experiences hardship because it is in an arid area. However, it is a good school and the students have been performing very well. It is a new school, but I must applaud the work of the teachers. I am proud when teachers accompany their students here. I am proud to be associated with them. I also urge other schools in our county to follow suit so that the students get mentors from public institutions like this one.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. Before my good friend, the Senator for Kajiado County proceeds to discuss the Bill, I would like to recognize the presence of these students and their teachers and say that there is an evil spirit roaming around schools right now. Some schools have ended up burning their dormitories.

It is great that the teachers and students have come here. I urge them to spread the gospel to their colleagues that as their leaders and parents, we do not know what is happening. However, we encourage the students to engage their teachers and parents in a sober manner whenever something comes up than to explode and display bad manners that nobody can understand. We have not had any incident in Kajiado County, but we advise our students from the few isolated areas that it is not the way to proceed to express anger on anything that they do not understand.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I join my colleagues in appreciating and welcoming the boys and their teachers from that school with a very difficult name.

The Temporary Speaker (Sen. Sang): It is called Olodariak Boys Secondary School.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, it sounded different when the Senator for Kajiado County mentioned it.

(Laughter)

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, the name of the school should not define the school. They say that a rose by any other name will still remain a rose. I would like to encourage the boys by urging them to look at this House. There is a misconception that this is a House of elders. However, there is proof that there are young people like Sen. Kajwang, who is speaking, Sen. Cheruiyot, the Senator seating on the Chair and even Sen. (Prof.) Lonyangapuo, who is young at heart. Therefore, they should not feel like the interests of the young people are not taken care of in this House. We have people who are physically young and those that are young at heart. Sen. Bule, for instance, is very young in spirit.

More fundamentally, you come from a beautiful county. I had the opportunity of walking around that county during a by-election in Kajiado Central Constituency. Your county is endowed with a very rich culture. I urge you not to forget about your culture for the cheap western one. Uphold and cherish your culture while making the best out of it.

You are also lucky that you come from a county that acts as the bedroom of Nairobi. I am not sure whether it is the bedroom or the bar for Nairobi County where people gather in the evening. Your closeness to Nairobi means that you have serious economic opportunities and potential. When you go back to school, work hard. Do not aspire to work in Nairobi. Please, aspire to work and build a career in Kajiado County. That is how you will make this country great and support devolution.

The Temporary Speaker (Sen. Sang): I can also confirm that Sen. Mositet is young both at heart and in spirit.

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, thank you for giving me the opportunity to recognize this young breed of future leaders. Worth noting to them is that we disagree many times in this House. I am sure that in the course of their time in the Public Gallery, they will notice that we seldom disagree with each other, but we do it in a civil manner.

My take to them is that should they never get to a point where they disagree with their teachers or the school administration. They should not resort to the bad spirit that is roving around our schools, where when students are not allowed to watch a soccer match, they resort to fire. We, as leaders, disagree, but we do not exchange fists or fire. Therefore, they should also not exchange fire.

I wish you all the best in your future life.

Sen. Sijeny: Mr. Temporary Speaker, Sir, I also wish to welcome the young leaders of tomorrow who are present at the Senate today. I wish them God's blessing and urge them to work hard. They should read and understand what they are being taught. They should not cram. They may never get a chance for revision and before they know it, they may find themselves standing where I am today and you will have to remind yourself of what you saw today. I am proud of you.

Parents work so hard. I am talking as a mother because we carry children for nine months, give birth, bring them up and pay school fees. Parents want to be rewarded by you being responsible and disciplined citizens. We do not want to hear things such as "Project X". Please, maintain discipline according to the culture that you have been taught and spiritual guidance that you have been given. The education that you have been given is not for nothing. I wish you well and hope to see you at the next level when you invite us for not only weddings, but graduation ceremonies as well.

The Temporary Speaker (Sen. Sang): That is Sen. Sijeny, the sponsor of the famous Reproductive Health Care Bill (Senate Bill No.17 of 2014) that seeks to ensure that our children in secondary schools learn and get the opportunity to know more about their reproductive health.

Please, proceed, Sen. Bule.

Sen. Bule: Mr. Temporary Speaker, Sir, I join my colleagues in recognizing the presence of students and teachers of this school which I cannot pronounce its name. I thank you for coming to learn from this Senate. It is a House of elders. Though there might be youthful leaders, they are also elders at heart and professionally. During our time, we had problems in school. However, the problem is not the school. It is parents who are not empowering our children according to the African culture. This school is better because they are empowered by the culture of their communities. They uphold the standard that all schools ought to have. I congratulate teachers and students of this school for that. You have to stick to what you learn here.

Hon. Senators come from different counties with different cultures. This diversity is important. The western culture pollutes our nation. Nowadays, young boys in school adorn *Rasta* and earrings. We need to curb this. We used to be caned in school. I used to receive 10 strokes of the cane on the buttocks. That is why I managed to be here. However, nowadays, there is no corporal punishment. There are just simple instructions. You have to follow the simple instructions given by your teachers and parents. You are the leaders of tomorrow.

Mr. Temporary Speaker (Sen. Sang): For the information of the students, that is Sen. Bule, the Senator for Tana River County.

Proceed, Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I join my colleagues as well in congratulating the students who have come to visit us in the Senate. We appreciate students who come here so that we can communicate with them. We are aware that the Ministry of Education is continuously making decisions that will affect the students. We urge the students, especially, when they are in the House here to consider some of those measures that the Ministry is taking in order to ensure that they have a good learning environment. I am sure the Cabinet Secretary for Education will make pronouncements very soon regarding the use of mobile phones in schools. We ask the students to consider this passionately and seriously. They should not make this a very big issue that will cause conflict in schools, and probably make it difficult to manage schools. A mobile phone is a gadget that we can manage very easily. It can be very useful to us. However, we must impart and suggest some ways in which this gadget can be used in school in agreement with the students. This gadget can either be available to be used in schools with some regulations or be removed completely from the school environment. When this decision is made, we should not fight over it. We should fight over the loss of infrastructure of institutions of learning.

Mr. Temporary Speaker, Sir, I urge the students to participate in this process. It is in their interest. We are setting the school environment conducive for learning. They should use this environment as such without any interruption from issues that we can discuss and agree on.

With those remarks, I congratulate the students and wish them well.

Mr. Temporary Speaker (Sen. Sang): Our message to students and schools is to expand the space and platform of dialogue in our schools.

