

COUNTY ASSEMBLY OF BUNGOMA

COUNTY ASSEMBLY DEBATES

DAILY HANSARD

THURSDAY 10TH MARCH, 2022

Afternoon Sitting

COUNTY ASSEMBLY OF BUNGOMA

HANSARD OFFICIAL REPORT

THURSDAY 10TH MARCH, 2022

The House met at 2:30 p.m.

(Temporary Speaker [Hon. Humphrey Sifuna in the Chair])

PRAYER

STATEMENTS

PAPERS

Hon. Elly Tindi(Deputy Majority Leader): Thank you, Mr. Speaker. I wish to table this report from the Office of the Auditor General on the financial statements of Bungoma County Education Boards scheme for the year ended 30th June, 2022.

Temporary Speaker: Thank you, Hon. Tindi.

(Applause)

The report is now tabled and has become the property of this House. I dedicate this report to the PAC Committee.

MOTIONS

REPORT BY JUSTICE AND LEGAL AFFAIRS COMMITTEE ON THE CAPACITY BUILDING WORKSHOP OF THE COMMITTEE MEMBERS

Hon. Anthony Lusenaka: Thank you, Mr. Speaker. I'm here to move a Motion on the report by Justice and Legal Affairs Committee on capacity building workshop of Committee Members at Kisumu.

ACKNOWLEDGEMENT

Mr. Speaker Sir, on behalf of Members of Justice and Legal Affairs Committee, it is my pleasant duty to present to the House the Committees report on the capacity building workshop in Kisumu from 18th to 23rd November 2021.

Committee Membership:

1. Hon. Peter Sindani - Chair Person
2. Hon. Anthony Lusenaka - Vice Chair Person

3. Hon. Ali Machani -	Member
4. Hon Elvis Abuka-	Member
5. Hon. David Barasa-	Member
6. Hon. Eunice Kirui-	Member
7. Hon. Evelyn Mutiembu-	Member
8. Hon. Nathaniel Aseneka -	Member
9. Hon. Rebah Wabwile-	Member
10. Hon. Sophie Marumbu-	Member
11. Hon. Wamusai Simiyu-	Member

Terms of Reference

Mr. Speaker Sir, the Committee had the following terms of reference.

1. To review the Committee mandate back and evaluate its performance.
2. Carry out a comparative analysis of the Committee mandate with other parliaments

Methodology

The Committee adopted general methodology during the training;

1. Front end teaching from CPF facilitators
2. Interactive segments with the facilitators and
3. Learning from one another sessions
4. Recorded and written information
5. Question and answer session

Acknowledgement

Mr. Speaker Sir, the Committee wishes to register its unreserved thanks to the office of the Speaker and the Clerk of the County Assembly for the support accorded to the Committee while executing its mandate. I wish further express my sincere appreciation to Honorable Members of the Committee who sacrificed their time to participate in formulation of this report.

Finally, special appreciation also goes to the secretariat of the Committee to have gone beyond their normal duty and produced this report in time. It is therefore my pleasant duty and privilege and on behalf of the Committee on Justice and Legal affairs to table this report

and recommend it to the House for debate and adoption pursuant to the provisions of the County Assembly Standing Orders number 196(5)(a)

Signed by Hon. Peter Sindani Chairperson Committee on Justice and Legal Affairs

Key Highlights of the Training

Topical analysis of the Committee

Mr. Speaker Sir, the 2010 Constitution of Kenya had fundamental changes in our governance system that indicated organs in terms of article 1(iii) of the Constitution of Kenya are: -

- Parliament and legislative Assemblies in the County governments.
- The National Executive and Executive structures in the County Governments.
- The Judiciary and independent tribunals.

The exercise of this sovereign power is dictated by the Constitution and the National Values and Principles of governance set out in Article 10 of the Constitution of Kenya.

