

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 29th September 2015

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

DELEGATION FROM MALAWI PSC IN THE SPEAKER'S ROW

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation from the Parliamentary Service Commission of Malawi which is seated in the Speaker's Row. The delegation comprises of the following Hon. Members:-

1. Hon. Vitus G. Dzoole, MP - Leader of Delegation
2. Hon. Aaron Sangala, MP
3. Hon. Ralph Jooma, MP
4. Hon. Abubakar Mbaya, MP

Hon. Members, the delegation is also accompanied by Mr. J. Mdala, the Chief Policy and Planning Officer and Ms. L. Jambo, Secretary to the Deputy Clerk of Parliament. The delegation has been in the country since 26th September 2015 and is here to broaden its understanding and knowledge of the workings of the Parliamentary Service Commission. On my own behalf and that of the House, I welcome them to the National Assembly of the Republic of Kenya and wish them fruitful engagements.

Thank you.

Members making their way in, please, walk quickly and take your seats. Take your seats. Member for Othaya, take your seat. Do not freeze, take a seat somewhere.

A FURTHER VOTE ON CONSTITUTIONAL AMENDMENT BILLS

Hon. Speaker: Hon. Members, this Communication concerns a further vote on Constitutional Amendment Bills. I wish to welcome you back from the long and well deserved recess. I believe the break presented a great opportunity to all the Members to catch-up with their respective constituents and engage in other matters of national interest.

Having said this, Hon. Members, further to my Communication which I made on 27th August 2015, regarding the procedure for the application of the Standing Order No.62 concerning the further vote on instances requiring a fixed majority, I wish to communicate as hereunder:-

(1) That the further vote on the Motion for the Third Reading of the Constitution of Kenya (Amendment) Bill No.2, National Assembly Bill No. 26 of 2013, sponsored by Hon. Lati Lelelit,

and the further vote on the Motion for the Second Reading of the Constitution of Kenya (Amendment) Bill, National Assembly Bill No.1 of 2015 sponsored by Hon. David Ochieng', shall both be undertaken in the afternoon sitting of Thursday, 1st October, 2015.

(2) That, I have requested the House Business Committee to also consider prioritizing the consideration in the Committee of the whole House, the Third Reading of the Constitution of Kenya (Amendment) Bill, National Assembly Bill No.2 of 2015, sponsored by Hon. George Kaluma, which passed Second Reading on 27th August 2015.

Should the House Business Committee agree it, therefore, follows that consideration in various stages of the three Bills and subsequent voting shall all be undertaken on Thursday, this week.

Hon. Members, I have allowed an additional period beyond what I had initially communicated in view of the fact that Members have just returned from the long and busy recess. I wish you fruitful deliberations as we commence this third part of the Third Session of the Eleventh Parliament.

Thank you, Hon. Members.

MESSAGES

Hon. Speaker: Hon. Members making their way in, please, take your seats. I have some three Messages.

APPOINTMENT OF SENATORS TO THE MEDIATION COMMITTEE

Hon. Members, the first Message is Message No.28 of 2015 from the Senate. The subject of this Message is "Mediation Committee on the County Governments (Amendment) Bill, Senate Bill No.1 of 2014."

I wish to convey to the House that pursuant to the provisions of Standing Order No.41(4), I have received a Message from the Senate regarding the appointment of four Senators to represent the Senate in the Mediation Committee to consider the County Governments (Amendment) Bill, Senate Bill No.1 of 2014. The objective of the Bill was to designate in law the respective headquarters of the 47 counties.

Hon. Members, you will recall that on Thursday, 6th August 2015, the National Assembly rejected the said Bill at Second Reading thereby causing the Speakers to invoke the provisions of Article 112(2)(b) of the Constitution. Subsequently, four Members were appointed to represent the National Assembly in the Mediation Committee. The Committee is requested to immediately commence the process of developing an agreed version of the said Bill with a view of finalizing it within 30 days as required under Article 113(3) of the Constitution.

Thank you.

THE PASSAGE OF THE MINING BILL (NATIONAL ASSEMBLY BILL NO.8 OF 2014)

The second Message is Message No.30 of 2015 from the Senate. Hon. Members, Standing Order No.41 relating to Messages from the Senate requires that the Speaker expeditiously reports to the House any such Messages received from the Senate. In this regard, I

wish to report that on Tuesday, 22nd September 2015 in accordance with Article 110(4) of the Constitution, I received a Message from the Senate regarding the passage of the Mining Bill (National Assembly Bill No.8 of 2014). The Bill was referred to the Senate after passage by this House on 29th October 2014.

