

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 5<sup>th</sup> May, 2016

The House met at 9.30 a.m.

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

### PRAYERS

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, we are short of the requisite quorum. Therefore, I order the bell to be rung for 10 minutes.

*(The Quorum Bell was rung)*

Order, Hon. Members! We now have a quorum. Let us begin this morning's business.

### PAPER LAID

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to lay the following Paper on the Table of the House:-

*(Hon. Ababu received a call)*

Hon. Temporary Deputy Speaker, is it in order for Hon. Ababu to use his phone in the Chamber? I have a lot of respect for him, but this is a House of rules.

**The Temporary Deputy Speaker** (Hon. Cheboi): He is obviously out of order, but I had given you an opportunity to lay Papers. You did not rise on a point of order. You cannot do equity with unclean hands yourself, but it makes a lot of sense. I wish somebody else had raised that point of order. I would have noted it. Clearly, that is water under the bridge. The Chair did not see it happen.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to lay the following Paper on the Table of the House:-

An Additional List of Nominees to 26 National Government Constituencies Development Fund Committees from the National Government Constituency Development Fund Board

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

### NOTICES OF MOTIONS

## ADOPTION OF ADDITIONAL LIST OF NOMINEES TO NGCDF COMMITTEES

**Hon. Lessonet:** Hon. Temporary Deputy Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the additional list of nominees to the following 26 Constituency Committees of the National Government Constituencies Development Fund, laid on the Table of the House today, Thursday, 5<sup>th</sup> May, 2016:-

1. Ainamoi Constituency.
2. Bobasi Constituency.
3. Embakasi West Constituency.
4. Bomachoge Chache Constituency.
5. Emuhaya Constituency.
6. Ganze Constituency.
7. Juja Constituency.
8. Kabete Constituency.
9. Kitui Rural Constituency.
10. Konoin Constituency.
11. Lungalunga Constituency.
12. Matungu Constituency.
13. Matungulu Constituency.
14. Mbita Constituency.
15. Navakholo Constituency.
16. North Horr Constituency.
17. Nyeri Town Constituency.
18. Nyatike Constituency.
19. Rangwe Constituency.
20. Nyaribari Chache Constituency.
21. Limuru Constituency.
22. Ndhiwa Constituency.
23. Kibwezi East Constituency.
24. Kibwezi West Constituency.
25. Malindi Constituency, and
26. Changamwe Constituency.

**The Temporary Deputy Speaker** (Hon. Cheboi): I must commend the Leader of the Majority Party and the Chair of the National Government Constituencies Development Fund (CDF) for the work well done.

Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

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

## THE LAND LAWS (AMENDMENT) BILL

*(Resumption of consideration interrupted in Committee on 4.5.2016)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we are in the Committee of the whole House to consider the Land Laws (Amendment) Bill. We had considered this Bill up to Clause 44. We will start with clause 45.

*Clause 45*

**Hon. (Ms.) Khamisi:** Hon. Temporary Deputy Chairlady, I beg to move:-  
THAT, clause 45 of the Bill be deleted.

Hon. Temporary Deputy Chairlady, this is against the Constitution. We have devolution and we want to have structures at the county level so that citizens at the county can access services by the National Land Commission (NLC).

Article 62(2) of the Constitution states:

“Public land shall vest in and be held by a county government for the people resident in the county, and shall be administered on their behalf by National Land Commission.”

If the NLC administers the land on behalf of the county government, then we should have a structure. The county land management boards were created by the NLC. Those boards are answerable to NLC. They are paid by the NLC. They are only sitting at the county level so that the public can access their services.

This amendment offends the requirement of Article 6(3) of the Constitution which states:-

“A national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.”

It also offends the national value on inclusivity and participation under Article 10 of the Constitution. Many people will fail to get ownership or resolve their land issues because they cannot access Nairobi because they are poor and have no knowledge of the processes involved. If we delete this structure at the county level, it will be difficult for our people to access the services of NLC.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Keep it short, Hon. (Ms.) Khamisi.

**Hon. (Ms.) Khamisi:** Well guided, Hon. Temporary Deputy Chairlady. The Supreme Court recently upheld the county land management boards.

*(Question of the amendment proposed)*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I strongly oppose the deletion of that clause. We are trying to help the NLC devolve itself directly other than using another body which is under the county assemblies. When the county land management boards were being appointed under the old Act that we are amending, they were approved by the county assemblies. The NLC has no much power to control those boards. They are answerable to the county assemblies and they can also be sued. They should have structures just like the Ethics and Anti-Corruption Commission (EACC) and the Independent Electoral and Boundaries Commission (IEBC) which have devolved themselves directly to the counties. If I can make reference to yesterday's current amendment, we deleted the boards under Clause 42. As it is now, we cannot purport to delete Clause 45.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mbadi.

**Hon. Ng'ongo:** Hon. Temporary Deputy Chairlady, I want to support the deletion of this clause for two reasons. We made a decision to have counties answerable in managing public land and that will be possible if you have the county land boards committees in place. I want to disagree with the Chairman who has said that the fact that the county assemblies approve the membership of the board gives them power to control them. That is not true. The law mandates the NLC to liaise with the county governments in appointing the boards. The responsibility of the county assemblies is the same as that of the National Assembly in vetting appointments. The assembly vets the membership of those boards to ensure that they are people of integrity and competent enough to execute their duties. It is the same way we vet the NLC membership. We should respect the fact that county assemblies have almost similar responsibilities as the National Assembly.

As Hon. (Ms.) Mishi has said, the Supreme Court upheld that the county land management boards have a responsibility and must be in place. It would be wrong for us to do away with a body that we created to devolve functions to the county.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, let us agree to take the shortest time when you are supporting or opposing so that we can take this Bill through before 1.00 p.m.

**Hon. Ng'ongo:** I am well guided.

The Committee has not helped us by clearly defining how the National Land Commission (NLC) would have its presence in the counties.

Hon. Temporary Deputy Chairlady, I support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Member for Mbeere North.

**Hon. Njagagua:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Sorry! I did not give you the Floor, Hon. Member.

**Hon. Njagagua:** My intervention was on a point of order.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I did not give you an opportunity to raise a point of order. I wanted to give the Floor to somebody to contribute.

Let me give the opportunity to Hon. ole Sakuda.

**Hon. ole Sakuda:** Thank you very much, Hon. Temporary Deputy Chairlady. I want to oppose this amendment very strongly.

I want to draw the attention of Hon. Members to what we did yesterday, on Clause 42 of the Bill. Clause 42 of the Bill says Section 2 of the National Land Commission Act is amended in section 2 by deleting the definition of "board". Hon. Mishi's amendment is giving life to

something that has already been deleted. It is true that the NLC has a duty to devolve itself to the counties, just like the Ministry of Land, Housing and Urban Development and other Government entities have done. The NLC can have members of staff on the ground, but not necessarily the board. The county land management boards were deleted from the principal Act through yesterday's amendment.

I oppose the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Thank you, Hon. ole Sakuda. I give the Floor to Hon. Gladys Wanga, and then I will put the Question.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairlady. I want to support Hon. Mishi's amendment. She is proposing to delete clause 45, which is repealing Section 18 in the NLC Act.

Firstly, the argument that we already deleted the definition of "board" does not hold water because we even opposed the deletion of that definition. Secondly, the big problem that the Committee says those boards have is the approval by the county assemblies. If the approval of the county assemblies is the problem, we should introduce an amendment to deal with that specific problem, instead of deleting the boards completely. Section 18 of NLC Act - which we are repealing - says that the county land management boards comprise of seven members who are appointed by NLC. You cannot propose to have members of staff in the counties. You need the engagement of the communities on land issues. Those boards allow the NLC to engage the communities out there. You cannot say that you will have members of staff there. The Committee should rethink the issue of abolishing the county land management boards.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, you have made your point.

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

*(Clause 45 agreed to)*

*Clause 46*

**Hon. Mwamkale:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 46 of the Bill be deleted.

Clause 46 proposes deletion of the words "selection panel" and substitution of the same with words "the Public Service Commission". I am proposing deletion of this section because it is unconstitutional. Article 234 (3) of the Constitution excludes State offices from the mandate of the Public Service Commission (PSC). There is no way the PSC can carry out the mandate of another independent commission. The NLC is an independent commission. Therefore, the PSC cannot oversee it.

Secondly, Article 249(I) and (2) (b) of the Constitution protect the sovereignty of the people. The people have the mandate to vet whoever will be in the selection panel. We saw this happen when the Chief Justice was being appointed. Every citizen was given the chance to send a memorandum. We are depriving the people of this privilege and giving it to the PSC. This is an independent commission. Article 67 of the Constitution protects it from being directed by either another authority or person.

Therefore, Clause 46 is unconstitutional and should be deleted.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Chair of the Departmental Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I oppose the amendment because we are not saying that the PSC will employ people. We are saying that the PSC will shortlist candidates and forward their names to this House for approval, just like they did with the Ethics and Anti-Corruption Commission (EACC). There is no sinister motive at all in doing so. The PSC have an established structure for vetting the curriculum vitae of candidates, do the shortlist and forward the names of qualified candidates to the National Assembly for approval.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I give the Floor to Hon. Andrew Mwadime.

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, I urge Members to be objective. Let us not be subjective. We are making laws for Kenyans. I support the amendment by Hon. Mwamkale. According to Article 234 of the Constitution, the amendments proposed by the Committee are unconstitutional.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I give the Floor to Hon. Makali Mulu.

**Hon. Mulu:** Hon. Temporary Deputy Chairlady, this is the second amendment that hon. Members are questioning its constitutionality. I am getting concerned and wondering whether this House should be discussing amendments which are not constitutional. We all swore to protect the Constitution.

There is also another thing which worries me. I thought before a Bill is brought to this House for consideration, issues to do with its constitutionality are sorted out. This Bill went through the relevant Departmental Committee. These amendments are championed mostly by Members from the Coast region. I am worried because this Committee did not take time to sit down with these Members to sort out some of these issues. We know that there are land issues in the coastal region. I am not very comfortable. I am thinking of stepping out because I get worried when I see Members from a particular region pushing for amendments. Because of numbers, we will rubbish all their amendments. At the end of the day, I do not know whether we are serving this country.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, your concern is noted. I can assure you that by the time this Order Paper came to this House, the relevant Legal Department of Parliament had looked at it. There is nothing unconstitutional that can be brought to the Floor to this House.

I want to give the Floor to Hon. Serut, but his request is not reflected on my request list. Are you on a point of order, Hon. Serut, or do you want to contribute? Do you have a card?

**Hon. Serut:** Hon. Temporary Deputy Chairlady, I want to persuade my colleagues that the argument advanced by *Mheshimiwa* Kamoti seems to hold water. There is no constitutional office that can oversee another constitutional institution. Please, Members, let us not create a situation where some people will rush to court to contest this legislation. Let us support that amendment.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Ababu.

**Hon. Ababu:** Hon. Temporary Deputy Chairlady, I am standing to support Hon. Mwamkale's amendment. He may be from Coast, but I disagree that this is merely a Coastal matter. We should not pigeonhole these issues because they are national issues. Issues of land are emotive nationally. The fact that this issue is being raised by a Member from a particular region does not regionalise the issue. I am a bit concerned if we enter the gang mentality and gang up against amendments merely because they are being raised by a particular region.

I also want to caution that, indeed, this House can pass unconstitutional legislation. Only last year, the High Court struck out 11 sections of the Security Laws (Amendment) Bill that was being discussed and enacted by this House.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Can we speak to the amendment on the Floor, Hon. Ababu? You have been given too much latitude, please.

**Hon. Ababu:** I am speaking to this amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): You are going beyond the amendment.

**Hon. Ababu:** What I am saying is that this attempt to emasculate the NLC and any attempt to replace devolution with mere decentralisation will be unconstitutional. This particular clause, if not amended as proposed by Hon. Mwamkale, will definitely be unconstitutional because it would amount to interfering in the operations of an independent constitutional commission. I support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair, I know you have spoken, but I am giving you this opportunity because I have been seeing you consulting.

**Hon. Mwiru:** Thank you, Hon. Temporary Deputy Chairlady. There is logic in what Hon. Ababu has said. But it is also important that he should have also read our amendments so that we can see whether we can strike a balance. If we delete the whole clause, the other provisions which we have already agreed on as a Committee and which are very important may vanish. I think we need to strike a balance. On the matter of Article 234 of the Constitution, the Committee has agreed.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwamkale, are you convinced by the Chair? We can strike a balance because we have also envisaged the same thing that he is saying. If his amendment is carried, it means the other provisions will also fall.

Let me explain it to him properly. Are you convinced by the Chair about his further amendment that follows yours? If we carry your amendment, then we will not be able to consider the amendments by the Chair.