Proceed, Sen. Mositet.

(Resumption of Debate on Bill)

Sen. Mositet: Mr. Temporary Speaker, Sir, let me appreciate the Senate. It is the House where we have the best brains in this country. Hon. Senators go through a number of acts or issues confronting this nation and come up with laws to guide this nation. I congratulate my colleague, one of the most vibrant Senators in this House, Sen. (Prof.) Lonyangapuo.

Ward and county administrators should note that there must have been some good elements in the Bill as drafted by the Senator. There was no need for them to panic and come up with associations to lobby for the rejection of the Bill. We have the Council of Governors (CoG) as per the Constitution. After that tier, because of the workings and

progress of implementation of the new Constitution, we also came with the County Assembly Speakers Forum (CAF) and the forum of the clerks of the county assemblies. I was informed through a text message that we now have another forum called the ward or county administrators' forum. This is healthy. However, let us form these forums when we are not in a panic mood where we can lobby for the best of this nation.

In the Bill, the hon. Senator is suggesting that administrators will be employed through a competitive process which will not be marred by nepotism and corruption. Elected leaders, for instance, governors, Senators, ward representatives or Members of the National Assembly will not have a hand in picking those administrators because the process will not be politicized. By so doing, we will get the best administrators.

Additionally, the hon. Senator has proposed that we should have some minimum educational qualifications for the administrators. For those at the constituency levels who are now the sub-county administrators, he pegged the qualifications at the degree level and for the ward administrators at the diploma level. Education is the backbone of development in every nation. We cannot talk about education and not talk about the minimum standards for employment. I congratulate the hon. Senator for this. The issue which is causing shockwaves among the administrators is whether they continue working after every five years when a new regime takes over.

I urge the House to adopt a model whereby you employ competitively people who are qualified, effective and trained in their line. If we hire these administrators after every five years, it will be very expensive for this country. It is going to create what we have noticed in the national Government where the Cabinet Secretaries (CS) and Principal Secretaries (PS) were pegged on those who had been elected. If we do that, I can tell you for sure that we will still be talking about the animal called corruption which we have always talked about in this country. Why is it always that corruption at the highest level in the Ministries is always traced from maybe the cabinet level to the Principal Secretaries? It is because these people feel that after five years, they will go or maybe they are just working under the mercy of the person who appointed them.

Mr. Temporary Speaker, Sir, if we continue that way at the ward and the constituency level where the county government is also involved, we will also have problems and we are going to have compromised work at the ward and constituency level. Why do we currently have the problems we are having at the ward and constituency levels? We trace that on how the current ward administrators and sub-county administrators were employed.

In some counties, there were no minimum standards in terms of education and because of that, these were people who were just pushed. Some were even campaigners of the governors or particular people in the county. For that reason, they are serving the interests of those people. I feel that is why the Senator found it logical that we must have minimum standards of education so that these people will not just come to serve those who appointed them.

Currently, I know quite a number of them are being used like tools. I believe if this Bill goes through with amendments where we will not be sacking them after every five years and then we make sure their work is clearly defined, we will have sober and good administrators at the sub-county level who will do their work in a good way to make sure that services are appreciated down there.

Mr. Temporary Speaker Sir, I believe if we were to strengthen the ward and sub-county administrators through this Senate, the Senator and the Governor would be directly informed on what is happening at the ward level. That way, the work of oversight for the Senator would be boosted because he or she will know whether the funds have been well utilized.

Currently, we are having a lot of problems in the counties at the ward level. The ward administrator is the person who is supposed to raise an alarm on whether a particular project which *wananchi* had prioritized in a particular financial year is being implemented properly or not. It could also be that the person who is supposed to implement the contract has run away. The way it is now, we have problems because the ward and sub-county administrators work at the whims of the governor. If we put these standards in place and make sure that the ward and sub-county administrators are protected to serve for five years and not at the whims of the sitting governor, I believe we will have a very effective civil service at the county level which we will be proud of.

Apart from the governor and the deputy who serve in the executive of the county as the only people directly elected by the people, the rest should be employed through the County Public Service Board. This will ensure that counties offer good service to the people.

The ward and sub-county administrators should not only serve for five years, the *status quo* should remain after those five years. They should make sure that the incoming governor and his deputy are made aware of the projects being carried out by the previous administration, their status, the level of appreciation by *wananchi* and how they want to move forward. That should be the process. He will be one of the people at the village level to say, for example, this was our position before the election and we expect to proceed this way.

I support the Bill with amendments.

The Temporary Speaker (Sen. Sang): We proceed to Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I wish to congratulate my colleague, Sen. (Prof.) Lonyangapuo, who has sought far and wide in order to draft this Bill and bring it to the House. I support this Bill, not because I agree with what it states but because it gives us food for thought as far as the administrators at the counties are concerned.

If anybody comes from a county such as mine, then they would quickly want to support this Bill in its entirety. In my county, the body that would be involved with the appointments, vetting and selection of individuals, which is the County Public Service Board, ceased to exist. This is the position in a number of counties in this country where the body which we mandated to appoint individuals to serve in various positions does not exist. We know that it is very easy for executive powers in the county to decimate the County Public Service Board by denying it funds.

This is what has happened in many counties and it has led to what we consider as inappropriate or non-functional administrators of either sub-counties or wards. This is because those individuals are no longer being vetted or recruited competitively because the County Public Service Board does not exist.

Mr. Temporary Speaker, Sir, I really appreciate and I will be part of this. As we continue to consider the positions of administrators, we should also consider the status of the CPSBs. For us to effectively ensure that the administrators at the counties are doing

their work well, this is the point to start ensuring that they are very operational. I will suggest amendments to the positions of the CPSBs so that they have the powers to exercise their responsibilities because they will have funds to do that by themselves without having to rely on the county executives.

Mr. Temporary Speaker, Sir, one of the greatest problems that we have with the ward administrators and sub-county administrators is the unprocedural manner in which many of them got into office. I have no problem with the CPSBs which are functional, vetted and competitively appointed ward administrators. However, where this has not happened, I am inclined to support an amendment to this Bill that at the end of the five years, the individuals who did not go through a proper procedure or those who were unprocedurally appointed into the positions of administrators should be vetted to ensure that their appointments are regularised. This can only be done when the new administration comes in with standards which are clear and with a County Public Service Board that has been empowered to do that. This will go in line with what is happening nowadays where if you take responsibility, there is a performance contract that you sign so that at the end of a certain period of time, which could be five years in this case, you go through a process in which you are evaluated; whether you have progressed in your career, performed or delivered. Therefore, we should not entirely send the administrators home because they can be realigned and retrained. In this case, I suggest that a school of Government be established either at the county or national level. We used to have the Kenya Institute of Administration (KIA) where all the administrators of a certain level were trained.