The Constitutional basis for committees lies in Article 124, 185 of Constitution of Kenya and the County Governments Act Sect.14 and it is upon these provisions of the Law that the Justice and Legal Affairs Committees is established and exists both in the National Assembly and the Senate. Some Assemblies have also established Justice and Legal Affairs committees. In the case of the Bungoma County Assembly, the Justice and Legal Affairs Committee came into existence in this second Assembly. The mandate of the committee as is currently stands has not been well understood by the committee members and the House at large and that is why the Committee embarked on this workshop training.

Comparative Analysis of the sister committee mandates in other Parliaments

To further determine the mandate of the committee, during the training a comparative analysis on how the Committee on Justice and Legal Affairs in other parliaments was brought out. This was in the spirit of learning from best practices of parliamentary jurisdictions and procedures. The mandate of the committees in the selected Parliaments was brought out as follows:

2.2.1 The UK Parliament

2.2.2 The Pan-African Parliament

2.2.3 The Senate of Kenya

2.2.4 The National Assembly

2.2.5 The County Assembly of Kakamega

2.2.6 The Nyandarua County Assembly

2.2.7 The County Assembly of Embu

2.3. Scrutiny of the committee mandate

The Committee was further taken through each of the clauses in its mandate to help members and the County Assembly at large to better understand the mandate of Justice and Legal Affairs Report. The clauses were illustrated as follows:

a) **Deal with Constitutional Affairs**

The constitution spells out various fundamental rights to equality and representation of the people in undertaking the devolved functions by Counties. The various rights and freedoms are well stated in chapter four of the Bill of Rights and the committee looked at them keenly and has cited some as examples to expound on its functions as far as constitutional affairs is concerned. The following are some of the provisions of the constitution of Kenya on general provisions relating to the Bill of Rights:

Article. 10 (2) (b) and(c) On National values and principles of governance

(Article 26; Right to life

(Article 27. Equality and freedom from discrimination

Article 28. Human dignity;

Article 30. Slavery, servitude and forced labour

It is the prerogative duty of the committee to make sure that these rights and fundamental freedoms, National values and principles of governance, fair administrative action, and access to justice are adhered to by both the Assembly and the Executive in the course of discharge of their duties.

b) Deals with Administration of Law and Justice

Under this clause, the committee has the responsibility of ensuring that both wings of the Government, that is the Legislative and the Executive administer Law and justice in the line of offering services. Several provisions of the Constitution of Kenya were considered and came in handy to aid the committee in interpreting this function.

Article; 47 (1), (2) and (3) (b): Fair administrative action

Article 48; Access to justice

In view of elections, the committee has the responsibility to oversight over the administration of law and justice in elections of various persons in positions where County Public Funds have been invested. These elections include the following among others;

1. The election of five members of the Municipal Boards elected under Sec 14 of the Urban Areas & Cities Act No. 13 of 2011: The provisions of section 13 shall apply with respect to the board of a municipality except that such board shall comprise nine members of whom four shall be appointed and five elected in the prescribed manner.

2. The election of the chairpersons and vice- chairperson of the Municipal Boards in relation to Sec 17 of the Urban Areas & Cities Act No. 13 of 2011;

The Chairperson and the Vice Chairperson shall be elected by the members of the board from among themselves during the first meeting of the board, and subsequently whenever a vacancy arises and shall be of opposite gender.

3. The elections of the members of the Board at NOCO, Coffee and Tea Sectors, as provided for in the cooperative societies

4. Elections of the Governor, the Speaker in the manner prescribed under So. No. 58, 59, 60, (procedure for removal of the Governor, and the Speaker), elections in case of occurrence of vacancies in the Office of the Chairperson, Vice-Chairperson of a Select Committee as per Standing Order No. 160 (2) of the County Assembly of Bungoma.