**Hon. Mwamkale:** I think the Chair is telling the House that he has conceded that some of the clauses are unconstitutional. Therefore, if he re-phrases and takes care of what he is conceding and comes up with a new amendment, I will agree. We cannot just dump my proposal and consider his amendment when we know some of the issues have not been taken care of.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So, you are not convinced. Let us vote. I think the Chair and Hon. Mwamkale are not in agreement.

Hon. Nyikal, let me give a chance in the next amendment, please. Let us put this issue to a vote.

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

The Chair, now move your amendment to the same clause.

**Hon. Mwiru:** Hon. Temporary deputy Chairlady I beg to move:-

THAT, Clause 46 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in paragraph (1)—

(i) by deleting the words “in consultation with the Prime Minister” appearing in the opening sentence;

(ii) by deleting sub-paragraph (b); and,

(iii) by deleting the proviso;

(b) by deleting paragraph (b);

(c) by deleting paragraph (c);

(d) by deleting paragraph (d);

(e) by deleting paragraph (g);

(f) by deleting paragraph (h);

(g) by deleting paragraph (i); and,

(h) by deleting paragraph (k).

The reason why we are proposing the amendment is that it is now not necessary to include the Office the Prime Minister because the Constitution does not recognise it at the moment.

Number two, and why I wanted to strike a balance with Hon. Mwamkale, is that the issue of the Public Service Commission of Kenya (PSCK) injures Article 234 of the Constitution and it expressly excludes State officers from the authority of the PSCK. Therefore, the amendment as contained in the Bill, providing that a commissioner of the NLC shall be appointed by the PSCK, would be unconstitutional. That is why I wanted to strike a balance. I think the issue is now taken care of in this particular amendment.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nyikal.

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairlady, I support this amendment. I want to take this opportunity to make a general statement. The essence of all the amendments I have seen – and I have not talked on these amendments from the beginning – is to move powers away from the NLC to the national Government. What we are seeing in this House is actually a vehement opposition from one part of the country whereas we are treating this as merely a legislative process where “Ayes” or “Nays” will have it.

I want this House to realise that when a whole block of people have an issue, we are dealing with a political problem. I want the House to note that the passage of this Bill in the way we are going, we will see its political ramifications later. I would have proposed, time permitting, that there would be need to get our colleagues from the Coast – you do not have to take my advice; I just want to go on the HANSARD – and we give them more time to have all their issues addressed.

Thank you, Hon. Temporary Deputy Chairlady. I have made my point.

**Hon. A.B. Duale:** On a point of information, Hon. Temporary Deputy Chairlady.



**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Do you want information, Hon. Nyikal?

**Hon. (Prof.) Nyikal:** I do not want the information.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): He does not need the information, Hon. Duale. So, I can give you an opportunity to raise a point of order.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, he can refuse to take the information, but I can stand on a point of order. I am sure my colleagues will agree with me that the Chair has called the Members more than eight times. Last week when I withdrew this Bill, I went physically to the Committee, Hon. Nassir will agree with me, and they met. The same thing was done between the pastoralist community and the Departmental Committee on Lands on the Community Land Bill. So, we have done this before. Parliament cannot wait for people. Members have their individual rights which they are exercising now.

Secondly and more fundamentally, I think he needs to withdraw the use of the words “one region”. There is no region in this House. I come from North-Eastern and there are many people here. If you are a leader, you do not say there will be political ramification. That is intimidation.

*(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)*

*(Clause 46 as amended agreed to)*

#### *Clause 47*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Chair of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 47 of the Bill be amended in paragraph (c)-

(a) in the definition of the term “lawful improvements”, by deleting the words “means improvements which increase or improve the value of land which have been carried out bona fide with all the approvals and consents having been obtained in accordance with all applicable law and includes” and substituting therefor the words “means improvements which increase or improve the value of land which have been quantified by a qualified valuer in accordance with all applicable law and includes”

(b) in the definition of the term “substantial transaction”, by deleting the words “means a transaction that involves the leasing or licensing of land to a local or foreign investor either alone or in a joint venture to carry out developments in agriculture and other approved ventures with direct developmental benefits for Kenya through” and substituting therefor the words “means a transaction that involves the transfer, leasing or licensing of land to a local or foreign investor either alone or in a joint venture to carry out developments in agriculture and other approved ventures with direct developmental benefits for Kenya through”

(c) by inserting the following new definition immediately after the definition of “agriculture or agricultural”–

“customary land” means private land on which one or more members of the family have customary rights of ownership”

There is not so much about the amendment. It is because we want to give clarity to the definitions of the words used within that section.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I see Hon. Gladys Wanga. Do you want to speak on this?

*(Hon. (Ms.) Nyasuna nodded in the negative)*

Hon. Otuoma?

**Hon. (Dr.) Nyongesa:** Yes. I support. This is just grammar.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Pukose, do you want to speak on this amendment?

**Hon. (Dr.) Pukose:** Thank you, Hon. Temporary Deputy Chairlady. I support the position of the Departmental Committee on Lands.

*(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)*

*(Clause 47 as amended agreed to)*

#### Clause 48

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 48 of the Bill be amended–

(a) by inserting the words “of the Land Act is amended” immediately after the words “Section 5”; and,

(b) in the proposed new subsection (3), by deleting the words “or vice versa”.

The amendment seeks to give clarity as to which Act is being amended at this point. On the other justification, it is unlikely that a proprietor will be obliged to surrender a lease for the interest in exchange for a freehold interest. We are just trying to streamline on how the matter can be dealt with.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member for Narok South.

**Hon. ole Lemein:** I rise to support the amendment. It is a fairly straightforward amendment.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Esther Murugi.

**Hon. (Ms.) Mathenge:** I also want to support the amendment by the Chairman.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Ababu.

**Hon. Ababu:** I was timing the next one, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Makau, the Member of Parliament for Mavoko Constituency.

**Hon. King'ola:** Thank you, Hon. Temporary Deputy Chairlady. I also want to support. If you allow, I will also support what the doctor was talking about.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): No. I will not allow that because we will be going out of the substance.

**Hon. King'ola:** Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us put the Question.

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

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

*(Clause 48 as amended agreed to)*

#### *Clause 49*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have two Members with amendments. Let us start with the amendment by Hon. Kamoti.

**Hon. Mwamkale:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 49 of the Bill be deleted.

Clause 49 proposes the deletion of the marginal note to substitute it with "powers and functions of the Cabinet Secretary (CS)". It goes ahead to put in a new provision (g). It gives the powers to make policy directions to the CS.

This is unconstitutional. Article 67(2)(c) is very clear that it is the NLC which is mandated to give policy direction to the national Government, and not the Cabinet Secretary indicated by the marginal note.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): It is clear. I told you to keep it short. The gist of your amendment has been noted. Once you have passed a message, please allow us to move on.

*(Question of the amendment proposed)*

Hon. Chairman of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I am opposing the amendment. As I said, it would have been appropriate for the Hon. Member to read along with me. These things are supposed to meet somewhere. If anything, we have tried to put in the NLC as he is saying. Deleting the whole clause defeats the whole meaning at the end of the day. To be very frank, that is why I am opposing it. If we delete the whole clause, even the purpose for which we are trying to raise the issue of NLC may not work out.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mbadi.

**Hon. Ng'ongo:** I support the amendment. Why? I thought the Committee was supposed to help us bring clarity to the various land laws we have. They have not done that. If you look at the Constitution, it is clear that under Article 67(2)(b), the function of the NLC is to recommend. The words to note there are “to recommend” and not “to make” or “to provide” a national land policy to the national Government. That can be the CS.

When you give the CS the functions of the NLC and say that he is supposed to provide policy direction regarding all classes of land, it is not proper. The Committee would have helped us by bringing clarity. If you leave it like this, it will conflict with the responsibility given to NLC. I urge the Chairman of the Committee to provide a further amendment to bring clarity. He should have said that the CS will provide policy direction regarding all classes of land after getting recommendations from NLC. I will be comfortable with that.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay, Hon. Member.

Let us hear Hon. Alice Wahome.

**Hon. (Ms.) Wahome:** I oppose this amendment. Initially, we had a lot of challenges in the coordination between the National Land Commission and the Cabinet Secretary concerned. If we bring an amendment to return the confusion that was there, we would not have done anything useful. The amendment is not tenable at this stage. Consultation is sometimes being abused.

I oppose.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We now go to the amendment by the Chairman of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 49 of the Bill be amended—

(a) in the proposed new paragraph (g), by inserting the words “in consultation with the Commission where appropriate” immediately after the words “classes of land”;

(b) by deleting the proposed new paragraph (h) and substituting therefor the following new paragraph—

“(h) coordinate the development and implementation of a National Land Information System in collaboration with the Commission”

(c) by deleting the proposed new paragraph (i) and substituting therefor the following new paragraph—

“(i) administer and undertake all dealings including registration of private land interests subject to Part VIII of this Act”

The Committee is trying to make sure that the CS consults with the NLC because the NLC has an advisory role on policy formulation. We are amending that clause as it is in the Bill by inserting (h) and (i) so that the NLC can have a role.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will start with Hon. Gladys Wanga.

**Hon. (Ms.) Nyasuna:** This is precisely what Hon. Mbadi was saying: You are taking away the function of NLC and giving it to the CS. You then say “we are now asking the CS to consult with the NLC.” The wording that had been proposed by Hon. Mbadi, which is to propose policy, upon receipt of the recommendation of the NLC, is proper. That is so that the NLC has its place. The CS will then operate upon that recommendation. Taking this role and giving it to the CS, hence letting him be in control and tell them to consult, is not possible. If the primary person is the one that consults, it will make sense. If the secondary person is the one who is being made to consult the primary person, it is like taking a kilogramme of sugar from someone and giving them a quarter of a kilogramme then you say they are still part of it.

I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, you have made your point. Hon. Jimmy Angwenyi.

**Hon. Agwenyi:** I support the amendment being made by the Chairman.

The principal person on policy of any ministry is the Cabinet Secretary. That is why he is appointed. That is why we vet him or her. I would like to support this amendment by the Chairman. Let us all support Cabinet Secretaries (CSs) to do their work. Otherwise, we should not have them.

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

*(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)*

*(Clause 49 as amended agreed to)*

*Clause 50*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 50 of the Bill be amended in the proposed new subsection (2), by deleting the word “alienation” appearing in paragraph (a) and substituting therefor the word “allocation”.

The amendment is for the purpose of correcting the wording as public land is converted to private land by allocation.

*(Question of the amendment proposed)*

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Chairlady. I support the rearrangement of numbers.

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

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

*(Clause 50 as amended agreed to)*

*(Clause 51 agreed to)*

*Clause 52*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): There is an amendment by Hon. Kamoti, which is deletion and then another one by the Chairman. If Hon. Kamoti's amendment is carried, Hon. Chairman's amendment will fall. Let us start with Hon. Kamoti.

**Hon. Mwamkale:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 52 of the Bill be deleted.

What is being amended here is the power to allocate land. Section 12 of the original Act provides that the Commission may, on behalf of the national or county governments, allocate public land. The same is echoed in Section 14 of the Land Act No.6 2012, which enumerates that the Commission shall, before allocating public land, give notice. We are saying that we ought to have checks and balances. Management and administration roles of land have been vested in the National Land Commission (NLC) and the CS should be in charge of giving titles. Let the allocation be done by one body and the titling be done by another body. That way, we will have checks and balances.

*(Question of the amendment proposed)*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I would have wished to agree with him, but I wish he had read what the Committee is trying to propose. What is in the Order Paper is that we are giving the mandate as a Committee to the NLC in terms of allocation. So, if we delete the whole clause, we will defeat the purpose of the whole thing. I wish Hon. Kamoti could read what is proposed by the Committee in the Order Paper to realise that we are also looking at that angle. When we delete the whole clause, the whole morphology of the Bill fails.

I oppose.

**Hon. Outa:** Thank you, Hon. Temporary Deputy Chairlady. We are here as the National Assembly and debating on a very important Bill that will unite Kenyans. Will I be in order to say that we do not meet the quorum in the House? I would want your advice if we would be able to continue with the Bill.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Outa, your point is made. We are confirming whether we have quorum. If not, we will ring the Quorum Bell. Can we ring the Quorum Bell?

*(The Quorum Bell was rung)*

*(Hon. Midiwo and Hon. Outa withdrew from the Chamber)*

Hon. Members, once you are in and the Quorum Bell is rung, you do not move out. Hon. Jakoyo and Hon. Outa, you know the rules. Hon. Outa has raised the issue of quorum and then he is walking out. That means he is not sincere in asking for the quorum. We will just wait while the Bell is ringing. Only the Whips should be out looking for Members to make quorum.

