

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Thursday, 1st October 2020

The House met at 10.00 a.m.

*[The Temporary Deputy Speaker
(Hon. Christopher Omulele) in the Chair]*

PRAYERS

QUORUM

The Temporary Deputy Speaker (Hon. Christopher Omulele): I direct that the Quorum Bell be rung for ten minutes.

(The Quorum Bell was rung)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Order, Hon. Members! Hon. Members we have the requisite numbers. We can now transact business. Hon. Members, calm down. Calm down so that we transact business.

MESSAGE

PASSAGE OF THE COUNTY ALLOCATION BILL

The Temporary Deputy Speaker (Hon. Christopher Omulele): Order, Hon. Members!

(Hon. Mbarire and Hon. Nyamai walked along the isle)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, probably let me allow the lady Members to take their seats. Hon. Members, Message No.8 of 2020 is from the Senate. It is about Passage of the County Allocation Bill (Senate Bill No.7) of 2020.

Hon. Members, pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received a Message from the Senate regarding its passage of the County Allocation of Revenue Bill (Senate Bill No.7 of 2020). The Message reads in part: "The Senate considered and passed the said Bill on Tuesday, 29th September, 2020 with amendments."

The County Allocation of Revenue Bill is an annual legislation introduced in accordance with the provisions of Article 218 of the Constitution with the objective of equitably allocating the share of national revenue among the 47 counties. Given the urgency of the passage of this Bill and

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in furtherance to the provisions of Standing Order 124(2)(a), the Budget and Appropriations Committee is directed to expedite consideration of the Bill to enable the House to consider the Bill in all stages during the sitting of Tuesday, 6th October, 2020, and unlock the budget processes in the 47 counties.

May I also take this opportunity to remind the House of the provisions of Article 111(2) of the Constitution which provides the voting thresholds for amending a special Bill:

"The National Assembly may amend or veto a special Bill that has been passed by the Senate only by a resolution supported by at least two-thirds of the members of the National Assembly."

The County Allocation of Revenue Bill is a special Bill concerning county governments in terms of Article 110(2)(a)(ii) of the Constitution. This implies that any amendment proposed in this House on the Bill shall require to be supported by at least two-thirds of all the Members of this House for it to pass. The House is accordingly guided.

I thank you.

ORDINARY QUESTIONS

Question No.181/2020

LAND ADJUDICATION MALPRACTICES

Hon. Robert Mbui (Kathiani, WDM-K): Hon. Temporary Deputy Speaker, I beg to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

- (i) What measures has the Ministry put in place to curb the rampant land adjudication malpractices across the country?
- (ii) Could the Cabinet Secretary explain why Mr. Richard Mwanzia Mwenga of Personal Identification number of 1994030631 and ID number 11571281 was dismissed as a land adjudication officer and whether due process was followed in dismissing him?
- (iii) Could the Cabinet Secretary provide details on the policy measures for remunerating land adjudication officers?

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. That question will be responded to before the Departmental Committee on Lands and Natural Resources. The second Question is by Hon. Qalicha Gufu, the Member for Moyale.

Question No.194/2020

ADDRESSING INSECURITY IN MOYALE CONSTITUENCY

Hon. Qalicha Wario (Moyale, JP): Hon. Temporary Deputy Speaker, I beg to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- (i) Could the Cabinet Secretary state whether any investigations were carried out into the recent attack on Funnah Idda in Sololo Sub-County, Moyale Constituency by unknown assailants?

- (ii) What measures have been put in place by the Ministry to curb the increased cases of insecurity in Funnah Idda, Funan Qumbi, Elbert and El Demtu villages and in particular from external attackers?
- (iii) Could the Cabinet Secretary state why the administrative units that were approved and gazetted on 21st June 2017 are yet to be effected in the country and in particular in Moyale Constituency.
- (iv) What action is the Ministry taking to ensure the units are functional to bring services closer to the people?

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. That question will be replied to before the Departmental Committee on Administration and National Security. The next Question is by Hon. Edith Nyenze, the Member for Kitui West.

Question No.212/2020

FACILITATION AND SECURITY OF VILLAGE ELDERS

Hon. (Ms.) Edith Nyenze (Kitui West, WDM-K): Hon. Temporary Deputy Speaker, I beg to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- (i) What facilitation - if any - has the Ministry provided to village elders for their effective provision of vital services to communities considering that they use personal resources to carry out various administrative duties?
- (ii) What measures are in place to ensure their security considering their role in community policing?

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. That Question will be replied to before the Departmental Committee on Administration and National Security. The next Question is by Hon. Gichimu Githinji, the member for Gichugu.

Question No.217/2020

DETAILS OF SOURCE, DESIGN, NETWORK AND VOLUMES
OF MEGA KUTUS WATER SUPPLY PROJECT

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Speaker, I beg to ask the Cabinet Secretary for Water, Sanitation, and Irrigation the following Question:

- (i) Could the Cabinet Secretary provide details regarding source, design, network, and volumes of the Mega Kutus Water Supply Project being undertaken by Tana Water Services Board in Kirinyaga county?
- (ii) Are the volumes of water in the said project enough to cover other areas other than the ones covered in the current design for equitable sharing of the said natural resource as envisioned in Article 69(1) of the Constitution?
- (iii) Could the Ministry consider designing another network for supply of water under the said project to Gichugu residents in the neighbouring Kabare and Baragwe wards?

The Temporary Deputy Speaker (Hon. Christopher Omulele): That Question will be responded to before the Departmental Committee on Environment and Natural Resources. The next Question is by Hon. Kipsengeret Koros, the Member for Sigowet/Soin.

Question No.222/2020

CRITERIA USED TO ALLOCATE ROADS MAINTENANCE
LEVY FUND TO COUNTIES

Hon. Kipsengeret Koros (Sigowet/Soin, Independent): Hon. Temporary Deputy Speaker, I would like to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works the following Question:

- (i) Could the Cabinet Secretary state the criteria used to allocate the Roads Maintenance Levy Fund to counties?
- (ii) Could the Cabinet Secretary explain whether the same criteria apply to the re-allocation of the County Roads Maintenance Levy Fund among the various constituencies in the same county?
- (iii) How much money was allocated from the Fund to Sigowet/Soin Constituency for the last five years and how much was disbursed?

I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very good. That Question will be replied to before the Departmental Committee on Transport, Public Works and Housing. The Next Question is by Hon. David Gikaria, the Member for Nakuru Town East.

Question No.227/2020

RISKS OF BLACK RAIN IN LANET

Hon. David Gikaria (Nakuru Town East, JP): Hon. Temporary Deputy Speaker, I wish to ask the Cabinet Secretary for Environment and Forestry the following Question:

- (i) Could the Cabinet Secretary explain the cause of the recent black rain that was experienced at Kabatini in Lanet, Umoja Ward in Nakuru County?
- (ii) Could the Cabinet Secretary explain the health risks, if any, that the black rain poses to the ecosystem?
- (iii) What steps has the Ministry undertaken to caution the public from the risks associated with black rain, and is there any compensation mechanisms to the affected residents?

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): That Question will be responded to before the Departmental Committee on Environment and Natural Resources.

The next Question is by Hon. Titus Khamala, the Member for Lurambi.

Question No.229/2020

MEASURES TO RESTORE ROAD C41

Hon. Titus Khamala (Lurambi, ANC): Hon. Temporary Deputy Speaker, I wish to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works the following Question:

- (i) Is the Cabinet Secretary aware that the road classified as C41 connecting Lurambi and Navakholo constituencies was swept away by heavy rains and landslides thus paralysing transport and communication between the two constituencies?
- (ii) What steps is the Cabinet Secretary taking to expedite the construction of the said road, and in particular the three-kilometre stretch from Lurambi to Shikoti and Ebumachembe which is in deplorable state?
- (iii) When is the construction of the road expected to commence and expected to be completed considering that the contractor left the site over one year ago?

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Well done. That Question will be responded to before the Departmental Committee on Transport, Public Works and Housing. The next Question is by Hon. John Paul Mwirigi, the Member for Igembe South.

Question No.232/2020

OWNERSHIP STATUS OF LAND IN MAUA TOWNSHIP

Hon. John Paul Mwirigi (Igembe South, Independent): Hon. Temporary Deputy Speaker, I wish to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

- (i) Could the Cabinet Secretary provide the status of ownership and the number of all parcels of land set aside for public use in Maua Township in Igembe South Constituency?
- (ii) What measures has the Ministry put in place to ensure that all public land is safeguarded against irregular allocation and grabbing by individuals for future developments?

I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): That Question will be responded to before the Departmental Committee on Lands.

The next Question is by Hon. Timothy Wanyonyi, the Member for Westlands Constituency.

Question No.234/2020

CAUSES OF POWER OUTAGES IN GIGIRI AND RUNDA

Hon. Tim Wanyonyi (Westlands, ODM): Hon. Temporary Deputy Speaker, I wish to ask the Cabinet Secretary for Energy the following Question:

- (i) Could the Cabinet Secretary explain what causes power outages in Gigiri, Runda and the wider Karura environs every evening at around six o'clock leading to damage of electronic appliances for both commercial and household use?
- (ii) What measures are in place to compensate the affected households with respect to damaged appliances?
- (iii) Could the Cabinet Secretary further explain why Kenya Power levies pre-paid electricity consumers on the basis of the number of units purchased over a three-month period as opposed to the total units consumed during the same period contrary to regulations?
- (iv) Could the Cabinet Secretary explain why the Energy and Petroleum Regulatory Authority has failed to address the concerns of consumers regarding billing and more specifically the consumer of Kenya Power pre-paid account number 01450540107?
- (v) Could the Cabinet Secretary provide a list of electricity customers who have been reimbursed by Kenya Power upon the intervention of the Energy and Petroleum Regulatory Authority for wrong billing during the 2019/2020 Financial Year?

I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. Wanyonyi is my Member of Parliament, and that is a problem that that area has. That good Question will be replied to before the Departmental Committee on Energy.

We shall deal with Statements.

REQUEST FOR STATEMENT

INTEGRITY OF IFMIS

Hon. Godfrey Osotsi (Nominated, ANC): Thank you Hon. Temporary Deputy Speaker.

Pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Finance and National Planning regarding the Integrated Financial Management Information System (IFMIS) as contained in the Report of the Auditor-General on the system's effectiveness for the period July 2010 to June 2014 as published in November 2016.

The IFMIS is a very critical system meant to enhance efficiency in planning, budgeting, procurement, expenditure and reporting. It is also meant to be an end-to-end platform to enhance accountability in Government expenditure and related agencies. The Report of the Auditor-General on IFMIS' effectiveness for the period July 2010 to June 2014 made fundamental observations and recommendations touching on, among others, the system's security management administration, stability, performance, integrity, reliability, business continuity, data recovery and network infrastructure.