Hon. Members, the Message states and I quote, “ The Mining Bill, (National Assembly Bill No.8 of 2014), which was published in the Kenya Gazette Supplement No.28 of 17th March 2014 as a Bill originating from the National Assembly was passed with amendments by the Senate on Wednesday 16th September 2015. The Senate now seeks the concurrence of the National Assembly on the said Bill”.

I am aware that the Clerk has since circulated the amendments to all the Members in accordance with the Standing Order No.145. In this regard, the Senate amendments to the Mining Bill (National Assembly Bill No.8 of 2014) now stands committed to the Departmental Committee on Environment and Natural Resources for consideration. The Committee is expected to submit its report before the amendments are considered by the House. I wish to remind the House that the National Assembly will only consider the amendments made by the Senate and not any other parts of the Bill.

Thank you.

DEPLOYMENT OF KENYA DEFENCE FORCES TO BONI FOREST

Hon. Members, I wish to report to the House that I have received a Message from the Cabinet Secretary for Defence, notifying the House that pursuant to Article 141(3) of the Constitution and Section 34 (1) and (2) of the Kenya Defence Forces Act, 2012, the Kenya Defence Forces were deployed to Boni Forest and its environs on 8th September 2015 in a joint operation in support of the National Police Service to counter *Al Shabaab* terror activities in the region.

Hon. Members, in keeping with the requirements of Section 8 (3) and (4) of Kenya Defence Forces Act, 2012, the Cabinet Secretary has submitted to the National Assembly copies of the Gazette Notice and a report of the said deployment. The copies of the letter, including the Gazette Notice and the report to the National Assembly are hereby referred to the Departmental Committee on Defence and Foreign Relations. The Committee is urged to study the report while taking cognisance of all deployments done since 2013 and table a report to the House for purposes of debating and noting.

I thank you, Hon. Members.

Hon. Tonui: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Tonui, what is your point of order?

Hon. Tonui: Thank you, Hon. Speaker. There is a very important national issue which this House has been petitioned. A petition on teachers strike was received in the Office of the Clerk on 11th. This is a very important House---

Hon. Speaker: Which Standing Order are you referring to? We are not yet anywhere near where you are.

Hon. Tonui: Petitions.

Hon. Speaker: No, not about petitions.

Hon. Tonui: I stood to seek your guidance.

Hon. Speaker: I have not received it. If I have not received it, it is being processed. Be satisfied. Every petition must go through the normal process.

Hon. Tonui: I thought that since it is a matter of national importance, we should not ignore it.

Hon. Speaker: It does not matter whether it is teachers or any other person but it must be processed through the normal process, Hon. Ronald Tonui.

Hon. Tonui: Our students are currently at home.

Hon. Speaker: Do not worry about that. The matter is being canvassed in court. We must be a House of rules and procedures. Hon. Tonui, I will rule you out of order. It does not matter where it has gone. If it is a petition that has been submitted here, it has to be processed through the Office of the Clerk.

Hon. Members: *(Inaudible)*

Hon. Speaker: It does not matter in which organization he is a treasurer. I am not responsible for treasurers of funny organisations out there!

(Laughter)

Let us be fair to Hon. Tonui. If and when I receive the petition, it will be communicated to the House. What you are trying to do, is do a job that is not yours.

(Hon. Tonui showed his phone)

Hon. Speaker: Hon. Tonui, it does not matter what you are showing. Do not show me. I do not communicate that way; there is a procedure. I am sure in your third year, you must be fully aware of those procedures.

Hon. Duale, proceed.

PAPERS LAID

Hon. A.B. Duale: Thank you, Hon. Speaker. We are back in the House and I hope my colleagues enjoyed their holiday. We are not in the Annual General Meeting of the Kenya Union of Post Primary Education Teachers (KUPPET). This is the august House and we must therefore follow procedures.

Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Tuesday 29th September 2015.

Reports to Parliament from the National Treasury on all new loans contracted by the Government between 1st November 2014 and 30th June 2015, prepared pursuant to Section 31(1) and (3) of the Public Finance Management Act, 2012.