Mr. Temporary Speaker, Sir, there is no doubt that I want to support this very strongly. The qualifications of whoever becomes an administrator, whether a village administrator, a ward administrator or sub-county administrator, are clearly defined. This is where I would like the bar to be set high. This country has invested so much in education and expended in terms of capacity building and there are no laws that can be made if we set the bar very high for the people who will occupy these positions because they will determine whether counties are successful or not. Therefore, I support this Bill because it states clearly the functions and qualifications of the village administrator, ward administrator and sub-county administrators. These are clearly defined and they will be clearly applied when CPSBs interview persons to take these positions.

Mr. Temporary Speaker, Sir, I certainly have concerns. If we simply accept to send home administrators at the end of every five years, I cannot imagine what will happen. If an administrator knows that he or she will go home at the end of the five years, I am sure they will fight tooth and nail and break all the rules to make sure that the current governor who appointed them recaptures his seat. So, it is a two way thing. If we decide to tell them that they will go home, probably, they will even break the laws much more than if they were to be assured of their positions in the next government.

Whereas I support this Bill, I call for some amendments to ensure that there is fairness for those who are already in positions and those who have been appointed fairly. There should also be fairness to those who were unprocedurally appointed and they should be given another chance to be vetted so that they can operate in the new dispensation of a new governor in place. Otherwise, I support this Bill but I will suggest some amendments as we go to the Committee Stage. We should ensure that we only

resolve issues that give us challenges at the moment and retain the ones that have so far brought county governments to the point where they are.

Mr. Temporary Speaker, Sir, with those remarks, I support.

Sen. Bule: Bw. Spika wa Muda, kwanza, nampongeza aliyeleta Mswada huu kwa sababu ni muhimu sana. Haya si mambo ya kufanya kwa haraka. Kwa hivyo, ni vyema tuyaangalie kwa undani. Ninawakilisha watu wa Kaunti ya Tana River ambao wengi wao hawakuwa wanawakilishwa kisawa. Jambo kama hili linafaa kuangaliwa kwa undani. Katiba mpya ililetwa kwa sababu machifu hawakuwa wanawakilisha vyema wananchi. Walifaa kuwakilisha wananchi, kujua shida zao na kuziwasilisha kwa Serikali lakini hawakuelewa kazi yao ni nini. Ninapinga baadhi ya vipengee katika Mswada huu kwa mfano sehemu inayosema kwamba machifu watafutwa kazi. Ni lazima tuangalie jambo hili kwa undani kwa sababu machifu hawakuajiriwa ili kuwakilisha magavana. Hata hivyo, wamekuwa wakitumika vibaya na magavana ambao wametumia vibaya fedha za kufanyia maendeleo katika kaunti zetu. Kwa hivyo, ni lazima tuangalie mambo hayo kwa sababu machifu waliteuliwa kutoka kwa wananchi na ni wananchi wanaolalamika kwamba machifu hawahitajiki tena.

Mtu yeyote anayewakilisha wananchi, awe chifu, mkuu wa taarafa au mkuu wa wilaya, lazima aelezwe kwa uwazi kuwa hakuajiriwa kumwakilisha gavana na kuendeleza unyakuzi wa ardhi na fedha bali kuwakilisha wananchi wanaoishi naye. Wakati machifu na wakuu wa wilaya walikuwa wanaandikwa kazi katika kaunti yangu, nilimwambia gavana kwamba kila jamii inayoishi Tana River lazima iwakilishwe. Tukizungumzia kuwaachisha kazi machifu, wakuu wa taarafa au wakuu wa wilaya, haimaanishi kwamba tunataka kurekebisha au kuelekeza Wakenya kwa njia iliyo bora zaidi kuliko tulivyo sasa hivi. Tusiwe na chuki na magavana na watu wengine kwa sababu magavana ni wapita njia; leo tuna huyu na huenda kesho tukawa na mwingine. Hata wewe huenda ukawa gavana. Tunahitaji sheria dhabiti ya kuwawezesha wawahudumie Wakenya. Kwa hivyo, marekebisho yanayohitajika ni kubainisha wazi kazi ya machifu, wakuu wa taarafa na wakuu wa wilaya. Tangu waandikwe kazi, hakuna kazi muhimu ambayo wamefanya.

Kazi yao ni kuwapigia debe magavana, kuenda kufanya kampeni ya magavana na kazi zingine ambazo sio zao. Huko kaunti yetu, hawa ni wale watu wakuweza kuleta amani baina ya jamii ambazo zilizoana, wale waliojisikia kwamba hawakuwakilishwa wamewakilishwa sasa hivi. Ni lazima wahakikishe kwamba watu wao wamepata maendeleo ambayo walikuwa wamekosa na walikuwa wanahitaji. Lakini haya yote yalikuwa ni kwa sababu ya wakati wa mpito. Miaka tatu iliyopita, Kenya hii tulikuwa katika mpito. Mpito ni kusema kwamba tulikuwa "*transitional period*". Wakati huo, kila mmoja aliyeandikwa kwa kaunti au alikuwa anafanya kazi kwa kaunti, ilikuwa ni mzozano. Wawakilishi wa kaunti ambao walichaguliwa na wananchi kufanya *oversight*, hata hao walikuwa wakikimbia nyuma ya gavana na kufanya jambo ambalo sivyo. Lakini sasa hivi, kila mmoja ameelewa na kuwajibika ndio tunaona kila jambo la kaunti linaenda vizuri. Ndio tunaona hapa wengine wako kikaangoni. Kwa hivyo, ninaunga mkono---

The Temporary Speaker (Sen. Sang): Sen. Bule, umesema wengine wako wapi?