Order, Hon. Members! Stop the Bell. We will now continue. We now have the requisite quorum. Hon. Members, we were considering Clause 52. The Mover had already moved that amendment.

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

*(Clause 52 deleted)*

*Clause 53*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime has an amendment to delete the Clause. Let us hear from Hon. Mwadime. Hon. Mwadime, the amendment is on Page 680 of the Order Paper.

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 53 of the Bill be deleted.

The gist of the matter is that one of the definitions of “controlled land” as per the Bill is land in Kenya, which is within a zone of 25 kilometres from the inland national boundary of Kenya. The Land Control Act (Cap. 302) is the one which controls agricultural land. Within those 25 kilometres, there are agricultural activities going on in some areas. It would be better if control of agricultural areas is left to the Cabinet Secretary to involve both the National Land Commission (NLC) and county governments because they are the ones who know exactly what activities take place within those boundaries.

*(Question of the amendment proposed)*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I oppose that amendment. He has referred to the Land Control Act (Cap. 302) which has already been repealed to begin with. Some of his proposals and fears are taken care of in the Committee’s amendment. The issue is the definition of the term “controlled land”.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Otuoma, do you want to speak to this?

**Hon. (Dr.) Nyongesa:** Hon. Temporary Deputy Chairlady, I support what the Chairman of our Committee has said. It is quite clear what “controlled land” is. The amendment that the Member is proposing is contrary to the objectives we wanted to achieve with regard to controlled land.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Chair, do you have another amendment to this Clause?

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 53 of the Bill be amended in the proposed new section

12A-

(a) in subsection (1)-

- (i) by deleting paragraph (c) in the definition of “controlled land”;
- (ii) by deleting paragraph (d) in the definition of “controlled land”;
- (iii) by deleting paragraph (e) in the definition of “controlled land”;
- (iv) by deleting paragraph (iii) in the definition of “ineligible person” and substituting therefor the following new paragraph-  
“(iii) a body corporate which has non-citizens as shareholders shall be deemed to be a non-citizen.”

(b) by deleting subsection (2) and substituting therefor the following new subsection-

“(2) No transaction in controlled land, including a transfer for a consideration or by way of trusts, gift *inter vivos* or otherwise to an ineligible person, shall be dealt with without the prior written approval of the Cabinet Secretary.”

(c) by deleting subsection (3);

(d) by deleting subsection (4);

(e) by deleting subsection (5);

(f) by deleting subsection (6) and substituting therefor the following new subsection-

“(6) In deciding whether to approve or not approve an application, the Cabinet Secretary shall seek the approval of the relevant authorities”; and

(g) by deleting subsection (7).

The reason is that we are trying to unlock agricultural land and public land from the definition of “controlled land” which Hon. Mwadime was trying to insinuate. The other reason is that we do not require Sub-section 3 because Sub-section 2 caters for all the transactions listed under Sub-section 3. Therefore, we are deleting Sub-section 3 because Sub-section 2 has taken care of that.

*(Question of the amendment proposed)*

*(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)*

*(Clause 53 as amended agreed to)*

*Clause 54*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 54 of the Bill be amended-

(a) in paragraph (a), by deleting the proposed new subsection (1) and substituting therefor the following new subsection-

“(1) Before the expiry of the leasehold tenure, the Commission shall-

(a) within five years, notify the lessee, by registered mail, of the date of expiry of the lease and inform the lessee of his or her pre-emptive right to allocation of the land upon application, provided that such lessee is a Kenyan citizen and that the land is not required by the national or county government for public purposes; and

(b) if within one year the lessee shall not have responded to the notification, publish the notification in one newspaper of nationwide circulation.”;

(b) in paragraph (b), by deleting the proposed new subsection (1A);

(c) by deleting paragraph (c);

(d) in paragraph (d)-

(i) by deleting the proposed new subsection (4);

(ii) by deleting the proposed new subsection (5);

(iii) by deleting the proposed new subsection (6);

(iv) by deleting the proposed new subsection (7); and

(v) by inserting the following new subsections immediately after subsection (3)-

“(4) Subject to the provisions of subsection (1), a lessee shall be entitled to apply for a renewal of the lease at any time before the expiry of the lease.

(5) If the lessee does not apply for the allocation of land at the date of expiry of the lease, the lessee shall be deemed to have forfeited the Pre-emptive right over the land.

(6) An application under this section shall be in the prescribed form.”

The amendment will ensure that the lessee is notified in good time for his pre-emptive right to allocation of land. We are talking of when the lease is about to expire. We are saying that the lessee must be informed five years earlier and one year earlier again for the purposes of allowing the pre-emptive rights for the renewal of the lease.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I do not see any interest on the left. I will give only one person from the right.

Yes, the Member for Juja.

**Hon. Francis Waititu:** Thank you, Hon. Temporary Chairlady. I also support the amendment by the Chair.

*(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)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have an amendment from Hon. Kisang. Is he in the House?

**Hon. Kisang:** Hon. Temporary Deputy Chairlady I beg to move:-

THAT, Clause 54 of the Bill be amended—

(a) in paragraph (a), in the proposed new subsection (1) by inserting the words “and via email, if available” immediately after the words “by registered mail”; and

(b) in paragraph (b) by inserting the following new subsection immediately after the proposed new subsection (1A)-

“(1AB) notwithstanding the provisions of subsection (1A), an administrator of the lessee’s estate may be allowed to apply for an extension of the lease before it expires”.

Since in this day and age almost everyone has an e-mail address and if it is available in the records of the person who is registered, we should also give a copy of the notification by e-mail address.

I am also proposing that in case the registered owner of the land is deceased or cannot be got because of a reason, the administrators of the land be given an opportunity to apply for extension of the lease.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Kisang, if you look at the Order Paper, you will see that your amendment on (a) falls because of the amendment by the Chair. The only two relevant amendments are (b) and new subsection (IA) and (1B). Are we in agreement?

**Hon. Kisang:** We are in agreement.

*(Proposed amendment to part (a) dropped)*

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will start with the Chair of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I oppose the amendment because whenever a person is deceased, the administrators have already been identified through the administration of the estate process. They would be the owners at that particular time. It may not add any value at the end the day.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Do you support or oppose?

**Hon. Mwiru:** I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Ababu Namwamba, do you want to speak to this?

**Hon. Ababu:** Hon. Temporary Deputy Chairlady, this amendment does no harm. What harm does it cause? May be the Chair could explain why he is opposed to it. It does absolutely no harm.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Chair made his remarks. Maybe, Hon. Ababu you were not listening.

Let us have the Member for Rongai, Hon. Kipruto Moi.

**Hon. Moi:** Thank you, Hon. Temporary Deputy Chairlady. I support this amendment because it protects the right of the lessee in terms of notifications and the pre-emptive rights.

*(Question, that the words to be inserted be inserted,  
put and negatived)*

*(Clause 54 as amended agreed to)*

*(Clauses 55 and 56 agreed to)*

#### *Clause 57*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 57 of the Bill be amended in paragraph (b) by deleting the proposed new subsection (2) and substituting therefor the following new subsection—

“(2) A lease or licence for public land shall be issued by the Commission and shall be registered by the Chief Lands Registrar.”

The reason for this is that we are putting the powers of the National Land Commission (NLC) because they are the ones to allocate public land. We are saying that the NLC must be given its role according to the Constitution.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I give Hon. Mary Seneta this chance.

**Hon. (Ms.) Seneta:** I support the amendment by the Chair of the Committee.

*(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)*

*(Clause 57 as amended agreed to)*

*(Clause 58 agreed to)*

*Clause 59*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 59 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in subsection (1) by deleting the word “determination” appearing in paragraph (a) and substituting therefor the word “termination”.

This is an issue of grammar. So, I do not need to argue too much about it.

*(Question of the amendment proposed)*

*(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)*

*(Clause 59 as amended agreed to)*

*(Clause 60 agreed to)*

*Clause 61*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 61 of the Bill be amended—

(a) in paragraph (b) by deleting the words “Unless otherwise” appearing in sub-paragraph (i) and substituting therefor the words “Other than as”;

(b) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) by deleting subsection (2) and substituting therefor the following new subsection—

“(2) Subsection (1) shall not apply to—

(a) a contract made in the course of a public action;

(b) the creation or operation of a resulting, implied or a constructive trust; or

(c) any agreement or contract made or entered into before the commencement of this Act, provided that—

- (i) the verbal contracts shall be reduced to writing within two years from the date of enactment of this Act; and
- (ii) the Cabinet Secretary shall put a notice of the requirement to reduce the contracts in writing, in a newspaper of nationwide circulation.”

The import of this is to identify the specific circumstances and conditions for which a valid contract shall apply. It is a matter of structure and how it can apply.

*(Question of the amendment proposed)*

*(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)*

*(Clause 61 as amended agreed to)*

*(Clause 62 agreed to)*

#### *Clause 63*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 63 of the Bill be amended in paragraph (b) by deleting the word “he” appearing immediately after the words “substituting therefor the”. This is correction of grammar. I do not need to explain.

*(Question of the amendment proposed)*

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

*(Clause 63 as amended agreed to)*

#### *Clause 64*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 64 of the Bill be amended in paragraph (b) by deleting the word “reasonable” appearing immediately after the words “and upon giving” and substituting therefor the words “a seven days’ notice”.

We are trying to give clarity in terms of the period an inspection can be done on a particular piece. It is just specifics other than being vague.

*(Question of the amendment proposed)*

*(Question, that the word 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)*

*(Clause 64 as amended agreed to)*

*Clause 65*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 65 of the Bill be deleted and replaced by the following new clause—

Amendment of section 72 of No. 6 of 2012. 65. Section 72 of the Land Act is amended in subsection (1) by deleting the word “not” appearing immediately after the words “and shall.”

We are deleting the word “not” so as to ensure that the subsection makes sense as it contains provisions dealing with the taking of positions by a lessee. So, deleting the word “not” makes it flow and gives sense of that paragraph.

*(Question of the amendment proposed)*

*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)*

*(Clause 65 as amended agreed to)*

*(Clause 66 agreed to)*

*Clause 67*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 67 of the Bill be amended—

(a) in paragraph (b) by inserting the words “paragraph (a) of” immediately after the word “in”;

(b) by deleting paragraph (d).

This is to ensure that the issue of referencing is well. Also, we are introducing the issue of the Matrimonial Property Act. So, that can be handled by that Act which has already been enacted in this Parliament.

*Question, that the words to be inserted be inserted,*

*put and agreed to)*

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

*(Clause 67 agreed to)*

*Clause 68*

**Hon. Mwiru :** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 68 of the Bill be amended in paragraph (b) by deleting the proposed new subsection (4) and substituting therefor the following new subsection—

“(4) Unless otherwise provided in the charge instrument, if the chargee, holding a charge created subsequent in time to one in favour of a prior chargee, lends money or money’s worth on the security of a charge to a chargor and it later transpires that a prior chargee or the chargor himself acted dishonestly or fraudulently in procuring the charge, the prior chargee’s right to repayment under the charge shall be postponed to the rights of the subsequent chargee.”

The amendment aims to protect the rights of a subsequent chargee who acts in good faith over prior chargee or chargor who have acted fraudulently. So, we are cushioning the chargee.

*(Question of the amendment proposed)*

*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)*

*(Clause 68 as amended agreed to)*

*(Clauses 69, 70 and 71 agreed to)*

*Clause 72*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 72 of the Bill be deleted and replaced by the following new clause—

Amendment of section 88 of No.6 of 2012. 72. Section 88 of the Land Act is amended in subsection (1) by deleting the word “at” appearing immediately after the word “improvements” in paragraph (c).

This is just to correct grammatical error.

*(Question of the amendment proposed)*

*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)*

*(Clause 72 as amended agreed to)*

*Clause 73*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 73 of the Bill be amended in paragraph (b) by deleting the words “three months” appearing at the end of the sentence and substituting therefor the words “ninety days”.

The Bill talks about three months. However, we want to give clarity as a Committee that it is 90 days and not three months because three months can have a February which has 28 days only.

*Question of the amendment proposed)*

*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)*

*(Clause 73 as amended agreed to)*

*Clause 74*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 74 of the Bill be deleted and replaced by the following New Clause—

Amendment of section 91 of No. 6 of 2012. 74. Section 91 of the Land Act is amended by deleting the words “this section” and substituting therefor the words “subsection (1) (c) of this section.

This is for the purpose of correct referencing to the subsection that we are referring to.

*(Question of the amendment proposed)*

*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)*

*(Clause 74 as amended agreed to)*

*(Clauses 75 and 76 agreed to)*

*Clause 77*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 77 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a)–

“(aa) in subsection (2) by inserting the following new proviso at the end of the subsection–

“Provided that this power of entry shall only be exercised after obtaining a court order.”

We are referring to a court order. This is the reason why we want to guard against abuse of power by some people who would want to abuse the process of doing this.