The Report of the Auditor-General on the Financial Statement of Kenya Animal Genetic Resource Center for the Year ended 30th June 2014 and the certificate therein.

The Report of the Auditor-General on the Financial Statement of the KASNEB for the year ended 30th June 2014 and the certificate therein.

The Report of the Auditor-General on the Financial Statement of the National Drought Management Authority for the year ended 30th June 2014 and the certificate therein.

The Report of the Auditor-General on the Financial Statement of the Kenya Industrial Estates Limited for the year ended 30th June 2014 and the certificate therein.

The Annual Report and the Financial Statement of Bukura Agricultural College for the Year ended 30th June 2014.

The Annual Report and Financial Statement of Jomo Kenyatta University of Agriculture and Technology for the year ended 30th June 2013.

The Report of the Auditor-General on the Financial Statement of the Office of the Controller of Budget for the year ended 30th June 2014 and the certificate therein.

The Report of the Commission for the Implementation of the Constitution on the assessment of the implementation of the transferred functions to the county governments.

The Annual Report of the Commission for the Implementation of the Constitution on the last lap for the year 2014/2015.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

MOTION

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL

Hon. A.B. Duale: Thank you, Hon. Speaker. I beg to move:-

THAT, the Senate Amendments to the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill 33 of 2013) be now considered.

This Bill was published in October 2013. It was passed by the National Assembly with amendments on 23rd July 2014, and it was further passed by the Senate with amendments on 17th February 2015.

This Bill proposes to amend in a minor way seven laws. This Bill seeks to amend the Land Adjudication Act, Cap 284 of the Laws of Kenya; the Urban Areas and Cities Act, 2011; the Transition to Devolved Government Act, 2012; the County Governments Act, 2012; the Agriculture, Fisheries and Food Authority Act, 2013, the Kenya Agricultural and Livestock Research Act, 2013, and the Crops Act, 2013.

The provision requires this House to consider the Bill as it touches on county governments.

Hon. Speaker, with regard to the Transition to Devolved Government Act, 2012, the Senate proposed to delete sub-section 5(b) which was inserted by the National Assembly under Section 23. The original effect of that provision was to empower and give more mandate to the Transition Authority to determine which functions would be transferred to the county governments. It was to allow gradual transfer of functions as opposed to rapid or one time transfer of functions.

For instance, on the health sector, the Bill recommended a phased process of devolved health facilities, particularly the Level 5 hospitals. In this regard, I disagree with the Senate's proposal to delete that clause. The National Assembly has found it prudent to ensure that the transfer of the Level 5 hospitals is done gradually, in the interest of Kenyans. I disagree with the Senate's proposal to that clause. The only reason that the Senate has given is that the National Assembly usurped the powers of the Senate in determining whether a function can be

transferred, or whether the county governments have enough capacity to perform certain functions. That is the bone of contention. The National Assembly felt that the transfer of functions to county governments should be done gradually based on the capacities of individual county governments, but the Senate deleted it. The senators argued that was not a mandate of the National Assembly. The same Senate wants to go to a referendum and take over the mandate of the National Assembly. I see the actions of the Senate to be very contradictory but that is for the people of Kenya to decide.

On the Senate's proposed amendments to Section 54 of the County Governments Act, 2012, I agree with them. Section 54 was introduced to the Act by the National Assembly to create a consultative forum within the county governments, to be headed by the governors and have representation from all heads of department and the leadership. The Senate seems to disagree with the National Assembly – something on which I also agree with the Senate. We are aware that this matter was canvassed in a court of law, which suspended the provisions. As such, it is only fair that we agree with the Senate's proposal to delete this section.

I disagree with the amendment proposed by the Senate to delete new Sub-section 139 of the County Governments Act. The hon. Members of this House made this provision in order to allow the county governments to continue imposing rates and charges while awaiting the passage of their respective Finance Bills and other laws relating to imposition of charges by county assemblies. For that reason, I disagree with the Senate's proposal to delete this clause. The clause was introduced by the National Assembly in order to provide a lifeline whenever passage of the county Finance Bill is delayed. The action of the National Assembly was in anticipation of a situation where county governments delay the passage of their respective Finance Bills – a safeguard measure should be put in place to enable them raise the various taxation measures. Again, the Senators disagreed with the National Assembly on this one. This occurs very often. Even the National Assembly delays the passage of the Division of Revenue Bill and the County Allocation of Revenue Bill. So, I disagree with the Senate. I agree with the National Assembly because it provided a safeguard measure against a scenario where the county assemblies, in their shenanigan behaviour within the county governments, delay the passage of the County Finance Bills.