Sen. Bule: Bw. Spika wa Muda, nimesema kwamba wako katika mahojiano makali ya Maseneta kuwahoji kuhusu uvujaji wa fedha za jamii na mambo yale yote waliyokuwa wakifanya. Ukweli wa mambo sasa uko mezani. Baada ya muda kidogo, wananchi watajua ukweli wa mambo uko wapi. Wale waliokuwa wakisema kwamba

Maseneta wamefanya nini, wapelekwe nyumbani, nataka wanisikize. Wananchi wa kaunti ya Tana River na wa Mkoa wa Pwani; ninaongea lugha ya Kiswahili kwa sababu asilimia 90 ya watu wetu wanaongea Kiswahili na ninataka wanisikize na wanielewe ya kwamba leo hii, tunataka Wakenya watuelewe, yule anayefanya kazi kwa kaunti, yule anayeishi kaunti hasa ya Tana River na Pwani waelewe ya kwamba hii Seneti ni mahali pa kuhakikisha maneno ya maendeleo na ya kaunti yanaangaliwa kwa undani na hatubagui ama kuonea mtu yeyote.

Kwa hivyo, kama wewe ni *administrator*, kama wewe ni chifu wa kata ndogo au wa kijiji, wewe sio chombo cha kukulia au “kijiko cha gavana”. Wewe ni mwakilishi wa wananchi na ni lazima uajibike. Kwa hivyo, ninaunga mkono Mswada huu kwa kupendekeza marekebisho ya kutopeleka machifu hawa nyumbani lakini tuwe na sheria kali ya kwamba wasitumike vibaya na magavana au watu wengine. Wawe mbali na siasa, ukabila, ---

The Temporary Speaker (Sen. Sang): What is it, Sen. (Prof.) Lonyangapuo?

Sen. (Prof.) Lonyangapuo: Hoja ya nidhamu, Bw. Spika wa Muda. Nitajaribu Kiswahili. Sen. Bule anasema wengine ni “kijiko cha magavana”. Anamaanisha nini? Naomba afanue.

The Temporary Speaker (Sen. Sang): Sen. Bule, pia fafana kwamba machifu na manaibu wa machifu unao--- *let me put it this way; you have mentioned the chiefs, the assistant chiefs and the District Officers (DOs). I hope you need to clarify because the Bill does not deal with chiefs and assistant chiefs.*

Sen. Bule: Bw. Spika wa Muda, tukizungumzia administrators, tunamaanisha ya kwamba hawa tukiwa tunaita kwa lugha yoyote ile, ni watu ambao tumewaandika kutatua shida za Wakenya, wawakilishe wananchi ambao hawakuwakilishwa au walikuwa na shida tofauti hapa na pale ili tuwalete karibu na Serikali. Ugatuzi ni kuleta serikali mashinani. Kwa hivyo, walipoletewa serikali, hatutaki machifu hawa watumike vibaya na magavana. Hiyo ndiyo sababu nilisema ya kwamba wasiwe sahani au kijiko cha magavana. Wanafaa wawe watu wa kuwakilisha wananchi wanaotaka huduma kwa karibu.

Bw. Spika wa Muda, tunataka marekebisho kwa machifu yawepo lakini wawekewe kwamba tukiwafuta leo, tuandike wengine. Hata mimi pengine nitakuwa gavana, na ninaweza kuwatumia vibaya. Kwa hivyo, mtu yeyote ambaye ameandikwa huko kwa kaunti kufanyia Wakenya kazi na wala sio gavana--- Kitambo Rais mstaafu, Bw. Daniel Toroitich arap Moi, alikuwa anawaambia machifu kwamba kama mambo ya usalama haitaimarika, walete sare zao za kazi. Kwa hivyo tunasema kama usalama hautaimarika na ufiada hautatambulika, ni hao hawakuwajibika. Kwa hivyo, warudishe sare zao za kazi. Lakini tusiwafute kila baada ya uchaguzi – hawakuchaguliwa na wananchi. Wameandikwa na serikali ya wananchi.

Bw. Spikawa Muda, nafikiri haya yanaeleweka kwa uwazi. Kwa hivyo, nasema kwa magavana, ole wenu. Tunasema kwamba gavana asitumie *administrators* kama vyombo vya kampeni. Leo hii, naona wengine wananitafuta na wengine hata sijawahi kuwaona. Wakati ambapo walikuwa wanachaguliwa, mimi nimesimama wima na kusema kila jamii lazima iwakilishwe. Mambo ya kura au kuchaguliwa si ya kuelekeza vile wananchi watachagua. Lakini haya ya kuandika, lazima tusimame imara kama viongozi kwa sababu tumeletwa hapa kwa sababu tunahitaji marekebisho na ni hili Bunge la

Seneti ambalo linaweza kurekebisha mambo ya kaunti na kufanya nchi yetu ya Kenya iwe nchi ya amani, ukweli, haki na maendeleo.

Bw. Spika wa Muda, maendelo mashinani yakiharibika, hata nchi yetu itaharibika. Utawala mashinani ukiharibika, hata utawala nchini utaharibika. Jana, kulikuwa na tatizo sehemu ya Kipini. Sina nambari ya *administrator* yeyote. Nilikuwa naonega na *County Commander* na *County Commissioner*. Hawana pesa ya mafuta ya gari, hawana magari ilhali *administrators* wanatembea na magari. Wanatembea na gari ya kaunti kwa mchezo. Huko Kipini, wakati wa kiangazi ukifika, kuna shida kwa sababu *the delta* ndiyo kila mfugaji na mkulima hukutana. Sasa, wakati hao *administrators* na machifu, - *in fact, it is duplication* ukiangalia kwa upande mwingine. Wote wako. Mtu anakupigia simu kwamba kuna shida fulani. Nilimpigia Kamanda wa Kaunti na county *administrator* ili waende na wachukue wazee kama hakuna *administrators* ili wawaambie wazee warekebishe maneno. Ni kama hawa *administrators* wameandikwa kufanya kampeni ya gavana. Ile siku utawaona ni wakati gavana yuko na sherehe. Hapo ndipo wanapeleka sahani na hema. Ninaipongeza Serikali kuu kwa kuimarisha kazi ya machifu, DO na DC ambao walivumilia huku wakipiga moyo konde---

(Sen. Bule's microphone went off)

The Temporary Speaker (Sen. Sang): Order! Your time is up. Asante!

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, first, I thank the Mover of this Amendment Bill, Sen. (Prof.) Lonyangapuo. When I was at the university, he was already a renowned professor. In that university, I was leading students as a Secretary General and Sen. (Prof.) Lonyangapuo later on led the institution. So, at times when I am in doubt between the Constitution and Sen. (Prof.) Lonyangapuo, I tend to trust him more because he is older than the Constitution.