*(Question of the amendment proposed)*

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

*(Clause 77 as amended agreed to)*

*(Clauses 78 and 79 agreed to)*

*Clause 80*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have two amendments; one from Hon. Kisang and another one from the Chair. Let us start with the one from the Chair.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 80 of the Bill be amended in paragraph (c)–

(a) in the proposed new subsection (6), by deleting the word “charge” appearing immediately after the words “made after the” and substituting therefor the word “transfer”;

(b) in the proposed new subsection (9), by inserting the word “cease” immediately after the words “under the charge shall”;

(c) by deleting the proposed new subsection (10) and substituting therefor the following new subsection–

“(10) Upon the deposit referred to in subsection (9), the Registrar shall cancel the registration of the charge and the Court shall pay the amount deposited to the chargee if the charge applies for it

within six years of the deposit, and where the chargee does not apply for the amount within the stated period, it shall be deposited with the Unclaimed Financial Assets Authority as an unclaimed asset.”

The amendment will ensure that any deposit that remains unclaimed by the chargee is treated as unclaimed financial asset.

*(Question of the amendment proposed)*

*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)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have Hon. Kisang.

**Hon. Kisang:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 80 of the Bill be amended in paragraph (c)–

(d) in the proviso to the proposed new subsection (5), by deleting the words “not more than three months” and substituting therefor the words “not more than six months”; and

(e) in the proposed new subsection (10), by deleting the words “consolidated fund” and substituting therefor the words “Unclaimed Assets Trust Fund”;

I propose that we increase the duration of the evaluation from three months to six months. Sometimes when you are doing land transaction, it takes more than 90 days before you complete the transaction. This is to ensure that the valuation covers those delays that arise within the Ministry of Lands.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Kisang, for your information. New Subsection 10 will fall if Hon. Mwiru’s amendment is passed and it has passed. So we are speaking about the rest but not this one.

*(Question of the amendment proposed)*

**Hon. Mwiru:** I have no problem with him if he is moving a further amendment to what I have done. This is because he is looking at the period that these transactions can be done. From three to six months is not a big problem. If he is proposing a further amendment then we can accommodate it.

*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)*

*(Clause 80 as amended agreed to)*  
*Clause 81*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 81 of the Bill be amended in sub-paragraph (ii) by deleting the figure “(a)” appearing at the end of the sentence and substituting therefor the figure “(c)”.

This is a matter of correct referencing

*(Question of the amendment proposed)*

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

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

*(Clause 81 as amended agreed to)*

#### *Clause 82*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 82 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in subsection (1) by deleting the word “available” appearing immediately after the words “available remedies” in sub-paragraph (i) of paragraph (b).”

The word “available” has been repeated twice. To make sense, we are just removing one of the words.

*(Question of the amendment proposed)*

*(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)*

*(Clause 82 as amended agreed to)*

#### *Clause 83*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 83 of the Bill be amended in paragraph (b) by deleting the words “three months, the acquiring authority may proceed and acquire the land”

appearing in the proposed new subsection (4) and substituting therefor the words “thirty days, it shall give to the acquiring authority the reasons for the decline and the conditions that must be met”.

The purpose of this is to shorten the period within which the Commission should respond to the acquiring authority so that, at least, not a lot of time is taken to respond.

*(Question of the amendment proposed)*

*(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)*

*(Clause 83 as amended agreed to)*

*(Clause 84 agreed to)*

#### *Clause 85*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 85 of the Bill be amended—

(a) by inserting the following new paragraph immediately after paragraph(a)—

“(aa) in subsection (1) by deleting the words “rate prevailing bank rates” and substituting therefor the words “base lending rate set by the Central Bank of Kenya and prevailing at that time”;

(b) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) by deleting subsection (2) and substituting therefor the following new subsection—

“(2) If additional compensation is payable under section 119 there shall be added to the amount of the additional compensation interest thereon at the base lending rate set by the Central Bank of Kenya and prevailing at that time, from the time when possession was taken or compensation was paid, whichever is earlier.”

The purpose of this is to give clarity and also provide interest that will accrue at the base lending rate set by the Central Bank of Kenya.

*(Question of the amendment proposed)*

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

*(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)*

*(Clause 85 as amended agreed to)*

*(Clause 86 agreed to)*

#### *Clause 87*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 87 of the Bill be amended—

(a) by deleting the proposed new marginal note and substituting therefor the following new marginal note—

*“Condition for payment of compensation”;*

(b) by renumbering the amendment as paragraph (a); and

(c) by inserting the following new paragraph immediately after paragraph

(a)—

“(b) by deleting section 119 and replacing with the following new section-

Condition payment compensation.	for of	119. Payment of compensation shall be made only upon the exercise of due diligence which shall include final survey and the determination of acreage boundaries, ownership and value.
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The purpose for this is to provide for the conditions and a structure base upon which payment of compensation will be made.

*Question of the amendment proposed)*

*(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)*

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

*(Clause 87 as amended agreed to)*

*(Clauses 88 and 89 agreed to)*

*Clause 90*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 90 of the Bill be amended by deleting paragraph (b).

The Committee felt it was not necessary to put it there because the effect and morphology of the Bill and the principal Act are correlating. Therefore, we did not need to have this particular clause.

*Question of the amendment proposed)*

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

*(Clause 90 as amended agreed to)*

*(Clause 91 agreed to)*

*Clause 92*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 92 of the Bill be deleted and replaced by the following new clause—

Amendment of section 124 of No.6 of 2012. 92. Section 124 of the Land Act is amended—

(a) by deleting the marginal note and substituting therefor the following new marginal note—  
*Power to obtain temporary occupation of land.*

(b) (b) in subsection (3) by deleting the words “the first offer of” appearing immediately after the words “may after paying” and substituting therefor the word “full”.

We are just bringing this particular registration in accordance with Article 40(3)(b) of the Constitution.

*Question of the amendment proposed)*

*(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)*

*(Clause 92 as amended agreed to)*

*Clause 93*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 93 of the Bill be amended—

(a) by renumbering the current amendment as paragraph (a); and

(b) by inserting the following new paragraph immediately after paragraph

(a)–

“(b) by deleting subsection (2)”

What we are trying to emphasis here is that compensation should always be done in full and not in piecemeal.

*Question of the amendment proposed)*

**Hon. Kombe:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member for Magarini, you have a point of order?

**Hon. Kombe:** Hon. Temporary Deputy Chairlady, I am wondering why we are not debating the amendments by the Chair. I thought one can contribute to them.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): You can go ahead, Hon. Member.

**Hon. Kombe:** Thank you, Hon. Temporary Deputy Chairlady. Whereas, I would wish to support the amendment, I feel I will be part and parcel of an illegality because we do not have the requisite quorum in the House. I am very disappointed though I wish to support. I am just from a meeting of the Departmental Committee on Education, Research and Technology.

## QUORUM

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Hon. Member has raised an issue on quorum again and we are obligated to call for quorum.

**Hon. Ababu:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Ababu, what is your point of order?

**Hon. Ababu:** Hon. Temporary Deputy Chairlady, I have no problem with the Hon. Member raising the issue of quorum, but as a matter of concern on the etiquette of this House, is he appropriately dressed for the Chamber.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Ababu, I think he is properly dressed. The mode of dressing, I believe has been ruled on before in this House. The Member has raised a quorum issue. So, let the Quorum Bell be rung. Can the Whips of both sides try to get Members, so that we can continue?

*(The Quorum Bell was rung)*

Order, Hon. Members! We now have a quorum.

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

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

*(Clause 93 as amended agreed to)*

*(Clause 94 agreed to)*

*Clause 95*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have two amendments on this clause. We will start with the amendment by Hon. Nassir, which will be followed by the Departmental Committee Chairman's amendment. If the amendment by Hon. Nassir is carried, the amendment by the Chair will fall.

**Hon. Nassir:** I would like the Chair of the Committee and his colleagues to lend me their ears. Once again, I wish to be on record that this is another day when this House is going to continue killing a constitutional office. What they are planning to do by saying that the NLC shall implement---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, can you just say "the Committee"? When you say "they", who are you referring to? Why not just say "the Committee" or "the Bill"? It makes it clearer.

**Hon. Nassir:** Thank you, Hon. Temporary Deputy Chairlady. I would have used another synonym but I will reserve my comments and say "the Committee". The Committee shall be on record for killing constitutional offices. They are trying to do this by deleting Subsection 1 and substituting it with a new subsection. The Committee is killing the NLC. The Committee is also saying that the national Government shall administer settlement programmes in consultation with the NLC. The original Act says that the Commission shall assist the national Government and the county governments in the administration of settlement programmes.

**Hon. Member:** On a point of order, Hon. Temporary Deputy Chairlady.

**Hon. Nassir:** Are you on a point of order?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, why have you stopped? I have not said anything. I am the one running this Committee of the whole House.

**Hon. Nassir:** Forgive me, Hon. Temporary Deputy Chairlady, but some people do not know their Standing Orders.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Go ahead, Hon. Nassir. You are now the one going against the Standing Orders.

**Hon. Nassir:** My apologies, Hon. Temporary Deputy Chairlady. We are going back to the old regime where powers on matters relating to land were a preserve of the Central Government. When we say that Sub-section 4 talks about a sub-county select committee, we kill the whole sense of public involvement.

**Hon. Kihagi:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): What is it, Hon. Kihagi?

**Hon. Kihagi:** Hon. Temporary Deputy Chairlady, is Hon. Nassir in order to debate an intended amendment instead of moving it? I have not heard him move any amendment. I have only heard him debate. He is anticipating the other amendment. Is he in order?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): That is fairly in order.



Hon. Nassir, please, move your amendment. Speak on the import of the amendment.

**Hon. Nassir:** I am. It will be nice if my colleague can read it. The whole intention is to read through the document and understand what it means. We are now looking at---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Move your amendment first and then speak on it.

**Hon. Nassir:** I am, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I am asking you to move it on record so that it can be captured by the HANSARD.

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 95 of the Bill be deleted.

The Committee is proposing that the issues be handled by what was then called “District Commissioners (DCs)” by calling them “sub-county administrations”. We should remember that the offices of the sub-county commissioners are still non-existent. I would like the Committee to show me where in law the office of the sub-county commissioner is stipulated. The previous Government had this in place and the current Government wants to carry it. We are going back to the same point of DCs.

*(Question of the amendment proposed)*

**Hon. Mwiru:** I want to oppose the proposed amendment by Hon. Nassir with the following facts and give him some information for consideration. The Constitution did not abolish the Provincial Administration. They were only told to restructure to conform to the Constitution. There is the office of County Commissioner. Hon. Nassir’s amendment provides that settlements should not lie in the hands of the national Government. The position of the Committee and those who were drafting the amendments was that even what we are doing today in the country including resettlement of Internally Displaced Persons (IDPs) should be carried by the national Government.

It is only the Government of Kenya that can guarantee any loan that a Settlement Fund Trustee (SFT) can have including what is borrowed outside. The national Government guarantees what the counties are borrowing. The import was that the national Government carries the activity because it is the only entity entitled as a guarantor for the country and people of the Republic.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Member for Bahati.

**Hon. Ngunjiri:** Hon. Temporary Deputy Chairlady, I rise to support the amendment by the Chairman of the Committee. This is because what Hon. Nassir is saying has been taken care of. Maybe Hon. Nassir does not understand and yet we gave them opportunity to go through this with us.

**Hon. Nassir:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, what is your point of order?

**Hon. Nassir:** Is the Member for Bahati in order to tell me that I have a problem and cannot read? I want to assure him that my parents gave me good education.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Ngunjiri, I am sure you did not mean that Hon. Nassir has a problem.

**Hon. Ngunjiri:** I did not say he has a problem but maybe I had it in a different language. I wanted to say that we invited him to the Committee and we went through this several times. I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. (Ms.) Florence Mutua, do you want to speak on this?

**Hon. (Ms.) F.M. Mutua:** Yes, Hon. Temporary Deputy Chairlady. I want to support Hon. Abdullswamad's amendment. It is good to understand the Constitution. Some of these roles are no longer in the Constitution. Why are we making mistakes?

**Hon. (Dr.) Nyongesa:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Otuoma, what is your point of order?

**Hon. (Dr.) Nyongesa:** On a point of order, Hon. Temporary Deputy Chairlady. What is Hon. (Ms.) Mutua supporting me for?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I think it was just a slip of the tongue. Can you please clarify that?

**Hon. (Ms.) F.M. Mutua:** Hon. Temporary Deputy Chairlady, maybe Hon. Otuoma wanted to speak to me. I said Hon. Abdullswamad. We should tell Kenyans the truth that the roles on this amendment no longer exist. We should look for agencies to identify people who will be in these committees. We do not need the Deputy County Commissioners and these other people proposed to be in the committee. Under (h)(ii), "a chairperson shall be appointed at the first sitting of the committee from the persons appointed under paragraphs (e), (f), (g) and (h)."