Hon. Temporary Deputy Speaker, there have been allegations that in May 2019, the IFMIS erroneously misallocated Kshs10 billion to county governments, which was reflected as allocated, disbursed and spent with budget-lines completely outside the functions of the counties. The IFMIS has also been severally mentioned in scandals, including the National Youth Service (NYS) scandal.

In addition, there has been numerous allegations that the system has been hacked several times due to among other concerns, weak and inadequate internal control, lack of functioning audit,

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poor management of users' rights, weak integration with other systems, weaknesses in data inscription, access by unauthorised users, negligence regarding the basic system security procedures, and non-existent data safeguards occasioning the loss of public funds.

It is against this background that I seek a Statement from the Chairperson Departmental Committee on Finance and Planning on the following:

- (i) What efforts have been made with regard to the numerous allegations and concerns regarding the system which has occasioned massive loss of public funds?
- (ii) Explain why the system has not been customised or upgraded in line with two levels of government as was recommended by the Report of the Auditor-General under reference?
- (iii) What is the organisation structure of the system management and administration indicating the staffing and corresponding qualification and work experience of staff?
- (iv) To provide detailed information on the existing support contracts, software licensing, vendor payment performance, actual benefits and value for money from these vendors?
- (v) Explain when the system will be aligned to the requirements of the Computer Misuse and Cybercrime Act particularly in regards to the critical information infrastructure and data?

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Osotsi is a man of systems. On this one, I will allow the first bite to it by Hon. Kisang, the Member for Marakwet West, who is also the Chair of the Departmental Committee on Communication, Information and Innovation.

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Temporary Deputy Speaker. This is a very good Statement by Hon. Osotsi who is a Member of my Committee. The IFMIS is a system which has been in place since 2001 and overtime, it has been upgraded.

According to reports from the Auditor-General, there are issues we need to inquire. In fact, I expected this to be an inquiry and not a Statement. I do not believe the Statement from the relevant Ministry will be enough. I also propose as the Departmental Committee on Finance and National Planning calls the Cabinet Secretary for the National Treasury to report on this, they also enjoin the Ministry of Information, Communication and Technology (ICT) and the Departmental Committee on Communication, Information and Innovation. Since, it is the expert Committee on systems in this House.

Secondly, the Ministry of ICT implements ICT solutions in the country on shared services. The IFMIS is a critical system, as other systems in the ICT sector, with critical infrastructure like fibre optic. Therefore, apart from seeking for a Statement, we need to inquire. Over time, we have been told several resources or funds have been lost through IFMIS.

Hon. Osotsi has mentioned about the National Youth Service scandals in the past and many others. We need to look into this and assist by giving recommendations on how to ensure the system is security proof and water tight, so that people with malicious intentions do not hack into the system and we lose resources. We should look into this and give proposals on how to improve it.

So, let us enjoin the Departmental Committee on Communication, Information and Innovation to assist the Departmental Committee on Finance and National Planning because they

are not experts. Out of the 19 Members in the Departmental Committee on Communication, Information and Innovation, about nine are experts in the ICT sector.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kisang, what you are saying is very important for the nation. We have lost money to the magnitude Hon. Osotsi has mentioned in his Statement in tens of billions from 2010 to 2014, yet this is a system which this country has invested billions in. I think this is a very serious matter.

As the Chair of the Departmental Committee on Communication, Information and Innovation, this is an inquiry that is squarely on your area, lap and court. Probably you should take it up. According to the manner in which Hon. Osotsi has sought the Statement, probably the Cabinet Secretary will just deliver it without too many questions being put to him.

So, this is a challenge to you and your Committee to probably look into it, so that we can have a proper inquiry and audit of the whole system and have a comprehensive report as you seem to seek.

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Temporary Deputy Speaker. We will take it up.

The Temporary Deputy Speaker (Hon. Christopher Omulele): I will allow Hon. Wakhungu Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimilili, FORD-K): Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Wamalwa, just before you go on, Hon. Members, I wish to remind you that we are still in the danger zone as far as this pandemic is concerned. Please, let us just observe the rules. It is important for us, as leaders, to ensure we are safe, take care of ourselves and others also. Hon. Wamalwa, proceed.

Hon. (Dr.) Chris Wamalwa (Kimilili, FORD-K): Thank you, Hon. Temporary Deputy Speaker. As you can see, I have put on my mask well. This is a very serious Statement regarding matters financial. The IFMIS means Integrated Financial Management Information System. Integration means connectivity and many times, this system has been abused.

I agree with Hon. Osotsi on the Report given by the Auditor-General. One of the issues that is supposed to be addressed is customising it with the two levels of Government and the three Arms of Government. Many times the National Treasury has abused IFMIS. It is like a tap that is opened and closed. Many times, there are delays in paying salaries and we are told IFMIS has not been opened.

So, it seems there is somebody somewhere in the National Treasury who is using IFMIS like a tap of water. He opens and closes. We have seen the Judiciary complaining that at times they open the IFMIS tap for a short period and close it before they finish their procurement process. When you want to spend money, it is closed. In fact, it should go further and not be an inquiry, but a Motion. The IFMIS is supposed to bring efficiency and effectiveness, but instead, it is being abused. At times, even Parliament cannot access its money.

Parliament allocates money because it is the budget-making House, but the National Treasury will not even give us what we have been allocated. This is something that should be harmonised. There must be customisation to the two levels of Government and the three Arms of Government. The NYS scandals are to do with IFMIS and we have also heard about the misallocations. The questions we are asking are: Who accesses IFMIS? Are there unauthorised people who access it and who are the people abusing it? These are the questions Kenyans are asking. It is highest time the Departmental Committee on Communication, Information and

Innovation, the Ministry and the National Treasury moved with speed so that issues of integrity, stability, effectiveness and efficiency can be assured as far as this system is concerned.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Keynan, do you want to weigh in on this?

Hon. Adan Keynan (Eldas, JP): Hon. Temporary Deputy Speaker, I just wanted to comment on the issue that you have just read. We still have the COVID-19 crisis. I just want to plead with Members because we saw a trend last week and this week where Members come with masks and when they are speaking, they remove them. Let us not endanger our health. I plead with the Members. The Temporary Deputy Speaker and the other Members of the Speaker's Panel, let us stick to the rules because this is very important for this institution.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Well done, Hon. Keynan. That cannot be said enough times. Hon. Members, we are not out of the woods. Leader of the Minority Party, you have an opportunity.

Hon. John Mbadī (Suba South, ODM): Thank you, Hon. Temporary Deputy Speaker. Hon. Keynan has spoken for me. Actually, Hon. Chris was seriously endangering my life behind me.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Whip of the Majority Party, you are saying the Leader of the Minority Party is out of order.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. The way Hon. Keynan said, it is our duty to take care of ourselves and when you are on the Chair and giving direction and Hon. Masara is seated comfortably without a mask, I feel it is not in order. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Masara, we might take some of these things as jokes, but they might be very expensive jokes. These protocols that we are following are not for fun. They are for the good of yourselves and others. At least protect yourself. Even if you want to be reckless with your life, do not be reckless with the lives of other Members. That is why we insist that you must have a mask when you are in this House. If you feel that the mask is not good enough for you while you are in the House, please, just keep away. You have that choice. Leader of the Minority Party, please proceed

Hon. John Mbadī (Suba South, ODM): In fact, some of them are behaving like Trump. I want to weigh in on the issue of IFMIS. I want to say the following. One, the issue of IFMIS is not new. It has been with us for some time. I remember in the Public Accounts Committee (PAC), we had a lot of discussions with the Treasury on the efficiency and effectiveness of this system. More so if you look at the records from the Treasury, almost every year there are upgrades of the system and they cost a lot of money. It is upwards of billions of shillings. So, one would wonder why we still have a lot of challenges with the system. Those challenges need to be looked into and I think it is timely that the matter is raised for the Committee to consider.

However, I tend to disagree with some of the comments coming from some of my colleagues, especially Hon. Chris Wamalwa. A financial system can never leave people happy. In fact, if you have a financial system that makes people angry, that is a perfect financial system. That is the main reason why we implement financial systems - to make sure that there is efficiency and that money is not wasted. If a system is easily accessible and you can transact so easily and at will without putting everything in order, then that is not a good financial system. What I would urge is for us to check if this system is serving the purpose and not serving the interests of individuals who want to access money easily. For people or any public officer to access money, documentation

must be put in order and there must be money. Sometimes we think there is a pool of money in the Treasury.

The Treasury is collecting money continuously and at times they do not have money. You do not expect the Cabinet Secretary in charge of Treasury to announce to Kenyans that the country is broke and that we do not have money. What they do is to close the system. When they close the system, they regulate the use of money. So, sometimes we may be too harsh on the Treasury for nothing yet they are just... Really some of us who have interacted with our State coffers know that we are struggling as a country. That is a fact. I can speak about it because I am a politician. That is a fact. We do not have enough money in this country to meet all our expenses. So, when you see IFMIS being closed, the message they are sending to you is: "Parliament, wait. We do not have money to give you." Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): We shall have comments from Hon. Rasso Ali, the Member for Saku.

Hon. Ali Rasso (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker. I thank Hon. Osotsi for bringing up the issue of IFMIS, but I tend to disagree with experts like Hon. Mbadi. If really IFMIS was a good thing, then today the financial management in this country would be one of the best. What we hear from the Auditor-General is that some of the pilferage, corruption and theft in this country is taking place through IFMIS. For that reason, I think the Chair of the Departmental Committee on Communication, Information and Innovation should dig deeper into whether Kenya needs IFMIS or we have IFMIS and strengthen it with other systems. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us now hear Hon. ole Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. I congratulate Hon. Osotsi for bringing such a very important issue on the Floor of this House. We should be aware that when Jubilee was elected, it was elected on the platform that it will be a digital Government. This is one of the digitisation that the country is trying to do. You are aware that in any programme, there must be some little teething problems, but it is up to this House to make sure that all those teething problems are solved. That is why Hon. Osotsi came up with this issue, so that we can solve it.

As Hon. Mbadi has said, any financial management system should be with a lot of strictness and should not be something that anybody can access at will. We are struggling post-COVID-19 although we are still within COVID-19. So, the country may not be having enough money at the moment. So, let the Chair of the Departmental Committee on Communication, Information and Innovation make sure that the experts in this House give their input so that we can better this financial management system. However, we cannot, in totality, oppose digitisation of our systems including financial management systems like IFMIS.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Omboko, Member for Emuhaya and the one who was ranked number one in the whole nation and who is my brother and neighbour. I take this opportunity to congratulate you and to tell the House that this man is a performer. He is my neighbour and brother. I am proud of him. Hon. Omboko, proceed.

