

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 29th October, 2015

The House met at 2.30 p.m.

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

PRAYERS

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING 10TH NOVEMBER, 2015

Hon. A.B. Duale: Thank you, Hon. Speaker. Pursuant to Standing Order No. 44(2)(a), on behalf of the House Business Committee (HBC), I rise to give the Statement regarding the business appearing before the House.

Without appearing to anticipate debate on the Motion for Adjournment this afternoon, this Statement is for the week after the short recess and not next week. It is envisaged that the House will proceed on recess as per the approved parliamentary calendar.

The HBC has resolved to prioritise all Bills with constitutional timelines, Senate Bills and other pieces of legislation proposed by individual Members of the House after our short recess. Priority will also be accorded to consideration of reports of committees, including the very important reports laid by the Public Accounts Committee (PAC).

The following Cabinet Secretaries (CSs) are scheduled to appear before various committees on Tuesday 10th November, 2015:-

(i) The CS for Transport and Infrastructure at 11.30 a.m. before the Departmental Committee on Transport, Public Works and Housing to answer questions from Hon. Ottichilo. I want to thank him because every week, he has questions concerning the people he represents. Hon. Onesmus Njuki, Hon. Peter Safari Shehe and Hon. Ronald Tonui, are Members of Parliament of this House.

(ii) The CS for Devolution and Planning is scheduled to appear at 10.00 a.m. before the Departmental Committee on Finance, Planning and Trade to answer questions from Hon. Mathew Lempurkel, MP, Hon. Ali Wario MP, Hon. Joseph Kiuna MP and Hon. James Mwangi MP.

(iii) The CS for Interior and Coordination of National Government is scheduled to appear at 10.00 a.m. before the Departmental Committee on Administration and National Security to answer questions from Hon. Janet Nangabo, MP, Hon. John Waluke, MP, Wilberforce Ottichilo, MP and Hon. Joseph Manje, MP.

I now wish to lay the Statement on the Table of the House.

(Hon. A. B. Duale laid the document on the Table)

Hon. Speaker: Even as that is happening, I think there is some disquiet that has been registered about the many questions that have been directed to the CS for Environment and Natural Resources, and which have not been responded to on numerous occasions for all manner of reasons. The Leader of the Majority Party should communicate to that particular CS that she needs to prioritise Parliament. She is not the only one who attends to Cabinet duties such that Parliament has to adjourn for more than three occasions. It is not fair. The next thing that will happen is this: We might resolve to deal with her in the best way we know how. She should make Parliament her friend and come and respond to questions. Members have nothing personal. They are just responding to the needs of the people they represent. There is nothing to worry. I know some of them may be a bit scared about the robustness of Parliament, but that is all about open democracy. So, she has nothing to fear. Let her come and respond to the questions, and then she can go and deal with other issues elsewhere. Even as we do this, we also want them to know that if they want to respond to issues which have been raised, if somebody has issues about a report by a committee of Parliament, they have no business writing to me. Once a report has been tabled, it becomes the property of the House. There is no way that the Speaker can recall a report which has been tabled and a committee has taken time to write it. They should just deal with the report as it comes. If they have been afforded an opportunity to appear, let them know that, that is the best opportunity. Once the report has been tabled, then the horse will have bolted and you cannot be expected to write to the Speaker then. The Speaker has no role in the matter. Did I see Hon. Midiwo with an intervention?

Hon. Midiwo: Just to support you on that Hon. Speaker, sometimes, people do not know or ignore what the powers and duties of Parliament are. This is unfortunate under our new Constitution, but I am sure they are well advised.

Hon. Speaker, on the Order Paper before the House, there is the Statute Law (Miscellaneous Amendments) Bill sponsored by the Leader of the Majority Party. I have in my possession a letter from the Cabinet Secretary (CS) for Information, Communication and Technology. I have looked at the amendments and a lot of them look unconstitutional. They require some consultations within the Executive so that we do not consider them. The letter from Mr. Fred Matiang'i to the Attorney-General (AG) says the amendments proposed in this Bill are not the Ministry's amendments. That is because the Ministry has not been consulted. These amendments are fundamental in nature.

Hon. Speaker: We are not yet on that Bill.

Hon. Midiwo: No, I am just talking about the Order Paper without discussing the contents of the Bill.

Hon. Chepkong'a: (*Off-record*)

Hon. Midiwo: I did not know you have become the Speaker, Hon. Chepkong'a. I know you do not understand what I am doing. So, I will try to accommodate you. I am talking about the Order Paper.

Hon. Speaker, I thought it is wise to bring it to your attention that there is a Bill before Parliament which has come here unprocedurally. It has very many controversial provisions. In fact, the Leader of the Majority Party wrote to you to stand down some of the provisions. That is because it is listed for debate this afternoon. It would be nice for you to guide us on how we should go about it, or whether I should raise the issues when we get to that Order. It will come shortly.

I thank you.

(Several hon. Members stood up in their places)

Hon. Speaker: Hon. Members, except with my leave, when a Member rises on a point of order, it is not open to you to also speak purportedly on a point of order.

On this matter, Hon. Midiwo jumped the gun. As he concluded his remarks, he said the correct thing, which is that he can raise those issues when the Order is called. Quite rightly, that would be the appropriate time. In the event that the issues you will be raising touch on the Constitution, there may be need for a considered ruling to be made before debate is commenced.

However, if this is the same Bill that the Leader of the Majority Party has written to me about, he withdrew consideration of the entire provisions relating to the Independent Policing Oversight Authority (IPOA) and the clauses purporting to amend the Universities Act, except Sections 22 and 39. I communicated that yesterday. So, the Bill would be proceeding for consideration without reference to the proposed amendments to the IPOA Act and the Universities Act, save for references to Sections 22 and 39 thereof. That is what the Leader of the Majority Party wrote to me about and that is what I communicated to the House yesterday. It is good that you have raised it so that I can remind the House that the Leader of the Majority Party has withdrawn those two aspects of the Bill.

Hon. Chepkong'a: On a point of order, Hon. Speaker.

Hon. Speaker: Yes, Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, Hon. Speaker. I have tremendous respect for the Deputy Leader of the Minority Party. He is a leader in this House. So, we exchange words generally in jest, nothing out of malice.

I want to inform him that the Departmental Committee on Justice and Legal Affairs has considered the two Statute Law (Miscellaneous Amendments) Bills. One is for the Senate and the other one will be considered by this House. We tabled the Report yesterday. Maybe, Members would need to look at the Report.

We have looked at all the clauses. We have even determined others to be unconstitutional and we have made proposals to make them constitutional. So, we will be moving some amendments to that effect. We have even proposed that some proposed amendments be rejected, including where the Bill seeks to take away the power of this House when it comes to the appointment of CSs. We have very good reasons contained in our Report. The Report is very comprehensive.

I thank you.

Hon. Speaker: Maybe to remind the House again, the Departmental Committee on Justice and Legal Affairs tabled 10 Reports yesterday afternoon. Among them is the Report on this Bill. For the information of Members, those that would care to read – I appreciate there are others who understand things without reading – can go to Room 8 for the Reports. People are intelligent in various ways. You can understand a Bill even without reading it or reading the Report. Hon. Chepkong'a has made a very valid point, that in their Report, they have even recommended outright rejection of some of the proposals. Such a recommendation coming from a Committee of this House is something worth considering. So, I would advise that those who are not members of the Committee, and who may wish to read for purposes of gaining knowledge, should go and get copies of the Report from the Table Office. As we commence debate, we do not have to spend a lot of time when the Committee has already made

recommendations guiding the House. The purpose of reports of committees is to guide the House in debate.

I see many requests for points of order. Let us not make points of order to be debate. It is not debate. This has been corrected.

What is your point of order, Hon. Gichigi?

Hon. Gichigi: Hon. Speaker, thank you very much. I want to bring to the notice of the Chairperson of the Committee that I have tried to get a copy of the Report that was tabled yesterday, but it is not available in the Table Office. The truth of the matter is that it is going to be extremely difficult for Members to debate this omnibus Bill without going through the Report.

Hon. Speaker: That is enough. That is an administrative matter. The Clerk's Office is directed to immediately make available those Reports. How can it be that the Report was tabled yesterday and it is not available today? Can you send somebody to go and ensure that the Report is available to Members?

What is your point of order, Hon. Olago Aluoch?

Hon. Aluoch: Thank you, Hon. Speaker. I have the honour and privilege to serve in the Departmental Committee on Justice and Legal Affairs under the chairmanship of Hon. Chepkong'a. I agree with what he has said.

My point of order is this: When Hon. Jakoyo addressed you on the communication between him and the Executive; I thought the roles were reversed because that communication ought to have come from the Leader of the Majority Party. Are we now taking instructions from the Executive from this side of the House? We need direction.

(Laughter)

Hon. Speaker: Hon. Midiwo, would you want to explain how you got the letter?

Hon. Midiwo: Yes, and that is why I have to clear my name. I am not a mole. This letter is in my possession as a whistle blower; as a watchman.

(Hon. A.B. Duale spoke off the record)

Well, it may not be a very bad tag, after all. I think Jubilee needs help. You need somebody like me. I may be a good catch.

(Laughter)

Hon. Speaker, the reason I brought this letter is to show that this Statute Law (Miscellaneous Amendments) Bill is here in a controversial way. I do not want to say some things, but I will say them during the debate. It has issues. Now that we are being told that even the Report was not available, I want to plead with you, since we are going on recess, to stand this Bill down for debate when we come back and after we have looked at the Report.

Just so that I can inform Members, on Tuesday in the House Business Committee (HBC), we spent a good part standing down a Bill because there was no report from a Committee. None other than the Leader of the Majority Party was so insistent and keen on the fact that no Bill should be discussed before a report is tabled. The Report was tabled - and I not want to blame

your Office - yesterday in the evening. The Bill was already scheduled for debate yesterday. That means this Bill should have appeared through another rescheduling of the Order Paper because we need time to read.

I want to plead with you on this. I know the Leader of the Majority Party thinks that he can rush us through just like he did to us yesterday, but we will say some things here which will surprise him. That is because the things somebody is purporting to do here will shake the nation. There is one that he has not stood down, and that will shock the nation. I am not going to debate before the time and I am here to say them.

Thank you, Hon. Speaker.

Hon. Speaker: Before you speak, Hon. Leader of the Majority Party, first of all - and that is why I have not referred to anything - Hon. Midiwo is holding certain documents. But they are not yet here officially. But Hon. Midiwo is at liberty to even carry all documents. So, he is not at fault to carry them. I thought he was holding part of the Order Paper.

(Hon. Midiwo stood up in his place)

Hon. Midiwo, there is nothing to debate. That is Order No.10. Immediately after Order No.8, we shall resume debate on Order No.9. We are even jumping the gun. I have been informed that that Report is now available in Room No. 8. The Report was tabled yesterday, anyway. There are several Members who will be able to contribute. I do not think you can even complete debate on this because it has quite a number of issues.

But be that as it may, let us have the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, at the outset, that letter is to the Attorney-General (A-G) and I am sure you have a copy - which I have. According to the letter, the person to respond - who the Cabinet Secretary (CS) is accusing - is the Attorney-General. I have advised the CS to appear before the relevant Departmental Committee on Energy, Communications and Information before we come to the Third Reading of the Bill. That section in the letter concerns communication. He is talking about the Communications Commission of Kenya (CCK). The reason why I withdrew those two other amendments on the Independent Policing Oversight Authority (IPOA) and universities - and I want to go on record - has nothing to do with the unconstitutionality of those clauses.

The reason was that this Statute Law (Miscellaneous Amendments) Bill is supposed to deal with minor amendments and errors and the issues on IPOA were very substantial. Even in your letter, I have said that Parliament can still do what was suggested on IPOA, but it should be done through a Bill. The same case applies to the universities. What they wanted to do, in my opinion, was very substantive. Again, there is a Bill in the pipeline called "The Universities Bill." I was wondering why somebody wants to rush this.

Thirdly, I am the one in the HBC who insisted that a Bill should not come without a report. The Bill was on access to information, a very important Bill, which a Private Member wanted to introduce before a report. For the record, the person who opposed me that a Bill can come to this House without a committee report was none other than Hon. Jakoyo Midiwo in that HBC meeting.

Today, at least, the Report on the Bill that is before the House was tabled yesterday afternoon. The Statute Law (Miscellaneous Amendments) Bill was at Order No.15 in yesterday's Order Paper. It is good for my very good friend, Hon. Midiwo, to know that what we say in other

meetings, we translate them in the House. He is the one who opposed me and the HBC agreed. It is good for the House to know that this is in our Standing Orders. In fact, when a Bill is read for the First Time; a Government Bill or a Private Members' Bill, the timelines within the Standing Orders must be fulfilled within 21 days. That is why you have said that the House must listen to Committees on Wednesday on the status of reports before them. Private Members' Bills and Petitions were taking too long. When a Bill is read for the First Time, the Committee must bring a report within the stipulated time. So, if there is any Bill on the Order Paper on which we do not have a report, then the reasons for it not to be debated make sense.

However, the Table Office is open until 10.00 p.m. Yesterday, I left the House at 9.45 p.m. and the Table Office was open. If Members do not want to go and pick reports, then those are administrative matters. I am sure the copies are there. I picked two copies of the Report of the Public Accounts Committee (PAC) on the National Police Service Commission (NPSC) issue yesterday.

Let us follow the agenda. I removed IPOA and universities issues not because of the law, but they were on the wrong Bill. For my friend the CS, I did not want to respond here, but the issues are between the Attorney-General and the CS.

Hon. Member: It is before the Committee!

Hon. A.B. Duale: No. I am saying that if it is the letter that I got and copied to you, it is to the Attorney-General. It was for our information. As the Leader of Government Business, I have told the CS that he has an opportunity. We will rectify if he convinces the Committee on Energy, Communication and Information led by Hon. Jamleck Kamau. The House will have the opportunity at the Third Reading. There are many others. A number of people have written on many issues, including why I withdrew the IPOA Act. We have an opportunity to rectify all that.

Hon. Speaker: Hon. Members, there is no debate. As you know, this was in keeping with the current trend in the 11th Parliament where, through points of order, we discuss administrative matters. We will have to look for a way of dealing with administrative matters, so that we can deal with business.

Hon. Muthomi Njuki.

Hon. Njuki: Thank you, Hon. Speaker. First, let me apologize to the Leader of the Majority Party for picking his copy of the Standing Orders. I know he is the only one who religiously carries the New Edition of the Standing Orders and the Constitution in this Parliament.

I need your indulgence on an issue that touches other Members of Parliament. This is an issue to do with the role the Implementation Committee is supposed to play in this House, as stipulated in Standing Order No.209. The Standing Order states:-

“(2) The Committee shall scrutinize the resolutions of the House (including adopted committee reports), petitions and the undertakings given by the National Executive and examine –

(a) whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and,

(b) whether or not legislation passed by the House has been operationalised and where operationalised, the extent to which such operationalisation has taken place within the minimum time necessary.

(3) The Committee may propose to the House sanctions against any Cabinet Secretary who fails to report to the relevant select Committee on implementation status without justifiable reasons”.