A Member of Parliament is involved in appointment. This is political. Where is the community in this?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. (Ms.) Shaban.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Chairlady, I want to oppose Hon. Nassir's amendment. The County Commissioner's Office is there. The allergy that people have to County Commissioners should stop.

The NLC is at the national level and somebody at the grassroots must do this work. There is representation of people at the grassroots. The selection committee is quite in order.

**Hon. Nassir:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, what is your point of order?

**Hon. Nassir:** My sister, Hon. (Ms.) Naomi Shaban has indicated issues that representation as purported by the Committee in the proposed amendment is fair enough. She should have seen the original Act which has the representation of the people who are the rightful owners of that land. It is not right to have a committee selected by a CS who has probably never even seen the administered land. Let it be on record that the original Land Act of what is being repealed by this Committee is the one that talks about the face of the people on the ground.

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

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 95 of the Bill be amended—

(a) by deleting paragraph (b);

(b) by renumbering the sentence beginning with the words “in subsection (3) as paragraph (b);

(c) by inserting the following new paragraph immediately after paragraph (b)–

“(bb) by deleting subsection (4) and substituting therefor the following new subsection–

“(4) Identification of beneficiaries shall be carried out and verified by a sub-county selection committee appointed by the Cabinet Secretary comprising of the following persons–

- (a) the deputy county commissioner;
- (b) the sub-county administrator;
- (c) a representative of the Commission;
- (d) a national government representative, who shall be the secretary;
- (e) a representative of persons with special needs;
- (f) a representative of women;
- (g) a youth representative; and
- (h) a representative of elders;

Provided that–

- (i) the persons appointed under paragraphs (e), (f), (g) and (h) shall be nominated by the area member of the National Assembly; and
- (ii) a chairperson shall be appointed at the first sitting of the committee from the persons appointed under paragraphs (e), (f), (g) and (h).”

(d) in paragraph (e) by deleting the word “not” appearing immediately after the words “or any other law shall”; and

(e) by deleting paragraph (f) and substituting therefor the following new paragraph–

“(f) in subsection (8) by deleting the words “the Commission and” appearing immediately after the words “from time to time”.

This is to ensure that the selection committee is all inclusive as it would have member representatives from both the national and county governments as well as special interest groups. Once an area has been declared as a settlement area, then locals are supposed to be there. The NLC should also be involved in selection. We are trying to enrich the representation for purposes of setting up settlement schemes.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, the Member for Magarini.

**Hon. Kombe:** Hon. Temporary Deputy Chairlady, I have a problem with the composition of the committee. It has about eight members, and since it is a committee that is

going to deliberate on issues that involve decision making, I think it should have an odd number of members.

*(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)*

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

*(Clause 95 as amended agreed to)*

*Clause 96*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, we will start with your amendment, and if it is carried, then that of the Chairman of the Committee is dropped.

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 96 of the Bill be deleted.

*(Loud consultations)*

Please protect me, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, please allow Hon. Nassir to move his amendment.

**Hon. Nassir:** Thank you, Hon. Temporary Deputy Chairlady.

The proposed amendment to Section 135 of the Land Act seeks to provide for a new institution through which the Government can buy land. Instead of the NLC buying land for the Government, we are now saying that a new entity called the Land Settlement Fund Board of Trustees will be given the authority to do so.

I would like to remind the House that we make laws bearing in mind what was done in other Acts of Parliament. When the Agriculture Act, Cap. 318, was enacted, it totally repealed the Settlement Fund Trustee, which was hitherto that moment in charge of agricultural land. We are now saying that the NLC should be relieved of the responsibility of buying land for the Government. We are contradicting ourselves.

Secondly, let us look at the persons who are going to sit on that board of trustees. They include the CS responsible for land matters, the CS responsible for the National Treasury, the CS responsible for agriculture, and the CS responsible for environment.

I would like to remind Kenyans and my brother who is seated next to me that the membership of the board of trustees will not reflect the face of Kenya. An example is the Kenya Ports Authority Board, where---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, you have made your point.

*(Question of the amendment proposed)*

I give the first opportunity to the Chair of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I want to oppose the amendment because the Mover is misleading the House by not saying that the NLC is part of that Board. This Board is not supposed to do the day-to-day administrative work of the Commission. It is the Board which is supposed to lobby, borrow money and look for grants. We are not talking about the day-to-day activities of the Land Settlement Fund Board of Trustees, but rather issues to do with whether those are the people who are supposed to make the policy. The NLC is well represented in the Board.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, Hon. A.B. Duale.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, I oppose the amendment. I want Hon. Nassir to think and speak nationalistically. Do not go sectarian. If today Hon. Duale becomes the Managing Director of Kenya Ports Authority (KPA), so be it because he is a Kenyan. If Hon. Nassir becomes the Managing Director of Lake Basin Development Authority or Mumias Sugar Company, so be it. This is one country. For example, the current CS for Environment and Natural Resources is from Western Kenya. The CS for the National Treasury is here because Article 114 of the Constitution makes this Bill a money Bill. There is nothing that can move without the input of the National Treasury because it is a fund. I want to go on record. The NLC does not belong to Coast region. It has representation from my region because one of the Commissioners is from my region.

**Hon. Nassir:** On a point of order, Hon. Temporary Deputy Chairlady.

**Hon. A.B. Duale:** Hon. Nassir, allow me to finish my contribution. I am a ranking Member of this House. I am your senior because I am the Leader of the Majority Party. You are out of order.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): What is your point of order, Hon. Nassir?

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, despite Hon. A.B. Duale being the Leader of the Majority Party, I represent 10 times the number of people who voted for him.

Secondly, is he in order to claim that I am sectarian because I said that the membership of any public body should reflect the face of Kenya? I never said that there is anything wrong with a Somali being appointed the head of KPA, or a person from the Coast region being appointed the head of the Lake Basin Development Authority. All I am saying is that the face of Kenya needs to be represented in every autonomous body in this country. We stand with that constitutional provision.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, Hon. A. B. Duale.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, I was excited. You know, Hon. Nassir is where I was in 2009, when I was serving my third year in the National Assembly. Even in the Commonwealth, there is something called “seniority” and “ranking”. I am the Leader of the Majority Party. If you have no valid point of order, you should wait for me to finish my contribution.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. A.B. Duale, please wrap up.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, I am nationalistic. I do not want this House to go sectarian as it conducts its business.

Let me go back to the content. The CS for the National Treasury is not here by fluke. He is here because a Fund is being established. Article 114 of the Constitution says that the National Treasury should have input on anything that touches on money. The CS responsible for environment will be dealing with certain issues that need to be protected within the context of land. There is also the CS responsible for agriculture. Agriculture contributes enormously to this country's GDP. The NLC is represented. So, what is wrong?

I watched the Committee of the whole House on land laws from my office. This law must be enacted for posterity. The last Parliament created the NLC. I will defend the existence of the NLC as provided for in the Constitution. I will also defend the functions given to the national Government, as provided for in the Constitution. We want to make laws for posterity.

I oppose the amendment and urge the Members to oppose it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Duale, your point is valid.

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

Let us hear the amendment from the Chair of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 96 of the Bill be amended—

(a) in paragraph (b) –

- (i) in the proposed new subsection (1A) by deleting the words “the Order” appearing immediately after the words “Agency under” in paragraph (d) and substituting therefor the words “this Act”;
- (ii) in the proposed new subsection (1B) by inserting the following new paragraph immediately after paragraph (d)-  
“(dd) the Cabinet Secretary responsible for Internal Security”
- (iii) in the proposed new subsection (1C) by inserting the following new paragraphs immediately after the introductory statement—
  - (a) be responsible for the provision of access to land—
    - (i) to squatters;
    - (ii) to displaced persons;
    - (iii) for development projects;
    - (iv) for conservation; or
    - (v) such other causes that may lead to movement and displacement of persons;
  - (b) purchase private land for settlement programmes;
  - (c) coordinate the provision of shelter and a livelihood to persons in need of settlement programmes; and,
  - (d) perform any other function that may enhance the development and promotion of settlement programmes

(b) in paragraph (c) –

- (i) by inserting the words “and substituting therefor the words “Board of the Land Settlement Fund Trustees” at the end of sub-paragraph (i);
- (ii) by deleting sub-paragraph (ii);
- (c) by deleting paragraph (e) and substituting therefor the following new paragraph—
  - “(e) by deleting subsection (5) and substituting therefor the following new subsection—
    - (5) In carrying out its functions under Part IX of this Act, the Board of the Land Settlement Fund Trustees shall consult the relevant county government where applicable”

Hon. Temporary Deputy Chairlady, as a Committee, we have included the CS for Interior and Coordination of National Government because some of the things we do in settlement border on issues to do with security in the country. That is why we have added that entity. Secondly, we have also defined the functions of the Land Settlement Fund Board of Trustees.

*(Question of the amendment proposed)*

*(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)*

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

*(Clause 96 as amended agreed to)*

*(Clauses 97, 98 and 99 agreed to)*

#### *Clause 100*

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, I wish to withdraw my amendment.

*(Proposed amendment by Hon. Nassir withdrawn)*

*(Clauses 100 and 101 agreed to)*

#### *Clause 102*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 102 of the Bill be deleted and substituted therefor the following new clause—

Amendment of section 147 of No.6 of 2012. 102. Section 147 of the Land Act is amended in subsection (2) by deleting the words “certificate of occupancy” and substituting therefor the words “certificate of title or certificate of lease” in paragraph (a).

The amendment is intended to properly identify where the words to be added to the Bill are to be placed.

*(Question of the amendment proposed)*

*(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)*

*(Clause 102 as amended agreed to)*

*Clause 103*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 103 of the Bill be deleted.

The purpose of deleting this clause is that the NLC is better placed to develop the rules as acquisition of land is a function of the Commission. A public right of way constitutes public land which is under the mandate of the Commission. So, we are giving the Commission the mandate it is supposed to play in the Constitution.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, the Member for Magarini.

**Hon. Kombe:** Thank you, Hon. Temporary Deputy Chairlady. I think it is very much in order we delete that clause so that the Commission retains its powers.

Thank you.

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

*(Clause 103 deleted)*

*(Clause 104 agreed to)*

*Clause 105*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 105 of the Bill be amended—



(a) by deleting the proposed new section 152D and substituting therefor the following new section—

Eviction notice to  
unlawful occupiers  
of community land

152D. (1) The County Executive Committee Member responsible for land matters shall cause a decision relating to an eviction from unregistered community land to be notified to all affected persons, in writing, by notice in the Gazette and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.

(2) In the case of registered community land, the procedure prescribed in section 152E shall apply.

(b) in the proposed new section 152E—

(i) in subsection (2) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) be in writing and in a national and official language.”

(ii) in subsection (2) by inserting the following new paragraph immediately after paragraph (c)—

“(d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.”

(iii) by deleting subsection (3);

(iv) by deleting subsection (4);

(c) by inserting the following new section immediately after section 152E—

Application to  
Court for relief.

152EA. (1) Any person or persons served with a notice in terms of sections 152C, 152D and 152E may apply to Court for relief against the notice.

(2) The Court, after considering the matters set out in sections 152C, 152D and 152E, may—

(a) confirm the notice and order the person to vacate;

(b) cancel, vary, alter or make additions to the notice on such terms as it deems equitable and just;

(c) suspend the operation of the notice for any period which the court shall determine; or

(d) order for compensation.

(d) in the proposed new section 152F—

(i) by deleting the figure (1) appearing at the beginning of the section;

(ii) by deleting the words “and any national or local code of conduct consistent with international law enforcement and human rights standards” appearing in paragraph (h);

(iii) by deleting paragraph (j); and

(e) by deleting the proposed new subsection 152G and substituting therefor the following new section—

Disposal of property  
left after eviction.

152G. The competent officer of the Commission or County Government, community owning a registered community land or owner of private land shall at least seven days from the date of the eviction, remove or cause to be removed or disposed by public auction, any unclaimed property that was left behind after an eviction from private, community or public land.

The amendment provides for the procedures of eviction in respect of all classes of land, that is, community, private and public land. If we do not give the clarity on the procedures then it can be ambiguous how the evictions can be carried out.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, Hon. Gikaria.

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Chairlady. I support the amendment by the Chair. In particular, we have seen this happening in very many places where evictions are just done without following any due process. Giving clarity as to how evictions should be done is an advantage.

*(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)*

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

*(Clause 105 as amended agreed to)*

*Clause 106*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, move your amendment please.

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 106 of the Bill be deleted.