Hon. Omboko Milemba (Emuhaya, ANC): I am humbled, Hon. Temporary Deputy Speaker. Last week, I was also roasted here, but it is okay. Thank you. The IFMIS is a good system and I think it moved us to the next level, which we appreciate. However, the Statement by Hon. Osotsi is timely and must be appreciated because it is based on a Report that was given by the

Auditor-General. One time I interacted with that Report closely because there were delays in payment of workers' salaries and that is why I got concerned. The issues he raised are issues that need to be attended to. Some of them that were in the Report include, among other things, the fact that unidentified users were able to use the system. That is one thing that should be looked at and fixed. He also raised the issue of multiple identities. I followed it very keenly during that particular time. There are people who have multi-identities within the system. They can come as Omboko and also come as Kimunya. It was in the Report. I think these are issues that need to be looked at.

Then there was the issue of deleting and that you could use it to pay and then you delete. Hon. Osotsi, I hope you interacted with that. This is so that it is not known that you did the payment. This finding is among many others. I think the case study that he has raised of the county government business being seen in the national Government business should have come out very strongly. Indeed, he pronounced himself on it. So, this is a very nice Statement. Let the Committee take it. I wish it was even just a Question because you would have had a one-on-one interaction with the Cabinet Secretary, so that you question him several times. However, I know the Chair of the Committee is able and should take up the matter, so that we are able to interrogate this system with the main aim of improving and safeguarding it.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Member for Gem, Hon. Odhiambo Ochieng.

Hon. Elisha Odhiambo (Gem, ODM): Thank you, Hon. Temporary Deputy Speaker for this opportunity to weigh on, on Hon. Osotsi's Statement. As I had mentioned at the beginning, the Auditor-General's Office in their Report indicated that there have been issues with IFMIS system. The original creation of IFMIS was supposed to give this country value for money. More importantly, it was supposed to align resources to priorities and policies so as to eliminate inefficiency that exist in the system.

Having said that, I think as a country, our eyes are on the National Treasury, the very people that are supposed to ensure that that system is effective and it meets what it was procured to perform. What comes to my mind, like systems that exist in the world, all these systems need to be audited and the profiles that are provided in any system, must be categorised such that every individual who is a user, has a specific profile level so that they do not duplicate roles. But from what I have read in a number of newspapers and reports, there are those in the National Treasury that are gifted ICT gurus who are able to delete a payment and do a payment. So, what Hon. Osotsi is saying is important. If we want to help Kenya to preserve and protect our resources that are earned well, we must audit that system and ensure that we have a robust system that can protect the money that is collected and ensure that the thieves that exist in National Treasury are eliminated by a proper audit system. I know the system is used under the platform of oracle which is a very good software, but I think the Chair of the Committee in charge of ICT, your work is very clear, you say you have managed facts, the baby is at your door, so that the country can protect our resources.

As I finish, I thank you for talking about COVID-19. However, yesterday I noticed in the newspaper, the Deputy President of the Republic of Kenya was with his *tanga tanga* team walking with a wheelbarrow without a mask. Surely, is this Kenya or that is somewhere else?

Thank you, Hon. Temporary Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Member for Gem, this Speaker can only speak for what is in this House. What is out there, I have advised Hon. Masara, that, if one chooses to be reckless with their lives, protect the one that is next to you. It is

God's duty and obligation to take care of your neighbour even if you do not want to take care of yourself. That is why all of us should wear these masks.

Hon. Members, we have run down the thirty minutes that the Standing Orders allow us to ventilate on this. I see a lot of interest in it, but Standing Order No.44 allows us to ventilate this matter for only 30 minutes. I will only allow a Member who was the first on the list since morning, Hon. Yusuf Haji, who is the Member for Mandera West, then we shall close on that.

Hon. Haji, proceed.

Hon. Yusuf Adan (Mandera West, EFP): Thank you, Hon. Temporary Deputy Speaker. I also rise to add my voice to the IFMIS system issue. I think this Statement is timely. Any system that is put in place is there for the sake of improving efficiency, transparency and for the betterment of the users of that system. But since IFMIS came on board, I think the system is good but some of the users of this IFMIS manipulate it and others use it for other purposes. It has become an animal that most of the people who wait for money through that system fear. For instance, when contractors who do work for the Government finish their work and are given certificate of completion and are told to wait for their payments, suddenly they are told IFMIS is closed. What the Leader of the Minority said is right, maybe at that particular time, there may be no money. But the best way is not to close and keep quiet, but to inform those who are expected to get money through that system that it will be done either tomorrow or any other day. But to only give one reason that IFMIS is now closed and, therefore, there is no way to move forward or backward, you just stick there and wait for IFMIS to open...

The IFMIS was put there to improve efficiency and safeguard money. When you hear billions of shillings have been stolen through IFMIS or it has been operated by somebody who is not known or somebody whose identity is not clear, it gives us a lot of doubt that the sole purpose of putting this system and what is happening are quite different. Therefore, I will urge my friends that the ball is now in the court of the Committee in charge of ICT. Let us hear of improvements and a friendlier IFMIS that is there for us and Kenyans all over. Whenever we hear IFMIS, let it be positive. Let us stop hearing negativity all the time. The IFMIS negativity and the statement that there is no money; everything, is blamed on this animal IFMIS. I think we need to identify this animal called IFMIS, brand it and put it for the betterment of this country.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. The next response to Statement will be from the Chairperson of the Departmental Committee on Administration and National Security. He will issue a Statement requested by Hon. Maoka Maore regarding the disappearance of David Taitumu in Mombasa County.

DISAPPEARANCE OF DAVID TAITUMU NKONTENE IN MOMBASA COUNTY

Hon. Paul Koinange (Kiambaa, JP): Thank you, Hon. Temporary Deputy Speaker. The Member for Igembe North, Hon. Maoka Maore had requested for a Statement regarding the disappearance of David Taitumu Nkontene in Mombasa County. The Hon. Member particularly sought to be informed on:

- (i) The Status of investigation into the disappearance of Mr. David Taitumu Nkontene in Mombasa County.
- (ii) The measures being undertaken by the relevant Ministry and other agencies to locate and bring back Mr. David Taitumu Nkontene to his family, that has been living in distress and anguish as it looks for its loved one.

Hon. Temporary Deputy Speaker, I wish to state as follows: On 15th August 2020, a report of a missing person was filed at Central Police Station Mombasa vide OB No.13/15/8/2020 at around 1600 hours by one Kirimi of mobile number 0726802173, a resident of Nesha area that his brother, David Taitumu Nkontene, went missing on 14th August, 2020 at 1600 hours. The description of the missing person was given as indicated below.

- Name: David Ntaitumu Nkontene.
- Age: 47 years.
- Skin: Dark.
- Height: Tall.
- Residence: Bamburi, Mtamboni area.
- Occupation: Shopkeeper at Express area.

On 15th August 2020, his motor vehicle Registration No. KBE 958Y, Toyota Premio, Silver in colour, was recovered by a Central Police Station duty officer and his anti-crime standby personnel after it was found abandoned at Kizingo area near Coast Academy Primary School. The car driver's window was shattered.

Hon. Temporary Deputy Speaker, the Directorate of Criminal Investigations (DCI) officer was immediately informed and he visited the scene, accompanied by crime scene support servicing personnel and after processing the scene, the car was towed to the police station for safe custody and further investigations. Investigations into the incident has commenced vide Police Inquiry File No. 3/2020 and statements, including those of the family and members of the public, were recorded. Investigations are still ongoing and once they are finalised, the file will be forwarded to the Director of Public Prosecutions (DPP) for perusal and further action. This Statement was signed by the Cabinet Secretary (CS) concerned on 29th September 2020.

I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Maoka Maore.

Hon. Maoka Maore (Igembe North, JP): Hon. Temporary Deputy Speaker, the answer that has been given does not point a finger to the answer that we were looking for. We expected the Ministry to state the status of the investigations. But from what the Chair has read, he just talked about a file and not the input of what is in that file. If the vehicle was found and then dusted, that should have given a clue on who might have been involved.

In addition, there is a very strange incident which I had mentioned in my question when I was seeking the statement. It is the story of the phone location. When the report was done, the phone was on, even on the 19th, which were four days later. It was still able to send or receive messages. Now, if the police were investigating and they were looking for him wherever he was, they would have known. That is why the family is very concerned that this may not be an ordinary abduction or kidnapping, but would have involved some security forces. It is the security forces only who are able to cover up for themselves so that, in dusting, they can prevent anything from coming out.

Hon. Temporary Deputy Speaker, on the phone location and the person's whereabouts, they would also do it given what has been happening around the Coast. People are being picked up, specifically by the Anti-Terrorism Police Unit, and they just disappear. In most cases where they disappear, it is because the security forces are worried about the lawsuits. That is why we would like more clarification on what is in that investigation file.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. Members, I direct that we move to the next business.

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

[The Temporary Deputy Speaker (Hon. Christopher Omulele) left the Chair]

IN THE COMMITTEE

[The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu) in the Chair]

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we are now in the Committee of the Whole House to consider the Public Service (Values and Principles) (Amendment) Bill (National Assembly Bill No. 17 of 2019). It is really a very short Bill. So, we can start.

THE PUBLIC SERVICE (VALUES AND PRINCIPLES) (AMENDMENT) BILL*Clause 2*

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we have a proposed amendment to Clause 2 by Hon. Andrew Mwadime, the Sponsor of the Bill. Please, move your proposed amendment.

Hon. Andrew Mwadime (Mwatate, ODM): Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Amendment of section 16
of No. 1A of 2015.

2.The Public Service (Values and Principles) Act is amended in section 16—

(a)in sub-clause (3), by inserting the following paragraph immediately after paragraph (d)—

“(da) details on the human resource establishment within the Service Commission outlining the total number of employees and highlighting their gender, age, county of birth, county of residence, ethnicity and whether they are persons living with disabilities.”

(b)by inserting the following new subsection immediately after subsection (3)—

(4) An authorised officer who fails to prepare a report under subsection (1) may be subjected to disciplinary action in accordance with the laid out procedures.

The justification for this amendment is, mostly, we focus on finances and procurement when we are fighting corruption. But massive corruption takes place in the human resource discipline in this country. You find that somebody is the Chief Executive Officer (CEO) of a

parastatal or any State arm and he ends up employing all his clansmen and people from his ethnicity, leaving behind the other 44 tribes in the country.

I thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): So, in a nutshell, Hon. Andrew Mwadime, that is your import to the amendment. I hope that Members have understood the import.

(Question of the amendment proposed)

I welcome comments from Hon. Daniel Maanzo, Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Hon. Temporary Deputy Chairlady, I support this amendment because this has been the trend in the country and we need to stop it. Whenever somebody becomes a CEO of a parastatal or a Government entity they, in a way - unless you make them account for how people have been hired during their time - collude. Therefore, this amendment is important so that we can make sure that there is equity in the country. That is because corruption is also by way of human resource.

I thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Igembe South. He seems to be consulting. Let me have the Member for Saku, Hon. Ali Rasso.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Temporary Deputy Chairlady. I support this very important amendment by Hon. Andrew Mwadime. In this country, we have 42 different tribes, speaking different dialects. We are a nation of different people but for unity of purpose, we are one country. All of us believe whatever is there at the centre and whatever the Public Service Commission (PSC) is doing. Even we, the Members of Parliament (MP), are blind to it. We believe that they do what is right, fair and what will bring this country together to show the face of Kenya. So, for that reason, the clarity of what he has spelt out in terms of what is the composition of the workforce in every department, ministry and institution, in the long run, is what will free this country.

I thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Let me have the Member for Kitui Central, Hon. Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady.

I also want to support the amendment to this law. It is very important because when you look at the statistics which were released the other day by the Cabinet Secretary in the Ministry of Public Service and Gender, you could see that, proportionately, some areas are not being represented in the Civil Service. So, this will ensure that every part of this country get their right share as we recruit. Given a chance, it is not wise to put the issue of ethnicity in law. I do not know whether mentioning ethnicity is the direction we want to go as a country.

I support the amendment

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have Hon. David ole Sankok. Member No.001.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Chairlady. I support this amendment.

Although I have recently been discharged from the National Cohesion and Equal Opportunity Committee, this amendment will bring equal opportunities, not only to regions, but to the 42 tribes that we have in this country and, more specifically, to the 43rd tribe of persons with disabilities. We cannot have a cohesive country if some feel that they are not represented in most of the parastatals and Government jobs. The moment we bring on board all the 42 tribes, the country will start healing and being cohesive. Cohesion can only be achieved if we, as a House, support this particular amendment so that the whole country is represented in our Government.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Makali supported the proposed amendment, but with interest in the issue of ethnicity. Hon. Makali, I refer you to Article 232 of the Constitution which talks of affording adequate and equal opportunities for appointment, training and advancement at all levels of the public service to men and women, members of all ethnic groups and persons with disabilities.

Let us have Hon. Makali.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. Well guided.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. It is good to always deal with the concerns of the Hon. Members. Let me put the Question now.

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

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

On the same clause, there is a proposed amendment by Hon. Koinange. Because his amendment is similar to that of Hon. Mwadime which has been carried, as a matter of procedure, it follows that Hon. Koinange's proposed amendment falls. Hon. Koinange, do you want to say something?

Hon. Paul Koinange (Kiambaa, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 2 of the Bill...

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Koinange, I have just given a communication. As a matter of procedure, your proposed amendment to the same clause is similar to the amendment that has been moved by Hon. Andrew Mwadime. Because Hon. Mwadime's amendment has already been carried, it just follows that your proposed amendment falls. They are similar.

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

We are through with the proposed amendments to the Bill. I, therefore, call upon the Mover to move reporting. Let us have Hon. Mwadime.

Hon. Andrew Mwadime (Mwatate, ODM): Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Public Service (Values

and Principles) (Amendment) Bill (National Assembly Bill No.17 of 2019) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. Christopher Omulele) in the Chair]*

REPORT AND THIRD READING

THE PUBLIC SERVICE (VALUES AND PRINCIPLES) (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have the Chairperson.

Hon. (Ms.) Jessica Mbalu (Kibwezi East, WDM –K): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Public Service (Values and Principles) (Amendment) Bill (National Assembly Bill No.17 of 2019), and approved the same with amendments.

Hon. Andrew Mwadime (Mwatate, ODM): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I also request Hon. Jeremiah to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Jeremiah Lomorukai (Loima, ODM): Hon. Temporary Deputy Speaker, I beg to second.

(Question proposed)

(Question put and agreed to)

Hon. Andrew Mwadime (Mwatate, ODM): Hon. Temporary Deputy Speaker, I beg to move that the Public Service (Values and Principles) (Amendment) Bill (National Assembly Bill No.17 of 2019), be now read the Third Time.

I also request Hon. Jeremiah to second.

Hon. Jeremiah Lomorukai (Loima, ODM): Hon. Temporary Deputy Speaker, I beg to second.

(Question proposed)

(Question put and agreed to)

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

The Temporary Deputy Speaker (Hon. Christopher Omulele): Next Order!

BILL

Second Reading

THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL

(Hon. Benjamin Mwangi on 17.9.2020)

(Resumption of Debate interrupted on 17.9.2020)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, this is resumption of debate. The Mover, Hon. Benjamin Mwangi, had started moving the Bill. According to the records which I have here, he has a balance of three minutes. Hon. Mwangi, proceed.

Hon. Benjamin Mwangi (Embakasi Central, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to continue moving the Public Service Commission (Amendment) Bill (National Assembly Bill No. 27 of 2019).

I wish to remind Hon. Members the objective of the Bill. One, it is on the compulsory retirement age of 60 years in the public service. Two, the Bill provides the penal provision in the event that the appointing authority does not confirm acting appointment or acting in appointment beyond the prescribed six months period. The final objective is to remove exemptions for further engagement of officers upon attaining the mandatory retirement age on the basis of rare skills, knowledge and competence. The justification behind this Bill is to spur economic growth and development through job creation and releasing retired officers to enjoy their sunset years. This will help the institutions to engage new skills either through promotion or direct employment in the public service which is supported by institutional succession planning.

The Bill recognises the need for structured succession planning in Government institutions. Appointing authority through prudent human resource management strategies will provide a pathway in management of human capital and reduce the recycling of officers upon attainment of the retirement age. The Public Service Commission (Amendment) Bill, 2019 is built on a case reference from the High Court where it suspended the circular on the removal of the age limit of head of parastatals. The Head of Public Service Commission (PSC), through the circular titled: "Term of Service for State Corporation Chief Executive Officers", instructed boards of management and parastatals on the decision to remove the term limits of parastatal heads or chiefs. With this circular in mind, a corporation head can be reappointed as many times as the appointing authority deems it fit. The possibility of working beyond the mandatory retirement age of 60 years is eminent, noting that such positions attract relatively old officers by virtue of qualification and experience, which is required in the appointment.

While suspending the circular from the Head of PSC on term limit for parastatal heads, Justice Onesmus Mutua of Employment and Labour Relations Court cited the provisions of Section 80(2) of the PSC Act, 2017 and the State corporations management and governance which is envisaged in the *Mwongozo* Code of Governance. It is, therefore, imperative to set the law that will streamline the appointments in the public service to ensure sustainability and competence in growth.

The Auditor-General, through the Draft Report of Human Resource Management and Planning of the Judicial Service Commission, said that there is evidence of an officer who acted in appointment for more than seven years, drawing acting allowance for approximately 74 months. The Auditor-General notes that a huge component of the acting allowance budget which ordinarily....

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mwangi, this is a good thing, but you have been caught up with time. However, I will allow you an extra two minutes so that you can complete moving the Bill and then we move on. Proceed.

Hon. Benjamin Mwangi (Embakasi Central, JP): Thank you, Hon. Temporary Deputy Speaker. The Auditor-General notes that the huge component of the acting allowance budget was firmed up to reduce operational bottlenecks in the service.

The public service is enshrined in the Constitution as the fulcrum of service delivery in the two-tier Government. Therefore, a critical legislation which governs the service is important, considering the dynamics in technology, innovation, skills and competence which are required to deliver the service. Section 34 of PSC Act, 2017 provides for acting appointment which shall be made by lawful authority and subject to the prescribed regulation and procedure which applies to appointment. Hence, there is need to regularise the period for appointment on acting capacity and provide for the penal or punishment for non-adherence to such provision. It is, therefore, against this backdrop that the PSC (Amendment) Bill, 2019 is before this honourable House for consideration and adoption of the Report of the Departmental Committee on Administration and National Security.

Therefore, in light of the foregoing information, the Bill seeks to provide compulsory retirement at the age of 60 years. Two, it provides the penal provision in case a public organisation allows a person or an officer to act for a period exceeding six months. Three, it provides for compulsory retirement upon the attainment of the mandatory retirement age of 60 years, without exemption as provided in Section 80(2) of the PSC Act, 2017.

With this in mind, I beg to move the Bill and request Hon. Charles Njagua Kanyi, Member for Starehe Constituency, to second. I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Charles Kanyi who is popularly known as Njagua.

Hon. Charles Njagua (Starehe, JP): Thank you, Hon. Temporary Deputy Speaker. Let me start by thanking my colleague, Hon. Major Donk, for bringing this Bill to this House. What Hon. Major Donk who is my good friend...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kanyi, that name is not in the record of the Members in this House. His name is Hon. Mwangi.

Hon. Charles Njagua (Starehe, JP): Okay, Hon. Temporary Deputy Speaker. He is commonly known as Hon. Major Donk.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kanyi, you have flouted a very critical protocol.

Hon. Charles Njagua (Starehe, JP): I withdraw, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): It is not that. Put on your mask, please. Proceed.

Hon. Charles Njagua (Starehe, JP): What Hon. Benjamin Gathiru's Bill is advocating for is the amendment of the PSC Act No. 10 of 2017. Sometimes back, I brought a Motion in this House. As you know, I am one of the beneficiaries of the votes from the youth that brought me to

this Parliament. We get a lot of opposition and criticism for not fighting for the youth in this country.

Unemployment in this country is a serious problem that needs to be addressed. Today, I am elated to stand here on the Floor of this House to fight for the rights of the youth in this country. I brought a Motion on the retirement age to be 50 years in this House because of the cry of the youth in this country. Unemployment has hit a margin that, if something is not done, this country would head in the wrong direction.

I have two reasons for seconding and supporting Hon. Benjamin Gathiru's Bill. One, we have a country where people are appointed to positions when they are over 80 years. Those are people who have worked for more than 74 years in the public service.

We also have organisations where you will find someone working at an acting capacity for more than seven years. A good example is, last year, where the whole top management of the National Social Security Fund (NSSF) were on acting capacity. That means that those graduates who have been tarmacking everyday looking for jobs cannot get employment, considering that one is working in an acting position while still holding another position in the same organisation.

Hon. Temporary Deputy Speaker, I know that many youths are looking upon us to see the policies and laws that we are putting in place to make sure that they get employment. Since the Motion that I brought to this House caused a lot of controversy, and there was objection from many members and experts who said that this would raise the pension issues, I know Hon. Benjamin Gathiru's Bill will pass with no objection because I believe that all Members of Parliament believe that unemployment is a problem.

Before I finish, I want to give a very good example. We have an MP who stayed in university for more than 10 years because he knew, once he gets out of that university, he would not secure employment. So, this is a big problem. I can even mention the name because Members know him. Hon. Babu Owino stayed at the university for 10 years because he knew very well that if he got out, he would not get employment. I want to laud and thank the people of Embakasi East for voting for him because he would still be in the university even now.