When it comes to petitions, your office came up with the Petition Tracker that shows us the status of any petition at any one time. Departmental Committees do a very good job in making sure that recommendations are done according to Standing Order Nos.228 and 227. The Report is given to the Office of the Clerk to show what the Committee recommended.

Hon. Speaker, several Members of Parliament, including me, have brought petitions to this House. In particular, I want to refer the House to a petition I took to the Departmental Committee on Transport, Public Works and Housing headed by Hon. Kamanda. There was a recommendation that bumps should be erected on a road in a place called Kangoro in Chuka/Igambang’ombe Constituency. That was one year ago. I saw the Report because it was given to me by the Clerk but, one year down the line, today we have demonstrations in the same area because a bus ploughed into a bus stop and injured a few people, despite the fact that the Committee recommended bumps to be erected. It is on record. It is in the Report in the Clerk’s Office. It has not been done. So, what is the work of the Committee on Implementation in this House? I need you to make a ruling whether it is Members who are supposed to go and do a follow-up in the Ministries or whether we are going to have a proper way of doing business in this House, where we get a Report and the sanctions as you earlier ruled in the case of the Cabinet Secretary (CS) for Environment, Water and Mineral Resources?

Thank you, Hon. Speaker.

Hon. Speaker: The Chair of the Committee on Implementation, Hon. Soipan, you are on the spot again.

Hon. (Ms.) Tuyu: Thank you, Hon. Speaker. I wish to say that being on the spot as the Committee on Implementation is very much expected because we are the convergence between the Legislature and the Executive in terms of implementation of all the business of this House.

With regard to the issue raised by Hon. Muthomi, he has really generalised issues because if he has an issue with the specific question of the petition about erection of bumps in his constituency, we can undertake to bring it up as a priority for the Committee and give him the necessary feedback.

Hon. Speaker, allow me to say that, as the Committee on Implementation, we have a number of resolutions that are currently before us. It is also clear for Members to know that we do not implement, but follow up on issues of resolutions of this House for implementation. We have a backlog from the previous Parliament. We have business which is being churned out from the Floor of the House every other week. So, it is a question of prioritisation. But I can assure the House that we are working as a Committee and we submitted a report before the House two months ago. We are preparing one before we go for the long recess. I urge Members who have any specific issues to please bring them to us. But they should also understand that we have a backlog that we are dealing with and it is a question of prioritisation. We are going to deal with each issue as it comes.

We undertake to look into Hon. Muthomi’s issue in the next one week after we come back from recess.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Soipan, your mandate is very clear. You shall scrutinize the resolutions of the House, including adopted committee reports like the ones we are talking about,

petitions and the undertakings given by the National Executive and examine whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been so implemented; and whether such implementation has taken place within the minimum time necessary.

Among other things and very importantly, you are mandated to propose to the House sanctions against any Cabinet Secretary who fails to report to the relevant Select Committee on implementation status without justifiable reasons, especially if a Committee of the House recommended, as I understood, that bumps should be erected at some place or places. That was supposed to be implemented by a certain Government department - the State Department of Roads and Infrastructure. All you were required to do is to summon them to come and explain whether that has been done. If not done, they should give the reasons for not doing so. There could be reasons why certain things may not be done but, at least, those reasons must be given to you for onward transmission to the House, so that the House is accordingly informed. If they come and explain to you that they have not been able to do this because they have been anticipating *El Nino* for the last six months, those are not reasonable grounds because everybody was expecting *El Nino* in the country and several other parts anyway.

More importantly, I expect that this Committee should be the eye of the House. You are really almost the Executive arm of the decisions of the House so that people who come here are summoned before Committees and they will make all manner of promises that they are going to do this or that. For example, they can say that they are going to ensure that there is grass planted on the streets or that they are going to build superhighways wherever. The Committees have done their work. Once those executives give those undertakings, it is for you now to take them head-on so that you can keep them on their toes. You can ask them: "You have promised to do this, how long do you want us to wait to see action?" I am not saying that they should start hiding or running away when they see Hon. (Ms) Soipan. But when they hear that the Committee on Implementation is calling them, they should be aware that things are not very good for them.

You could begin by recommending certain sanctions on anyone who is not living up to the resolutions of the House, so that we can come and deal with them here in the way we know how.

Hon. Soipan.

Hon. (Ms.) Tuya: Thank you, Hon. Speaker. We very well understand that mandate and we know it is a very crucial part of the deliberations of this House. I assure the House that we are up to the task as a Committee.

Hon. Speaker, you know that for the very first time, two months ago, the Committee on Implementation did a report to this House since its establishment. It has never been done before. So, mine is to reiterate and assure Members that the Committee is working. On the particular issue raised by Hon. Muthomi, we have had several occasions where we have summoned the Ministry of Transport and Infrastructure, but on other business of the Committee. It is only that we have not reached Hon. Muthomi's issue. But, again, I want to encourage hon. Members because we prioritize the business that is before the Committee, if you have any pressing issue, please bring it up. Before we go for the long recess, we shall table a comprehensive report of what we have done so far as a Committee.

Thank you.

Hon. Speaker: Hon. Waititu.

Hon. Francis Waititu: Thank you, Hon. Speaker. I just want to highlight what you have just said about roads, especially the Thika Superhighway. The country heard you when you talked about what has been happening about the bumps. It is also good for the Committee to understand that we have lost hundreds of lives on Thika Superhighway. In the morning, there is heavy traffic jam on that road. Now that the country has heard you, the Committee should move very fast and check on that.

Thank you for allowing me some time.

Hon. Speaker: Implementing what resolution? Generally, I was not talking about highways and specifically bumps on Thika Superhighway and traffic jams. I do not think there has been a House resolution about traffic jams on Thika Superhighway. Maybe, the relevant Committee chaired by Hon. Kamama and the Vice-Chairperson have heard you. You need to bring a petition so that they can investigate that matter. Then, we can have a resolution which Hon. (Ms.) Soipan's Committee can pursue.

Next Order.

MOTION

ADOPTION OF REPORT ON REMOVAL OF MAJOR (RTD) M.S. MUTIA FROM NPSC

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the Petition for the Removal of a Member of the National Police Service Commission, laid on the Table of the House on Thursday, 22nd October 2015, and in accordance with the provisions of Article 251(3) of the Constitution and Standing Order No. 230(5), finds that the Petition does disclose sufficient ground for the removal of Major (Rtd.) Muiu Shadrack Mutia as a Member of the National Police Service Commission.

(Hon. Abongotum on 28.10.2015)

(Resumption of Debate interrupted on 28.10.2015)

Hon. Speaker: Hon. Members, debate on this Motion was concluded yesterday. What remains is for the Question to be put. I proceed to do so.

(Question put and agreed to)

Next Order!

BILL

Second Reading

THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

(Hon. (Dr.) Shaban on 22.10.2015)

(Resumption of Debate interrupted on 27.10.2015)

Hon. Speaker: Hon. Members, the person who was on the Floor yesterday was Hon. Thomas Mwadeghu, who has a balance of seven minutes. Is Hon. Mwadeghu present? He is absent not desiring to be present. The first chance goes to Hon. Joyce Akai.

Hon. (Ms.) Emanikor: Thank you, Hon. Speaker. I rise to support the Petroleum Bill. This Bill is very important for many reasons, given the fact that Kenya has joined the league of oil producing countries. We are endowed with oil, gas and other natural resources and also, given the fact that the dynamics of the oil sector in Kenya is changing, it is quite timely that the Bill comes.

I want to concentrate on Article 117 which talks about the community rights. This Bill gives the community the right to be informed. As we all know, the oil sector in Kenya is shrouded with a lot of discreetness and secrecy. That is why we have had problems with the areas where the oil investors are working, like in Turkana. We have always heard of demonstrations, protests, suspension of operations, Memorandum of Understanding (MOUs) and communities have grievances over things like employment, contracts, lack of inclusion and revenue sharing.

This Bill has taken into account the need for the communities to be given their rights. One of them is the ability to make inquiries through a mechanism that goes down to the lowest levels; ward level, sub-county level and all the levels where those operations are taking place. The communities have a right to interrogate the planned activities and how those activities will interact with the environment, ecosystem and livelihoods of the people.

The other thing is the right of the communities to be compensated for different things. One of them is land. There are issues around land, environmental damage, injury or sickness within those areas which are related to operations of oil and gas prospecting. There are issues about compensation for property loss and other things that the communities think they should be compensated for. The other right that this Bill brings is the right of communities to be educated and sensitized on the operations and the right to participate in planning. They should not be excluded in planning.

The other clauses that I find to be very important in this Bill are Clauses 86 to 99 on environmental concerns. There have been issues. I want to single out Tullow which is working in Turkana. I am sure the same issues could be applicable to other investors in this sector who are working in other parts of Kenya. We have had issues of sewage effluent, disposal of hazardous material, air pollution and occupational hazards. This Bill takes care of all the environmental concerns that we have had. Through this Bill, we are now able to give notice to those investors to ensure that they take measures to secure the safety and health of the staff and the local people around where those operations are taking place. They should be able to control the flows and spillages of oil and other hazardous material. They should prevent pollution of air, soil, water resources and other resources within the areas of operation. They should also be able to prevent flaring and venting of oil and gas. This has been an issue in areas around *Ngamia 1*, where communities have reported seeing dark smoke in the air meaning the flaring is not done in the correct manner. This affects the health of the people living around those areas.

The other clause that is very important is Clause 119 which talks of the local content. The communities need capacity building. This means value addition to the local and national economic investments. They should be given tenders, contracts and jobs. All these are under the local content, including the revenue sharing formula. Clauses 100 to 108 streamline land issues for oil operations. However, the pending and emotive land Bills that are yet to be discussed will have great implications on this Bill. That is because of the land that has to be given out by the National Lands Commission (NLC).

I, however, have reservations on this Bill, particularly on the powers given to the Cabinet Secretary vis-à-vis the powers of the community and that of the county governments. The CS has been given immense powers in this Bill. I hope there will be amendments that will come to ensure that the communities also have powers in the Bill.

With those few remarks, I beg to support.

Hon. Speaker: Hon. Dan Kazungu.

Hon. Muzee: Thank you, Hon. Speaker, for giving me this opportunity to contribute. I am a member of the Departmental Committee on Energy, Communication and Information. So, I have been part of the team that has been trying to put this Bill together and engage stakeholders on the way forward, and to put up a robust framework to guide a new economy in the country. This is the petroleum economy, which is new to our nation. We have done extensive work. We have listened to a lot of input from other stakeholders. We believe that we have something that we can present to the nation and to the Floor of the House to deliberate.

My only point is this: Where do you put Parliament when contracts are given to oil and gas explorers in the country? When do they come here and implement the plans? It is one thing getting a contract, but it is another to ensure that, that contract holder does the job that they are supposed to do in the field. They should not hold a licence and do nothing when the country is waiting for a productive team and products to drive the economy forward. That is the issue that we need to look into. We need to look at whether it is for an authority to oversee that or Parliament will have a say on when activities should be done on the field.

The other issue that we need to look into seriously - from what I have seen in areas like Malindi - is where there is a lot of offshore exploration in the ocean and there is environmental degradation. Some parts of Malindi and Watamu, which are now being taken up as some blocks for exploration, are delicate eco-systems which have marine life. We need to take care when we are doing exploration in those areas because it could be in conflict with some of the issues of environment that we insist on.

There is the issue of land. Exploration is done on either family or private land. We need to look at this issue as we discuss this Bill, so that there is a balance between the community, the county government and the national Government. We have heard before complaints from exploration companies who get contracts in Nairobi but, when they are on the ground and they need to get started, they are confronted by Members of the County Assemblies (MCAs) or the county governments who want to know the benefit for the county and the people in the locality. That is critical so that we avoid unnecessary conflicts. That way, we will not hold back people who have been given the opportunity to contribute to the economy of the country.

We want, as much as possible, to avoid conflicts that we have seen in so many areas, especially in Africa where, instead of oil and gas exploration becoming a boon for the country, it has become a curse. We have been very keen to ensure that we have a win-win scenario in this new oil economy.

Thank you, Hon. Speaker for that. We look forward to many deliberations and ideas from Members here, so that we can come up with a robust law that can guide oil exploration in the country today and beyond.

Hon. Gichigi: Thank you, Hon. Speaker. I also rise to support the Petroleum (Exploration, Development and Production) Bill. I will not repeat what others have said. It is true that it is high time we came up with a substantive law for that sector. As Kenyans, we thank God for that resource that has been discovered in the country. The reason I support this law is because it has very good provisions.

Part II deals with equitable benefit for the people of Kenya. It does not mean that because a resource is just found in one part of the country, the resources are not going to benefit other parts of the country. It is a natural resource. It is God given and, naturally, it ought to benefit everybody.

Part IV vests the petroleum resource in the national Government in trust for the people of Kenya. That shows that it is not going to be possible for any person to claim that he owns that resource as an individual absolutely. It is only through development and extraction that such a person is going to be forced to share the benefits of that resource with other Kenyans.

Clause 72 is also a good one. It says that any person extracting the oil must provide information and make reports on issues of taxes, environment and environmental impact. So, it is mandatory that a person must indicate the volumes of oil that is extracted. You must also give the information on the possible environmental impact. It goes ahead and sets penalties for offences if somebody does not give genuine information. If you give false information, that is criminalised.

Clause 77 is also a good one. This is the trend. Currently, you find that very many investors coming to this country want to come with their employees with skills that are readily available in the country. They want to come with production equipment that is readily available in the country. This particular provision states that if certain equipment and materials are available in Kenya, they are supposed to be exploited and used rather than getting them from outside the country. Further, it says that where human labour skills are available in the country, such contractors are supposed to be used. They are supposed to use local human resources before they look for those resources elsewhere. This is a provision that can be improved.

I will bring an amendment to state that it is going to be compulsory to use local expertise. External expertise can only come when we do not have it locally. There must be that understanding. This is somebody who is going to be trained for a specific period so that he can take over the duties of such expatriates after a certain time. We cannot permit people to come to this country and take up all the jobs that should be going to Kenyans forever. It can only be for a period as we train our people.

Perhaps, even as we debate this issue of our petroleum extraction, the Ministry of Labour, Social Security and Services should wake up from their slumber and start communicating with our training institutions and the industry. It should talk to the industry and find out the job prospects of tomorrow. What will the petroleum industry require in terms of skills in five years to come, so that it can turn around and talk to the training institution like the universities and colleges and know what skills they need for people to be trained? We do not want to find ourselves having to absorb expatriates from abroad for skills that we would, otherwise, have created in the country.

We also need to put a law that is very specific; that if we have certain resources in this country, we do not want to get them from outside the country.

Clause 79 is also good. It is establishing a training fund for local skills. So, it is not just extraction, but it is important to train our people in that sector.