Hon. Speaker, I agree with the proposed amendments to the Agriculture, Fisheries and Food Authority Act---

(Loud consultations)

Hon. Speaker: Order! Order, Members! I appreciate that you have not met one another for some time but consult and greet each other in low tones. Many of you might have been to many places together. It must be exciting to be back after a month but allow the business of the House to be transacted.

Hon. A.B. Duale: Thank you, Hon. Speaker. I am sure that many of them met in other different fora; not in the Chamber.

I agree with the Senate's proposed amendments to the Agriculture, Fisheries and Food Authority Act, 2013 because the clause that the Senate proposes to delete relates to the regulation of the fisheries sector, which will be comprehensively legislated. When the National Assembly passes the Fisheries Management and Development Bill, 2014, this afternoon and if the President assents to it, the Senate's proposal will have been addressed. So, the right place for these

amendments, according to the Senate and me, is not in the Agriculture, Fisheries and Food Authority Act; it should be in the Fisheries Management and Development Bill, 2014, which is scheduled for consideration by this House this afternoon.

We disagreed with the Senate only on two issues, which I have highlighted. I agree with the other proposed amendments to the Kenya Agricultural, Livestock and Research Act, 2013, and to the Crops Act. The amendments they have proposed to the Crops Act, 2013, and the amendments they have proposed to the Kenya Agricultural, Livestock and Research Act, 2013---

(Loud consultations)

Hon. Speaker, I need your intervention. There are a lot of loud consultations going on, particularly from one of the Members of the Speaker's Panel, Hon. Cheboi. I do not know what he is canvassing. He needs to share with the whole House. I am sure that he is not canvassing on the impeachment Motion; it is on something else.

Hon. Speaker: There seems to be a lot of excitement.

Hon. A.B. Duale: Hon. Speaker, this used to happen when we opened school on the first day of the term in those old days. Those of us who went to public secondary schools, particularly those of us whose parents were very poor; we used to be very happy on the first day of a new term, when we went back to school from the village. That does not apply to those who went to high end schools like Braeburn and other expensive schools.

Hon. Speaker, I agree with all the amendments except two, in respect of which I feel the National Assembly did well.

With those remarks, I beg to move and ask the Chair of Legal Affairs Committee, Hon. Chepkong'a, to second.

Hon. Chepkong'a: Hon. Speaker, I rise to second the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No. 33 of 2013). I totally agree with the sentiments that have been expressed by the Leader of the Majority Party with regard to the two issues that we have disagreed with the Senate.

In particular, as concerns the question of devolution of Level 5 hospitals, the National Assembly proposed that this should be done in a gradual manner as indicated by the Leader of the Majority Party. The bone of contention by the Senate is that this originated from the National Assembly. They must have ignored some very clear provisions of the Constitution. Article 115 of the Constitution empowers any Member of Parliament in this House to bring any Bill, including Bills touching on the counties. It is, therefore, within our constitutional mandate to introduce any Bill to Parliament, including Bills which must be taken to the Senate for concurrence. So, we just performed our constitutional function.

As you realise, the question of hospitals or health care within the county governments has been a problematic issue. The reason being that it was devolved so instantaneously that it become a problem for the county governments to manage. So, we are seeking to have the Level 5 hospitals to be devolved in a gradual manner as the county governments build capacity. So, we are within our constitutional mandate taking note of what is going on in the counties. As you know, there have been very many strikes and they have been unable to deal with them. So, to minimise strikes, it is important for the national Government to manage these hospitals in a manner that will ensure that health care is still provided to all Kenyans in a seamless manner.

I wish to thank the Leader of the Majority for pointing out the various issues. I, therefore second because these are fairly straightforward matters that we need to deal with. The other issue on the Agriculture, Fisheries and Food Authority is already contained in the Order Paper as No.9 today. We agree with the Senate that this be deleted.

Hon. Speaker: Order, Hon. Members! Member for Kikuyu! Hon. Members, let me recognise the presence of students from Compuera Academy from Dagoretti South Constituency, Nairobi County, who are seated in the Speaker's Gallery.