In this particular matter that the Sen. (Prof.) Lonyangapuo has brought before us, let me make it very clear to county administrators who are following this debate because I have received many comments, texts and *whatsapp* messages that county administrators are following this debate keenly. When a Bill is presented to this House, it can be rejected in totality or accepted with amendments. When my colleagues support the Bill but propose amendments, it is in order. It does not defeat what the expectations of the county administrators are.

I personally support this Bill but with amendments. Allow me to mention the areas that I support and the areas that I believe we can do better. One of the key things that the debate on this Bill has missed, particularly within the media and also in the circles of the leadership of our counties--- I saw there was a gathering at Bomas of Kenya. I am not sure how that grand event was funded. It is not easy to bring all ward and sub-county administrators to Nairobi City County. Someone must foot that budget. All the same, the debate there missed a significant point that is being advanced by Sen. (Prof.) Lonyangapuo, that, we must have minimum academic requirements for these positions.

Mr. Temporary Speaker, Sir, Sen. (Prof.) Lonyangapuo is very clear that to be a sub-county administrator, you must have a degree plus relevant experience in administration and management. This is not a small job. A sub-county administrator takes care of a constituency. If you want to be a ward administrator, you must have at least a

diploma and some professional qualifications in administration and management. For village administrators, you must have at least a secondary school education plus some professional qualifications and knowledge in administration. You will not employ a cook in a good restaurant without some evidence that this person has gone through some basic training to undertake the job and function that you are employing him for. I think this is the same logic that Sen. (Prof.) Lonyangapuo is bringing in here; that for you to hold these positions, there has to be some defined minimum academic requirements. To that extent, I support.

We must now ask ourselves, in case there was a sub-county administrator who was employed without a degree, how do we deal with that particular person? We must then come up with progressive implementation proposals so that someone does not lose their job because they were appointed at that time without the degree. You cannot come up with a requirement today and try to apply it in retrospect. That will not work. So, it will be important for us to have a progressive implementation approach so that those who have already been recruited into this position without the requisite academic qualifications --- I think it is Sen. (Prof.) Lesan who must have mentioned the school of Government or some similar approach where these people can be taken, up scaled and given certificates or qualifications that are equivalent to the minimum requirements that are proposed in the Bill by Sen. (Prof.) Lonyangapuo.

I would have expected or requested – this can come up later – that we would have made a comment on these issues of the two-thirds gender rule, so that we ensure not more than two-thirds shall be of the same gender. In the appointments in our counties, we are seeing a situation where in a county with eight sub-counties, all the sub-county administrators are men. We are looking at a situation where the ward administrators in a county with forty wards, majority are men. We must be conscious of the constitutional requirement on gender. It needs to be put somewhere that no more than two-thirds shall be of the same gender. We assume that since it is in the Constitution, everyone shall follow it. However, Parliament is an example of an institution that has not fulfilled that requirement which has been expressly stated in the Constitution.

Mr. Temporary Speaker, Sir, when it comes to further suggestions for improvement, I would like to discuss with the Mover and see whether it is necessary beyond any reasonable doubt, to include that or whether it has been captured elsewhere within the County Governments Act, which Sen. (Prof.) Lonyangapuo seeks to amend. If you look at the role of these administrators as captured in the County Governments Act's clauses 50, 51 and 52, this is where the problem lies. You have people who are idle but not by choice. It is because of the manner in which their roles have been defined in the County Governments Act. For example, one of the functions of a sub-county administrator is development of policies and plans. The question is: Which policy or plan and where does he take it to? Is it to the county assembly, senator, governor or county secretary and how often? If you look at the development plans and budgets which have just been approved by the respective county assemblies, you will realise that there is nowhere where sub-county or ward administrator is mentioned. Not even when it comes to issues of public participation. During the budget making process, these administrators are flower boys and girls. Their jobs are to make sure that there is a public address system, a tent, flowers and sodas in those venues. There is really nothing significant that

they do that matches the qualifications, pay and nature of persons appointed to these roles. We need to revisit the roles of administrators.

Another role says service delivery. What service does a sub-county administrator deliver? Further, it says that the sub-county administrator is responsible for the County Public Service Board (CPSB) at that level. Have we devolved the CPSB? Is there anybody that they supervise? If it is a sub-county administrator, maybe he or she only supervises the ward administrator. If it is the ward administrator, maybe he or she only supervises the village administrator. However, there is no staff compliment. We have given people jobs but not resources. We have given them very ambiguous roles. This is the same way that the Senate has been treated. You have a powerful body that is anchored in the Constitution but its functions and roles are stated so broadly yet there is no attendant, resource or structure. It is not seen as an institution. We are looking at these people as individuals rather than institutions.

Mr. Temporary Speaker, Sir, in my view, we should pay some attention to the roles of administrators and make their roles very specific. They need to be given very clear deliverables and defined outcomes of their actions in such a way that they are not used by governors as youth wingers. Some of these people are the ones who carry the red carpet and do protocol duties at the county level. Protocol simply means any other job meant to pamper the king. We are reducing people whom we say should be degree and diploma holders to people who are *court justus* because their roles are not specific or tightly defined.

Article 176 (2) of the Constitution talks about decentralization of services. We tend to forget that the Constitution is clear that county governments shall ensure that they decentralize their functions and services to the extent that is efficient and practicable. To many people's understanding, Article 176 (2) can be achieved through the sub-county and ward administrators. The sub-county administrator can be the head of decentralized functions at the sub-county level and not just an office where people sign visitors' book. There should be decentralized functions where a broad range of services and functions of a county government can be obtained and accessed at the sub-county level. The ward administrator shall be that one-stop where all functions of a county can be accessed.

When we look at Article 176 (2) of the Constitution, we need to think about the sub-county and ward administrators and see them as agents and instruments of achieving this. A single governor will not bring services to everybody. He will be sitting at the county headquarters. He should empower and entrust his administrators to be the agents through which decentralization of functions can be achieved.

Mr. Temporary Speaker, Sir, I wish to bring to the attention of Members and the Mover of this Bill on the issue of the relationship between the county secretaries and the County Public Service Boards (CPSBs). The County Governments Act is an important Act for those of us whose constitutional duty is to defend and protect devolution. In the County Governments Act, there is a position called County Secretary. The Act states that the County Public Service shall be headed by the County Secretary. The same Act goes ahead to establish the CPSB and gives it powers. If you read the powers, you will realise that it is more or less the *de facto* head, manager, operator and maintainer of a County Public Service.