Clause 84 talks of profit-sharing between the contractor and the national Government. It is good to put it on paper. Other than the ordinary taxes, the profits or earnings should be shared. The regulation should be clear on the formula that will be used to share those profits or earnings, so that we do not have issues degenerating to court cases all the time. It is also on revenue-sharing between the national Government and the county governments. There is a 5 per cent that is supposed to go to the county governments. We need to think about the 5 per cent that the county government is going to receive in terms of earnings, and in terms of whether it is adequate. Should we go directly and give that percentage? It is good because the revenue is supposed to develop the entire country, including areas that do not have such a resource. Even the money that goes directly to the national Government goes back to the counties through the division of revenue mechanism. Are we not probably compensating twice? But 5 per cent is a good figure since it will be some form of appreciation.

Revenue is shared between the national Government and the county governments, but what about prosperity? This is a resource that once it is extracted and exhausted, that is the end of the matter. What about generations that will come? I have heard of national reserves in the Scandinavian countries and, perhaps, this is the route that we should go. It is high time we introduced such laws in this county. This Bill should be a candidate for such an amendment.

Out of the revenues that we are collecting today, God just gave us this resource. We should reserve a certain percentage of that money for posterity and generations to come. For example, we can keep that 5 per cent for a number of years. I strongly suggest that we have that national reserve for posterity.

As I wind up, Part VII takes care of issues like security. The contractor is supposed to put measures in place because that is petrol and it can cause a major disaster. The contractor is enjoined to put measures in place, warnings and even create a radius around where oil is being extracted - where people cannot settle.

I am also happy about compensation for the owners of land.

I support.

Hon. (Ms.) Kedogo: Thank you, Hon. Speaker. I want to welcome Members of the County Assembly (MCAs) from Vihiga County seated at the Speaker's Gallery.

I want to support this Bill which seeks to provide a mechanism of regulation of the upstream petroleum sector. It also sets out the revenue sharing formula between the national Government and the county governments. Twenty per cent is going to the county government, which I think is not enough. It gives the national Government a lot of revenue. We should change so that we can have 20 or 40 per cent for the national Government and the remaining is taken to the counties. There is a ratio for the local community. People have to benefit.

The Bill is also very strong on environmental health and safety. Sometimes, pollution occurs unnecessarily and people suffer. It has a clause on environmental health and safety. It has governing laws that the contractor agrees to, so that he or she obeys and abides by all the laws and regulations enforced in Kenya.

The Bill provides for training of Kenyans in the petroleum industry matters. Sometimes, you may set up something and yet, people do not know about it. Once they are trained, they will

know how safe they are in the petroleum industry. The Bill also requires petroleum companies to provide annual reports on their activities. It has a clause that provides that if there is any offence or lies, the contractor is liable for that.

I support the Bill.

Hon. Chanzu: Thank you, Hon. Speaker, for giving me the opportunity to support this important Bill. I would like to join the Woman Representative for Vihiga County to welcome the MCAs from Vihiga County.

Hon. Speaker: Hon. Chanzu, resume your seat. I will give you your full 10 minutes.

Allow me to appreciate the following groups and acknowledge the presence in the Speaker's Gallery: We have visiting members and staff from Vihiga County Assembly; Committee on Justice and Legal Affairs. They are seated at the Speaker's Gallery. I will request each members of the delegation to stand up when called out, so that they are acknowledged by the Members.

They are:-

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|-------------------------------|---|-------------------------|
| (1) Hon. Khalif Khamis Balala | - | Chair of the Committee. |
| (2) Hon. Vena Khaisha | - | Vice-Chair. |
| (3) Hon. Andrew Khauga | - | Member. |
| (4) Hon. Rodah Wamufumu | - | Member. |
| (5) Hon. Reuben Hubima | - | Member. |
| (6) Hon. Elizabeth Muhonja | - | Member. |

The staffers include:-

- | | | |
|-------------------|---|-------------------|
| (1) Sherah Didi | - | Legal counsel. |
| (2) George Kibisu | - | Serjeant-at-Arms. |
| (3) James Gereza | | |

(Applause)

On behalf of the National Assembly and on my own behalf, I welcome them to the National Assembly and wish them well for the remainder of their stay.

I would also like to recognise and acknowledge the presence, in the Speaker's Gallery, the visiting staff from Lamu County Assembly. They are here on a one week attachment programme at the Directorate of Committee Services, Directorate of Legislative and Procedural Services and the Directorate of Information and Research Services. They are:-

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|---------------------------|---|--------------|
| (1) Mr. Omar Ahmed Ali. | - | Deputy Clerk |
| (2) Mr. Ali Ahmed Sayeed. | | |
| (3) Swaleh Rubea. | | |
| (4) Asman Elema. | | |
| (5) Yassir M. Sheyumbe. | | |
| (6) Fatma Athuman Haji. | | |

I hope they have a fruitful programme. On behalf of the National Assembly and on my own behalf, I welcome them to the National Assembly and wish them well for the remainder of their stay.

Hon. Chanzu: Thank you, Hon. Speaker, for giving me the opportunity to support the Bill and to welcome the Members of the County Assembly from my County to this Assembly.

Petroleum is a very important natural resource and commodity not only in this country, but also worldwide. It is very important that, as we start the issue of exploration, development and production of the commodity, we put in place measures to safeguard the resource itself, provide guidelines on how it is going to be utilised and related aspects such as how the environment shall be protected. It is when we get into the aspect of exploration that you find a lot of competing interests, including environmental issues. It is very important that we pass laws which will guide how exploration and development shall be done. I am very pleased that this Bill, under Clause 14, proposes the establishment of an upstream petroleum regulatory authority, with powers to regulate and control exploration, development and production of oil. It is very important that we lay emphasis on that aspect. First of all, we must have proper laws in place to safeguard petroleum mining. Unless we have institutions in place to make sure that the laws are properly implemented, there will be problems.

The other thing I like about this Bill is the calibre of people being recommended or suggested to run the institution. With regard to the qualifications of the chairman, the Bill specifies that the candidate should have a degree in the field of engineering. The minimum term limit for experience, which is being moderated in terms of years, is seven. Before, it had been set at 14 or 15 years, but we are trying to bring it down. We also want young people who are coming from our educational institutions like colleges and universities to get opportunities. I hope there will come a time when, in the discussion about qualifications, a person will not be expected to have experience of a certain number of years. It is impractical for somebody who has come from university or college to be expected to have 15 years experience. The main emphasis should be the kind of educational qualifications.

The same applies to those who will be working within the board. Unlike before, it will not be an issue of a Cabinet Secretary just picking anybody and putting him on the board. The Bill specifies that a person should hold a degree from a university recognised in Kenya, in fields such as engineering, physical sciences, law, finance, economics or energy, which is quite appropriate. This applies even for the members of the board. It also specifies that the Director-General should have proper qualifications. This will ensure that the institutions being created by this Bill are managed by people who know what they are doing, and not just by individuals appointed on the basis of political expediency.

The other aspect that we also need to address is the fact that in this country, we have natural resources like water. We are generating hydro-electric power at the Kindaruma Dam. However, the people living in area where resources are found do not benefit. For instance, the Seven Forks Dam generates power for Nairobi, but the residents of that area live in darkness. We need to invest in such areas so that the locals can also benefit, particularly in areas where resource extraction takes place. The water that is generated by the Nolturesh-Loitoktok Water Company benefits people in Kajiado, Machakos and Nairobi, but members of the Maasai community living there do not get water. This necessitated putting traps in place so that the residents there could get water. The project design did not take into account the residents. The locals in those places should be taken into account so that they can also benefit.

My colleagues have talked about environmental conservation, which is very important. In certain areas, unknown gases and chemicals are produced and emitted. Scientific studies should be conducted to ensure that the chemicals being produced are not harmful. Recently, the media ran a story about a certain village in the coastal region where residents were experiencing skin

damage due to chemicals that are being emitted from some of the factories around there. The issue of health and safety is very important.

Generally, there should be adequate consultations to ensure that we do not have conflicts over such resources. Article 6 of the Constitution comes in handy because it talks about the levels of government. We have the national Government and the county governments. This is a resource for the country, but it is found in various counties of this country. By right, the resource is generated in certain areas. Therefore, people in such areas must have a say, through their respective county governments, on how the resources should be administered. Article 6 of the Constitution is very important because it talks about the two levels of government being separate or distinct. They have to work together when it comes to exploration of such resources. The county governments and national Government must work hand in hand to ensure that the benefits are enjoyed by the country and locals in those areas. The citizens in those areas should enjoy the benefits and their rights should be taken into account.

With those few remarks, I beg to support the Bill.

Hon. Speaker: Hon. Members, since there is no other person interested in contributing to this debate, I call upon the Mover to reply.

You have the Floor, Hon. Naomi Shaban.

Hon. (Dr.) Shaban: Thank you, Hon. Speaker. I want to take this opportunity, as I reply, to thank all the Members who have contributed to this very important Bill, the Petroleum (Exploration, Development and Production) Bill of 2015. We have taken note of most of the issues that have been raised and more so Kenya is like a plane that wants to take off and you cannot take off without enough fuel. If we embrace this Bill and use the law properly and implement it, certainly, Kenya is going places.

With those few remarks, I beg to move.

Hon. Speaker: Hon. Members including those who are standing on the gangways, debate on the Petroleum (Exploration, Development and Production) National Assembly Bill No.44 of 2015 is concluded at that point. The Question will not be put for reasons best known to you.

Therefore, we will proceed to the next Order.

BILL

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. A.B. Duale: Hon. Speaker, I beg to move that the Statute Law (Miscellaneous Amendment) Bill (National Assembly Bill No.57 of 2015) be now read a Second Time.

As you had communicated yesterday, I would like to notify the House that I withdrew all the proposed amendments relating to the Independent Policing Oversight Authority (IPOA) Act, 2011 and some proposed amendments relating to the Universities Act, 2012, except for amendments to Section 22 and Section 39.

The Statute Law (Miscellaneous Amendment) law was not intended to make amendments to any existing law of a fundamental and substantial nature. It intends to correct anomalies and inconsistencies in the law and errors. Every year, about such a time and in all parliaments, the Statute Law (Miscellaneous Amendments) Bill is introduced to the House to do a simple thing

such as to correct inconsistencies, errors and anomalies that various laws might face when Parliament is dealing with various legislative agenda.

I am of the opinion that the proposed amendment to Section 14 of the Bill on the IPOA is a fundamental change to the law. As such, those changes ought to be addressed in a substantive amendment and not in a miscellaneous amendment. On the same line, my office is also in receipt of a draft proposal for publication of separate Bills to amend the Universities Act 2012. The proposed Bill is quite comprehensive and it includes other proposed amendments to the Universities Act. In this regard, I wish to drop all the proposed amendments to these Acts save for those I have mentioned, Sections 22 and 39.

This Bill contains amendments to the following 23 laws. The first one is the Criminal Procedure Code, Cap. 75. The Bill seeks to amend this Criminal Procedure Code in order to give the High Court powers to revise the orders of a subordinate court. It seeks to empower the High Court to stay the order of a subordinate court pending the filing of an application for review by the Director of Public Prosecutions (DPP) in proceedings under specific statutes. This includes the Prevention of Terrorism Act, the Anti-Money Laundering Act and the Prevention of Organized Crimes. This is to secure the nation that has been faced with a threat. So, we are giving the High Court powers in the unlikely event that a criminal is given certain orders by a subordinate court, to revise them.

There is an amendment to the Prisons Act, Cap.90 which is mainly to introduce Sections 46 and 48 which relate to the remission of prisoners sentences.

The Bill seeks to amend the Registration of Persons Act to recognize the appointment of a new office called “the Director of National Registration” by the Public Service Commission (PSC). Currently, he is called the Director of Registration. In the reform agenda of the PSC, they have created the position, the title and changed the name and called it “Director of National Registration”. This is in line with what the PSC wants.

This Bill also seeks to amend the Firearms Act Cap.114 to expand the definition of what a firearm is. There are a number of accessories to firearms. These must also be defined. It is, therefore, about definition. Under technology, you can carry something that can injure people, but when you are taken to court, somebody can say this is not a firearm. Mainly, this wants to define and expand the bracket of the term “firearm”.

There is also an Air Passengers Service Charge Act. The Bill seeks to amend the Air Passengers Service Charge Act to confer discretion upon the Cabinet Secretary (CS) in the apportioning of the funds collected as service charge between the Kenya Airports Authority (KAA) and the Kenya Civil Aviation Authority (KCAA).

In last year’s Statute Law, something unusual happened because a huge part of the funding to the KCAA for infrastructure was given to the KCAA. This Bill is now saying the CS for Transport and Infrastructure should have the discretion because both organizations fall within his Ministry to say, based on the need of each institutions, this is the way they will share the tax that is charged and received from the Air Passenger Service Charge.

On the National Cohesion and Integration Act, 2008 No.12 of 2008, the Bill seeks to amend the National Cohesion and Integration Commission (NCIC) Act to make provisions for the appointment of new members of the Commission after the commencement of the Act when the tenure of an existing commission expired. I am sure the Chair of the Departmental Committee on Justice and Legal Affairs will agree with me that when we were appointing the current commissioners, there was a lacuna on the 2008 Act.

On the Kenya Citizen and Immigration Act, 2011 No.12 of 2011, this Bill seeks to amend the Kenya Citizens and Immigration Act to provide basically for an interagency cooperation to matters relating to immigration. It is no longer safe for only one agency. We, therefore, want the immigration agencies to work with the police; intelligence; community; Ministry of Interior and Coordination of National Government and Parliament in making sure that the people who get our citizenship are the right ones. This will enable us to secure our citizens' documents from criminals and people who do not belong to our country.

The Bill intends to amend the Power of Mercy Act to place the responsibility of implementing the Act on the Cabinet Secretary (CS) responsible for justice. The Bill also seeks to amend the Veterinary Surgeons and Veterinary Para-Professionals Act to provide for the private sector veterinary surgeons to offer clinical services since the public sector veterinary surgeons do not offer those services. So, the amendment is to bring on board the private sector surgeons in the veterinary profession and give them a leeway to offer their services.

The Bill also seeks to reinstate the supervisory and approval functions of the Veterinary Board with respect to accreditation of relevant programmes in universities. This will ensure that the Veterinary Board is the sole institution to accredit relevant programmes relating to the veterinary profession offered at our universities. This will deal with the emerging quacks in the veterinary sector.

The Bill seeks to amend the Kenya School of Law Act to provide for the membership of the Secretary to the Commission for University Education (CUE) on the Council of the Kenya School of Law (KSL). This is very important because there are many universities that offer law degree courses. The best person to represent them in the KSL Council is none other than the Secretary to the CUE.

The Bill seeks to amend the Treaty Making and Ratification Act to vest the responsibility of implementing the Act on the Attorney-General. It also seeks to involve both Houses in the process of ratification. The Committee will look at the reason why we need to involve the Senate. The Bill proposes to delete reference to the National Assembly and Speaker of the National Assembly and replace them with Parliament and Speakers of Parliament respectively. The Chairperson of the Committee will give us more direction on that. Secondly, the Bill seeks to make the AG's Office the custodian of treaty instruments and the implementing agent of the Act on behalf of the Government.