(Question proposed)

Hon. Members, even as we consider that matter in Second Reading, I hope that every Member has a copy of the Senate Amendments. They are on the Order Paper, Page 979. For the convenience of the House---

(Hon. Kipyegon and Hon. Kuria stood on the gangway)

Hon. Ng'eno, you are in the House and not in Emurua Dikirr Constituency. Hon. Moses Kuria, this is not Gatundu South Constituency.

(Laughter)

What is wrong? Hon. Members are not in the House yet? I thought I welcomed you back to the Third Session of this Sitting. Hon. Members, you are still in some other engagements.

However, for the convenience of the House and so that we spend time optimally, it is fair to note that we are not considering the entire Bill, so that even your contributions, if any, should be to address the proposed amendments by the Senate, namely, the proposed amendments to the Transition to Devolved Government Act, 2012, which is the first amendment from the Senate. Secondly, we have the proposed amendments to the County Governments Act, 2012 and to the Agriculture, Fisheries and Food Authority Act, 2013. The second from last are the proposed amendments by the Senate to the Crops Act of 2013. Finally is the proposed amendment by the Senate to the Kenya Agricultural, Livestock and Research Act of 2013.

Hon. Members, so that everybody is able to follow properly, limit your contributions to those proposed amendments to avoid discussing a matter that we have already taken a vote on as the House. The rest of the Bill has not been touched by the Senate. Whatever it is that we are contributing to here now in the Second Reading should only be limited and confined to those proposed amendments. You can express yourselves on those ones. The rest, even in the Committee, you will not touch them. You will only deal with these proposed amendments. The House should be accordingly guided.

Let us have Hon. Maanzo.

Hon. Maanzo: Thank you, Hon. Speaker for giving me an opportunity to contribute on the amendments. I would like to touch on the Agricultural, Fisheries and Food Authority Act. This is a little different from the Fisheries Management and Development Bill that we are going to be considering today. I support the amendment that the word "Chairman" be changed to "Chairperson". This will cover both genders and it is in accordance with the Constitution. I support the proposal to delete the amendments as given. Generally, the amendments are

great. The Transition to Devolved Government Act is very important because of devolution. The exercise is almost coming to an end and, therefore, the amendments are necessary. I support the Senate's position.

On the Crops Act, which is under the Departmental Committee on Agriculture, Livestock and Cooperatives, the words "biodiversity" and "biosafety" are there. It is good to know that biosafety also covers biodiversity. Therefore, I support the amendment.

The Kenya Agricultural, Livestock and Research Act needed to be covered under the new Constitution. I support and I thank you for giving me the opportunity to contribute on these important amendments.

Hon. Speaker: Let us have Hon. Njoroge Baiya.

Hon. Baiya: Thank you, Hon. Speaker. I wish to contribute with regard to the amendment proposed by the Senate to Section 23 of the Transition to Devolved Government Act. The amendment that is sought by the Senate is what has allowed the process of devolution to be undertaken outside the framework of the law. It was meant to facilitate phased transfer of functions. We know, as a fact, that the process of devolution of services was done clearly against the framework of the law that had already been enacted. Under this amendment, the Senate seeks to give itself the power to allow devolution of functions irrespective or against the framework that was set out.

We know whatever transpired and what has happened as far as implementation of the devolution is concerned. Allowing this amendment will amount to giving a thumb of authority to what was done improperly and against the law. I, therefore, oppose and urge this House not to allow this amendment. It is an abuse of the very philosophy that was anchored in ensuring effective devolution of services. As things stand, some of the services are not being properly implemented because the devolved governments never gave themselves the opportunity to evaluate themselves. They need to evaluate themselves to see whether they are ready to effectively undertake those services.

We still see some problems, for example, when we hear the Council of Governors saying that they are not going to accept e-procurement as a result of what they call "absence of infrastructure". Once the law is enacted and the policy is set out, it would be out of order for any institution to place itself within the exception. We would rather have heard from them what problems they seek to be resolved rather than to seek to be exempted from the practices of the law, which have been clearly set out.

For those reasons, Hon. Speaker, I want to strongly oppose the proposed amendment by the Senate to Section 23 of the Transition to Devolved Government Act.

I beg to oppose. Thank you.