Therefore, Hon. Temporary Deputy Speaker, as I sit, unemployment is a serious problem in this country...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kanyi, yes, I am aware that Hon. Ongili Babu has been at the university for a fairly long period, but it is not because he had any fear for anything. If there is one Member who I know that does not fear anything, it is Hon. Babu. I am sure that this unemployment could not have been a monster that could have scared him.

Hon. Charles Njagua (Starehe, JP): Hon. Temporary Deputy Speaker...

The Temporary Deputy Speaker (Hon. Christopher Omulele): From what I know, Hon. Babu was studying for many degrees. He is a master of quite a number of disciplines at the university, and I believe that he is still studying for his Doctorate in Philosophy (PhD).

Proceed Hon. Njagua.

Hon. Charles Njagua (Starehe, JP): Hon. Temporary Deputy Speaker, Hon. Babu is a good friend of mine and I can say without fear of contradiction that...

The Temporary Deputy Speaker (Hon. Christopher Omulele): I will allow you two more minutes because I took your time, Hon. Kanyi.

Hon. Charles Njagua (Starehe, JP): Hon. Temporary Deputy Speaker, I can say without fear of contradiction that Hon. Babu Owino is a good friend of mine and he confided in me why he stayed at the university for more than 10 years.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well, Hon. Kanyi. Hon. Wangwe, what is out of order?

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. In as much as Hon. Kanyi is my good friend and we have had a good travel together, but this House has some rules. Is the Member in order to open a discussion about a colleague without a substantive Motion on the Floor?

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Wangwe, I am sure that Hon. Kanyi was doing it on a very light note. The rules require that if you are going to mention another Member or to cast any aspersions on any Member, then you need to bring a substantive Motion so that it can be conversed. But I took it that you are doing it on a very light note. Proceed and finish your submission.

Hon. Charles Njagua (Starehe, JP): Thank you, Hon. Temporary Deputy Speaker. As I finish, I want to urge MPs in this House to support this Bill and make sure that we will work on other Bills that will create employment for the youths of this country. If you look at the number of Kenyans who enter the job market, especially those with degrees and diplomas you will be shocked. I believe that if something is not done, this country is not headed in the right direction.

Thank you, Hon. Temporary Deputy Speaker. I beg to second.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Well done, Hon. Kanyi.

(Question proposed)

Hon. Members I will give the first go of this to the Chair of the Departmental Committee on Administration and National Security, Hon. Koinange.

Hon. Paul Koinange (Kiambaa, JP): Thank you very much, Hon. Temporary Deputy Speaker. The principal object of the Bill is to amend the Public Service Commission Act of 2017 to prescribe the mandatory retirement age of 60 years in the Act. The Public Service Commission Act 2017 provides that the mandatory age is to be prescribed in the regulations. The Bill further provides for penal provisions in the event that an appointing authority allows a person to act for a period of more than six months. Lastly, the Act provides for mandatory retirement at the age of 60, without any exception.

Hon. Temporary Deputy Speaker, the amendment is to address the issue of succession planning by the Public Service Commission and the other service commissions, and ensure that those service commissions take the necessary steps to ensure that they train other persons in the organizations to take up positions. The Public Service Commission (Amendment) Bill 2019 was read the First Time on Thursday, 2nd May 2019 and, subsequently, committed to the Committee pursuant to the provisions of Standing Order 127 (1) and report to the House.

The Committee noted the following in relation to Clause 2 which provides that:

“3(a) Upon the expiry of six months, an officer appointed under sub-section 3 shall not be entitled to any acting allowance.”

The Committee observed the following:

(a) The proposed clause is punitive in nature because it punishes an officer who has been appointed under sub-section 3. The proposal does not take into account officers acting in a temporary capacity such as study leave, secondment, leave of absence or such other leave as the Commission may approve.

(b) The clause does not state whether the officer ceases to act; and if that is the case, what happens to the acting position.

(c) The proposed clause does not substantively address the issue of one in an acting capacity as a temporary measure awaiting the appointing authority to recruit and subsequently fill the position. The clause should be amended to buttress sub-section 3 as it addresses or provides that an officer may be appointed in an acting capacity for a period of not, at least, 30 days, but not exceeding a period of six months.

Therefore, the Committee recommended for a new sub-section 3A that will mandate an appointing authority to fill a vacant position within six months.

In relation to Clause 3 which seeks to amend section 80 of the Public Service Commission Act, in order to provide for the age of retirement in statute, the Committee observed the following:

1. The proposed amendment is timely as it will increase job vacancies available to the youth. This will also task the PSC and other appointing authorities to come up with succession plans for jobs that require rare technical skills.
2. The Executive has the tendency of extending the tenure of persons on account of possession of rare knowledge or skill.
3. With regard to constitutional commissions, many retirees who are over 70 years are recycled into the said commission. Members felt that such positions can be filled by able persons who are less than 60 years who have the requisite knowledge.
4. The provision proposed will unclog the heavy wage bill that the country is currently facing.

Hon. Temporary Deputy Speaker, as I conclude, in relation to Clause 4 of the Bill, which provides for a saving and transition provision, the Committee observed that the transition provision is to cater for persons who are over 60 years and are currently serving in the service or in any other public authority. In view of the same, the Committee has proposed amendments to the Bill to take into consideration the observations. We will do that in the Committee of the whole House. Therefore, I request all hon. Members to read the Report of the Committee.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Well done, Hon. Koinange. That is the way it should be. Chairs of Committees, when there is debate like this, it is good for them to come with the Committee's position so that they can inform the House to enable Members to debate from an informed position. Good job. Well done, Hon. Koinange.

We shall have the first contribution from Hon. Mbui, Member for Kathiani.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity.

The Bill is fairly timely. When you look at it at face value, it seems not to do much but, when you read through it, you will appreciate that there is quite a lot especially what has been highlighted by the Chair of the Committee.

Retirement is basically meant to leave space for other people. When people retire, there is expectation that other people will be recruited. A lot of times, the youth believe that the opportunity is created for them. Unfortunately, it is not always the case. Many times, people retire from office and the people who replace them are just a few years younger. So, it does not necessarily follow that when one retires, the work goes to the youth. I see the intention here is to try and create opportunities for the youth.

The youth have been told from time immemorial that they are the leaders of tomorrow but strangely, tomorrow never seem to come for them. That is why they are normally taken advantage of by the politicians after being given handouts. I have recently seen them being pushed around in wheelbarrows and given shovels and told that they are being empowered and yet, those who are

doing that were empowered by being taught, trained, enlightened and given things of substantial value that could push their lives forward. So, it is important that we try to support our youth by finding appropriate avenues for them.

They are proposing that the retirement age of 60 years should be made compulsory and any extension of time almost punishable. I agree with the Chair that sometimes you cannot put all cadres of employment together. There could be situations or reasons or circumstances that could lead to some extension. So, it is important that we address that aspect.

I also support the proposal to encourage succession planning that is in the proposed Bill. Many times when people leave office, it is like we are disorganised. It is as if we do not know who is going to take over and how soon. That is why we find people operating in acting capacity for so long. The Chief Executive Officer of the National Government Constituencies Development Fund (NG-CDF) worked in an acting capacity for years and yet, he had all the qualifications that are required to have taken up that office almost immediately. It is important that we encourage people to be confirmed in appointment within six months. They do not need to be paid acting allowances, which are proposed to be stopped. I support in saying that the Executive should be pushed to recruit and confirm those people within that period because it is possible. I encourage succession planning. That is a very good step. When officers serve in acting capacity for so long, it shows that the organisation is a little disorganised.

Hon. Temporary Deputy Speaker, this is a step in the right direction. As the Chair said, there will be opportunity to discuss it later in the Committee of the whole House. We can propose amendments to make the Bill better.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Masara, Member for Suna West.

Hon. Peter Masara (Suna West, Independent): Thank you, Hon. Temporary Deputy Speaker. This Amendment Bill is very timely because the youths of this country are crying to be absorbed to work in the Government but, in most cases, the offices are filled by people who are beyond 60 years. Apart from that, many people are still being appointed to public office by the Executive, but the youths are left out when it comes to jobs.

I sit in the Departmental Committee on Administration and National Security, where a lot of work was done. That is why the Chairman came up with the recommendations and statement.

The succession plan which has been introduced in this Bill will really assist this country. Remember some time back, the country was at a crossroad when the Auditor-General retired. For almost a year, that office operated without a substantive Auditor-General. In many cases, people do that deliberately to create room for their relatives and friends, so that they can continue earning in the Government after attaining 60 years. The amendment also seeks to ensure that once someone retires, within six months, the person is replaced.

Hon. Mwangi's Amendment Bill is good and it needs to be supported. Thank you, Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. ole Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much Hon. Temporary Deputy Speaker for giving me an opportunity to support this Bill. I congratulate my friend because the Bill is quite timely.

Our youth are out there unemployed. One of the effects of COVID-19 was the loss of 1.7 million jobs, in addition to the millions of unemployed youth that are out there as a time bomb. If our youth, in their millions with the amount of physical energy they have, are left idle, they will

become a devil's workshop. That is why over the years, the youths have been used to uproot railways and demonstrate for the sake of some politicians who never accept any election results. They do that so that they can have "handshakes" and make a backdoor entry into the Government.

We need to create opportunities for the youth. We can only do that if we accept that when retirement age comes, one has to go home and leave that particular position for someone else. Hon. Mbui said that, sometimes, we create an opportunity from somebody who is 60 years only to give the chance to somebody who is 65 years. Let us remember that when one retires, an employment opportunity is created and cascaded downwards to people who are 24 or 25 years old.

This is a very timely Bill. During the Committee of the whole House, we will make more input to enrich it. We cannot say that teachers, clerks and accountants should retire at the age of 60 years because they are tired in terms of mental and physical productivity but, at the same time, we recycle politicians, chief executive officers of parastatals and directors of parastatal boards. We can enrich the Bill by proposing to tie-up the retirement age of all civil servants with that of every politician or anybody else.

Hon. Temporary Deputy Speaker, we need to empower our youth. Hon. Mbui has said that wheelbarrows and *mikokotenis* cannot empower the youth. But given that he comes from a rich family, he might not understand their value. I started my business by sharpening knives and the machine I was using cost me Kshs1,500. A wheelbarrow and a *mkokoteni* are even more costly. For a progressive mind, a *boda boda* is a tool to jumpstart you to start a business, become a millionaire, an employer and contribute to nation building in terms of the economy.

Hon. Temporary Deputy Speaker, we need to create positions. I want to urge the House to support this amendment from my good friend. If you get an opportunity, you must use it well before 60 years by investing so as to assist the Government in employing the youth. You can do that by retiring and create more opportunities for the youth, who will exit in the same manner. You cannot do more even if we add you an extra five years, if you did not invest in the last 20 years you were employed.