There is no justification for the repeal as the objects of the Fund have not been achieved, or an alternative fund established. The Fund was to offer compensation to *bona fide* purchasers of land who lose land without notice. Its repeal offends Article 40 of the Constitution that requires compensation for any loss of land by a *bona fide* purchaser without notice.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have the Chair of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I oppose the deletion of the clause because we have already established the Fund. If we delete the clause, then it beats the whole purpose.

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

*(Clauses 106 agreed to)*

*(Clause 107 agreed to)*

*Clause 108*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, Hon. Mwadime.

**Hon. Mwadime:** I withdraw that amendment, Hon. Temporary Deputy Chairlady.

*(Proposed amendment by Hon. Mwadime withdrawn)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us now consider the amendment by the Chair of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 108 of the Bill be deleted and replaced by the following new clause—

Amendment of  
Section 159 of No.6  
of 2012.

108. The Land Act is amended by deleting section 159 and substituting therefor the following new section—

Minimum and  
maximum land  
holding acreages.

159. (1) Subject to Article 40 of the Constitution—

(a) the minimum land holding acreage shall be subject to the provisions of Article 66(1) of the Constitution and legislation envisaged therein.

(b) the maximum land holding acreage shall be subject to Article 60(1)(a) and (c) of the Constitution.

(2) The Cabinet Secretary shall publish guidelines on penalties for non-compliance with the provisions of this section.

We are giving a provision that must be in line with Article 66(1) of the Constitution to include issues of land use. All zones in this country cannot be the same in terms of climatic and other factors that are supposed to be looked at.

*(Question of the amendment proposed)*

*(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)*

*(Clause 108 as amended agreed to)*

*Clause 109*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have two amendments on this clause. We will start with the amendment by the Chair. If it is carried, the amendment by Hon. Mwadime will fall.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 109 of the Bill be deleted.

Now that we have amended Clause 108 which deals with maximum and minimum land holding acreages, Clause 109 is not necessary. In fact, the amendment is in line with that by Hon. Mwadime, so we do not even need to debate a lot.

*(Question of the amendment proposed)*

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

*(Proposed amendment by Hon. Mwadime dropped)*

*(Clause 109 deleted)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I call upon the Mover of the Bill to move for reporting.

**Hon. A.B. Duale:** I beg to move that the Committee doth report to the House its consideration of the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker*

*(Hon.(Ms.) Shebesh) in the Chair]*

### PROGRESS REPORTED

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has partly considered the Land Laws (Amendment) Bill (National Assembly Bill No.55 of 2015) and seeks leave to sit again today.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the said Report, subject to re-committal of Clause 44.

**Hon. Mwiru** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, we are going back to the Committee of the whole House.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

### THE LAND LAWS (AMENDMENT) BILL

*(Resumption of consideration interrupted in Committee today)*

#### Clause 44

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 44 of the Bill be deleted and replaced by the following new clause—

Amendment of section  
15 of No. 5 of 2012.

44. Section 15 of the National Land Commission Act is deleted and replaced by the following new section—

Historical  
injustices.

land

15. (1) Pursuant to Article 67(3) of the Constitution, the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

(2) For the purposes of this section, a historical land injustice means a grievance which—

- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual place of residence;
- (c) occurred between 15<sup>th</sup> June 1895 when Kenya became a protectorate under the British East African Protectorate and 27<sup>th</sup> August, 2010 when the Constitution of Kenya was promulgated;
- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection 3 of this section.

(3) A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria—

- (a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;
- (b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that—
  - (i) the claim contradicts a law that was in force at the time when the injustice began; or
  - (ii) the claim is debarred under section 7 of the Limitation of Actions Act or any other law;
- (c) the claimant was either a proprietor or occupant of the land upon which the claim is based;
- (d) no action or omission on the part of the claimant amounts to surrender or renunciation of the right to the land in question; and
- (e) it is brought within five years from the

Cap.22.

date of commencement of this Act.

(4) A claim alleging historical land injustice shall be permissible if it was occasioned by—

- (a) colonial occupation;
- (b) independence struggle;
- (c) pre-independence treaty or agreement between a community and the government;
- (d) development-induced displacement for which no adequate compensation or other form of remedy was provided, including conversion of non-public land into public land;
- (e) inequitable land adjudication process or resettlement scheme;
- (f) politically motivated or conflict base eviction;
- (g) corruption or other form of illegality;
- (h) natural disaster; or
- (i) other cause approved by the Commission.

(5) When conducting investigations under subsection (1) into historical land injustices the Commission may—

- (a) request from any person including any government department such particulars, documents and information regarding any investigation, as may be necessary; or
- (b) by notice in writing, addressed and delivered by a staff of the Commission to any person, direct such person, in relation to any investigation, to appear before the Commission at such time and place as may be specified in the notice, and to produce such documents or objects in the possession, custody or under the control of such person and which are relevant to that investigation.

(6) Where a complainant is unable to provide all the information necessary for the adequate submission or investigation of a complaint, the Commission shall take reasonable steps to have this information made available.

Hon.  
Temporary  
Chairlady,  
want to  
amend this  
clause to  
incorporate  
issues of  
historical  
injustices.  
Committee,  
have even  
further to  
describe and  
prescribe  
historical  
injustices  
and the  
periods  
which we  
consider as  
time  
historical  
injustices  
befell this  
country.  
is up to, and  
including  
immediately

(7) If at any stage during the course of an investigation, the Commission is of the opinion that the resources of the Commission may be more effectively utilized if all claims within a given area or township were to be investigated at the same time, the Commission shall cause to be published in the Gazette or in such other manner as the Commission may deem appropriate, a notice advising potential complainants of the decision and inviting them to lodge claims within a period specified in such notice.

(8) A claim in respect of a matter contemplated in subsection (7) shall not be lodged after the expiry of the period specified in the said notice.

(9) The Commission, after investigating any case of historical land injustice referred to it, shall recommend any of the following remedies—

- (a) restitution;
- (b) compensation, if it is impossible to restore the land;
- (c) resettlement on an alternative land;
- (d) rehabilitation through provision of social infrastructure;
- (e) affirmative action programmes for marginalized groups and communities;
- (f) creation of wayleaves and easements;
- (g) order for revocation and reallocation of the land;
- (h) order for revocation of an official declaration in respect of any public land and reallocation;
- (i) sale and sharing of the proceeds;
- (j) refund to *bona fide* third party purchasers after valuation; or
- (k) declaratory and preservation orders including injunctions.

(10) Upon determination of a historical land injustice claim by the Commission, any authority mandated to act under the redress recommended shall be required to do so within three years.

(11) The provisions of this section shall stand repealed within ten years.

promulgation of the new Constitution.

We are saying this because we know that according to the Constitution, the National Land Commission has powers to institute this process. In our earlier Act, we had prescribed that



the National Land Commission prescribes to Parliament how they want to deal with it within two years. After we enacted the National Land Commission Act in 2012, two years elapsed in 2014. We have to reinstitute a process of looking at historical land injustices as Parliament. That is why we are bringing Clause 44 for purposes of the NLC to deal with this issue as the Constitution has given the mandate and function other than prescribing to other boards, bodies or committees. The commission should do it directly because they have the powers.

*(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)*

*(Clause 44 as amended agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we have completed the Committee of the whole House on the Land Laws (Amendment) Bill.

**Hon. A. B. Duale:** Hon. Temporary Deputy Chairlady, I beg to move that the Committee of the whole House doth report to the House its consideration of the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

#### THE SEEDS AND PLANT VARIETIES (AMENDMENT) BILL

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, let us very quickly consider the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015).

#### *Clause 2*

**Hon. Angatia:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 2 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) deleting the word “national” appearing immediately after the words “to establish a”; and”

The essence of the amendment is that in the principal Act the word “national” comes after the right to persons. It comes after “establish a”.

It is a matter of correction.

*(Question of the amendment proposed)*

*(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)*

*(Clause 2 as amended agreed to)*

**????????**

### *Clause 3*

**Hon. Angatia:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended by deleting Clause 3 and substituting therefor the following new clause—

Amendment of  
Section 2 of Cap.326

3. Section 2 of the principal Act is amended—

- (a) in the definition of the phrase “national variety list” by deleting the words “are for the time being exploited commercially” and substituting therefor the words “have been tested, officially released and published in the Gazette”;
- (b) in the definition of “seed” by inserting the words “plantlet, minituber” immediately after the word “sucker”;
- (c) by inserting the following new definition in its proper alphabetical sequence—  
“plant genetic resources for food and agriculture” means any genetic material of plant origin of actual or potential value for food and agriculture including indigenous seeds and plant varieties;”

This amendment seeks to enrich the definition of the list of national varieties.

*(Question of the amendment proposed)*

*(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)*

*(Clause 3 as amended agreed to)*

### *Clause 4*

**Hon. Angatia:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 4 of the Bill be amended by—

(a) deleting the proposed new subsection (1) and substituting therefor the following new subsection, in paragraph (a)—

“(1) There is established a Plant Genetic Resources Centre for Food and Agriculture, which shall be responsible for the conservation and sustainable utilization of plant genetic resources for food and agriculture, including indigenous seeds and plant varieties in Kenya.”;

(b) deleting the proposed new marginal note and substituting therefor the following in paragraph (b)—

“Establishment of Plant Genetic Resources Centre for Food and Agriculture.”

(c) deleting paragraph (c) subparagraph (i) and substituting therefor the following new subparagraph—

“(i) deleting the words “National Plant Genetic Resources Centre” and substituting therefor the words “Plant Genetic Resources Centre for Food and Agriculture”;

(d) deleting the proposed subsection (3) and substituting therefor the following new subsection, in paragraph (d)—

“(3) There shall be a Plant Genetic Resources Committee for food and Agriculture, which shall provide oversight on matters relating to the Centre.”

Hon. Temporary Deputy Chairman, in the original Act, it only talks of “Plant Genetic Research Centre”. We need to include conservation and management. We need to put it out as “National Plant Genetic Resource Centre for Food and Agriculture.”

*(Question of the amendment proposed)*

*(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)*

*(Clause 3 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS**

### **THE LAND LAWS (AMENDMENT) BILL**

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) and approved the same with amendments.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I ask the Chairman of the Departmental Committee on Lands to second.

**Hon. Mwiru:** I second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) be now read the Third Time. I also request Hon. Chairman of the Departmental Committee on Lands to second.

**Hon. Mwiru:** I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, I have confirmed that we have requisite numbers in the House.

*(Question put and agreed to)*

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

Hon. Members, let us also do the same for the Seeds and Plant Varieties (Amendment) Bill.

### **THE SEEDS AND PLANT VARIETIES (AMENDMENT) BILL**

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015) and approved the same with amendments.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Nooru, the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives to second.

**Hon. Nooru:** I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015) be now read the Third Time. I also request Hon. Nooru the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives to second.

**Hon. Nooru:** 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. (Ms.) Shebesh): Next Order.

*Second Reading*

THE ELECTION LAWS (AMENDMENT) (NO.3) BILL

*(Hon. Chepkong'a on 4.5.2016)*

*(Resumption of Debate interrupted on 4.5.2016 – Morning Sitting)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, yesterday, we began the debate on the elections law. Hon. George Ogalo, Member for Rangwe, you were on the Floor. You have five minutes to go.

*(Several Hon. Members withdrew from the Chamber)*

Hon. Members, please have decorum as you leave. There are people who are now on other business. I want to give Hon. Ogalo time to be heard.

**Hon. Ogalo:** Thank you, Hon. Temporary Deputy Speaker. As I was saying yesterday, this House now has an opportunity to deliberate on how to ensure that the 2017 elections happen in a manner that all Kenyans will be glad with the results and will accept them. We have seen in the previous elections that the process of determining the votes in each and every polling station, transmitting them from the polling station to the constituency tallying centre, the county tallying centre and national tallying centre has always been weak to the extent that unscrupulous people

can easily manipulate and ensure that these results change from stage to stage. This House must legislate this time round to ensure that such things are impossible to do.

In a country where money can be saved on the phones, how can results fail to have integrity when being transmitted from one station to the next? This House must not fail Kenyans, it must legislate properly. We must look at the election law in totality. We will not be restricted to those sections of the law which have been proposed for amendment in this amendment Bill. If this House can deliver credible elections at the end of its term, it will go into history as the House that cured the future of this country.