Hon. Chanzu: Thank you, Hon. Speaker. I also want to contribute on the Senate amendments to the Transition to Devolved Government Act, 2012. This was supposed to be a gradual process because the Constitution anticipated that we must have adequate structures in place for all these. We are not only transferring roles but also resources. So, it is not like where we used to talk about delegation. It is devolution which means that you are transferring roles or responsibilities coupled with resources. For instance, there is the issue of Level 5 hospitals. We have seen from experience that most hospitals in the counties are not able to function because they lack adequacy in capacity like personnel.

Even the resources that are taken to the county governments are mismanaged because of lack of adequate capacity both at the county government level and the institutions. That is why

that is important. The fact that the Constitution advocates or stresses the point of mutual consultation, the two levels of government must work mutually. There must be adequate mutual consultations. So, the role that the Senate is supposed to play or it has played in this matter is quite important to ensure that there are checks and balances in the two levels of government. So, I support.

I also support the Agriculture, Fisheries and Food Authority Act of 2013 and the amendments which have been proposed on the Crops Act, 2013. Thank you.

Hon. Speaker: Order, Members!

(Hon. F.K. Wanyonyi walked while the Speaker was on his feet)

That is not the way it is done, Hon. Wanyonyi. You cannot have forgotten just within a month. I am sure you have been very busy in the constituency, therefore, you are pardoned for having forgotten.

I see no interest and I, therefore, put the Question.

(Question put and agreed to)

Hon. Members, even as you go into the Committee of the whole House, I wish to direct that due to the fact that, that business appears to be shorter to transact, we re-organise business in the Committee so that you go straight to the business appearing as 9(ii) which is Consideration of the Senate Amendments to the Statute Law (Miscellaneous Amendments) (No.2) Bill after which then you can go to the Fisheries Management and Development Bill.

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Cheboi) took the Chair]*

CONSIDERATION OF THE SENATE AMENDMENTS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! Those who are retreating, do it quietly. We will be starting as we have been advised by the Speaker. We will be doing the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No.33 of 2013) The Deputy Leader of the Majority Party, are you ready?

Hon. (Dr.) Shaban: No.

The Temporary Deputy Speaker (Hon. Cheboi): Okay, we will give you some time. Hon. Members, as you can see, there are still some consultations between---

As you noticed earlier, the Speaker ordered that we go to the Committee of the whole House on Senate Amendments to the Statute Law (Miscellaneous Amendments) (No.2) Bill but the Leader of the Majority Party is not prepared. So, we will proceed to the Fisheries Management and Development Bill, National Assembly Bill No. 20 of 2014) I assume that the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives will be moving the specific amendments as the Leader of the Majority Party is preparing for us to proceed to the next one.

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL

Clause 14

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 14 of the Bill be amended by—

(a) deleting the word “six” appearing in paragraph (a) of sub-clause (3) and substituting therefor the word “five”;

(b) deleting sub-clause (5) and substituting therefor the following new sub-clause—

“(5) The Board may, in its discretion at any of its meetings—

(a) invite a person or persons to attend; or

(b) receive or hear submissions or information from any person.”

(c) deleting sub-clause (7) and substituting therefor the following new sub-clause 7—

“(7) The Board may from time to time, establish such advisory sub-committees as it considers necessary in relation to its functions and powers for the purpose of making reports and recommendations to the Board and such sub-committees shall be comprised of Board members.”

(d) deleting sub-clause (8) and substituting therefor the following new sub-clause 8—

“(8) Any decision of a sub-committee established by the Board under subsection (7) shall be subject to ratification by a fully constituted Board meeting.”

Hon. Temporary Deputy Chairman, that is on the composition of the board members. It is warranted because we reduced the number of the original board members from 18 to nine. The quorum should be reduced from six to five.

The Temporary Deputy Chairman (Hon. Cheboi): I can see there was an amendment by Hon. Millie Odhiambo, but if Hon. Nooru’s amendment is taken, the other one will be dropped.