I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Well spoken, Hon. Sankok. Hon. Members, we need a paradigm shift in the way we look at employment in this country. We have a big population of youth who now have a good training courtesy of the efforts that have been made by previous parliaments and ourselves who have expanded the education space. However, we still have the mindset that the youth must be absorbed in the Civil Service, which is not possible. We must expand our thinking in terms of finding useful ways of occupying our youth.

Hon. Maanzo Kitonga, Member for Makueni, you have the Floor.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Bill. I want to agree with you that we must go beyond the Civil Service, which is what this Bill is concentrating on. Article 27(4) of the Constitution states that we should not discriminate on age and other parameters. We were discussing with the Majority Whip, Hon. Wangwe, that we must make laws that are within the Constitution. Every law, including the Constitution, has an exception. We must take note of that as we improve this law from dealing with regulations. I am familiar with regulations that deal with this aspect of the service that are now being brought to the main Act, and I am sure there will be regulations that will deal with the amendments passed. The Chairman of the Departmental Committee on Administration and National Security, Hon. Koinange, has stated that there are instances where one acts because maybe the recruitment process was not successful or you are

serving on contractual basis, although you are above 60 years. This happens in specified places like the National Treasury and the Office of the President, for example, the current Head of Civil Service. When it is an appointment of the President to serve in his office for a specific task, how does this Act come into play and how will it safeguard this?

Hon. Temporary Deputy Speaker, you will realise that many people retire, set up businesses and hire youth. As you talk about work, the two presidential candidates in the USA are almost 80 years. We do not have a youth running for presidency in the USA although they have capacity and resources, especially those who have invested in Information Technology (IT). They have left politics to the experts. I would like us to look at this law in totality. There is a lot of work at the Third Reading to purify this Act so that it conforms to the law. I support employment creation for the youth. The youth are now shining in the IT sector. Most of the youth can now work online. Job seeking is now online and it is not limited to Kenya. Many young people are working online for companies outside Kenya and they are able to deliver and are paid online. I want to urge our youth to access the internet using their phones. The universities are now operating online – lectures are ongoing, because of COVID-19. We must look at the future and where the world is going.

I once attended an international conference on Savings and Credit Cooperative Societies (SACCOs) and there was a discussion that, in future, we will have lorries without drivers. We will have vehicles that use technology to deliver goods without drivers.

I support the amendment, and I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken, Hon. Maanzo. This morning, I received a text message from the Kenya Power and Lighting Company (KPLC) notifying me that they now have meters that will allow consumers to access and read their meters on their own. This means that those meter readers will no longer be employed. We need to have a paradigm shift. Hon. Chachu Ganya, you have the Floor.

Hon. Chachu Ganya (North Horr, FAP): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this Bill. This Bill seeks to streamline the law on the appointment of public servants. It seeks to amend the principal Act to provide in law for the mandatory retirement age of 60 years. At the moment, it is in the regulations, but they want to anchor it in law. It is a good idea. By doing so, it will provide employment to the youth, which is a very serious issue in our country. The Bill provides that there will be no exception to the retirement age and once a vacancy arises, it must be filled within 60 days. The Bill, as it is, does not have regard for special skills, expertise and special education. It does not speak to how any acting capacity that could arise in the Public Service or State corporations could be filled within six months. While the Bill is trying to address unemployment, as it is, I have serious issues with it. I do not agree with the fact that it seeks to do away with study leaves and leaves without pay. There are many Kenyans who take study leave to get education or experience so as to advance their careers. We also have Kenyans who are appointed to work overseas and their spouses take leave without pay for about three years to go and serve this nation in different capacities and come back again and continue with their professions. This Bill is trying to do away with that.

In some sense, this Bill is discriminative and punitive. It is discriminative in the sense that people are discriminated on the basis of age. For sure, all the jobs we have in this county are not necessarily for the youth. There are some jobs that require serious experience, expertise and knowledge on certain matters for one to adequately serve this nation. It can be a job at the United Nations (UN), the World Bank or the International Monetary Fund (IMF). These positions are given to very experienced and highly educated people with special expertise to serve these institutions. So, we have to be realistic by living within the realities of the world. As we appreciate

the need to give job opportunities to the youth, we must appreciate that some jobs are for old people. So, it is discriminative in that sense. It is a serious issue that is unconstitutional as far as our supreme law is concerned.

The Bill is punitive in the sense that, if somebody serves more than six months in an acting capacity, he will not be compensated; he will not be paid his allowances or salary. Some recruitment exercises take a year or so to hire somebody who is capable and targeted for a given position for many reasons. There are jobs that require special skills, expertise and dedication. We have to be realistic. The Bill should be amended at the Committee of the Whole House stage, so that all these realities are taken care of to ensure that this Bill is not discriminative and punitive. For now, I oppose the Bill.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. The Hon. (Dr.) Makali Mulu, Member for Kitui Central, you have the Floor.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to add my voice to this important Bill. I thank the Mover of this Bill because if you look at it, you will find that it is not changing anything to do with the retirement age. It is moving the retirement age from being part of a regulation to being part of an Act of Parliament. So, in terms of enforcement, it will give it more power.

Looking at what is currently happening in this country. It is high time we started asking hard questions on whether the age of 60 is the age that we want people to retire at. To determine retirement age, there are a number of factors that need to be considered. You must consider the average time people die, what we call the “life span” of an individual and you must look at the skill development. Any time you visit offices, and this also happens in this House....

This House has passed many individuals who are above 60 years to head institutions. One would ask himself: Is it that we do not have skills at the lower level or is it that we need to relook at our retirement age? What is critical is the issue of the six months probation period. We are now saying that after six months, you either confirm or sack an employee. In this country you will hardly find a position that has no deputy. Most positions have deputies. If you have a deputy who has been deputising you for a number of years, then you act for six months and you do not qualify, your deputy should take over.

However, what happens in most cases is that the appointing authorities take time to look for the right person. That is where we have a problem. For example, if I have deputised somebody for so long and when an opportunity for me to move up comes they bring somebody from outside, that will easily demoralise those of us who are already inside an organisation. This is an important clause. That, after six months, the appointing authority has no choice but to either confirm or sack whoever was on probation and upgrade another officer from the system. In that case, you will have proper succession plan.

The other thing is that, as long as we clog the top, the bottom will never remain open. That is why we have no chances for our youth. In all cadres, our youth are completing colleges. For example, we have accountants, economists and engineers. However, because we have clogged the top, the bottom will not open for them to join. That is where the Civil Service has a challenge. It must plan well so that by the time people complete university education, they have a way of joining the workforce. They all join at the lower level. You will never see a fresh graduate becoming an executive in an organisation or taking the top position. But, if at the top you are giving jobs to persons who are up to 70 years, then the bottom is not moving up. We need to plan properly for succession, so that as people grow old and hit 60 years, they exit. What people do after 60 years is

consultancy because they have experienced and skills. Instead of working for one individual, they can work for many clients because they have skills.

If you are an accountant or an auditor retiring at 60 years, you can become a consulting auditor or an accountant. You can do that for many people. If we go that way, we will help the human skills in this country. The human resource in this country is underutilised. We have many people who are trained and they have not got jobs. We need proper planning for human resource. Those of us who have issues with factors of production, human resource is a key factor of production. It manages the other factors of production. If you do not manage it well, you will have a problem. I am a Member of the Departmental Committee on Administration and National Security and I will be supporting some amendments so that we streamline this area to get the best out of our employees of the public service.

Before I conclude, because we are policy makers, at this level we need to think of serious policies which will create employment. You cannot create employment by having unplanned programmes or projects. You create employment by coming up with well-structured programmes that will make sure that our youth get employment and expand the employment space. That way we will be assisting the youth. I sympathise with....

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Makali, remember, as a House, you decided that we will be speaking for five minutes. What you have said is valid and good for all of us.

Hon. Mwirigi Paul, the Member for Igembe South, you have the Floor.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Speaker. First, I want to thank Hon Benjamin for bringing this Bill to this House. This Bill is crosscutting. It favours persons of 59 years of age and below. This means it caters for the youth and the elderly. The Bill is seeking to set in law the 60-year retirement age so that we can hold accountable the appointing authorities that extend the retirement age limit.

*[The Temporary Deputy Speaker
(Christopher Omulele) left the Chair]*

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

In this country, more than 70 per cent of the young people are not employed. The reason is that, jobs in this country are given to aged people. We know that after the age of 60 years, one should be enjoying his retirement as fresh blood employees are active in office working.

Madam Speaker, secondly, this will help graduates who graduated the other day to be employed in offices. Currently, the people being employed are cronies of leaders. So, it is good for this Bill to be enacted into law so that we can have mandatory retirement. An officer should leave office for the ones from school.

This Bill seeks to guide on acting capacities in an office. An officer who acts in an office for more than six months should be confirmed or quit, something which is not the case in this country. We have seen officers who act for longer periods without being confirmed. This Bill will help in speeding up confirmation of acting officers.

This Bill will help where employing entities retain people because of their skills. It will help these officers to prepare a successor. When you reach 55 years and above, you know that you

are exiting the office. You should prepare somebody else to succeed you upon retirement. So, I support this Bill. I beg the House to support it so that we can create more employment opportunities for the young people.

Thank you.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): Let us now hear the Member for Navakholo, Hon. Wangwe Emanuel.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. Allow me to also add my voice to the debate by supporting this Bill with proposed amendments. This Bill has not provided for exceptions. I will look at it and propose exceptions to the rule. We should have exceptions especially on the issue of acting in an office for six months. That rule should be very clear. There are situations where an employer has given leave of absence to a manager, so the employer has no choice but to bring in another person to act. That is a very valid exception which I will be recommending during the Committee of the whole House.

However, I support the issue of mandatory retirement at 60 years. The attitude that one has to work up to 60 years is not helpful. The Civil Service should allow the youth to join the service to accumulate capital for business when they hit 40 or 50 years. Therefore, it is important for those in the Civil Service to provide an avenue for the youth to join the job market. They should not take the Civil Service as a place of permanence or where they have to stay until they retire. At the end of the day, if you retire at the age of 40, you will fall sick at 60 on account of your age. At that age, you have limited room to do business and run around. Therefore, it is important to encourage our citizenry to start doing business when they are still able to run around and in good health. I support this Bill so that everyone should know that at the age of 60 he should pack up and go home.

On the issue of acting in an office for six months, we had a case about the NG-CDF. We have cases of managing directors who have been acting for more than six years. When such an MD makes a mistake or when he is not able to execute his mandate, he relies on the board chair for protection. In that case, the mistake is as a result of omission or commission, he is not able to explain himself because he is not the substantive office holder. It is important to anchor this provision in law so that we can speak for the vulnerable—those who cannot defend themselves because they are seeking employment. The employer, who in most cases is the public service, should know that after six months a certain position will fall vacant. It is the duty of the public service to plan and replace exiting officers. Failing to plan simply means you are planning to fail. If the public service cannot plan succession well, it would mean failing the generation behind us.