In counties where county secretaries have been seconded from the national Government and are individuals with significant experience in Government bureaucracy,

they have made life difficult for the CPSBs. Sometimes they contend that since the Act says that they are the head of the County Public Service, it means that the CPSBs will report to and fall under them. The drafters of this Act had something in mind when they said that the CPSBs, in terms of removal, shall be subject to Article 251 of the Constitution. It meant that they felt that the CPSBs should enjoy some level of independence that has only been granted to constitutional commissions in the Constitution under Article 251. It needs to be clear that whereas we have the county secretaries, the responsibility of managing, staffing, disciplining staff, establishing offices and transferring staff falls within the ambit of the CPSBs, and not the governor or the county secretary. These administrators must be made to feel that they are being supervised and administered by the board, but not individuals in the governor's office.

Mr. Temporary Speaker, Sir, it is also important that we consider the National Government Coordination Act. The Constitution is clear that within five years from the date of enactment of this Constitution---

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Sang): What is it, Sen. (Prof.) Lonyangapuo?

(Interruption of Debate on Bill)

PROCEDURAL MOTION

ELECTION OF SEN. (PROF.) LESAN TO PRESIDE OVER THE HOUSE
PURSUANT TO STANDING ORDER NO.18 AND
ARTICLE 107(1) (C) OF THE CONSTITUTION

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I beg to move that pursuant to Article 107 (1) (c) and Standing Order 18, the Senate elects Sen. (Prof.) Wilfred Lesan to preside over the proceedings of the Senate for the remainder of the day.

I request Sen. Wetangula to second.

The Senate Minority Leader (Sen. Wetangula): I hope the Chair is not running away from the House. I second.

The Temporary Speaker (Sen. Sang): The Senate Minority Leader, you are out of order. The Chair cannot possibly want to run away.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker(Sen. Sang): You may proceed, Sen. M. Kajwang. You had a balance of two-and-a-half minutes. The Chair may decide to add you a few more but for now proceed.

[The Temporary Speaker (Sen. Sang left Chair)]

[The Temporary Speaker (Sen. (Prof.) Lesan took the Chair)]

Sen. M. Kajwang: Temporary Speaker, Sir, I hope the Temporary Speaker assuming the Chair will not go down as the Chair who presided over the death of the ward and sub-county administrators. I hope he will add me one extra minute just to wrap up my argument.

Mr. Temporary Speaker, Sir, this Senate needs to go back and look at the National Government Coordination Act that brings back the provincial administration. The Constitution is clear and the drafters of the Constitution intended that what we are calling the provincial administration ought to have been restructured to be in line with devolved governments.

The roles played by agents of the national Government at the grassroots level, their roles and functions can be played by employees of county governments. The Constitution allows a situation where functions can be transferred from one level of government to the other. If chiefs and their assistants in the villages fighting alcohol, whereas the alcohol control is devolved, then there is no need to have two structures that are parallel. We as the Senate must go back to the Constitution and see to it that the intention of the drafters has been realised. The National Government Coordination Act has structures that are parallel to what we have under devolution. Therefore it is not making the lives of these village, ward and county administrators easy.

Mr. Temporary Speaker, Sir, I do not support the proposal to tie the terms of these administrators to the general election. These officers were offered permanent jobs and if they misbehave and persist operating like youth wingers and political operatives yet they are civil servants, they should not engage in partisan politics. The county---

(Sen. M. Kajwang spoke off the microphone)

Mr. Temporary Speaker, Sir, kindly grant me a minute so that I wrap it up.

The Temporary Speaker(Sen. (Prof.) Lesan): You are granted.

Sen. M. Kajwang: Thank you, Mr. Temporary Speaker, Sir. If they are involved in indiscipline and political activities among other activities that are inconsistent with their job description, the County Public Service Board should have the power to discipline them.

In conclusion, may I inform the governors and those who were at Bomas of Kenya saying that the Senate is the enemy of devolution, that through their actions and utterances, they are the ones who are making devolution stink. They should have had confidence that this Senate has got the right mental frame, interest of the nation and that when a Bill is before this House, we are not going to close our eyes and vote. The voting machines are not there today as the Chair can see. Today, we have the debating machines. This House is competent and it defends devolution. It was in bad taste for a section of governors to go to Bomas and gang up against Senators. They must not forget that in the Constitution, the defender and protector of devolution is the Senate. This House has brains and the nation has confidence that we will make the right decision.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, this Bill is one that my good neighbour, Sen.(Prof.) Lonyangapuo, has extensively talked to me about right from the time the ideas were evolving in his head. I am sure that he has not talked to me alone, but to other people as well.

Devolution is a great constitutional gift to the people of Kenya. In fact, 70 per cent of the 'Yes' votes for the new Constitution was because of devolution. Kenyans were sick and tired of the corrupt centrist system. Not that the system has collapsed, but it is creeping back with even greater force. However, Kenyans wanted to devolve resources, authority and politics so that we can have people in the countryside doing exactly the same things if not better than we do in Nairobi. The devolution dream was stolen and ruined after the Bomas of Kenya talks.

At the Bomas of Kenya, where devolution was born, there was a very good agreement that the country was going to have 16 regions which were not then called counties. Those regions are sufficiently large in terms of physical size, population, economic capability and could stand on their own. At that time, we agreed at the Bomas of Kenya that we were going to have Central Province as was then split into two, Rift Valley Province into three, Western Province into two, Nyanza Province into two, Eastern Province into three, North Eastern Province into two, Nairobi as an extra territorial region while the good people of the Coast Province opted to remain one.

Mr. Temporary Speaker, Sir, you can imagine the size and the economic capacity of Coast region together; Lamu, Kilifi, Taita Taveta, Mombasa and Kwale. That is very viable. When you go Rift Valley, you will find small counties like Bomet. That is without any prejudice to you, Chair, it is physically small. When you also go to Eastern, you will also find a small county like Tharaka-Nithi with only two constituencies. Vihiga County in my region is also very small. If we had the economics of scale to devolve economics, requires a serious unit like the Majimbo units at Independence where the country was divided in seven regions plus Nairobi. That way, you would find a serious regional parliament in Kakamega, Nakuru, Kitale and others in Meru, Machakos, Mombasa and Nyeri.