(Question of the amendment proposed)

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

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

(Clause 14 as amended agreed to)

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

Clause 15

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 15 of the Bill be amended—

(a) by inserting the words “openly and transparently, and” immediately after the words “Board” in sub-clause (1);

(b) in sub-clause (2) by—

(i) deleting the word “development” appearing immediately after the word “environmental management” in paragraph (a);

(ii) deleting the word “oceanography” appearing in paragraph (c) and substituting therefor the word “aquatic science”;

(iii) deleting the words “area which the Board is satisfied is relevant to the position” appearing in paragraph (d) and substituting therefor the words “related field”; and

(iv) deleting the words “fifteen years” appearing in the proviso and substituting therefor the words “ten years”.

Hon. Temporary Deputy Chairman, in the original Bill, we talked about competitiveness without putting into consideration the openness of the process. So, we are trying to enrich the openness of the process, and be a bit clear.

In sub-clause (2) we are proposing the deletion of the word “development” appearing immediately after the word “environmental management” in paragraph (a). It deals with the Director-General. This is just to expand on professionalism so that there is no profession standing on its own as development. So, we are proposing that we delete the word “development” and leave the rest as it is.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nooru, we will move a little bit faster. You will only propose the changes as proposed in the Order Paper and then you will give a very brief description of what you want to achieve.

(Question of the amendment proposed)

Hon. Makenga, do you want to speak on this?

Hon. Makenga: Thank you, Hon. Temporary Deputy Chairman. I want to support the amendment as proposed by the Chairman of the Departmental Committee that the words “openly and transparently” be inserted. Everything should be done competitively, openly and transparently.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I also notice there is an amendment by Hon. Millie Odhiambo which if this amendment is carried will be dropped. In any case, Hon. Millie Odhiambo does not seem to be in the House.

(Question, that the words to be left out be left out,

put and agreed to)

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

(Clause 15 as amended agreed to)

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

Clause 16

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 16 of the Bill be amended by—

(a) deleting paragraph (d) in sub-clause (2) and substituting therefor the following new paragraph—

“(d) collaborate with the Fish Marketing Authority established under section 204 and other agencies to identify marketing and investments opportunities for the fisheries sector;”

(b) deleting the words “or other person in the service of the Service” appearing in sub-clause (3).

Hon. Temporary Deputy Chairman, this is to make it a bit participatory. This is because a management authority already exists within the service. So, it must be done in consultation the Fish Marketing Authority.

(Question of the amendment proposed)

Hon. F. K. Wanyonyi: Hon. Temporary Deputy Chairman. I wish to support this amendment because marketing is a very crucial factor in the fisheries sector. Lack of marketing has killed the morale of the small fishermen at the grassroots level. So, this is an important amendment.

The Temporary Deputy Chairman (Hon. Cheboi): On this Clause, again, as was before, there is an amendment by Hon. Millie Odhiambo. It is dropped because the first one has been carried. I do not see Hon. Millie Odhiambo in the House.

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

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

(Clause 16 as amended agreed to)

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 17 agreed to)

Clause 18

Hon. Nooru: Hon. Temporary Deputy Chairman, I want to drop this amendment for the following reason: The words “Defence Forces” confines it to only the army whereas the original “Armed Force” is open and people can be picked from any force that is, the Police Force, Kenya Wildlife Service, Administration Police and the rest. I want to drop this amendment---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nooru, let us get it very clearly. Are you proposing a particular amendment? It sounds like you want to withdraw a certain amendment.

Hon. Nooru: No, I need to drop that amendment and leave the original Bill as it is.

The Temporary Deputy Chairman (Hon. Cheboi): So, it means that you are withdrawing that amendment.

Hon. Nooru: Yes.

The Temporary Deputy Chairman (Hon. Cheboi): Then if you are withdrawing, do it on the microphone so that we are aware that you have done exactly that. It is good to be on record.

Hon. Nooru: Hon. Temporary Deputy Chairman, I intend to drop the amendment on Clause 18 Sub-Clause (1) which originally deletes the words “Armed Force” and substitutes---

The Temporary Deputy Chairman (Hon. Cheboi): No! If you are withdrawing then you are just withdrawing. So, there should be no issues.

(Proposed amendment by Hon. Nooru withdrawn)

(Clause 18 agreed to)

(Clause 19 agreed to)

Clause 20

The Temporary Deputy Chairman (Hon. Cheboi): On this one, we have an amendment by Hon. Millie Odhiambo, not you Hon. Nooru. I cannot see an amendment by you. Did you have an amendment on that one, Hon. Nooru?

Hon. Nooru: Yes. It is there.