This is a small and less controversial Bill. As usual in all parliaments, Statute Law is very controversial. However, this year we have used the legislative powers given to this House to deal with matters that we feel are very urgent for the Government and the citizens. With your permission, Hon. Speaker, we have removed the sections on the Independent Policing Oversight Authority (IPOA) Act and the Universities Act not because of anything else, but because we want the comprehensive law on universities to be brought.

With those many remarks, I beg to move and ask the Chairperson of the Departmental Committee on Justice and Legal Affairs who is also the Member for Ainabkoi in Uasin Gishu County to take the Floor and second the Bill.

Hon. Speaker: Proceed, Hon. Chepkong'a.

Hon. Chepkong'a: I thank you, Hon. Speaker. I would like to thank the Leader of the Majority Party for the very comprehensive comments that he has made with respect to this Bill. This Bill will be concluded in this House. It is not intended to be referred to the Senate because all matters covered in it are matters of a national nature. The Statute Law (Miscellaneous

Amendment) (No.2) Bill, 2015 that will be discussed later on touches on matters that affect the counties.

I rise to second this Bill. First and foremost, the Bill seeks to amend section 364 of the Criminal Procedure Code to make it mandatory for the courts not to grant bail for serious offences that have been stated under section 203 and 296(2) of the Penal Code. Such offences include the ones covered in the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances Control Act, the Prevention of Organised Crimes Act, the Proceeds of Crime and Anti-Money Laundering Act and the Counter-Trafficking in Persons Act. As you may realise, this is the same section that was proposed in the last Session as Section 20 of the Security Laws (Amendment) Act, 2015, which was challenged in court through Petition No.628 of 2014.

The court held that the section was unconstitutional for being in conflict with the right to be released on bond or on bail under reasonable conditions as provided under Article 49(1)(h) of the Constitution. So, this clause is unconstitutional.

The Committee has considered this clause and has proposed amendments to make it constitutional. This clause seeks to oust the jurisdiction of the High Court in terms of its discretion to grant bail under Article 49(1)(h) of the Constitution. This provision was declared unconstitutional.

In the Report that we have tabled in this House, we have proposed to amend this provision by providing that the courts may, as required by the Constitution, if there are compelling reasons not to grant bail, deny the suspect or accused person bail. As it is right now, the provision makes it absolutely mandatory for the courts not to grant bail. So, we will be moving an amendment to ensure that we align this clause with the Constitution.

The essence of this Bill is to introduce a number of provisions that clarify certain provisions in the law. For example, the Bill seeks to make it clear how remissions shall be granted as provided for under Chapter 90 of the Laws of Kenya. The Committee considered this clause and came up with recommendations to ensure that it includes the Power of Mercy Committee. It appears like the CS for Interior and Co-ordination of National Government has been given power to deal with issues of remission.

However, we thought that since there is a standing committee that advises the President to ensure that prisons are decongested, particularly where there are persons who have reformed, they need to be granted remission so that we decongest our prisons. If you have reformed, why should you be held longer than it is necessary? The reason why one is taken to prison, particularly on petty crimes, is to ensure that he or she reforms. Once the person has reformed and the Power of Mercy Committee has found so, that person should be released to join other Kenyans and continue with his or her life. It is important that the Power of Mercy Committee is included. So, we will be moving an amendment to that clause to ensure that that Committee plays a role.

The Bill also seeks to align the provisions in the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act, Cap.301 with the Constitution. As you know, that legislation mentions only the High Court. The Constitution has created a court that is suitable for matters that, that court should be dealing with under the Environment and Land Act. The Bill is seeking to align this Act with the Constitution.

The other Act that we in the Departmental Committee on Justice and Legal Affairs considered, because it was relevant to our Committee, is the Judicial Service Act. The section that is sought to be amended under this Act is Section 30 that deals with the appointment of the

Chief Justice and the Deputy Chief Justice. It provides for a clear procedure on the transmission of the name or names of the persons that have been recommended for appointment to those two positions. It now requires the Judicial Service Commission (JSC) to transmit the names of the proposed nominees to the President within three days upon the JSC making such a decision.

The Committee considered the appropriateness of this clause and it is, therefore, seeking to move further amendments. The amendments that we seek to introduce arise from experiences. When this House was considering the appointment of the Deputy Chief Justice in 2013, we were constrained to reject a name because we realised that she had been appointed and she was nearing retirement at that time. The difficulty of the Committee was that if we had rejected and the position had been vacant for too long, it would have taken another year for another name to be brought up. So, with a lot of difficulties, we recommended that she be approved for appointment as the Deputy Chief Justice. As you may have seen in the recent past, she is now contesting that she does not want to retire at the age of 70 and yet we know she swore to uphold the new Constitution which requires that all judges retire at the age of 70. When in particular I put that question to her, she said that she would retire at the age of 70. Unfortunately, we did not get her to swear an affidavit.

With your permission, we would like to make a clarification with respect to retirement of the judicial officers. This has been misused. When you attain 70 years, you are generally tired. Having worked for over 40 years, it is only fair that you allow other Kenyans to continue to serve. If we allow people to serve up to 74 years, we are denying opportunity to other Kenyans. There are certain things that happen to people when they grow old. I am being persuaded by some Members on the Floor of this House that you can easily grow senile. I have not said so, but it is from some loud noises that I am hearing from the House that there is a possibility. In fact, one of the doctors behind me is claiming that it is true. Since a doctor has said so, I have no reason not to believe. These are serious matters although they touch on the rights of the people. This House needs to pronounce itself on these matters, so that we can allow the courts to function.

As it is, the reputation of the courts is in tatters. It is claimed that people want to continue to work when they know they are supposed to retire. We are not trying to push people out of employment but we are saying that it is important that we uphold the Constitution that we passed. We may be coming to you to seek a clarification.

The other issue in which we had a lot of difficulties in 2013 is the fact that only one name was presented to the President by the JSC. As a matter of deference to the appointing authority, you must give him the latitude to make a choice. So, we will be proposing an amendment, just like we did with the Ethics and Anti-Corruption Commission (EACC) that a minimum of three names are forwarded to the President. So, we will be moving that amendment.

I request to be given just one minute to conclude one issue that the Committee considered very important to this House. This is under Section 2 of the Public Appointments (Parliamentary Approval) Act. There is a proposal to oust the participation of this House in the approval of CSs on re-appointment. It is very dangerous to remove the House from the approval process. When you are vetted or approved, this House determines the suitability of that person to the position that he or she has been appointed to. For that person to be taken to another position, this House must also be satisfied that the person is qualified for that position. So, you must come back here, so that we can determine whether he or she is qualified for that position. We will be proposing the deletion of this clause. It was unanimous and many Members have said so.

With those remarks, I second.

(Question proposed)

Hon. Speaker: Before I give the first shot to the next contributor, allow me, at the request of Hon. Dorcas Kedogo, the County Women Representative, Vihiga County to recognise the County Executive Committee (CEC) Member for Embu County, one Pamela Munyi Kiarie who is seated in the Speaker's Gallery.

(Applause)

Welcome to the National Assembly.

Do I see the Member of Parliament for Tongaren, Dr. Eseli Simiyu?

Hon. (Dr.) Simiyu: Thank you, Hon. Speaker. This Statute Law (Miscellaneous Amendments) Bill, 2015 should not have happened, in my view. It is important to note that when we are making laws, we make them for posterity and not for our comfort at the moment. What will happen in future if the moment you are uncomfortable with a particular law you amend it to suit that time?

A lot of the factors that have been put into this Bill appear to be trying to ameliorate the situation. At one time, this House rejected the nomination of one Monica Juma to be Secretary to the Cabinet. This amendment appears to be trying to remove that so that we do not have to vet anybody again. Making a law for convenience is the wrong way to do anything. Generally speaking, and I am not a lawyer as you are very well aware, if you really feel that a law is good, you should be comfortable with it even if it is in the hands of your worst enemy.

If we start legislating for small things here and there, so that we make it more comfortable for us, we completely lose track as a House. The Statute Law (Miscellaneous Amendments) Bill is full of such mischief, for lack of a better word. It is good that the Leader of the Majority Party decided to withdraw the part on IPOA, because IPOA has its role well set out under the Constitution. So, anybody trying to remove those powers will have to go for a constitutional amendment first and yet we are trying to do all these things through the miscellaneous amendments.

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

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

It is also notable that there have been very many miscellaneous amendments in the 11th Parliament. Already we are doing many miscellaneous amendments than we ever did in the 10th Parliament which I was privileged to be a Member of. In the short period that the 11th Parliament has been in existence, we have had to deal with so many miscellaneous amendments, many of which are full of mischief. This is entirely mischievous. In fact, it makes the good parts of it to also appear to have a sinister motive. In my view, we should just throw out the whole Bill so that the Executive can go back and think through before they bring any more miscellaneous amendments.

Hon. Temporary Deputy Speaker, I oppose the whole Bill in totality.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, Hon. Robert Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Temporary Deputy Speaker for allowing me to contribute to the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.57 of 2015). From the outset, I support this Bill with amendments in certain areas which I will point out.

The amendments to the Land Registration Act, 2012; the Land Act, 2012 and the Environment and Land Court Act, 2011 (No.19 of 2011) are good. This Bill seeks to amend the Environment and Land Court Act to empower the Chief Justice to transfer judges of the High Court to serve in the Environment and Land Court and vice versa. The Bill further seeks to provide for appeals from subordinate courts and local tribunals to be filed within a period of 30 days from the date of the decree or appeal. The Bill also empowers the Chief Justice to appoint certain magistrates to preside over cases involving the environment and land in respect of any of the areas within the country.

The Bill seeks to amend the Land Registration Act (No.3 of 2012) to empower subordinate courts to hear and determine disputes, actions and proceedings concerning land. Normally, you will find that individuals go to court and in the process of prosecuting their case, it is referred to the Environment and Land Court. This is the case and yet it is supposed to be determined and somebody has taken a lot of time in prosecuting this matter. So, by empowering subordinate courts and the Chief Justice having power to transfer the judges to these courts, it saves the individuals time and legal fees to be paid to the lawyer so that they execute their cases. It saves time because with this amendment, any subordinate court can hear and determine that case.

The Bill seeks to amend the Public Appointments (Parliamentary Approval) Act (No.33 of 2011). It seeks to amend that Act to make a distinction with regard to the approval procedure that applies to reappointments. That will be negating the gains made in this House, and on that, we will need to make amendments. On reappointments, if you are being reappointed to a different position, you also need to be vetted afresh in order to qualify. For example, after the initial vetting of the CSs and the Principal Secretaries (PSs), they have performed their duties. If somebody has performed a duty and has been involved in issues of corruption and incompetence while performing his duties, it should not be automatic that that person can be taken to another position without going through the parliamentary vetting process. If someone has been appointed to a fresh post, he must be subjected to the parliamentary vetting process so that Parliament can approve if he is committed or if he has failed to perform his duties. So, I oppose that and it has to be amended so that the powers of this House are not negated.

The amendment to the Registration of Persons Act is long overdue because this is a position that will require the appointment of the Director of National Registration by the Public Service Commission (PSC). This person must be vetted so that we appoint somebody who is competent and is able to perform these duties diligently because the issuance of national identity cards and passports should be done by somebody who has been appointed to that position. The person should be sure that the post he is occupying is secure and safe, and that he is in that position to perform.

With those few remarks, I support this Bill with amendments.

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

Hon. Bunyasi: Thank you, Hon. Temporary Deputy Speaker. I rise with mixed feelings on the various amendments although I fully understand and appreciate the fact that when they are making small changes, this is the way to do it. However, in doing this, some very significant changes occur as is in this case.

So, while I support the principle of the Statute Law (Miscellaneous Amendments) Bill, the House leadership should help us minimize the presentation of Bills that are touching on significant changes like the IPOA that will significantly shift the powers that are embedded by other laws in the Executive. It will shift powers among the various arms.

The Statute Law (Miscellaneous Amendments) Bill touches on a wide range of areas. For example, I have looked at the changes that are proposed under the Competition Act, the Counterfeit Act and the National Cohesion and Integration Act. It is a whole set of things and I think that even for the House to conceptualize this in totality is quite a challenge. We, therefore, end up legislating without fully being able to brief our constituents as for which way, in total, we are heading with legislations that are amended in part through the Statute Law (Miscellaneous Amendments) Bill such as the one we have this time.

I had prepared to speak to a different law but I broadly support these amendments.

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

Hon. Midiwo: Thank you, Hon. Temporary Deputy Speaker. I want to put my contributions to this jumbled proposal. Sometimes I find it interesting why we rush and make many mistakes. I am puzzled by the enthusiasm with which this Bill is before this House. I am also puzzled by the enthusiasm with which this Bill wants to amend and introduce very many things at a time when there is a lot of noise around the country.

I know it is easy for the Executive to use the miscellaneous omnibus Bill to do sneaky things.

At least, give us a chance as a House to do something. I am happy that the Leader of the Majority Party withdrew the very contentious subject from this Bill about the IPOA. What this Bill purported to do to the IPOA is thoroughly and overly unconstitutional. It beats logic why the first Government under our new Constitution should not be giving more teeth to the IPOA. The Government would not listen to the voices of Kenyans to know that, if nothing else, they want this country to change. The police should change the way it relates with the public.

Just about six days ago, I was involved in trying to release the former Mayor of Nairobi, Hon. Aladwa, from arrest. What we went through in the hands of the police and a few days later - confronted with a Bill to have the police being free to keep doing more of the same - makes you not sleep.

In that incident, Aladwa presented himself to what we call Nairobi Area Police Station and then Kilimani Police Station. That is where we joined him and he wrote a statement. The offence he purportedly committed is a misdemeanour. So, the police should have given him a cash bail which we eventually got for Kshs20,000 after about 12 or 14 hours. However, we had to go to court.

After recording a statement, we were led on a wild goose chase to Kiambu Road to the Criminal Investigation Department (CID). You will be shocked. When we got there, nobody wanted to talk to us. We were there for about an hour and we never spoke to anybody contrary to Press reports that we were seen by the CID bosses. Then out of nowhere we went to Kamukunji Police Station. What we saw at Kamukunji and that is why the Government must be very careful

and help this new dispensation--- We all have a duty because we supported the new Constitution. When we got to Kamukunji Police Station, it was laughable that nobody could talk to us for about five minutes. Then Aladwa was put in another car with police armed with AK47 guns and told that they were going to the Airport Police. From there we were to go to Machakos. I told my driver: “Block this guy. We are going nowhere. We are Kenyans. If this is what it is, let us do it.” What we saw there--- The County Women Representative for Vihiga County had her blouse torn at Kamukunji Police Station by a police officer. Shame on a man or a woman who touches a woman’s breast in public without her permission. We are going to make a claim with the same IPOA.

The Officer Commanding Police Division (OCPD) of Kamukunji said things I want to repeat here. We will see him in court because he cannot work as a tribal police officer. It is a sad thing. The only body in this country that can stop that is the IPOA. You cannot deny it the power which Kenyans, in their own wisdom, gave in the Constitution.