We probably would have grown much better. However, opportunists jumped in and completely destroyed the dream until we reached an unreasonable compromise. Everybody wanted their region to be a county. Some constituencies wanted to be counties. Any district as at 1994 was going to be a threshold and became a county. That is why you find Bomet is a county equal to Nakuru or Tharaka-Nithi is a county equal to Meru. These were districts that were carved out by retired President *Mzee* Moi to reward political cronies. They were never given on any rational thinking. He just sat and said: "The late hon. Kones is a good man, give him a district, so-and-so is a good man, give him a district, the late hon. Mudavadi is a good man, give him his Vihiga." These are the kind of things that happened. We ended up where we are. The elephant in the room is: how do we make devolution in its current structure work?

Mr. Temporary Speaker, Sir, we then arrived a new enemy; the Office of the President and now the current regime. Article 17 of the Transitional Clauses of the Constitution states:-

"Within five years after the effective date, the national Government shall restructure the system of administration commonly known as the provincial administration to accord with and respect the system of devolved government established under this Constitution."

People then sat in Harambee House and thought that to transition provincial administration to align with devolution was equal to giving it a new name; just repaint it from provincial administration. A Provincial Commissioner (PC) becomes a Regional

Coordinator, a District Commissioner becomes a County Commissioner and they just run the same thing. Sometimes when I listen to a lady called Ms. Sara Serem talking about the wage bill – there is a community in Western region called the Batachoni, they say when you hear such a thing, *Amarwi kakhaba amatakho wekhalira*. It is not obscene, it is serious intelligence. Directly translated it means I wish ears were buttocks so that I sit on them, so that I do not hear this nonsense. It makes a lot of sense because people say that when they are completely disgusted with what is being said; that, I would rather not hear this at all.

Mr. Temporary Speaker, Sir, the national Government rechristened the provincial administration and set up a parallel structure. Devolution has another structure. In the counties, there is a miserable man called the county commissioner. He has no budget. He is busy every morning at the governor's office begging for fuel. All he does is to sit in counties peddling *fitina* from morning to evening. They do nothing.

So, you get a governor who is checkmated by a county commissioner. You have a sub-county administrator checkmated by a sub-county commissioner. You have a ward administrator checkmated by the assistant county commissioner. Then you go further down where you have a village administrator checkmated by a chief and an assistant chief. All these people are earning public salaries, doing the same thing and Sarah Serem is busy telling us that we must control the public wage bill. How do you control the public wage bill when you are employing people to sit in offices, read newspapers and peddle *fitina*?

In the morning, Sen. (Prof.) Lesan's graph is very high, in the afternoon it is very low. The next day, Sen. (Prof.) Lonyangapuo is un-electable, while nobody can beat him the next day. That is all they do the whole day. *Fitina, fitina, fitina* and nothing else.

Mr. Temporary Speaker Sir, we got it all wrong. *Waswahili wanasema: Siku njema huonekana asubuhi*. We started devolution on the wrong note. We sent in governors and gave them *carte blanche*; an open cheque. When Sen. (Prof.) Lonyangapuo talked to me about this Bill, I was very sympathetic to the idea of those administrators going home with those who brought them in. This is because when you go to some counties, some governors have literally employed their entire clan; their cousins and cronies as administrators. You cannot get a job if you did not belong to his party when he was campaigning and if you do not sing his song every day.

In my county, my governor has even employed people in every village and pays them a salary to ring radio stations everyday to say that he is a good man. Look at those abuses, how will people like those reform to the next governor? What is their job description?

I have been listening to what people are saying. Some, out there, are very fine administrators. Not everyone is rotten. Some very fine administrators have been calling and saying: "Senate Minority Leader, we are administrators who were competitively appointed, why do you want to send us home yet we do not owe allegiance to the governor, but to the people of our county?" There are many like that.

There are also those rotten ones whose duty is to praise the governor. There is one in my county whose only duty is, every time the governor is going to a funeral, he arrives two hours early to sit on a special chair that costs Kshs3million, and waits for the governor in case anyone else sits on it. That is his job. When you have such abuses, you start wondering whether this system should not be looked at.

Mr. Temporary Speaker, Sir, I want to tell my brother that this is a fantastic Bill, take a little time and see how to repackage, recast, reshape, reform it and make it to serve the future. I like the idea of standardization in terms of qualifications. Today, you cannot be recruited as an assistant county commissioner unless you are a graduate. I do not, therefore, understand how ward administrators are picked from anywhere and everywhere.

The sponsor of the Bill whispered to me that he wants to have ward administrators with a diploma. My thinking is that the sub-county administrators and the ward administrators must be graduates with relevant skills to administrate. You remember we had a very good Bill here about bringing a board to look at what we are doing in the counties. It was killed by governors running to court. If we want to have a team that will eventually be depoliticized, I would have loved a situation where some even go through revetting to see if they fit the bill. Those whose duty is to call radio stations and praise the governor, calling him *baba ya kaunti* from morning to evening, do not deserve to be in those offices.

Those who are doing a good job should be left to do a good job. I do not know how Sen. (Prof.) Lonyangapuo, the distinguished Senator for West Pokot, can find this Bill to give meaning and effect to Section 17 of the transitional clauses of the Constitution. In trying to make the administrators work, how do they relate, co-exist or replace the piles and piles of provincial administrators?

Today, with a ward administrator, what is the role of the District Officer (DO)? Today, with a sub-county administrator, what is the role of the District Commissioner (DC)? Today, with the governor, what is the role of the county commissioner? Today, there is a man sitting in Garissa, Nakuru or Kakamega calling himself a regional coordinator. What does he do because each county is semi-autonomous? There is no county in the former Nyanza Province that reports to Kisumu. Homa Bay is a county on its own. So, what does the man called the regional coordinator or regional commissioner sitting in Kisumu do? This is probably what my brother, Sen. (Prof.) Lonyangapuo, should have had the courage to deal with. Let them reject it and we will deal with them at elections. We should get hold of the bull by the horns like Sen. (Dr.) Khalwale and ride it so that we find meaning of realignment and what the drafters of this Constitution intended. If this Constitution intended a provincial administrator to be called a regional coordinator, they would have said so. If we intended a DC to be called a sub-county administrator, we would have said so. But now when you go to one county, every constituency is a district. So, you have many piles and piles of administrators. Just take time and look at the budget, there is no money provided for those fellows. So, they are now leaving on corrupt practices and they have to conspire with the police to mount illegal roadblocks every day to collect money and share with them.