For example, the public service has had a very good internship programme. Yesterday, the PSC issued a notice to the interns to sign their exit letters, meaning all the interns who have been working for six months are going home and they will again be jobless. That means our public service has planned to fail. What plans do they have for these interns? Therefore, it is important we put sense into the public service so that it works for Kenyans and plan for the youth. Let us support the youth who graduate from universities with knowledge and skills. They should also be supported in terms of raising capital once they get into the job market.

With that, I beg to support.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): The Member for Bomachoge Borabu, Hon. Ogutu Abel, you have the Floor.

Hon. (Prof.) Zadoc Ogutu (Bomachoge Borabu, Independent): Thank you, Hon. Temporary Deputy Speaker, for allowing me to make my contribution to this Bill. I fully support

the Bill. As a nation we are growing. If we have to make strides that do not take us back, we must put in measures that will hold us whenever circumstances or situations do not work in our favour.

Retirement age has been an issue in this country simply because we have not seriously looked at how to open up the job market. We only struggle to ensure that our human resources take up the limited opportunities that exist and the few that are created. I would like to see a nation where the 60-year age limit is not an issue. Such a nation can only be created by this House through the policies and pieces of legislation that we make, which will ensure that we are able to create jobs. The CEOs who retire at the age of 60 should be assessed in terms of how many jobs they have created while in office. At the same time, as my colleagues have said, it is important to look at successful CEOs based on their exit strategies, which include how they hand over leadership to those who take over from them. In most cases, CEOs strain to work and even delay their succession. It needs to be very clear that in assessing the performance of CEOs, the PSC should look at their ability to hand over leadership. That is an element of succession.

Even as we discuss this important amendment, there are institutions in this country that are not running not because there is no manpower, but because the recruitment process has delayed. I have in mind about 18 universities with no councils, about six or seven have no vice-chancellors while many others have no top management. This is an element partly resulting from poor retirement and recruitment process.

As a nation, let us be open to allow Kenyans to compete for opportunities that are created, opportunities which exist, which can be earned on merit and experience rather than delaying and dodging the recruitment processes to scuttle the running of our institutions.

Hon. Temporary Deputy Speaker, I want to finish by saying that when we talk about compulsory retirement, we are actually talking about giving every Kenyan an opportunity to contribute substantively to the growth and development of this country.

I support this amendment.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Funyula, Hon. Oundo Odhiambo, you have the Floor.

Hon (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker for this opportunity to contribute to this Bill.

Let me also take this opportunity to congratulate or thank our colleague who has come up with these amendments to the Public Service Commission (Amendment) Bill. The spirit of the amendment is two folds: One, to have adequate succession planning and secondly, to create room for upward mobility of the young graduates and middle level workers or middle aged workers to rise in the Civil Service. On that score, they are commendable amendments that all of us need to support without conditions or reservations. However, two issues are clearly emerging. The first is the one on succession planning.

Indeed, any trained HR person, any serious board of directors and any serious policy making board of any organisation must always prioritise succession planning at any given time. It looks ridiculous and it is actually, a dereliction of duty or failed governance for somebody to get to a point of retirement and he cannot be allowed to because there is nobody competent enough to take over those positions. We sit in too many committees where many of the accounting officers will come and tell you they retain somebody in the payroll on contract basis because there was no one competent.

We suppose with the passing of this amendment, the Public Service Commission (Amendment) Bill, the relevant boards will prioritise succession planning and ensure that within the rank and file, they start preparing people or persons to take over positions that people exit.

Secondly, is the issue of retirement age which the amendment simply moves the prescription of the retirement age from Regulations to the main Act. It is a welcome move, but obviously we must be cognisant of the fact that there will be circumstances within the Civil Service that generally will require retention of some cadre of employees who probably have exceeded the retirement age. I would not imagine, probably, tying a whole Head of State that he must employ or appoint somebody for certain age in certain positions. So, it will be important at that particular time of the Committee of the whole House to move a further amendment to our amendment to give circumstances under which the same can be varied or allowed the discretion of some appointing optional positions.

Hon. Temporary Deputy Speaker, this also brings into question the issue of employment. We seem to have dramatised the issue of employment in the Civil Service. Indeed, all over the world, the Civil Service is becoming leaner and leaner. Employment opportunities are no longer in the Public Service. Employment opportunities are in entrepreneurship and, indeed, in the private sector. It is a challenge that goes to all of us, especially as parents, to condition our children not to believe that the only form of employment is white-collar job or where you have a desk, a telephone extension and a swinging chair. The money is in Technical, Industrial, Vocational and Entrepreneurship Training (TIVET) technical skills. In that area, you do not bother about retirement age.

In principle, I support this Amendment Bill with reservations. We must invest in our youths. Giving them wheelbarrows, slashes and nondescript tools is really an act of disrespect. It is an act of extending poverty among our youths.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us now hear the Member for Ruiru, Hon. King'ara Ng'ang'a.

Hon. Simon King'ara (Ruiru, JP): Thank you Hon. Temporary Deputy Speaker for giving me this opportunity to share my views on this important Bill. I first want to thank Hon. Mwangi because of thinking ahead. It defeats sense when it is said that after 60 years you are going to retire and then at the same time you have worked, maybe, for 30 years and then you are given an extension of five years. It defeats logic. Therefore, if we were to prosper and even accommodate the upcoming skills from our schools, we have to create a real exit. Moreover, the Government sector is the benchmark of how we should do things. This is because if the Government does not adhere to the set age limit then the private sector will follow suit. Actually, you find that those who are getting skills from schools will have no opportunity to work. As it was said by other speakers, when you are given an extension or when you are acting sometimes you find yourself earning two salaries – a salary for your substantive role and another salary for the position in which you are acting. It is like you hold two jobs yet we are talking of unemployment. It is important that we adhere to what we have set as basis for working. Moreover, one would ask why an age limit of 60 was put in place. If there was no reason, then the age limit would not have been there. If there were to be extension – maybe that is where the amendment comes in – the extension should have a specific time limit that should be adhered to.

Lastly, we also need to lead by example...

*(Hon. Ole Sankok clapped his hands as
Hon. Waluke walked into the Chamber)*

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Sankok, you are out of order! Let me hear an intervention by Hon. (Dr.) Chris Wamalwa first before I get to Hon. Sankok, who is totally out of order! What is the point of order?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Hon. Temporary Deputy Speaker, I rise on a point of order over the conduct of Hon. Sankok, Nominee 001. Of course, we appreciate the entry of Hon. John Waluke into the House.

(Applause)

Moreover, as Parliament, we have ways of communing. He has been here for three years now. Is he in order to clap his hands and conduct himself in the manner he has done? Of course, we recognise Hon. John Waluke, and we welcome him.

(Applause)

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Sankok, you are doing your third year in the House and you are out of order. You know the procedure of the House. We do not clap our hands neither do we hit desks. This is not a baraza neither is it a fighting area. You know what we do when you want to clap. We are appreciating Hon. Waluke. Do you want to say something?

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I want to apologise because I was just excited.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Apologise for what?

Hon. David ole Sankok (Nominated, JP): Apologise for clapping my hands and banging the table because of the entry of Hon. Waluke. He is a colleague and we are excited. Hon. Temporary Deputy Speaker, remember I do not have legs. So, when I am excited I have to use whatever I have. Now that God did not give me legs, but gave me hands and a mouth, I use my hands and sometimes my mouth *kwa sababu siwezi nyimwa yote*.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Sankok, we have no exception for you to conduct yourself differently. You know what you can use better and do the right way. You have legs though not all. They may be more but you know how to do it down there the way the Members do it. However, you were just banging and you were out of order. Thank you for accepting you were out of order, and you have apologised. Hon. Members, let us have decorum in the House as it is part of us.

Hon. Member, we took your two minutes. So, just finish up your contribution in two minutes.

Hon. Simon King'ara (Ruiru, JP): Thank you, Hon. Temporary Deputy Speaker. I conclude by saying that because of the common extensions, it has become a trend where when somebody is nearing 60 years, he or she starts campaigning for an extension which is readily available. If we manage people to work within their time set, we will do well to our youth and country.

I thank you. I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. The Hon. Member for Khwisero Constituency, Hon. Wangaya Aseka, you have the Floor.

Hon. Christopher Wangaya (Khwisero, ANC): Thank you, Hon. Temporary Deputy Speaker. I also support the amendment that tries to ensure that there is proper succession plan within the entire public service. It is not that we are creating employment opportunities for the young people by ensuring that we retire old ones at 60 years. Public service is a small area where not all Kenyans can be employed. We also have to look at the Big Four Agenda which the President has given this country. Within that, there is an aspect of manufacturing and industrialisation which creates more employment opportunities.

As a House, we are called upon as a nation and as a Government to ensure that we rise and support the innovations, creativity within our youth population so that we can create more employment in the informal and private sector.

I will also be seeking an amendment to this Bill during the Committee of the whole House. If we want to cap the retirement age of people within the Civil Service at 60 years, then in our elective positions, we should also cap such that every person beyond 60 years should not vie for any elective post.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. I can hear Members appreciating, but do not shout. You will have your time to contribute.

Let us have Hon. Waweru Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Hon. Temporary Deputy Speaker, the opportunity to speak to this Bill is not taken for granted and so I thank you. First, I congratulate a neighbour, Hon. Benjamin Gathiru Mwangi, for successfully processing a Bill and eventually having it land on the Floor of this House. In fact, this is a very meaningful Bill.

From the general look of this Bill, the objective is to tidy up how we go about employment, in relation to the opportunities we give to people who serve different positions in this country. What happens is that there are so many laws out there that speak to this issue. However, this one seeks to find a way of tidying up very critical issues.

The first issue which is very important is people earning acting allowance after serving for over six months. In Nairobi County, we had a case of a Member of the County Assembly (MCA) acting as the Speaker of the county assembly. During the time when the Member was acting, he was receiving full perks as an MCA and speaker.

Such a law will curb some of these issues. We understand if you are given an opportunity to serve for six months, you have already proven your mantle and what you are able to do. So, if you cannot prove that in six months, you might never prove it even if given six years. For this reason, I support what Hon. Benjamin Gathiru is trying to do.

Hon. Temporary Deputy Speaker, I see someone obstructing your view.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I have allowed him, he was consulting. But I can see and hear you.

Hon. John Kiarie (Dagoretti South, JP): Thank you, Hon. Temporary Deputy Speaker. The second mischief which Hon. Gathiru is seeking to remedy is retirement. There are people who will argue that the hon. Member is being ageist. There are some realities of life; that one is born a toddler, you become a child, and eventually an adult and finally you become an octogenarian.