There is the issue of the Deputy Inspector-General of Police. Madam Kaindi has been kicked out but there is this imagination that she can be replaced by a man while the Constitution says that of the three, the Inspector-General (IG) and the two deputies, one must be from either gender; at least one. I do not know how English is hard that a whole Government with all the resources cannot interpret the meaning of “at least one person of the three being of either gender”. I do not understand that. My opinion is that somebody somewhere wants to use a law like this to deny Kenyans their hard-earned Constitution. However, we are not going to play along and take it. There is no way you can deny the women of this country even that one slot in the senior position in the police. Even that one, people have to go to the street. People have to go to court for it to be brought to Parliament to authenticate. To me, that is embarrassing and shameful. We cannot do that and we must not do that as a country.

If you look at what this “thing” purports to do, you will find that the Departmental Committee on Justice and Legal Affairs only tabled a report which Hon. Gichigi helped us this afternoon by saying that it was not even there by the time we came to Parliament. We need time to read it but there are some sections here, particularly the section that seems to take power from the Communication Authority of Kenya (CAK) and take it to the Competition Authority. Such issues need to be discussed. You just cannot take power away. We know the debate that is going on now about a dominant company in business. If a company grows very big in business, you usually split it and let it play by some rules.

We know there is a war between Safaricom and Airtel and we need an explanation. I want to beg the Chairman of the Departmental Committee on Energy, Communication and Information, Hon. Jamleck Kamau, to allow the Cabinet Secretary who has sent letter to the Committee, which I want to table, protesting that they are against these amendments--- They have not been consulted and it is not too late to consult. Let us always not be adversarial. Sometimes we can find consensus and I want to plead with Hon. Jamleck to call the stakeholders to a meeting. Let us see where this war is because it is the duty of Parliament to mitigate. I want to tell you that there was a time there was a fierce war when I was in the Departmental Committee on Finance, Planning and Trade between a locally owned company called “Keroche” and Kenya Breweries Limited (KBL). It was such a big war but we decided, as a Committee, to call them. We said:-

“Let us talk together. After all both of you pay taxes to the Government of Kenya and both of you employ Kenyans.”

I want to support the Bill with reservations and hope the issues I have raised will be dealt with before we go to the Committee Stage.

I thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): You said that you are going to table something Hon. Midiwo.

(Hon. Midiwo laid the document on the Table)

I now give the Floor to Hon. Florence Kajuju.

Hon. (Ms.) Kajuju: Thank you, Hon. Temporary Deputy Speaker. I rise to support the Statute Law (Miscellaneous Amendments) Bill and state that I am a Member of the Departmental Committee on Justice and Legal Affairs. As a Committee, we sat and went through this Bill and proposed very many amendments to what is contained in the amendments.

We, as a Committee, thought about granting bail. We know that according to the Constitution, unless and until there are compelling reasons that have been given why an accused person should not be released on bail, it is automatic. It does not matter whether it is robbery with violence under Article 296(2), whether it is a capital offence or if it is murder. Any accused person who is taken before a court of law is entitled to bail. Those are some of the issues that we asked ourselves in the Committee. We were saying that it is upon the prosecution to prove that there are compelling reasons why an accused person should not be granted bail. So, that is one of the issues that we were saying. Otherwise, we said that you cannot stay the granting of bail. You are supposed to grant bail to any accused person who appears before a court unless and until the Chief Justice makes such regulations and rules that would define further the compelling reasons. However, as they are now in the Constitution, it is up to the prosecutor or the State Counsel to indicate to the court what in his wisdom he thinks the compelling reasons are. So, amendments will be brought to the provision that deals with the Criminal Procedure Court and Cap.75.

We also looked at the issues of remission. I sat in the Power of Mercy Committee where I served for some time before I resigned to go into politics. I know that under Article 133 of the Constitution, that Committee is constituted for purposes of advising the President on who should be granted pardon, who should be given a conditional pardon and who should be either given remission or after you have been convicted whether your sentence can be suspended or not. What we realised in this Bill is that it was giving the same powers to the CS. We felt, as a Committee, that it is not proper to give the CS these powers because the Chair of the Power of Mercy Committee is the Attorney-General. A person who represents the CS in this case would be a member. So, we did not see why, again, this provision would grant the same CS other powers because the Power of Mercy Committee would not be able to prosecute its mandate. Those are some of the amendments that the Committee recommended and I believe that they will come at the right time. However, we said that the Bill, as it is, will require some amendments.

We also looked at Section 296 which deals with robbery with violence. Under the Penal Code, we have two provisions where one can be charged with robbery with violence. This can either be under Section 296(1) or Section 296(2). We also said that if you have been convicted in such a case, then it is up to the Power of Mercy Committee to find it fit when necessary to recommend to the President to exercise his powers that are granted under Article 133 of the Constitution.

The Chairperson has spoken on the issues of the Judiciary and the age at which a judge is expected to retire so that they can leave the Bench. If I can add my voice to what the Chair said, when the current Deputy Chief Justice appeared before the Departmental Committee on Justice and Legal Affairs, seeking to join the Judiciary, it was her commitment that she is going to uphold the Constitution of Kenya. One of the things that are in the Constitution 2010 is the fact that a judge must retire upon attaining the age of 70. That is what she told that Committee when she was being vetted. However, it appears that things have changed and each and every judge who is serving, as we speak, is bound by the current Constitution because upon---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let me interrupt, Hon. Kajuju. Hon. Jakoyo, as you leave, I want to let you know that your paper had been laid properly on the Floor of the House.

Hon. Kajuju, you can proceed.

Hon. (Ms.) Kajuju: Thank you, Hon. Temporary Deputy Speaker. My position is that because judges have sworn to be committed to the Constitution, then it is up to them to get committed actively by ensuring that the age at which they swore to retire is upheld by the courts and by themselves as the people who dispense justice to the people of Kenya. This is a good Bill but it will be subject to the Committee amendments that have been proposed. I believe that all the other issues that have been raised by my senior, Hon. Jakoyo Midiwo do not apply as far as this Bill is concerned. I believe that he was raising his experiences but as far as the Statute Law (Miscellaneous Amendments) Bill amendments are concerned, they are proper as far as the Committee is concerned.

I support, Hon. Temporary Deputy Speaker.

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

Hon. Bowen: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to add my voice to the Statute Law (Miscellaneous amendments) Bill. From the outset, I rise to support this Bill subject to amendments. I want to be specific on some sections especially on those that touch on security. What this Bill proposes especially from Sections 17 to 30 is that the President may remove, retire, redeploy a Deputy Inspector-General at any time before he attains the age of retirement. This is an area that my senior colleague, Hon. Jakoyo Midiwo, was saying is unconstitutional. If you remember some few months ago when we had serious security issues in the country, everyone was saying: "The buck stops with the President or the Chief Executive Officer (CEO) of the country." I believe that these amendments are meant to improve the security of our country and make decisions relevant to security very fast.

For the several incidences of insecurity that we had in this country, there has been a blame game between the senior officers in the security sector. This Bill seeks to streamline and make sure that the President as the CEO of the country and the Commander-in-Chief of the Defence Forces can ensure that security in the country is okay and Kenyans are safe. There is only one case. I do not know how it is going to be approached especially the case on the National Police Service Commission (NPSC). If you check the famous list of corrupt people that was submitted by the President to this House, you will find that the Chairman of the NPSC, Mr. Kavuludi was mentioned. I do not know whether the decision that the Chair is making when vetting some officers and sending them home is binding now or not. I believe Mr. Kavuludi should not be in office now and the decision that he is making should be null and void. That is subject to interpretation. I do not know whether he was cleared along the way or not.

The IPOA is a very important constitutional body in our country. It must balance when investigating officers who are on duty and those who have abused their positions. If you go out today to meet our security officers, you will find that they do not have the confidence they had before. They cannot discharge their duties in a very confident way because on one side there are human rights and on the other side there is the IPOA. They should not fear that the IPOA will investigate them. These are people who are going to arrest terrorists and criminals. They are armed and you cannot arrest them with your bare hands. We should ensure that our officers are not intimidated by the IPOA.

On the Universities Act, which the Leader of the Majority withdrew from the Statute Law (Miscellaneous Amendments) Bill because it is a substantive law, this is an area where there is serious confusion. I like the way the Leader of the Majority said that it should not come as a miscellaneous amendment, but as a substantive law. As I speak, many bodies are managing and regulating various faculties in universities and this has really caused confusion given the fact that we also have the Commission of University Education, which has a mandate in this area.

If you look at the Kenya Universities and Colleges Central Placement Service (KUCCPS), you will find that there is confusion. There is need to amend this law to restrict this body to the universities and colleges under the Ministry of Education. There was a tussle on admission at the Kenya Medical Training College (KMTC) and as of today, students who were admitted are yet to report because of the court cases and wrangles between the KUCCPS and the college.

We need to make the law very clear, so that the KUCPB is restricted to colleges and universities under the Ministry of Education, Science and Technology and not any other Ministry. This House appropriates money for the KMTC through the Ministry of Health and the same money cannot be used by another Ministry like the Ministry of Education.

Immigration laws are also in the Statute Law (Miscellaneous Amendments) Bill. This is another area which requires serious amendments. The rampant insecurity in the country is as a result of weak and poor immigration laws. Many people have acquired passports and IDs illegally and we are later told that these are criminals in the country. It is worth noting how work permits are issued at the Immigration Department. There is a serious loophole and we need laws to provide vetting before people are issued with work permits or citizenship of this country.

I support that the immigration laws should provide that the Immigration Department should co-operate with the security agents in the country to ensure that we know what businesses these people have come to do in our country before we issue them with work permits.

Under information law, the issue of competition should be checked. The issue of dominance should also be checked. Many subscribers to telecommunication services receive messages which they have not subscribed to and some money is deducted from their accounts.

With those many remarks, I support the Bill with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will now give the Floor to Hon. (Ms.) Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. From the outset, I would be reluctant to support this Bill in its current form. Hon. (Ms.) Kajuju, who is a Member of the Departmental Committee on Justice and Legal Affairs has indicated that they have proposed several amendments upon which we should support the Bill.

However, what we have before us, which we are debating, is not the Report of the Departmental Committee on Justice and Legal Affairs but this Bill. For me, the Bill in its current form does not meet constitutional standards and I would not be keen to support it.

As a country, there is growing concern for some of us who are very committed to constitutionalism and protection of human rights, that there is a growing culture of disregard of constitutionalism. Part of it is through Executive action and another part is through legislative action. The most dangerous path through legislative action is through the Statute Law (Miscellaneous Amendments) Bill.

If you look at some of the provisions in this Bill, you will find that they are drawing back on the gains that we have made in the Constitution. If you want to amend the Constitution, the Constitution is very clear on the process that we should follow. Many people died while fighting for liberation of this country and many people struggled to make sure that we have a new Constitution. Some of us spent countless days agitating both outside and within Parliament so that we could have a new constitutional dispensation. We are not going to sit back and allow this process that Kenyans worked very hard for to be taken back through simple miscellaneous amendments.

Some of the things that we are proposing would even require a referendum while others would require a two-thirds majority of Parliament. We cannot do this sort of thing.

I have said this before, but I am going to take it up seriously, that I am going to propose a miscellaneous amendment Bill that will set out how many pieces of legislation should come to Parliament as miscellaneous amendments and public participation in that process.

Hon. Temporary Deputy Speaker, if you look at the Bills that we have under this Statute Law (Miscellaneous Amendments) Bill, you will find that there are not less than 32 pieces. If you look at the various topics that they are dealing with, you will find that they are diverse namely, environmental, land and all manner of things. Ideally, they should go through several parliamentary committees. From what I have heard, it sounds like it is only the Departmental Committee on Justice and Legal Affairs that has filed a report. In terms of some of the issues that are here, the Justice and Legal Affairs Committee would be the competent body to deal with them. The Bills that are here should go to the various committees.

We need to come up with a law that states how miscellaneous Bills should be brought to this House. Even though I would like to say that this has improved if you compare to the other Bills that have come under the Statute Law (Miscellaneous Amendments) Bills. The others have been exceedingly huge but this Bill is still big. We have various roles as Member of Parliament namely representative, legislative and oversight. By the time you do your representative and oversight roles, especially for those of us who come from very far like Mbita--- I am only able to get here either on Monday afternoon or Tuesday morning and we spare little time to look at the Bills that are before this House. We cannot do that if we have 32 pieces of legislation to look at. Some of us want to deal with matters in this House seriously.

Hon. Temporary Deputy Speaker, we were with you in the last Parliament and I have always taken my legislative work seriously, but we cannot take it seriously if we have 32 pieces of legislation in one Bill.

One of the issues that are of concern to me is what people have spoken about especially an attempt to take back the powers of the IPOA. When we passed the Constitution, we were very clear on how rogue our police was then. There has been a lot of improvement since then but there is still room for further improvement. The improvement has been occasioned by the fact

that there is an oversight body. There is a big brother watching. If we water down the powers of the IPOA, we will be going back to where we were. We refuse to go back to Egypt because we have moved on to Canaan. I will not be happy with the amendments that seek to reduce the powers of the IPOA.

The other issue that I mentioned, which I would like to expound on is public participation. There are 32 pieces of legislation that are being amended by this Statute Law (Miscellaneous Amendments) Bill. How sure are we that the stakeholders in the respective fields have actively participated? There are instances where major amendments concerning certain sectors have gone through and yet most of the people are not aware.

I am a lawyer of distinction and a very active Member of this House. However, half of the things in this Bill require deletion. Because of the short period of time that we have, I may agree to the deletion. However, the word “delete” in law may have a very profound impact and effect in terms of the law we are seeking to delete. If, as a Member of Parliament, I find it a challenge in terms of participation, what about the public? If this law passes in this form, any member of the public would be acting within his or her rights if he or she challenges its passage in a court of law on the basis of public participation alone.

The other issue that I am concerned about is that this Bill is seeking to erode the powers of the Communications Commission of Kenya. This has been a growing trend. We created commissions for a purpose. We do not want a situation, like we did in the old Constitution, where an individual had powers to override everybody else. We do not want a situation where power is abused. Whenever you place absolute power on one person or office, there is the likelihood of such power being abused. That is why, through devolution, we devolved power to various offices. If we agreed to distribute power through devolution and other means, we cannot now reconsolidate those powers in individuals. I would only be happy to support this Bill if we relook at the amendments relating to the Kenya Information and Communication Act.

I also want to speak to the issue of the Universities Act that the Bill seeks to amend. This is especially on the issue of accreditation. In addition to this Bill seeking to define “accreditation”, we have greater challenges with the universities with regard to accreditation. It is one of the issues that I raised before. I hoped the persons who will bring amendments in relation to the Universities Act will not just bring amendments on the issue of accreditation but on the entire process of accreditation.

Every time I travel across towns in this country, it reminds me of a time when Kenyans would say that this person has gone to such and such a place for further studies. I do not want to mention the countries because I may compromise on my colleagues who have studied in those countries. However, there was a country that was notorious in conducting training in very small rooms. My sitting room would qualify as a university. The quality of teaching there was also in doubt and could be challenged. That is why we now have a crop of young people who are graduating from our universities who cannot handle simplest tasks within their professions. This is because of unregulated proliferation of universities. I am one of the persons who have been very keen on ensuring that we have, at least, one public university per county. However, that does not mean that we compromise on quality.