The issue of the Independent Electoral and Boundaries Commission (IEBC) must be dealt with. Kenyans must go to the elections knowing very well that the referee is fair, has integrity and can deliver an election. We cannot go when we are not sure about the impartiality of the referee. So, this House must ensure that before we go to elections next year, the credibility of IEBC and the confidence of Kenyans in that body has been restored. This must be a bipartisan process where both teams going for the elections are consulted and participate fully before we arrive at the body to carry out elections. The legislation we are going to pass should protect the issue of voter turnout to ensure that we do not have a shifting voter turnout. In 2013, we had an initial 10,800,000 voters participating in the elections. By the time the results were announced, the turnout was over 12 million voters. This cannot be allowed. This must be protected because thievery in elections takes place in the shifting of the total voter turnout. As we deal with this law during the Committee of the whole House stage, let us be open and faithful to our country. We must ensure that we avoid problems like the ones we experienced in 2007/2008 by delivering credible elections to the Republic of Kenya.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to the Hon. Member for Molo. Do you want to speak to the Election Laws (Amendment) Bill?

**Hon. Macharia:** Thank you, Hon. Temporary Deputy Speaker. It is common knowledge that in this country, elections are fraught with emotions. They cause anxiety. Therefore, this Bill seeks to put in place measures that will control and ensure that we have a fair playing-ground in elections, irrespective of party positions, support base and candidates that are going to vie.

I am particularly keen on the fact that this Bill has stopped the debate on whether people waiting for identity cards (IDs) can register. If people waiting for IDs were allowed to vote, we would have all manner of rigging and election malpractice. I am happy that this Bill has stipulated that one can only register as a voter if he or she has an ID.

The issue of nominations has also been of great interest to all of us in this House and all politicians in this country. Party nominations in this country have been causes of great pain and suffering for politicians. This law seeks to clearly streamline this by giving deadlines in which nomination rules should be published by political parties and also a timeline in which those who are aggrieved can petition their parties if they do not agree with the nominations. This is important in election planning.

The issue of qualifications has also been addressed. I am happy that the issue of the ranking of public officers has come out clearly. Members of Parliament are ranked in position 43 simply because we do not have a bar or qualification criteria under which someone could become a Member of Parliament in terms of academics. At this point, it would be important as a country for us to put in place a qualification criterion. I, personally support the view that a Member of Parliament should have qualifications, preferably a diploma or even a degree. It is important to note that there are Members of County Assemblies (MCAs) in this country who do

not know how to read and write. They sit in those assemblies whiling away hours not knowing what is happening. It is time we state clearly that MCAs or candidates vying for the position of MCA are diploma holders, post form-four certificate holders or Kenya Certificate of Secondary Education (KCSE) holders.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Katoo ole Metito.

**Hon. Katoo:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Bill. We are talking about elections. Election laws have only to do with elections.

In an election, a candidate requires three institutions. First, you require the support of the people. You need to convince the people to buy your ideology and philosophy so that you can get their support. Secondly, you require the Independent Electoral and Boundaries Commission (IEBC). Third, you require the Judiciary. IEBC is just a referee that supervises the elections and announces the people's verdict. If as a candidate you are not satisfied, you will require the Judiciary for arbitration. I say that because of the current hot political temperatures in the country whereby these two institutions, especially the referee, namely the IEBC and the Judiciary - where you will go for arbitration - are being discredited. It is really worrying that we, the politicians, are saying that we do not trust or have confidence in those two institutions. It is not something voters will take lightly because that would breed anarchy. Therefore, I plead with my colleagues in the political class to bring down the political temperatures with respect to these two institutions, especially the IEBC and the Judiciary. If politicians say that they do not trust the Judiciary, that tells you that if one does not accept the verdict of the people as announced by the IEBC - the referee - then we will not have an institution for arbitration.

In 2013, there was a presidential election dispute. Those aggrieved moved to court and the Judiciary made a decision. I applaud the step taken by those aggrieved saying that even if they did not agree with the verdict, they would respect the ruling. If we start saying this early that we do not have confidence or trust in the Judiciary or the IEBC with regard to elections, to an extent of even disobeying court orders, we are not heading in the right direction.

Having said that, let me go to the Bill. There is need for us to have a credible, free and fair process that will end up in legitimate results that can be honoured by those in the political field. Looking at this Bill, I agree with my colleagues who have said that we should not just view it as though it only talks of academic qualifications for those who want to fight for political positions in this country. We should do a clean-up of all the electoral laws.

Clause 7 of the Bill tries to amend Section 22 of the parent act, namely the Elections Act, 2011. It talks of the academic qualifications required for all the five offices, that is, the National Assembly, Senate, Women's representatives, governor and the presidency. The academic qualifications of the governor and the presidency are already described elsewhere in the Constitution. It talks of a Member of Parliament having a degree and an MCA having a post-secondary school diploma from a recognised institution in Kenya. This requirement for MCAs is only for the 2017 election. Thereafter, the Bill says that they should be holders of a degree from a university recognised in Kenya. Having high educational qualification is not a licence that you will be a good leader. We have seen, in this House and even before and at the county assembly level, where professors compete with people who have never gone to school and the professors are defeated because leadership requires wisdom. You can be knowledgeable but wisdom is inborn and God given. It is not books that are required for you to be a leader: it is the people's

choice. If they agree in their own assessment that it is the person who has never gone to school who understands their issues and who can partner with them in providing solutions for the challenges facing them, so be it.

Hon. Temporary Deputy Speaker, what is really required here is some competence and skills to understand the role of legislators at the county and national level where you have representation, oversight and legislation. You only need to marry them. Maybe for legislation purposes, educational qualification in terms of capacity, competence and skills come into play.

The Mover of the Bill, the Chairman of the Departmental Committee on Justice and Legal Affairs, while moving it yesterday, mentioned a scenario where everybody will be allowed to run whether they meet the basic requirement or not but thereafter there will be different remuneration schemes. He said that Parliament could be the only institution where everybody joins and becomes a Member of Parliament or Members of the County Assembly and you are paid the same, whether you are a professor or a class one leaver. Those are the examples he gave yesterday but should we go that way? I still feel that we should not deny the common voter a chance to elect a person of his or her choice.

The issue of experience also comes in. If you look at Parliament as an institution, it is the only one where experience does not count. My good friend, Hon. Dr. Oburu Odinga, is one of the longest serving Members of this House but he is paid the same as the Member of Malindi who just came three months ago. This is the only institution that does not take into account experience in appreciating those who have served for long. Should we go the way the Mover of the Bill was talking yesterday, we should consider ranking not only in speaking or offering facilities like offices but also in remuneration. That is another thing the Committee should look into.

Clause 12 of this Bill which seeks to amend Section 34 of the parent Act talks of the duration needed to present the nomination list by any party to the Commission. It talks of 60 days before elections. It used to be 45 days. I have a problem with that. If you present the list as party for nominations what happens if there is change in party allegiance? I prefer this nomination list to be done after.

Finally, the issue of distance should be considered in Clause 13. You should not have more than 700 voters in one stream. You should consider people in rural areas. They should not walk for more than two kilometres.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member you have made your point. I will now give the Floor to Hon. Florence Mutua.

**Hon. (Ms.) F.M. Mutua:** Thank you, Hon. Temporary Deputy Speaker. As I stand to support the amendments on the Bill, I urge Kenyans, as we move towards 2017, to promote the conduct of free and fair elections and a climate of tolerance in which political parties' activities may take place without coercion, intimidation or reprisals.

My colleague has talked about the Independent Electoral and Boundaries Commission (IEBC). Without belabouring the issue of IEBC, we have raised the issue of a referee not being a player. We have raised how the IEBC can be impartial on some issues. It is out in the public domain. As we move towards 2017, many Kenyans have come out and they are not necessarily members of the Coalition for Reforms and Democracy (CORD). This is not a CORD issue. This is an issue for Kenyans. We need all stakeholders to have a round table discussion on how IEBC can be sorted out so that we can have peaceful elections in 2017.



I am also happy about the amendments in this Bill especially on the issue of political party nominations. These party nominations will have some activity for the people who are going to be nominated. The candidates who will take part in elective activities will garner votes, especially women candidates. It is these women candidates who will be gazetted for nomination. So, people will get out of the belief that women are given seats. The second runners up should be given the nomination slots. That will bring sanity to nominations.

We all know what happened in 2013. It was a big sham. We have people who would have served better in county assemblies and the National Assembly but they were dropped because they did not know who mattered at that time in the parties. This would be a very good Bill especially when it comes to the issue of nominations because we will have ranking when it comes to the votes one has garnered. The constituents will also feel that such a person deserves the nomination because they have done something. They will also taste how it feels to vie. That way, the nominated will respect the people who have vied.

Another amendment I am happy about is the one on special seats under Clause 1 (c)(a) which shall be determined after the full declaration of the office holders in the next General Election. This will give a chance to political parties to assess how women performed and what numbers are required for top up. As we sit today, we have very many able women who lost their seats and if this law was in place at that time, they would be in the National Assembly or county assemblies representing Kenyans. The few that come to mind are like Hon. Charity Ngilu who was saved by getting a Cabinet Secretary (CS) position in the Jubilee Government. If she had not been given the position in the Jubilee Government as a CS, she would be out in the cold yet she is a strong woman. We also have Hon. Linah Chebii. These are women who vied and lost. We have Hon. Wavinya Ndeti and Hon. Margaret Kamar who even attempted to vie for governorship. All these women I am talking about would be in Parliament through party nomination after they lost in the General Election.

So, I support this Bill that we should do nominations after elections. Once the dust has settled, we see which women vied and are strong, know their capability and then they are given nomination slots.

We have talked about education. We are always talking about governance. If we do not have degrees, we cannot oversee people who have degrees. We need to have this discussion as Kenyans seriously. This is because if we are to oversee the budget, we need to understand what that budget is all about. However, we also need to look at the other side of the coin as Kenyans and agree that leadership does exist because of books. We have so many people in this country who have gone to school and yet they cannot even make positive arguments.

We have Hon. Leshoomo who is one of our best legislators in this National Assembly from Samburu. So, we need to consider so many aspects when we are considering this Bill when it comes to education. We have people in this country who can lead us and they do not have that level of education. So, we need to have some sort of balance where we need to ensure that we do not leave out good leaders because they do not have some level of education.

Hon. Temporary Deputy Speaker. I support this Bill and urge Members as we move forward to support these amendments so that we can move forward together as a country. We should ensure our nominations are in order and the electoral commissions that we are going to have are impartial so that we can have a peaceful election. When there is violence in a country, it is the women and the children that suffer. So, we do not want to go for the 2017 elections when the temperatures are very high. We need all stakeholders in this country as we discuss these Bills

to sit together as Kenyans and avoid chest thumping so that we can come up with good laws and bring everybody on board.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Okay. I now give the Floor to Hon. Samuel Gichigi.

**Hon. Gichigi:** Thank you, Hon. Temporary Deputy Speaker. I support this Bill but before I give my views, I am looking at the other side of the aisle and wondering where the Coalition for Reforms and Democracy (CORD) brigade which has been up in arms about the Independent Electoral and Boundaries Commission (IEBC) is. This is the opportunity that the law has given them to deal with whatever issues they have against IEBC. We are dealing with provisions that touch on IEBC today through this Bill and yet they are not here. So to me, the clear intention of forming a militia called *Firimbi Movement* has nothing to do with justice and fairness. It is all about politicking. If I had seen any debate or proposed amendments dealing with the complaints against IEBC, I would understand where they are coming from otherwise, the *Firimbi Movement* on IEBC is just another *Mungiki*, *Chinkororo* or *Al-Shabaab*.

I support this Bill because it has certain good provisions. When it gives the period within which disputes on nominations ought to be dealt with as 40 days by the parties--- Some of us suffered during the last elections because after the nominations the issues were not very clear. The time was so limited that there was no time for the tribunals to sit, hear and determine these disputes. So, I am going to support the provisions on early nominations. I will also support the provisions that require the parties to resolve those nomination disputes long before the elections happen.

I oppose the issue of the parties submitting nomination rules to the IEBC three months before the elections. I support the suggestion by Hon. Katoo that it is high time we thought of coming up with nomination lists after the elections. The idea of nominations is to look at the people who have been elected, find out where the gaps are and then fill those gaps. If you come up with a nomination list before the elections, everybody is normally very busy and only a few people have an idea of what is happening when it comes to preparation of those lists. After the elections, you might find that the people who are in those lists are not the ones that are suitable to fill in the gaps that rise out of the elections. We need to amend the proposed provisions here and come up with nominations after the elections.

Education of Members of Parliament (MPs) is a constitutional requirement which the Tenth Parliament failed to abide by. As we think about it, it is important that we consider the education of MPs and their trainings after they join Parliament. Even as we think of the levels of education for the candidates, let us also think about the requirements. We have been mandated by the Constitution to oversee, represent as well as make laws. When we come to Parliament, the induction that is given for a day like the one we had at Safari Park Hotel is not proper training for MPs. I suggest that for the first about three months Parliament must take new MPs through some training. We have no business coming to pretend to be making any laws here.