5. To inquire into the low turnout of voters in an election within the County and make recommendations to the Independent Electoral and Boundaries Commission.

d) **Administration of Law in Relation to the Public Officers Ethics Act 2003 and the Anti-Corruption and Economic Crimes Act 2003**

The committee was alive to the fact that there have been reported cases of corruption and economic crimes, and ethical issues bordering on Bribery, conflicts of interest, improper benefits to trustees for appointments, bid rigging, abuse of office, etc. that have bedeviled the county since the inception of devolution. The committee henceforth has the sole obligation of reviewing these cases both in the past and the current regime to find out if justice was really administered to the parties in relation to the Public Officers Ethics Act 2003 and the Anti-Corruption and Economics Crimes Act 2003.

e) **Issues of Human Rights**

The committee is cognizant of the vast matters touching on the abuse of human rights and lack of security in the county.

COMMITTEE OBSERVATIONS AND RECCOMMENTATIONS

Committee Observations

The committee made the following observations after the training;

1. It is the prerogative duty of the committee to make sure that these rights and fundamental freedoms, National values and principles of governance, fair administrative action, and access to justice are adhered to by both the Assembly and the Executive in the course of discharge of their duties.
2. The committee observes that issues relating to administrative of justice, human rights, ethics and integrity as outlined in the standing order are cross cutting which requires collaboration with other agencies
3. The committee needs to undertake civic education and community sensitization across the 45 wards to inform the citizens on the administration of law, justice, equality and issues on human rights including equal distribution of resources.
4. The County Assembly of Bungoma needs to review and customise the mandate of Justice and Legal Affairs Committee.
5. The committee observes that issues of prepublication scrutiny of bills has been overlooked and there is need for the same to be undertaken by the committee before the select committee takes over the bill for public participation.

COMMITTEE RECOMMENDATIONS

The committee made the following recommendations

1. That the Honourable House allows the committee to undertake pre-publication scrutiny of all bills of the County Assembly of Bungoma in a bid to strengthen and improve in the legislation of the County.
2. That the Honourable House allows the committee to carry out civic education and community capacity building across 45 wards to sensitise the citizens on issues of administration of law and justice, equality, human rights issues oversight and equal distribution of resources

3. That the committee hereby requests the rules and procedure committee to fast-track the review and customisation of the mandate of the justice and legal affairs committee
4. That all members of the County Assembly should be sensitised on the mandates of all committees at the beginning of every County Assembly for them to be aware and hence enrich their oversight role.

We the undersigned members of the committee affix our signatures adopting this report with the contents there in. That is

1. Hon. Peter Sindani - Chairperson
2. Hon. Antony Lusenaka –Vice Chairperson
3. Hon. Elvis Abuka -Member
4. Hon. David Barasa - Member
5. Hon. Nathaniel Aseneka - Member
6. Hon. Everline Mutiambu -Member
7. Hon. Eunice Kirui - Member
8. Hon. Rebah Wabwile - Member
9. Hon. Sophie Marumbu - Member
10. Hon. Chrispinus Wamusai - Member
11. Hon. Ali Machani - Member

I wish to call upon Hon. Sophie Marumbu to second the report!

Temporary Speaker: Very well Hon. Namunyu.

Hon. Sophie Marumbu: Thank you Mr. Speaker. On the onset, I want to thank my Chair for having taken us through the report and I believe we have all gone through with him.

Secondly, I rise to second the report.

Temporary Speaker: Honourable members, now a motion having been moved and ably seconded, I will now propose a question. I propose.

(Question proposed)

Hon. Henry Majimbo: Thank you Mr. Speaker for giving me an opportunity to contribute and on the onset I stand to support the motion as moved by Hon. Antony Lusenaka MCA Bukembe West and I have the following to say;

That looking at the mandate of this committee, this is one of the key committees that can streamline governance in any institution. What I do not get is; I might be wrong or right since I was elected in 2017 I have never seen any other report from this committee apart from capacity building ones. They have been doing capacity buildings but when I look at their mandate, I have never seen them table any cases of injustices in the County. I will have really wished to get a report from them to see whether, we comply with the provisions of the Constitution especially article 10 or 27 that touch on human rights.

I recall you were a victim of injustice when you were ambushed and that was the time the report that you had made to the police and the allegations that you made, that you suspect that was a pre-arranged attack on you. That could be one of the cases this committee could have looked into.