I can see that my time is almost up but I still want to speak. I am the Member of Parliament for Mbita but there is also a big constituency that I represent by choice and by interest namely the women of this country.

As the Member of Parliament for the women of this country, I was not happy with the way Mrs. Kaindi was thrown out of office. Since she has withdrawn that case, we want to demand that a woman be given that position. There are qualified women in this country who can take up that position. As women of this country, we will not accept to be told that there is no woman that is qualified to take up that position.

I have many other issues that I would like to speak to, including the Treaty Making and Ratification Act; issues to do with the Bill of Rights and the retirement age of judges. However, because of time, I will propose amendments with respect to some of them at the Committee Stage.

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

Hon. Barua: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill.

I would like to begin by commenting on the amendments proposed to the Environmental Management and Coordination Act. That is my area of expertise, and I sit in the Departmental Committee on Environment and Natural Resources. I would like to seek a clarification on whether it is possible to amend a statute which has already been overtaken by events. The Environmental Management and Coordination Act is one of those Bills which have constitutional timelines. We passed one such Bill this year and it has been signed into law.

In this Bill, we have the Environmental Management and Coordination Act No.8 of 1999, which has been overtaken by events. I assume that this is a mistake which needs to be corrected. If need be, I will bring an amendment so that we make corrections to this Bill.

The purpose of this amendment is to amend the Environmental Management and Coordination Act to align the provision with the Constitution by specifying the jurisdiction of the Environment and Land Act. The new Constitution put into place the existence of the environment and land courts which bring justice closer to the people who have environmental complaints. Over time, cases regarding environmental crimes have taken a back-seat and they have not been considered. This is a good opportunity, under these courts, for environmental justice to be offered to those who seek it.

I support the Bill because it also amends the Land Act. It seeks to remove the exclusive jurisdiction of environmental and land courts and give subordinate courts the right to hear such cases. This will ensure that people with land cases are not restricted to the environmental and land courts.

I am also wondering whether it is possible for this House to contact the respective Committees before including amendments in the Statute Law (Miscellaneous Amendments) Bills. If the Departmental Committee on Environment and Natural Resources was contacted before this Bill was published, I am sure that this oversight may have been noticed and corrected; it would not have appeared in this Bill.

There are more serious concerns than this one, including the amendments proposed to the Environmental Management and Coordination Act of 2015 to substitute the nominee of the civil society in the Public Complaints Committee with the nominee of the Council of Governors. I would like to submit that the Council of Governors or the governors themselves do not perform the same roles as the civil society. The civil society, which comprises of NGOs, should be given a chance to nominate somebody to sit on the Public Complaints Committee. If this happens, it will bring justice closer to the people through representation.

I would also like to raise the issue of public participation, because when an issue like this appears in such a Bill, it is not possible to determine whether the public participates or not. It should be in the interest of justice to ensure that the people who will be making laws on their behalf will be given a chance to participate in the process.

I would, in future, support the views of the Member for Mbita, Hon. Millie Odhiambo-Mabona, who is proposing that there should be a provision that the common man or the *mwanaanchi* should be given an opportunity to scrutinize these Bills through public participation.

With those few remarks, I would like to support those amendments.

Thank you, Hon. Temporary Deputy Speaker.

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

Hon. Oyoo: Thank you very much, Hon. Temporary Deputy Speaker for giving me the opportunity to add my voice to the Statute Law (Miscellaneous Amendment) Bill. From the outset, I would like to say that I oppose this Bill because of the big vice that is taking root in this country called impunity and people's attitude not to move away from the past practice. We have seen every other day the Executive bringing its Bills here; it is as if Parliament is being ambushed. There are interests that are concealed in the so called "omnibus Bills", which have far reaching ramifications that need public participation; some even need a referendum to be changed, but because they know we as parliamentarians are busy and do not have time to read deep into these Bills, they are brought in a hurry; sometimes they get away with it. The President said during Mashujaa Day that he wants Parliament to make good laws.

We would also request that those who are in charge of drafting Bills and bringing Motions to this House do so in good faith, so that they are brought in good time and in good spirit. I am aware that certain aspects of this Bill, especially those touching on the Kenya Law Reform Commission (KLRC) were published without reference to the KLR. Therefore, they did not make input, and were not able to interrogate them. Other aspects of it have things to do with succession and involvement of the Council of Governors (CoG). The KLRC is not an inter-governmental body; therefore you cannot bring in members from the amorphous CoG. It is a forum of professionals, and you must get people who fit the Bill like qualified lawyers of repute.

Then we have the so called consideration for the senior counsel. I know very well that this Bill was done with the consent of most senior counsel members, including my very good friend the Attorney-General (AG). I think he was looking for an opportunity for his friends. They are only 21 people but the laws are being made for 40 million Kenyans. We do not want things that people tailor-make for their interests, or the interests of their friends. Kenyans must refuse to return Kenya to the past, or allow Kenya to belong to a few people. When people are appointed to positions of responsibility they want to run things the way they did in the past; they tailor-make them for the benefit of their friends and themselves. This is something of the past that we must do everything to reject.

I have also looked at the aspect of the university accreditation. We need time. This should have been taken to the Departmental Committee on Education, Research and Technology. Just as my colleague, Hon. Millie Odhiambo has said a few minutes ago, there was a time when there was an exodus of Kenyans to India. She was just afraid of mentioning India. Long time ago, India was a place that people coveted during Mahatma Gandhi's era. Then there was serious education. The lawyers who went there came back and did Kenya proud. Much later in the 1970s and 1980s, commercial colleges sprouted in India where people went and so long as their

parents were able to pay school fees to sustain them during their period, they came back with degrees. When put to test, their degrees were wanting. They were not equal to the task. They were not degrees of substance like what we have here. So, we would like to be given time for people to interrogate these Bills before they appear before this House.

I would appeal to my good friend, the AG, that Kenyans have a lot of respect for him and he needs to learn that Kenyans moved. They are no longer the Kenyans who were gullible, and who can be ambushed with personal interest or interest of State House; you cannot circumvent them and put the cart before the horse. The cart is supposed to be behind the horse, so that it can be pulled by the horse. It is very unfortunate that people still believe in status quo, and this is the time when we must say no, and this House must lead by saying no to bad governance and bad laws. That way, we will be doing our country proud.

With those few remarks, I oppose.

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

Hon. Nakara: Hon. Temporary Deputy Speaker, I stand to support the Bill on condition that we shall bring amendments at a later stage. The procedure for nominating commissioners by National Assembly is one of the things that we need to encourage in this country.

I am so happy that the Jubilee Government has tried to balance the appointments of commissioners in this country. Since Independence we have seen gender being included in appointments. We want to say that we do some amendments at a later stage to consider regional balance in some areas, particularly affirmative action on tribes that are still behind such as the pastoralists, so that they too can enjoy fruits of being commissioners. By being there, they will also represent their people and bring experience back home.

There is an upcoming sensitive issue that Kenyans are talking about; the Jubilee Government is appointing many retired armed forces people to many positions in this country. They are worried that the country is going to be led by the military. These are the people who have experience in different things, and not only in military. Most of them went to school when they were serving. If you give them positions of commissioners or ambassadors, they will do a good job because of their experience in the military and expertise in public service.

The other issue is about National Police Service Act, 2011 and County Policing Authority. We have heard many complaints from the governors that security in their counties is deteriorating because they are not given a role to play. I am happy that now we have a County Policing Authority, which the governors will chair. In the governor's absence his deputy will chair it. They will also make quick decisions. In some areas, especially in Arid and Semi Arid Lands (ASALs) raiders and cattle rustlers are there and you need to make a decision to recover the cattle or follow the raiders. The County Policing Authority will bring peace within counties, and the governor will take responsibility when security in his county deteriorates without blaming the national Government. The county governments will be responsible for insecurity in their areas, and will be accountable for every life that will be lost in their areas. We, therefore, want to encourage counties to interact to prevent any insecurity in their areas and encourage development for their people.

Hon. Temporary Deputy Speaker, I support the proposed amendment to the Prevention of Terrorism Act to allow the Chief Justice (CJ) to accept appeal by any aggrieved party. It has become a routine that when police officers arrest you, they say you are a terrorist. Once they give you that kind of a name, it becomes very difficult for that person to come out. I am a Member of

Parliament of a cosmopolitan constituency. We have all the tribes in Turkana Central. We have original Somalis, who have been living there for many years, even before I was born. Some of them have intermarried with the Turkana. When they do something wrong, or they travel out of the country and come back, there is a tendency of linking them with terrorists. This amendment will enable them to appeal, so that they can be given an opportunity to speak.

I commend our security forces for reducing cases of terrorist attacks. Now our country is completely secure because security agencies are working together as partners. Two years ago each force was working on its own. Now co-ordination in the security sector in this country is improving. We encourage our security agencies to work together as a team for the sake of Kenyans who pay them.

The inclusion of accessories in the Registration of Firearms Act is very important, so that even if you do not have a gun but you have accessories you must be arrested. One can bring accessories separately and assemble them into a gun. So, the possession of firearm accessories must also be considered as a crime, whether the accessories are in your own house, or you are walking with them. Some people use these accessories to make bombs and local firearms. So, we need to extend the criminality to accessories, so that when you are found with an accessory you have to give an account of where you got it from and for what purpose.

With those few remarks, I support the Bill. I would wish to bring some amendments later on.

Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity.

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

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker. I am also happy to contribute to the Statute Law (Miscellaneous Amendments) Bill, especially following the deliberations of the Departmental Committee on Justice and Legal Affairs, which had occasion to look at the various provisions of the Bill.

I agree with Hon. Millie that the history of Statute Law (Miscellaneous Amendments) Bills is an interesting one. However, often the law needs to be tightened, clarified or changed. This is the Bill that we use to bring in the changes, sometimes very minimal, required to tighten a law, or to make the implementation of a law better.

The only problem we have is instances where the establishment, and sometimes elements within the establishments, gets ideas about using the Statute Law (Miscellaneous Amendments) Bill to fix things that are selfish, personal or are not in the national interest. In those instances, I thank the House, especially the committees of the House, for always spotting and rejecting some of the unnecessary amendments.

This Bill has come to this House before. In the first one, we had the very contentious issues on public benefits organisations, including the 15 per cent capping on funding, a fairly questionable principle. I am happy that the House did not accept those amendments. The debate on public benefits organisations and the work they do remains an interesting debate in this country. However, we need a good balance between regulating those organisations and having the benefits they bring. I was particularly impressed by the World Vision that is doing very useful work in my own county of Nyeri and many other counties in this country. We should give them space to continue working. I come from Kituo cha Sheria and I will continuously support the work that the organisation does.

In the Statute Law (Miscellaneous Amendments) Bill, it has become routine for this House, every year, to spot amendments that are not useful. In the last Bill we looked at matters of public benefits organizations were brought in. Luckily, the Leader of the Majority Party withdrew that clause from consideration.

As has become the norm this year, this is the third Statute Law (Miscellaneous Amendments) Bill that this House is looking at. We have in good time identified the issues on the Independent Policing Oversight Authority (IPOA). I reprimand very much the people who thought that this was wise, or anybody who came up with the idea that it would be useful for the President to appoint the chairperson of the IPOA. That is old thinking. That is the Kenya we are leaving and not the Kenya we are going to. That is not the country we want to be in.

Speaking as a member of the Jubilee Coalition, it is very useful every time the police are challenged for us to say we have the IPOA that is looking at that matter. It is true we have a police service that is working and serving, but we have elements within the police service that many times do the wrong things. We have a history of a police service that has been violating rights, that is corrupt and that we need to continuously reform. The only way we can do that is by having IPOA that is helping us to remove the bad apples from the police service. To then purport to take away the independence of the IPOA is to defeat the very argument that we use to confirm to everybody that we are trying to improve the police service. To take away the independence of IPOA is to confirm to everybody that we do not intend in any way to reform the police service. If we intend to reform the police service, we must safeguard the independence of the IPOA, which is a key institution in the reforming of the police service. I like their vision, mission and motto, which is to restore confidence in the police service.

The first interface of citizens with their Government is the police service. Many of us in our lifetime will interact with the police service in one way or another. You get involved in an accident, you have to report to the police; you get your items stolen, you have to go to the police; somebody injures, slaps or mishandles you, you have to go to the police. So, the face of the Government that we will see, and the interaction with the Government that we will have is with the police service.

When we have a police service that is not *utumishi kwa wote* but something else, we have no choice but to reform the institution. I look forward to a time when we will have a professional police service, that is not corrupt and that will help us enforce the law. Other countries have such a police service. We too can have such a police service. The IPOA is a big part of the vision of police reforms that we need to continuously engage in.

I support the move to withdraw the sections of this Bill touching on IPOA. I hope that they will never make their way back to this House. Even as we look at that, I also support the views of the Departmental Committee on Justice and Legal Affairs that had as early as yesterday already rejected those proposed amendments. Even if they had come to the Floor, we would have urged the House to agree with the Committee to completely reject all the proposals that were made on IPOA.

Having independent institutions in our country is not a bad thing. Having a strong presidency that is delivering as the Jubilee presidency is doing is, of course, a good thing. However, alongside a good and strong presidency are good and strong institutions in many other areas of law and governance. IPOA is leading the way in that direction. In fact, in a discussion we had with IPOA, I am glad they have started thinking about corruption in the police. IPOA has done well on matters of grievous bodily harm and the issue of trigger-happy police officers.

They have been able to catch the policemen who misuse firearms and power. IPOA needs to expand this to police corruption. We still have police officers who collect money from our poor people and police officers who refuse to serve until they are paid. Even in these days of Government leasing vehicles for the police, we still have police officers saying that they do not have fuel. We still have police officers saying they will not respond to an emergency because they do not have vehicles. For both crimes of commission and omission, the police need somebody else to look at their conduct. We need to see whether we have police negligence and where police corruption happens, what action is taken, especially when police corruption is at the higher levels.

Hon. Temporary Deputy Speaker, I am also glad that IPOA is recognising and awarding the best service awards to police officers who show courage, commitment, patriotism and perform heroic acts in defence of our country and her people. It is not just a stick approach. It is both a carrot and stick approach. For all those things, leaving IPOA as an independent institution is the best we can do.

There is a very controversial introduction to the Statute Law (Miscellaneous Amendment) Bill, where it seems to suggest that a CS, or a Government official, can be reappointed without parliamentary vetting. That would also not be allowed. The Justice and Legal Affairs Committee does not agree with that. If any official is going to be appointed in a different capacity with different tasks, they would have to come to the Assembly for vetting, for them to be found suitable for the new tasks, the new appointment and the new job. We cannot transfer vetting. You cannot be vetted for one job and move around with that vetting to several other jobs.