We ought to be taken through thorough training. So, if you asked somebody here: "What is the curriculum of oversight or what is oversight?" They will start googling because nobody took us through that issue. So, I challenge the Parliamentary Service Commission (PSC), because they are the ones who are going to be here after Parliament is dissolved to take care of the MPs. Let us not just think about their education before they come to Parliament. Come up with a syllabus. We have the Centre for Parliamentary Studies and Training Institute (CPST) at Karen.

Let them come up with a good course for new MPs and specific ones for various committees such as the Departmental Committee on Energy and Budget and Appropriations Committee. We should be trained so that we carry out our constitutional mandate competently because we are not holding it for lack of capacity.

I support the issue of limiting the number of voters in a polling station. A total of 700 voters is okay rather than have long queues that can easily bring chaos or lead to people being barred from voting because of time lapse.

Clause 14 talks of resignation of public officers one year before the elections. We need serious clarity on this. Some of us were forced to resign from our public positions much earlier, then the elections was shifted to December and then to March. As we debate on the date of election, we know that tentatively it is in August. The idea of having a Bill to have it shifted to December, whether the period is five years or four years and six months needs clarity. It will be very unfair to tell people to resign a year before August of this year only for the election to be shifted to December or March 2018. So, I do not think that this is a good provision, the six months should remain.

Clause 21 on the stay of the elections pending appeal to the Court of Appeal is also a good one. Instead of somebody being sworn in here and yet a petition is pending, there should be a stay as proposed. As I wind up, Clause 23 is also a good one as it brings clarity where an election court finds that one of the candidates had committed an election offence. It is clear how it sends its report to the Director of Public Prosecutions (DPP) who is then supposed to investigate and determine whether an offence has been committed and proceed to either charge or dismiss that particular report. I think it is a good provision. Finally, on clause 36 on the limitation of boundaries, the proposal that the factor of population needs to be emphasized is also a good one.

Hon. Temporary Deputy Speaker, I support this particular Bill subject to amendments and hope that before we go to the Third Reading, the people calling for mass action will bring proposed amendments so that we can consider them. If they want us to kick out the IEBC they should give us reasons. We cannot reason in the streets.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Mwanzyoha.

**Hon. Mwanzyoha:** Asante sana, Mhe. Naibu Spika wa Muda, kwa kunipatia nafasi hii ili niunge mkono Hoja iliyoko mbele yetu siku ya leo. Ni lazima Serikali itafakari kwa sababu mara nyingi huwa na zogo kwa sababu ya hawa watu wa IEBC.

Ingawa mmoja wetu hivi sasa amezungumza na kuuliza watu wa CORD wako wapi, nataka kumwambia ya kwamba mambo haya si ya CORD. CORD inasimamia haya mambo na yoyote anayezungumza ana simamia mambo haya kwa sababu ya kuleta amani nchini. Kwa hivyo, awe mtu wa CORD ama Jubilee mimi naona kwamba iko haja jambo hili liangaliwe kwa makini na watu wote ili kuondoa ghasia na matatizo ambayo mara kwa mara yanazushwa kwa sababu ya IEBC. Kwa hivyo IEBC lazima iangaliwe kirefu na kupigwa msasa na wachukie watu waadhilifu ambao wanajua wanafanya nini na ambao imani yao ni kuhakikisha kwamba Kenya imekuwa na amani.

Nikirudi katika upande wa elimu, fikira zangu naona ya kwamba, ni vizuri zaidi turudi kwa zile nyakati za nyuma na twende kufanya mitihani na mtu akipita Kiswahili ama Kingereza aende moja kwa moja kwa uchaguzi. Kwa sababu kuna watu wengi wana makaratasi na mwisho unasikia hayo makaratasi ni ya wizi, si ya haki. Kwa hivyo mtu akiwa bayana pale anafanya

mtihani nafikiri hapo ndipo wakati utajuwa kwamba huyo ni kiongozi ama si kiongozi sawasawa.

Kwa hivyo, masuala ya elimu mimi naona kwamba cheti kisiwe na uzito zaidi. Nakumbuka kwamba zamani kulikuwa na mibabe ya kisiasa ambao hawakufika hata darasa la nne. Nikitoa mfano, kule kwetu tulikuwa na mbabe wa siasa Mhe. Masoud Mwakileo, Mhe. Mwarua Abdalla, na Mhe. Abdalla Ndovu Mwidao. Hawa nina imani kuwa elimu yao haikuwa ya juu kama vile watu wanavyofikiria lakini walikuwa wanasema maneno sawa sawa na wakizungumza mtu anajua. Nina wasiwasi kama marehemu Shikuku alikuwa na degree. Penguin alikuwa na diploma tu lakini alikuwa akizungumza na nchi nzima inatetemeka.

Kwa hivyo, masuala ya elimu mimi nataka yaangaliwe vizuri ili tusitoe watu nje katika mazungumzo ama---

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, I am sorry, I have to interrupt. Hon. Member for Wajir South what is your point of order?

**Hon. Mohamed Diriye:** On a point of order, Hon. Temporary Deputy Speaker. I believe Hon. Gichigi said the CORD side is not here when we are speaking on this very important election law.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): You cannot be raising a point of order on what Gichigi said. He is no longer on the Floor, so you are out of order.

**Hon. Mohamed Diriye:** But there are even few Jubilee MPs.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, you are out of order and please do not test me. Hon. Mwanyoha.

**Hon. Mwanyoha:** Bunge hili huwa na matatizo wakati Mwanyoha anazugumza. Watu hutoa maneno ili wakati wangu uishe. Mhe. Naibu Spika wa Muda, nashukuru kwa kunitetea; uendelee namna hiyo.

Nataka sasa niongee kuhusu nambari ya wale ambao wanahitajika kupiga kura katika kituo. Mara kwa mara kuna watu wengi sana, mpaka watu wengine huja saa kumi na mbili za asubuhi. Lakini ikifika saa kumi na mbili za jioni wanaambia wakati umeisha na wanaachwa nje. Naomba kuwe na marekebisho ili badala ya kuwa na watu 1,000 wawe 500 kwa kila kituo. Vituo viweze kuongezwa ili kuwe na muda mrefu na kila mtu aweze kupiga kura. Kwa hivyo naomba Serikali ihakikishe kwamba itaongeza vituo na nambari ya kila kituo iwe ndogo.

Nikirudi kwa uteuzi wa wale Wabunge ama madiwani ambao wanataka kuchaguliwa au kuteuliwa, hii iwe baada ya uchaguzi ili tuweze kuangalia ni nani alikuwa anafanya kazi nzuri wakati wa kampeini na nani alikuwa goigoi. Kwa sababu wengine huketi bure na mwisho huchaguliwa bila kuangalia na wengine wanaenda kiasi cha kuchagua wapenzi wao. Kwa hivyo mimi naomba hii ifanywe sawa.

*(Applause)*

Asante sana. Hiyo ni kuonyesha maneno haya ni kabambe. Kwa hivyo naomba ya kwamba uteuzi ufanywe baada ya uchaguzi na tuhakikishe kwamba mambo yamekuwa sawa sawa.

Asante, Mhe. Naibu Spika wa Muda kwa kunipatia nafasi hii. Naunga mkono.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Joseph Kahangara. Is he in the House? If not, I give the Floor to Hon. Mary Seneta.

**Hon. (Ms.) Seneta:** Thank you, Hon. Temporary Deputy Speaker. I rise to support the Bill and especially when it comes to the area of nomination. I also want to echo what my other colleagues are suggesting that on this nomination exercise, parties should present their lists after elections so that, at least, we can see those people who served parties and did good work for them instead of us giving out the nomination list when campaigns are ongoing and everyone, including the party leaders, are also very busy. Anybody can sneak in a name of a person who has not even been serious serving the party.

I was thinking that nomination lists should be given after elections so that we can scrutinise and see those people who deserve to be nominated. It will also give us a chance to distribute those nomination slots properly. We can have a chance to look at marginalized areas, gender and properly distribute slots according to regions that have supported different parties. I also support the aspect of qualifications, though we know that most of the time the electorate does not look at the qualifications of a person. It is important for those people serving in different levels of government to interpret the Constitution and make policies that can help the country move forward.

We are a country that puts a lot of emphasis on education. Most of the time, we look at qualifications in other levels. So, we should also look at qualifications in the political arena, especially when it comes to payment of salaries. We should look at maybe paying according to grades just like how other civil servants are paid. At times it will be very discriminatory if we pay somebody who has not gone to school equally with one who has a degree.

We should look into that issue. The issue of the whole process of election should not be just about the voting day. We should look at the institutions, put systems in place and look at the whole process of election so that we can have a fair and transparent election for this country.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I give the Floor to the Member for Kisumu, Hon. Rose Nyamunga.

**Hon. (Ms.) Nyamunga:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to add my voice to the contributions that my colleagues have already made. I am sorry if I have to repeat the issues that have already been raised. I stand by the same issues. Having a good code of conduct is very important in any election process. It is important that we first of all have a good code of conduct. It is also important to have a very credible referee to oversee the elections. That is why the Independent Electoral and Boundaries Commission (IEBC) needs to be reconstituted. It is very important because Kenyans have lost faith in our election body. For us to move forward and have an election that is credible, with a good code of conduct put in place, it is important that the IEBC is reconstituted.

It is also important to have a conducive environment for any elections. During every electioneering period, people living in the urban areas move to the rural areas even though they are not listed to vote in the rural areas because of the fear that comes with elections. We have seen that in many occasions in Kenya. It has happened several times. As we prepare to have elections next year, many people are living in fear. There is a lot of movement of people from urban areas to their rural areas, where they can find refuge. A strong system and a good referee are very important for any election body.

Secondly, we know that nominations must be done. For many years, the people who are nominated are those who have been very supportive of their political parties and championed the ideals of the party. Nominations are not given to anybody. In fact, the list of the people who are

nominated consists of people you have never seen. They are people who have been dying with different parties. If it is not a relative, it is a friend. That should be a thing of the past. It should be on the table across all parties, and not a particular party. I am not talking about ODM alone. I am talking about all parties that will be participating in the elections. I support the issue of nomination. The list should come out after elections because that is when you see people who have championed the ideals of the respective parties.

Thirdly, much as I know that we have great leaders who do not have university degrees and some who have never seen the doors of classroom, we must realize that we spend a lot of money as a nation and families to ensure that our people go to school. We have gone to one school after another to ensure that we can understand issues better and debate in a much better structured manner. We do not want to discourage people who are taking their children to school by arguing that anybody can be elected to Parliament even if they do not have primary education qualification or a certain minimum academic qualification. That will discourage so many young people. They will not see the importance of going to school. There must be a minimum educational qualification on some positions. From the suggestions that we have seen, the qualifications are very minimal. We can talk of a diploma for a Member of the County Assembly (MCA) and a first degree for a Member of Parliament, going forward.

Hon. Temporary Deputy Chairlady, education cannot be downplayed. It is important and will encourage our young people who are aspiring to be politicians to know that education goes with some of these things.

The amendments to this Bill are crucial for our elections moving forward.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Keter. You have four minutes.

**Hon. Alfred Keter:** Thank you, Hon. Temporary Deputy Chairlady. At the outset, I want to support this Bill with amendments. I agree that it is important to put a minimum qualification in education for anybody to be elected to any position whether in the county, Senate or the National Assembly. I want to agree with the other Members that education is not the only quality of a good leader. There are four qualities of a good leader but the main quality is the willingness to serve. It is not about the ability to serve. Education falls under the ability to serve where there is knowledge and wisdom. We have seen great leaders like Winston Churchill who are recognised in the whole world for their wisdom. If you base qualities only on education, you will miss many other people who can lead. It is a question of whether you are willing to serve or not willing to serve. You need to sympathise with the situation and fight for the poor Kenyans.

About the referee- the Independent Electoral and Boundaries Commission (IEBC), I agree that a majority which is almost 100 per cent must be agreeable with a referee. It is not whether a few individuals are supportive of the IEBC. At the moment, about 60 to 70 per cent of Kenyans have expressed doubt with it. We should embrace modern world where if you are seeking an office and people express some doubt in your leadership, you should be ready to quit. Why are you insisting to stay? The debate should not be about how to remove the IEBC from office but whether they are fit in office or not. A majority of Kenyans have expressed doubt in them. We want a bi-partisan referee that every winner or loser will trust the outcome of an election.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Keter, you have six more minutes when the debate comes back on the Floor.

Hon. Members, I will use my discretion of Standing Order No. 1 to allow the Chief Whip to lay a Paper.

### PAPER LAID

**Hon. Katoo:** Thank you, Hon. Temporary Deputy Chairlady. I beg to lay the following Paper on the Table of the House:-

The Seventh Batch of Nominees to 20 National Government Constituencies Development Fund (CDF) Committees from the National Government Constituency Development Board.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, the time being 1.00 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.