There were cases of the CEO of this County threatening MCAs and I want to quote in Swahili that *tutawatembelea*. That is injustice because it is infringing on my human rights because I have that right to associate, speech and this committee could have also been investigating the allegations that the executive has been muting violence onto other innocent people especially at funerals.

That is part of the exercise this committee could have undertaken in their mandate because it looks at those injustices because if someone stands up and says *nitatembelea hao kwa manyumba zao*, that causes fear in the society. Although we are coming to the end of this session but I tend to believe that those are some of the cases that this committee could have looked into.

Lastly, I laud this committee for trying to give us comparative analysis from other jurisdiction. I think it is also enriching my knowledge on other jurisdictions. I support.

Temporary Speaker: Very well, Hon. Majimbo

Hon Francis Chemion: Thank you, Mr. Speaker. I want to look at some two recommendations of this committee, the first recommendation I don't know why this committee is requesting because they are saying that the Honorable House allows... That the committee makes the following recommendation, "That the Honorable House allows the committee to make to undertake pre-publication scrutiny of all bills of the County Assembly of Bungoma in a bid to strengthen and improve legislation in the County. I want to know why the committee in its own wisdom is asking to be allowed something that they could just do. Is there an impediment that stops them from doing this prepublication and scrutiny of bills?

The second recommendation again, the committee is requesting the Honorable House to allow it to carry out civic education and community capacity building across 45 wards. If it were me, I would have said the committee to carry out civic education and community capacity building across the 45 wards to sensitize the citizens on issues of administration of law and justice, equality, human rights issues, oversight and equal distribution of resources. They do not need permission because they could have just said the committee to do this so that it doesn't look as if its hands are tied. Otherwise, from the background, I want to laud the committee and its clerk for how they have brought out the background information about this committee. They have looked at the international level; they have come to Africa, then to the national level, then the counties. That is how the background is always done and I am very sure we have got much information by reading this report. I support this report.

Temporary Speaker: Very well Hon. Chemion. In the absence of any other contributor, I will now call upon the mover to reply.

Hon. Anthony Lusenaka: Thank you, Honorable Speaker. First, I want to appreciate the input by Hon. Majimbo and Chemion on this motion. First, this committee previously we have not been looking at Bills, that is pre-publication and that is why we are asking because each committee is mandated to look at its own report. So this committee was requesting that all Bills should pass through this committee before publication, so that they are properly trained on this mandate.

Secondly, because of budgetary constraints, we are requesting this House to approve this report so that this committee is also tasked with civic education. Sometimes when we go out for one or two functions, our kitty is depleted and that is why we are asking that money is set aside for civic education. Otherwise our own budget cannot sustain to carry out civic education in all the 45 wards, as we can only do maybe one or two wards.

When you look at recommendation number four, that all members of County Assembly should be sensitized on the mandates of all committees at the beginning of every County Assembly, we are also requesting that any Assembly that starts like now the third Assembly that starts on 9th of August this year, all members should be sensitized on the mandates of every committee, so that we can also exchange ideas and have some input all across.

In case of frequent changes that are happening, that is moving from one committee to the other like what has happened in the last two years. At least we have knowledge of the mandate of that committee and so that recommendation is very important.

Lastly, what Hon. Majimbo was alluding to, that was just hearsay. If it was factual, we could have taken up the matter and maybe written a report on the same, but we will be very keen if such a thing happens again. I think the committee can take up the issue, we are well equipped with the knowledge and the resources are there, so that in case of any injustices to any member of this House or executive, this committee will take up the matter and see how to help in such cases.

Otherwise, I want to request this House to approve the report, so that we see how to move forward.

Temporary Speaker: Very well, Hon. Namunyu. Honorable members, a motion on a report having been moved and seconded, debate ensued and replied to; I now put a question that the report and its recommendations be adopted.

(Question put and agreed to)

The ayes have it.

(Applause)

The report has been adopted by the House for onward transmission to the relevant department.

That being the last item on our Order Paper, the House stands adjourned to Tuesday next week.

(House adjourns)