Lastly, let me comment on the issue of the Criminal Procedure Code. It is good to have a provision to allow a higher court to look at the issue of bail and bond on very serious crimes. Some of those serious crimes have been set out as robbery with violence, prevention of terrorism, narcotic drugs, organised crime, money laundering and counter-trafficking of persons. In Justice and Legal Affairs Committee, we have added the Sexual Offences Act. We are asking our courts to look at questions of bail and bond in sexual offences as much as possible, especially where it is defilement. It is not right to allow a perpetrator to go out on bail and start affecting victims.

On the retirement of judges, this House is very clear. Seventy years is the age of retirement for judges as far as the new Constitution is concerned.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Nyokabi, wind up because your time is up. Hon. Diriye Mohamed.

Hon. Mohamed Diriye: Thank you, Hon. Temporary Deputy Speaker. From the outset, I wish to state that this proposed Statute Law (Miscellaneous Amendments) Bill, 2015 seeks to amend various laws, including amending various sections of the National Police Service Act, 2011. These are Sections 10, 13, 17, 29 and 31 and other laws.

Therefore, it is very clear that the Government is bringing changes to various laws. This will confuse Kenyans and bring a level of lack of confidence and trust. Our economy is already suffering and the financial sector is having big problems. Amending these various laws is going to cause panic. Honestly, it is already causing panic to some of us. The main issue in changing the police laws is that we are already in a country where the mere mention of the police sends shivers across the population, because the police have been known for harassment, extra-judicial killings, forced disappearances and abuse of human rights.

You cannot give arbitrary powers to the President. Kenyans refused to have a President who is very powerful. We had this in the previous regimes of KANU under the Moi leadership and Kenyans voted for a new Constitution. One of the elements of the new Constitution is that we must have independent institutions. The National Police Service Commission (NPSC) must be independent, including the appointment of the Inspector-General of Police (IGP) and the Deputy Inspector-Generals.

This proposed amendment that seeks to give the IGP the sole power to determine the distribution and deployment of officers in the service is not going to be very healthy for our country. Under the current National Police Service Act, 2011, the IGP must involve the NPSC and the County Policing Authority (CPA) in the distribution and deployment of officers. The involvement of the NPSC and the CPA provides for checks and balances, so that the IGP does not abuse his powers. If you give the IGP the power to distribute, transfer and act independently, this is going to reduce checks and balances, and is going to be bad for our country. This amendment will allow the IGP to distribute and deploy officers at will, and whenever he feels like with nobody to check him. This will ultimately affect the efficiency of the NPSC.

Clause 13 of the proposed Statute Law (Miscellaneous Amendments) Bill, 2015, also involves the President in the appointment of the Deputy IG after the recommendation of the NPSC. In the present Act, the President is not involved in the appointment of Deputy IG. Involving the Head of State in the recruitment of officers to the National Police Service interferes with the level of independence that is required for the proper functioning of the office of the DIG. This amendment should not be allowed at all for the purpose of having an independent Deputy IG.

The Bill also seeks to delete Section 17 of the National Police Service Act, 2011 that provides for the process of the removal of the DIG. It seeks to introduce a new clause that the power to remove the IG will lie elsewhere. The effect of the proposed clause is that once the President is given the powers to remove the DIG, the Head of State will be in a position to take advantage and use this office for his personal advantage. Remember, we are making these laws not for the current Government only. The current President might be good, he might do this with good intentions, but in future, we do not know who will be the President. Giving this to any President, current or future, there is likelihood of it being abused.

There is need to have an independent office of Deputy IG to overcome political influences. If this amendment passes, the President will hire and fire the IG just as it happened in the case of immediate former DIG, Madam Grace Kaindi. We are asking the President why that happened. Are we making all these amendments in the National Police Service Act, 2011, just to make sure that what happened to Grace Kaindi is perpetuated?

The Bill further seeks to amend Section 29 of the National Police Service Act, 2011. It clothes the President with the power to appoint the Director-General (DG) of criminal investigations. Under the current Act, the process of employment of the DG is competitive. This is in line with the constitutional requirement of fair competition. However, under this amendment, the President will have the sole power to appoint the DG without any other process. The effect of this is that the President will be able to misuse the Office of the DG of criminal investigations to his own end. Further, this is in contravention of the principles of fairness, equality and due process as enshrined in the Constitution of Kenya, 2010.

Hon. Temporary Deputy Speaker, Clause 31 of the Bill gives the President the sole power to remove the DG at any time. Under the current Act, the removal of the DG involves the

National Police Service Commission (NPSC). However, the Bill has proposed to give the President the power to remove the DG without involving the NPSC. This will have the end effect of having a Criminal Investigation Directorate that is remotely controlled from State House.

In conclusion, I wish to say that the amendments fronted are actually unconstitutional and will thus be illegal. They seem to be aimed at having a powerful presidency that has all the security organs under its docket. There is need for fairness.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Wind up, Hon. Member. Your time is up.

Hon. Mohamed Diriye: There is need for fairness, due process, equality and equal opportunities for all Kenyans. This is why we need to maintain the status quo where the NPSC and the Independent Policing Oversight Authority (IPOA) are given a role in the selection of the Inspector-General and the Deputy Inspector-General.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your time is up. I now call the Mover to reply.

Hon. Chepkong'a: I thank you, Hon. Temporary Deputy Speaker. I rise to reply and thank all Members who have contributed in a very positive manner, exercising their rights as contained in the Constitution with regard to the legislative process. Most of these clauses are merely proposals. It is incumbent upon this House to amend, approve or delete what it will consider to be unconstitutional.

Secondly, the issues of removing the tenure of offices of officers who are below the rank of the IG is in order. You cannot give tenure to junior people. Those do not deal with the President. The DG and the DIG deal with the IG. Why would you protect juniors from the President who does not deal with them? The only person who ought to have tenure of office is the IG.

Thirdly, the President is incapable of abusing his office, and if he does so, the Constitution is very clear and it is provided very clearly in Article 10 of the Constitution, which deals with leadership and integrity, so that every person, including the Members of Parliament, while exercising their powers that are conferred to them by the Constitution and other legislation, must do so for the benefit of Kenyans. You cannot do things for your own selfish ends. That will not be acceptable to Kenyans and the Judiciary. So, anybody who makes an attempt to acquire power illegally, and not as is provided in the Constitution will be acting unconstitutionally, and the courts will frown on them. So, we should not be afraid. We are not the final persons in terms of determining whether the matter is unconstitutional, or whether somebody will exercise their power in a fraudulent manner. That is a matter which if you do it, Kenyans who are very keen will go to court and seek interpretation of your decisions and they will be struck out. There is no need to whip emotions that the President will misuse his power. The current President has not misused any power. In fact, he has restrained himself from exercising the powers that are conferred on him in the Constitution. He has delegated a lot of powers to the IG and various other agencies, including this House.

I thank every Member, and beg to reply.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will not put the Question at this time for obvious reasons. We will move to the next Order.

Second Reading

THE HEALTH BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have the Deputy Leader of the Majority Party.

Hon. (Dr.) Shabaan: Hon. Temporary Deputy Speaker, I beg to move that the Health Bill, 2015 be now read a Second Time.

The purpose of this Bill is to provide for---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Deputy Leader of the Majority Party, quote the title of the Bill, the number and the year just as it is written on the Order Paper.

Hon. (Dr.) Shabaan: I am sorry. I stand guided.

Hon. Temporary Deputy Speaker, I beg to move that the Health Bill (National Assembly Bill No.14 of 2015) be now read a Second Time.

The purpose of this Bill is to provide for a mechanism on how the national health policy shall be formulated, implemented and coordinated between the two levels of government, and most significantly to capture the development in technology that can positively contribute to healthcare services while curbing negative development.

There is need for co-ordination among various health professions so as to harness capacity and enhance relevance of the service to the health industry. To that end, the Bill aims at establishing a national health system, whose main purpose will be to afford an enabling environment to progressively realise the right to the highest attainable standard of health; this includes the right to healthcare services, including reproductive health.

Indeed, this is enshrined in our Bill of Rights. Article 43(1)(a) of our Constitution states that:-

“Every person has the right to the highest attainable standard of health which includes the right to healthcare services, including reproductive health care---”

As it is enshrined in the Bill of Rights, this Bill comes at a time when we need to look at the laws which are being used, so that we can have a mother Bill which can put most issues which have been addressed under one umbrella.

Clauses 1 and 2 of the Bill provide for the short title and interpretation provisions of the Bill. Clause 3 provides for the objects and purposes of the Bill, which include the establishment of a national health system that will encompass public and private institutions and health service providers, both at the national and county levels, and to facilitate, in a progressive and equitable manner, the highest attainable standard of health services.

The Bill aims at recognising the role of statutory health regulatory bodies and distinguishes the regulatory role from the policy making function of the national Government. Clause 7 gives effect to the right to emergency medical treatment and makes it an offence for any medical institution or healthcare provider to deny any person emergency medical treatment when it has capacity to do so.

Of late we have seen a patient being kept in an ambulance for 18 hours. That was just one whose family was able to reach the media. We have seen Kenyatta National Hospital (KNH) carrying a burden, because all the health providers around the KNH have either failed or have chosen not to give emergency treatment. Once this Bill becomes law it will put that issue to rest,

and Kenyans will be able to access emergency treatment immediately they arrive at an institution or a health provider.

Hon. Temporary Deputy Speaker, Clause 8 makes it mandatory for every healthcare provider to inform a user and where the user of the information is a minor, or is incapacitated, inform the guardian of among other things, the user's health status except in circumstances where there is substantial evidence that disclosure of the user's health status would be contrary to the best interests of the user. There have been issues where you find that even when incapacitation, or disease, is affecting a spouse, it is difficult for people to give that information simply because there was no legal framework to address that. Once this Bill becomes law, it will put that one to rest.

Clauses 16 and 17 create directorates within the Ministry of Health headed by a Director-General. The Director-General shall be the technical advisor to the Cabinet Secretary (CS) on all matters relating to health and responsible for preventing and guarding against the introduction of infectious diseases into Kenya, and shall advise the two levels of Government on matters of national security in public health.

Considering that health was fully devolved, there has been a grey area in how these issues were to be dealt with. So, this Bill seeks to create a Director-General who is going to be very strong and will be able to advise all the levels, so that we can realise the goal in Article 43 of our Constitution.

Clause 27 establishes the Kenya Health Professionals Oversight Authority (KHPOA) charged with the responsibility of providing an oversight role to the regulatory functions of the national health system, and ensuring adequate co-ordination of joint activities of regulatory bodies within the health sector. Amongst its key functions will be to promote and regulate inter-professional liaison between statutory regulatory bodies, co-ordinate joint inspections with all regulatory bodies, ensure the necessary standards for health professionals are not compromised by the regulatory bodies and arbitrate disputes between statutory regulatory bodies, including conflict or dispute resolution among boards and councils in the health sector. To just name a few, we have the Kenya Medical and Dentists Board, National Council for Nurses and one for clinical officers. We have different professions regulated through different bodies. This Clause 27 seeks to put them under one umbrella, where this will act as an oversight authority to all those bodies which govern all the professions in the health sector.

Clause 32 creates room for the establishment of a single regulatory body for regulation of health products and technologies by a separate Act of Parliament. Clause 48 outlaws human organs transplantation except in the manner provided in the law. This is a very well-considered Bill, and so many things have been put under it, so that we can regulate all the functions of the health sector.

It will also allow us to deal with standardisation of medical treatment for Kenyans at this time under devolution; devolution of health was done in a bang. It was not done in phases. Because of that, there is a bit of work which requires to be done, more so within a legal framework, so that it is easy for devolution in the health sector to be well taken care of where our Kenyans are concerned.

There are few clauses which I would want to point out. In this Bill, there are clauses which relate to health financing. There are also clauses which provide that the CS shall pursue strategies conducive for the development of private health services and alignment to the needs of the population. You realise that in Kenya, what happens in the public sector and the private

sector is like running two different departments in the health sector without knowing what one is doing and what the other one is not doing.

This Bill seeks to put everything together, where even the CS can not only regulate but also pursue strategies which can put all matters health and policy under one umbrella. The enactment of this Bill will occasion some additional expenditure of public funds, which will be catered for through the estimates.

With those few remarks, I beg to move and ask Hon. Robert Pukose, who is the Vice-Chairperson of Departmental Committee on Health, to second.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Temporary Deputy Speaker for allowing me to second. I want to thank the Deputy Leader of the Majority Party for ably presenting the Bill. Regarding this Health Bill, as a Committee we have held 35 sittings, and we have involved various parties. This Bill was presented to our Committee on 7th and 9th July 2015; we held our meetings in the Chamber, where we were able to hold consultative sessions with the members of the public from various interested parties within the health sector. We have also held various retreats. We have had a retreat with the Commission on Implementation of the Constitution (CIC), Office of the Deputy President, the Legislative and the Inter-Governmental Liaison Office. We also held a retreat with the Council of Governors (CoG) on 16th to 19th September 2015. This was aimed at building consensus, especially on the issues that we felt were contentious. I want to thank everybody who participated.

We also received memoranda from Pharmaceutical Society of Kenya; Kenya Ethical and Legal Issues Network; Public Health Society of Kenya; Kenya National Commission on Human Rights; Council of Governors; IPAS Africa Alliance; Coalition on Violence Against Women; Kenya Health Professionals Society; Kenya Health and Palliative Care Association; Kenya Medical Association; Kenya National Union of Nurses; Kenya Dental Association; Kenya Pharmaceutical Association; Health Systems Management Association; Kenya Health International; Kenya Christians Professionals Forum; National Technical Working Group on Quality Management; the Health Sector Board for KEPSA and various individual healthcare professionals.

Some of the areas discussed with the stakeholders included aligning the interpretation of the Bill to the World Health Organisation (WHO) definitions, implementation of emergency provisions as provided for in the Health Bill, the role of palliative care in the national healthcare system, the qualifications of the Director-General, the County Director of Health and other officers in charge under Levels 4, 5 and 6 health facilities, the creation of a Health Directors Forum and the management of the health human resource. This was very key because many of the healthcare workers, especially after the devolution of health found that we needed to have a mechanism through which management of training, issues of promotion of healthcare, inter-county transfer and all other issues pertaining to healthcare in the country could be addressed.

The Committee on meeting major stakeholders that made submissions highlighted the issues of healthcare workers welfare. The Committee further noted that the Bill does not expressly address the foregoing issue, and was of the opinion that issues relating to healthcare workers ought to be addressed as much as possible through this Bill. Our Committee will, therefore, be proposing various amendments to the Bill during the Committee Stage in the House to address the foregoing observations, among them the objects of the Act, the provisions on emergency treatment, duties of the national Government and the county government, the

appointment of the Director-General of Health, the composition and functions of the Kenya Health Professional Authority, health financing, establishment of inter-governmental co-ordinating mechanisms and providing of inter-governmental mechanisms to address the healthcare workers welfare.

With those few remarks, Hon. Temporary Deputy Speaker, I second the Bill.