Mr. Temporary Speaker, Sir, we saw a case in Mandera where a person is given a fuel voucher for 10 litres and he has to fuel in Garissa from Mandera. You need more than 200 litres to travel from Mandera to Garissa but the Government only gives a voucher for 10 litres to go to Garissa, fuel the car and go back to Mandera to work. That is how unreasonable the system has become and we are busy crying that the public wage bill is heavy and that Members of Parliament (MPs) are overpaid. Those are the people who are guzzling public funds for doing nothing.

Mr. Temporary Speaker, Sir, like I have said repeatedly, every new Constitution must be subjected to an audit. Every new Constitution must be looked at as what you doctors call “its efficacy”. We need to know what works and what does not. We need to ask ourselves whether devolution is working the way we intended it to be. Did we devolve to have governors buying seats costing Kshs3 million to sit on at funerals? We have just been hearing a petition where a county government bought a pipette worth Kshs25 that is used in Artificial Insemination (AI) at Kshs800. A packet of those pipettes that cost Kshs800 were bought at Kshs75,000. Obviously, this is just looting and theft of public funds.

Mr. Temporary Speaker, Sir, in trying to realign this administration, we need to seriously start looking at the great dream of the people of Kenya which is devolution and how we can make it work. You can see the greed by the national Government where it is even attempting to take away hospitals from counties instead of asking how they can make medical services work.

The Constitution says that the national Government is responsible for referral hospitals. Why can they not build more referral hospitals countrywide? I told you that in the sunset years of Hon. Kibaki as the President, we passed in Cabinet the building of 23 referral facilities in the country scattered all over to serve the people. The national Government would then have an opportunity to move doctors from Mombasa to Pokot, from Pokot to Nyeri, from Nyeri to Kisumu and so on. They are just busy focusing singularly on only one thing; in each undertaking, how much money is there for corruption. That is all they are doing, nothing else.

Mr. Temporary Speaker, Sir, in the family, when your son sees you dressed badly every day, he thinks that is the manner of dressing. So, he also starts dressing like you. When your son sees you eating greedily on the dinner table, he thinks that is how people live. So, he starts also doing the same. Those governors are seeing the greed being exhibited at the national level and they think that is how public servants should live. If in Nairobi in one stroke on Standard Gauge Railway, they steal Kshs100 billion, if on Eurobond, they steal Kshs100 billion, then what will stop the governor? How do you have the moral capacity in Nairobi to tell governors that corruption is wrong? That is why they keep on going round and round.

Mr. Temporary Speaker, Sir, the long and short of it is; all the clauses that say these administrators go home with their governors, we need to rethink. Where you need to have qualifications, I suggest that the sub-county administrators who are now the District Commissioners (DCs) must have degrees and some experience in administration. Those who are going to be District Officers (DOs) must have degrees and some relevance to administration. Those who are going to be the chiefs, they should have diplomas or post-secondary qualifications. Some of our chiefs are former teachers, some are former policemen and some are former clerks in DC’s offices. They went to Form Four but did something to enhance their capacity to administer public activities.

Mr. Temporary Speaker, Sir, what is more important is to rationalize as well. I have been interacting with some and I have realised that the salaries of some of those administrators, say in Pokot, is not the same as in Homa Bay and in Homa Bay may not be the same as in Nairobi. Equally important is that the aggregate in the county should also have some gender balance. You will find that in a whole county, where you have nine sub-county administrators, you find only one woman. This does not meet the

threshold in the Constitution. When you go to the next level, the aggregate in the county must also have the constitutional requirement on gender balance apart from qualifications.

Mr. Temporary Speaker, Sir, it should be harmonized countrywide so that a ward administrator in Lamu County is not different from a ward administrator in Turkana, Pokot, Bungoma, Homa Bay, Kisumu or Nairobi counties, and of course, subject to allowances given the exigencies of the conditions under which they work. Obviously, somebody working in Turkana and in Mandera ought to have hardship allowance. Hardship allowance used to be given to people who have been uprooted from far-flung areas to others. If you live in Mandera and you are employed to work in Mandera, I do not see why you should be given hardship allowance because that is where you live. Therefore, there is no hardship being caused to you because you live where you were born, where you have grown and where you will end up ending your life and resting forever.

Mr. Temporary Speaker, Sir, I want to encourage the good professor to re-look at this Bill so that we can make administration in the counties better. This Bill is important and I want Sen. (Prof.) Lonyangapuo to see how he can give sunset to some of the duplicity of administrators that we have. I honestly would want to know what a DC does and what a sub-county administrator does. If they are doing the same thing, then one must give way to the other. Under the Constitution, the one who must give way is the one from Nairobi because that is why we have devolution.

I beg to support to that extent.

The Temporary Speaker (Sen. (Prof.) Lesan): There being no other interest to contribute, I now ask the Mover to reply.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, Sen. Wamatangi was held up. He kept communicating that he wanted to contribute and he arrives when I am on the Floor. So, I can give him some few minutes.

The Senate Minority Leader (Sen. Wetangula): Rescind the decision and give him an opportunity.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, it is okay.

I thank colleagues for ably contributing to this Bill. It has been mentioned that this Bill is not intended to mess up the anchor of devolution but to strengthen it more than it is and correct what seems to have not gone right. Sen. Wetangula has even talked about the realignment of the former provincial administration by the national Government. We are only dealing with the amendment to the County Governments Act here that may need to be re-looked at seriously as well as with the good intention of making our laws better for the sake of this nation.

The essence of this amendment as Members have rightly put it, is to make the office very attractive and have the necessary qualifications for the person sitting at that level. When we talk of sub-county administrator, we are talking of an equivalent of a National Assembly Member of Parliament. What are the qualifications of that person at that level? It is because we are dealing with the same area of service. What are the qualifications of a District Commissioner (DC) and so on? What is coming out here is that ---

The Senate Minority Leader (Sen. Wetangula): You do not have to finish. You can carry on tomorrow. Do not rush it.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, can I continue?

The Senate Minority Leader (Sen. Wetangula): If you want justice for your Bill, you can carry on tomorrow. When it gets to 6.30 p.m. you will be time barred.

The Temporary Speaker (Sen. (Prof.) Lesan): Okay. The Mover will still have 10 minutes to continue replying.

ADJOURNMENT

The Temporary Speaker (Sen. (Prof.) Lesan): It is now 6.30 p.m. it is time to interrupt the business of the Senate. The Senate stands adjourned until tomorrow, Wednesday, 20th July, 2016 at 2.30 p.m.

The Senate rose at 6.30 p.m.