I will give a personal example. When I was young in the youth movement, I was one of those people who argued almost violently against people beyond the age of 35 years acting on behalf of the youth. When I was elected into this august House there are people who approached me and asked me to join the Kenya Young Parliamentarians Association (KYPA). I told them I

understood the times and for me at age 40 years, I found it sacrilegious to be in KYPA. This is because I knew my time in the youth movement had passed.

I know there is a difference between being young and youthful. I am still youthful but not young. If this Bill is implemented as it is, it will help us utilise the new knowledge of young people who will be coming into service when older people are tiring. This is because we know the world is moving very fast. There are new technologies and knowledge that needs to come into the workforce.

This Bill will ensure that even as young people come in the older people get upward displacement. This upward displacement does not condemn someone to go and die. When you are upwardly displaced you serve in a higher office. Even in the tradition of organisations, we know the place of boards where people superintend over secretariats at an older age.

I would like to leave it there because I see my time...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members for your planning, pursuant to the resolutions of the House, debate on such a Bill as we passed, every Member has five minutes. Let me give the Leader of the Majority Party, Hon. Kimunya, who is also the Member for Kipipiri.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker, for this opportunity. Let me start by saying I support the Bill in principle. I congratulate the Member for bringing it, but I have some few reservations that I would like to bring to the attention of the House. I hope we shall tidy up this by the time we get to the Committee of the whole House, so that we achieve the objects of the Bill, but at the same time not end up creating more problems without giving a solution. This is because a solution should not create problems. It should actually solve a problem.

I agree in principle that we need certainty in terms of succession planning and that we should not have positions being held in an acting capacity forever. However, when you now look at the Bill, much as it addresses the issue of somebody in an acting capacity, it does not say the circumstances under which someone is appointed to act. So, it presumes that everyone is acting just because of a position falling vacant. We have situations where officers will go on study leave and somebody else will be appointed to act in their position until they come back. That could be for one year. In those kind of situations, you cannot then tell the person who has been taught to act that they will only be paid for six months and after that, they will be forced to continue acting, but they will not be paid. So, there are some issues we will not address to separate the different circumstances in which people act.

We also know how long the recruitment process takes in this country. We created this new animal called public participation. We have created so many variables in the recruitment process and it is not unlikely that a position could fall vacant, but the recruitment process then takes longer than six months. So, you are now punishing the person who will be acting by telling them they will only be paid for six months and nothing after that. So, for this to work, we will need to bring in some amendments and provisos so that we know that where a position is already vacant, these are the provisos that we will be providing so that we do not punish the person but we ensure that the position is filled as soon as possible.

The other bit that I am looking at is in Clause 3. We are saying by putting the retirement at 60, it will create jobs for youth. I am not sure jobs will be created for the youth because the people who will be replacing those are people in their 50s who are not exactly youth. It does not necessarily mean that the fact that somebody has retired, a job has been created at the entry point. The dynamics are very different. Studies have also shown that people could be productive beyond

60 and in their 70s. They have acquired some experience and they may need to be retained until a suitable replacement is found. That is the reason why this was contained within the regulations rather than within the law so that as dynamics change, the age could even be shifted from 60 to 50 years. It is easier to amend the regulations than the law. This is because for a law to pass here, it could take more than a year. Again, we will be looking at this before we come to the Committee of the whole House. We will see what amendments we can bring because we need to ensure that whatever we are doing cannot be challenged from its constitutionality.

I heard a Member wanting to extend this thinking even to elected officials. I wish he was here because I would have reminded him. If you remember in the old Constitution, the entry point for the president was 35 years and then there was no upper limit.

When that was attempted to be introduced in the 2010 Constitution, we were reminded of Article 27 which had already said that nobody can be discriminated on account of age, from aspiring to hold office. So long as you are a registered voter, which means that you must be over 18 years, you can even vie for presidency. Now, even as we try to bring in that you must retire at 60, we need to be careful that this law does not fall victim to the provisions of Article 27, that the only reason we are saying a person cannot continue contributing to their nation is on account of age which then becomes a violation of their rights which is guaranteed in Article 27.

I think we need to balance between all these things. The intentions are good, to make sure that people can retire at a certain age, but we cannot legislate here on things that will be deemed to be unconstitutional because you will now discriminate a person on account of their age, that because you are now 60, you must retire. This goes against the Constitution. We did not have those provisions within the Constitution, except for people working in a certain service. It is a blanket thing, nobody is discriminated on account of their gender, race or age. It does not say entry point or exit point. That is why the entry point for presidential election or for any election was not capped. Either way, there is a cap, that you must be a registered voter and definitely you must be the age of the majority, otherwise minors cannot make a decision for themselves or for the people, so they cannot represent anyone.

So, I congratulate the Member, but I want the House to take cognisance of those two issues that; one, in terms of the acting, how long a person can act. We need to tie that to the circumstances under which the person is acting. So you do not penalise a person for acting and not getting paid, yet it is not possible to do otherwise.

Two, ensure that whatever we do with the age of 60 does not go against the Bill of Rights in the Constitution.

Once we harmonies that, then we will be good to go in terms of achieving the objective of this Bill.

With those few remarks I support the effort, but we need to look at those provisos.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members who are coming in, we are on the Public Service Commission (Amendment) Bill as moved by Hon. Benjamin Mwangi.

Let us move to the next Member, Member for Isiolo North, Hon. Hulufu Oda.

Hon. Hassan Hulufu (Isiolo North, KPP): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this Bill. I would like to start by congratulating the Member who has introduced these amendments. We have a huge population of youth in our country. I agree with the Leader of the Majority Party that setting the age of retirement at 60 does not necessarily mean that we will have all our youth being employed in the public service. However, moving that requirement from regulation to a statute is a good thing, such that unless

there are extraordinary circumstances under which a certain Kenyan will be required to hold public office beyond the age of 60, we need to have a law clearly indicating that once somebody has obtained the age of 60 having served in the public service, the person should retire honourably.

Hon. Temporary Deputy Speaker, the other aspect which this amendment has touched on is the issue of people who are acting in offices. We have had situations where individuals have been allowed to act for close to a decade, to the extent that when those offices are supposed to be filled, it becomes a challenge. An example is when we were filling the position of the Chief Executive Officer (CEO) for the National Government Constituencies Development Fund (NG – CDF). Such a thing should not happen unless a Kenyan is required to hold brief for a CEO who is on official leave, study leave or who is away from office, under certain special circumstances. Under circumstances where the CEO has exited and the vacancy needs to be filled, there is no reason why somebody should act for more than six months. This amendment will help us to seal that loophole.

We have had situations where heads of parastatals or heads of Government institutions, who are acting, are forced to be at the mercy of the board, the chairs of the board and board of directors. When somebody is acting, they cannot exercise their powers fully. They are insecure and, thus, that makes them vulnerable to manipulation by the board. Therefore, I see this as something which is very important. But as Members who have spoken before me have indicated, when it comes to the Third Reading, we need to make provision for special circumstances where acting beyond six months could be allowed and where certain Kenyans, because of their unique skills and knowledge, could be allowed to work on contract beyond the 60 years.

I thank you. I support the amendment.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Let me have the Member for Sirisia, Hon. John Waluke.

(Applause)

Hon. John Waluke (Sirisia, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to contribute. I have been away for almost four months and I want to take this opportunity to thank all the Members of this House, those who stood with me during the difficult time that I had. I want to let the Members and the nation know that I did not steal and I am not corrupt. Sometimes, it is a challenge. I have been in custody for almost four months and I have learnt a lot. It is a very big experience. I have learnt that there are prisoners who have been jailed, some without any mistake. I want to let the Members of this House know that many of their constituents are in prison. Some are petty offenders with a fine Ksh1000 or Ksh2000...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. John Waluke, even as you do that, you can marry your debate with the Public Service Commission (Amendment) Bill.

Hon. John Waluke (Sirisia, JP): Okay, Hon. Temporary Deputy Speaker. I thank the Member who brought this amendment, which talks of retirement age of 60 years.

Everybody is born as a child and grows to become an old person. It depends with the time that God gives you to stay on this land. In this country, the retirement age is now 60 years; it used to be 55 years.

With the very many youths and graduates from universities who are out there looking for jobs and tarmacking - last year our Committee thought of reversing the retirement age from 60 back to 55. There are hundreds of thousands of youths who have completed university education and do not have jobs.

Those who came up with the retirement age of 55 knew that when you work up to the age of 85, you will be exhausted. I have been abroad where people can work up to even 80 or 90 years of age. Those are *Wazungus*. In Africa, we should retire by the age of 55. That way, you can go home when you still have energy. You can plan for the remaining years that God will give you instead of working up to the age of 60.

I have a lot to say but due to time, I will leave it there. I appreciate the opportunity.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Welcome back to the House, Member for Sirisia. I can tell from the Members that he is doing the right thing. They appreciate his presence.

Let us have the Member for Kabondo Kasipul, Hon. Obara Akinyi.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I stand to also support the Bill. It is reinforcing regulations that are already in place.

In the public service today, the retirement age is 60. This has been the case for about 15 years now. People retire at 60 years of age. There is nothing new in this. The retirement age is 60. The problem could be the enforcement of this regulation. I say without fear or contradiction that probably only 85 per cent of public servants have complied with this regulation. Probably only 10 or 15 per cent have not. This could be abuse. I would call it an abuse of office because they know the retirement age is 60.

Secondly, the CEOs they were talking about have very clear regulations on how to exit. They exit on a three-year term, renewable after three years, or renewable after five years. It is very clear. That is before you are 60 years old. Once you are 60 years old, you have to exit. Again, there is no crisis in that area. You have seen in areas where boards are tempted to extend beyond the retirement age of 60, they were stopped by the courts. A case in point is the Kenya Power and Lighting Company. The courts overturned that and the CEO had to go home.

We must distinguish between the staff and the board. The staff have a retirement age of 60. The retirement age of members of a board can go beyond 60. Boards are not staff. They are not employees earning the benefits of the staff. They are not taking jobs that the youth should be doing. We have to be very clear on what we are talking about.

When we talk about serving in an acting capacity, there are different types of acting that were raised by the Leader of the Majority Party. You act...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Eve Obara, you have good information. However, due to the interest of time, you will have a balance of three minutes, when debate on the Bill will be on the Order Paper. Please, plan your time. You have a balance of three minutes. You will have the priority to contribute to the Bill.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order Members! Hon. Members, debate on the Bill will have 43 minutes next time it will be slotted on the Order Paper by the House Business Committee.

The time being 1.00 p.m., this House stands adjourned until Thursday, 1st October 2020 at 2.30 p.m. I thank you.

The House rose at 1.00 p.m.