(Question proposed)

MOTION FOR ADJOURNMENT

ADJOURNMENT TO A DAY OTHER THAN
THE NEXT NORMAL SITTING DAY

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I am interrupting this session, Hon. Members, because we have a Motion for Adjournment. Therefore, I want to call upon the Leader of the Majority Party to move the Motion for adjournment of this House to a day other than the next normal sitting day. Hon. Naomi Shaban.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order No. 28, this House adjourns until Tuesday, 10th November 2015 in accordance with the Calendar of the National Assembly (Regular Sessions).

We determine the calendar of the National Assembly. These dates have been gazetted. We are supposed to be going for a short recess for around 10 days, so that we can come back on 10th November 2015. After we have been here for a while, it is time to take this recess and head to our constituencies, so that we go and deal with the matters at the grassroots in a continuous way. It is not that Members of Parliament do not usually go to their constituencies. We go to our constituencies every weekend. This is an opportunity for us to go and spend time with our constituents, so that we can understand the issues on the matters of development and also their welfare. We need to sit down with them to discuss and come up with a way forward. This is the time when all Members of Parliament usually get to know their constituents very well.

This has been a time when we came back and started a new financial year. Many issues have come up. As we move on, the Executive and the Judiciary which are the arms of Government are trying to do their bit. We have also tried to do our bit in the Legislature, but the other bit that we ought to do is in our constituencies. I will not take much time. This is just to remind Members the importance of representing people; in representation, the other duty is now calling.

With those few remarks, I beg to move. Hon. Temporary Deputy Speaker, I would ask Hon. (Dr.) Pukose to second this Motion.

Hon. (Dr.) Pukose: Thank you, Hon. Temporary Deputy Speaker for allowing me to second this Motion for Adjournment.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. (Dr.) Pukose, there is no seconding but you can continue to contribute.

Hon. (Dr.) Pukose: Okay. Thank you, Hon. Temporary Deputy Speaker for your guidance. As we move into the short recess of 10 days, I want to thank my colleagues because

they have done their best to make sure that we actualise the business of the House and pass the various Bills. This time round, within the shortest time possible, we have been able to pass many Motions and Bills. This Sunday, we will be going to Ol Kalou as Jubilee Coalition. We also invite our colleagues from the Opposition to go with us to pray for our Deputy President and Mr. Joshua Sang, whose cases are still at The Hague; the Almighty God will be able to have mercy on us and have these cases terminated.

I know that we were also warned about the *El Nino*. It is good that what we are having is the short rains. We have not seen the serious effects of it. The Government prepared enough, but the skies are also not opening up much. That is good news for us because in my Trans-Nzoia County, many of the farmers are facing difficulties; this is a harvesting season. We are harvesting our maize. We lost a lot of crops in one of my wards. A half of the ward was not able to harvest any crop because of crop failure and drought this year. I have been able to talk to the Ministry of Planning and Devolution, special programmes and our county government, so that they can both look at making sure that Kenyans living within the area do not starve to death; they did not harvest any crop. So, if we are going to have *El Nino*, it will spoil and destroy many of our crops, which we are harvesting at this time. I am hoping that farmers will take advantage of the rains not pounding so much to harvest and store our crops within the various places, so that at the end of the day, we have a good harvest.

I know that Form Four students in my constituency are doing their examinations. Standard Eight pupils are also waiting for their exams. I also want to take this opportunity to wish them success, and hope that they will perform very well in this year's examinations. I am going to be with them during this short recess to make sure that issues that have been reported do not ruin our area. We have heard of examination leakage, which is a very frustrating issue.

With those few remarks, I thank you for giving me this opportunity.

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

Hon. Rotino: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Motion for Adjournment.

From the outset, it is time for us to visit our constituencies and spend time with our electorates. We need to hold meetings with them and explain some issues to them, especially the rumour that the Government has no money, or it is broke. It is time to go to our constituencies, spend time there and explain to our people what is going on. They ask us a lot of questions.

Those who come from areas which experience a lot of insecurity should go and spend time with our constituents and hold meetings in various places in order to build confidence in our people, that the Government is in place and it is doing its best to restore security in those areas. There is a lot of fatigue in the House; Members need to go and cheer up and then come back when they are fresh. We do not have leave, but 10 days is a lot of time. It will be a good time for us to rest and catch up with our committee meetings that have not been done.

It will be good for us to spend more time with our people and update them on how the Government is running.

With those few remarks, I support the adjournment Motion.

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

Hon. Angatia: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to the Adjournment Motion. The recess will give me a lot of time,

being a young man, to sit with my young family. They really miss me when I come to Parliament at 10.00 a.m., sitting in Committee meetings up to 1.00 p.m., and in the afternoon coming to the official session here. I miss time to sit with my family.

The most important thing is that we have been given opportunity to go and stay with our electorate in the village and understand their problems. At this critical moment when the Metrological Department has warned us of *El Nino*, already three schools have been affected in my constituency. This will give me an opportunity to visit the schools, and if possible, organize some emergency funds through the Constituencies Development Fund (CDF) to facilitate their re-construction.

There is a lot that is going on in the village just like my colleague has said. There is confusion in the village that the Kenyan economy is scrambling like Greece. We need to sit with the *wananchi* and explain to them that the country is stable and there are only a few issues that can be sorted out by the Government to ensure we have a stable economy.

We will also have opportunity to interact with members of the county assembly, and share ideas on how they can resolve issues in the assemblies, especially regarding pending bills which are really accumulating. For example, my neighbouring Vihiga County has accumulated a pending bill of Kshs2.8 million, while Bungoma County has accumulated a pending bill of Kshs2 billion. Future governors will have problems. We will sit with our local MCAs and share ideas on how to resolve some of these issues.

Since time is not on our side, I wish to stop there and donate part of my remaining time to other Members.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): That is not your work, Hon. Savula.

Hon. (Ms.) Priscilla Nyokabi.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker. We have been asked to speak very briefly, so that we can all get a chance to speak.

As the House adjourns, it is good to note that it has done very commendable work in terms of the many Bills, reports and petitions that we have looked at. Clearly, we deserve this recess. After many days of hard work, it is only fair that we get some time for recess, committee deliberations and constituency work.

The Justice and Legal Affairs Committee will be meeting the vetting board and also the National Cohesion and Integration Commission, looking at some of the issues in their work and what they need to do more. We are particularly interested in the National Cohesion and Integration Commission given the negative ethnicity that has started to come back to this country.

When we return, we will look at questions of the Health Bill. I particularly wanted to contribute to that Bill, but I will be ready when the House comes back on 10th November 2015, because my county has a very big problem with the Level 5 hospitals. Maybe it is time that these regional referral hospitals got back to the national Government. They are fairly costly for a single county to maintain. We are going to look at the question of classification and have the regional referral hospitals fall under the management and the funding of the national Government.

I will be moving the Access to Information Bill when we come back. You and I are big supporters of two-thirds gender rule. We will be gearing up for a fairly heated discussion on the matter of two-thirds when the House comes back. All the constitutional Bills have to be finished before December, so that they can be taken to the Senate.

With those comments, I wish every Member a safe and good recess until we come back to continue with work, hoping that the Executive will also continue to do its work on the stabilisation of the economy. Today, it was good to hear the CS, Mr. Henry Rotich, explain that the interest rates will come down, and that there will be funding. We are hopeful that the Kenya shilling will start gaining on the dollar.

With those remarks, we thank the House and appreciate the recess.

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

Hon. Okoth: Thank you, Hon. Temporary Deputy Speaker. I look forward to the recess. I support this Motion for Adjournment. It will give Members an opportunity to engage with their people. I represent a constituency not far from Parliament, but the effort that is needed to pay attention to the people, listen to their concerns and suggestions about priorities and how to fix the economy, improve their lives, negotiate relationships with other branches of Government, including the county governments are important. So, I appreciate this time.

We will also be out there praying for this country in general. I heard another Member saying that they will use the time for prayers. It should be a good time for reflection. I hope that all the leaders in this country will understand the duty entrusted on them to unite people and guide the country to greater heights, rather than divide the people and sow seeds of discontent and conflict which might bring trouble to our country.

I am grateful again and I look forward to spending time in Kibra Constituency with my people, looking at human rights. I am also as passionate about the two-thirds gender rule as Hon. (Ms.) Nyokabi. We are working towards the same goal, perhaps through different paths. I will be collecting signatures in support of a popular petition to make sure that women are elected to the next Parliament and we attain the two-thirds gender rule.

With those few remarks, I thank you and wish you, Hon. Temporary Deputy Speaker, a great recess. I welcome you to Kibra.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Ken Okoth. I will now give the Floor to Hon. Nakara.

Hon. Nakara: Asante Mhe. Naibu Spika wa Muda, kwa kunipa nafasi kuchangia Hoja hii wakati ambapo Bunge linaenda kwenye mapumziko.

Ni wakati wa kwenda kuelimisha umma juu ya sheria ambazo tumezitengeneza hapa, kwa maana wengi wao hawajui kusoma na hawajahi kusikia kuhusu sheria hizo. Ni wakati pia ambapo Wabunge wataenda kuwaelimisha ili wajue jinsi ambavyo sheria hizo zitawasaidia na kuongoza maisha yao ya kila siku. Pia tutasikia maoni ambayo wangependa yahusishwe kwenye sheria ambazo tutatengeneza baadaye.

Mhe. Naibu Spika wa Muda, ni wakati pia wa kwenda kuangalia miradi ambayo imejengwa kwa kutumia pesa za ustawi wa maeneo Bunge katika maeneo yetu. Itakuwa ni wakati wa kufungua miradi hii na kuipeana kwa wananchi, ili wafurahie matunda ya pesa za ustawi wa maeneo Bunge; hii ni njia moja ya kupanua maendeleo katika nchi hii.

Pia, huu ni wakati mwema wa kuendelea na maombi kama Jubilee juu ya ndugu zetu wawili, Naibu wa Rais, Mhe. Ruto na Arap Sang, ambao kesi zao ziko kule ICC. Tutaendelea kuwaomba na kuwaweka katika mkono wa Mungu ili majaji watakapofanya uamuzi wao, wafanye kwa njia ya busara bila kupendelea au kufuata siasa. Tunataka kwenda kupumzika ili tuje baadaye tukiwa tumechangamuka na tuna nguvu.

Kwa kumalizia, tuna kongamano katika Kaunti ya Turkana linaloanza tarehe tano mwezi wa Novemba hadi tarehe saba. Utakuwa ni wakati mzuri ikiwa wewe ni mwekezaji uje katika kongamano hilo la wafanyi biashara na wawekezaji ambao wanataka kuwekeza katika Kaunti ya Turkana. Kaunti ya Turkana ina nafasi nyingi za biashara. Nawaalika wabunge wenzangu waje na kupata nafasi ya kuwekeza katika Kaunti ya Turkana. Kaunti hiyo ina rasilimali kama ardhi, maji, petroli na vitu vingine vizuri.

Nawatakia heri njema.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Dennitah Ghati. I understand your microphone is not working; we will bring you the portable microphone. Your microphone is now on.

Hon. (Ms.) Ghati: Thank you very much, Hon. Temporary Deputy Speaker for giving me the opportunity to support the Motion for Adjournment.

The 10 days of recess will be enough for us to rest although, as Members of Parliament, there is really no time to rest because we work all the time. It will be an opportunity to meet our constituents. There are many issues to be sorted out, especially for me as the Member of Parliament representing the County of Migori. You are aware that even as we go for this short recess to meet our people, women representatives are yet to obtain resources to explain to our people the various projects that we have been doing so far. It is a challenge but I know that our people understand that, as women representatives, we still do not have a kitty to continue working. That is what we will be explaining to our people.

We hope that the 10 days of recess are going to be enough for us to push the agenda for the Affirmative Action Social Development Fund. On the ground, people think that the funds have been dispatched but we are not working. It is an opportunity for us to explain the fact that the funds are yet to hit our accounts for us to deliver on our mandate.

My attention has been drawn to the issue of the alleged examination leakages that are doing rounds in our country. It is very sad that while our students have been busy reading and preparing for their examinations, there have been examination leakages on the internet of papers yet to be undertaken. As leaders and representatives of our people, we face the challenge of having to explain to our people why there are certain areas of this country getting examinations leakages while others are not. It is very obvious that in remote areas, such as the county I represent, where students do not even own mobile phones, are unable to access the internet, see the leakage and compete fairly with a student from Nairobi or any other county. Those are some of the challenges, issues and questions that we are going to face and answer to our people.

Lastly, the Jubilee coalition is extending a hand for us to help them in prayer meetings. As a coalition, we also have our issues that we are sorting out. We have our Coalition for Reform and Democracy (CORD) principal, Moses Wetangula, whom we are holding prayers for. We are going to be busy. We want to invite the Jubilee coalition to join us in praying for our principal, so that this country can also move forward. It is the most opportune time to go on recess. I hope we are going to use this opportunity well and come back rejuvenated.

Lastly, as a representative of Migori County, I am receiving information on cases of defilement. Cases of child defilement are now on the increase in my county. My tray is going to be full as I look at how to curb issues of child defilement in Migori County. It is not going to be business as usual. It is going to be a busy recess for me.

With those few remarks, I wish every Member the best as we go on recess.

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

Hon. Mohammed Diriye: Thank you, Hon. Temporary Deputy Speaker.

I wish to thank my fellow Members for their hard work and good efforts in deliberating on issues affecting Kenyans. As Members of Parliament, we are doing a great job, both in Parliament and outside, to help Kenyans. That is why we look forward to meeting our constituents for 10 days, interact with them, look at the problems they are facing and represent them very well, although I am not very happy that some constituencies did not get the Constituencies Development Fund (CDF) as expected. We are going back to our constituencies without the Constituencies Development Fund money. It would have been very good if we got the CDF funds, so that when we go on recess, we implement the projects as envisaged in the CDF projects plan and help needy Kenyans.

I wish to thank the Almighty Allah for giving us this opportunity to deliberate on the issues affecting Kenyans. As a country, we are faced with a lot of challenges including the forecast *El Nino*, the examination leakages that we have been experiencing over the last few weeks and the teachers strike. These are issues which are affecting our country. We pray to Allah that He eases some of these burdens and guides us into the right path.

I also wish to note that we are a bit worried from the forecast of the weatherman. Right now, it is dry in many parts of this country. Farmers, pastoralists and nomads have prepared themselves for the heavy downpour of the *El Nino*. We are a bit worried by what is happening. Was the weatherman's forecast incorrect? Were we misled, or is the *El Nino* still to come? All the same, we pray for the best from Allah. We are faced with some tough economic problems in this country. The National Treasury is experiencing problems with funding the county governments. There is a cash crunch all over the country. We also hope that this will ease.

I also wish to join my fellow colleagues of Parliament in calling for prayers. We support the prayers for all our compatriots - Arap Sang' and the Deputy President - who are both facing charges at the International Criminal Court (ICC). We pray that Allah helps them. We pray that they surmount this problem that they have been faced with. I do not think they are guilty. They are just Kenyans who are doing the right job. I pray that God helps them in defeating those who want to put them into problems.

Finally, I wish all KCSE and KCPE candidates success in their examinations.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, the time being 6.30 p.m., this House stands adjourned until Tuesday, 10th November, 2015 at 2.30 p.m.

The House rose at 6.30 p.m.