The Temporary Deputy Chairman (Hon. Cheboi): From the records here, we do not seem to have it. Okay, proceed and move your specific amendment. The fate will be in this one and future amendments. Where Hon. Millie has put specific amendments, if yours is carried, hers will be dropped.

Hon. Nooru: Hon. Temporary Deputy Chairman, I have it on the Order Paper. Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 20 of the Bill be amended—

(a) in sub-clause (2) (a) by-

(i) deleting the word “and” appearing immediately after the word “including”

- (ii) deleting the word “of” appearing immediately after the word “enforcement”
- (b) in sub-clause (2) (b) by -
 - (i) deleting the words “as appropriate” at the beginning of the paragraph; and
 - (ii) inserting the words “subject to the Treaty Making and Ratification Act, 2013” immediately after the word “directs”.

Both are editorial. It is just removing the word “and” and the word “of” on this one. It is just editorial, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed.)

The Temporary Deputy Chairman (Hon. Chebooi): I see the Member for Kisumu East, Hon. Shakeel Shabbir. Do you want to speak on this one, Hon. Shabbir?

Hon. S.S. Ahmed: No, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Not on that specific one. Okay. So, you can press again your card because we have removed it from here.

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

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

(Clause 20 as amended agreed to)

Clause 21

The Temporary Deputy Chairman (Hon. Cheboi): We also have another amendment by Hon. Nooru.

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 21 of the Bill be amended in sub-clause (2) by—

- (a) deleting the word “Second” and substituting therefor the word “First”;
- (b) inserting the word “Secretary” immediately after the word “Cabinet”

Hon. Temporary Deputy Chairman, it is the same as Clause 20. Clause 21 is just a correction whereby we delete the word “second” and substitute it with word “First” because it appears in the First Schedule in the first place.

Secondly, add the word “Secretary” to the word “Cabinet”. It is an editorial matter. There is no substance which is being changed.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. But, you will always be moving your amendment before you go to the gist of what you want to achieve.

(Question of the amendment proposed)

(Question, that the word to be left out

be left out, put and agreed to)

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

(Clause 21 as amended agreed to)

Clause 22

The Temporary Deputy Chairman (Hon. Cheboi): We also have Hon. Nooru, the Chair of the Committee.

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 22 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “provided” and substituting therefor the word “appropriated”.

(b) in sub-clause (2) by—

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

“(c) contracts for technical consultants, observers, researchers and other personnel, activities or operations which support the functions and programmes of the Service;

(ii) by deleting the words “of the Director General and staff and members of the Board and Cabinet Secretary in accordance with the budget and approved rates approved by the Board” appearing in paragraph (d)

(c) by deleting sub-clause (4); and

(d) by deleting sub-clause (5) and substituting therefor the following new sub-clause—

“(5) The Service may open and maintain an account with a bank approved by the National Treasury under the Public Finance and Management Act 2012 and shall at all times maintain one account and shall pay all its moneys into such account.”

This is a fund for the Board. Parliament cannot provide funds; that is the work of the Treasury. We only appropriate. So, we are amending it to replace “provide” with the word “appropriate”.

The Temporary Deputy Chairman (Hon. Cheboi): You do not have to read it. Just tell us what you want to achieve by that then we---

Hon. Nooru: What we intend to achieve on this one is just to add the word “consultancy” which was lacking in the original Bill.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Now, Hon. Shabbir, you want to speak to that one. Let us have you.

Hon. S.S. Ahmed: Yes, Hon. Temporary Deputy Chairman. Firstly, I cannot see Clause 22 in the Bill as published.

Secondly, the amendment that is being proposed in item (d) 5---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Shabbir, you have made a statement which we want to clarify. Are you saying you cannot see Clause 22 because you cannot see it or because it is not there? We can see here clearly, that is what is headed as "Financial" in Part IV. The heading is "Part IV". That is the first one in Part IV immediately after the words "financial and administrative provisions". Of course, we are doing the Fisheries Management and Development Bill. Can you see it now, Hon. Shabbir?

Hon. S.S. Ahmed: Maybe this one does not have a copy. In any case, I have objection in respect to the amendment. The amendment that has been proposed---

The Temporary Deputy Chairman (Hon. Cheboi): Now, that puts us at a loss. If you cannot see, which amendments are you talking about?

Hon. S.S. Ahmed: The amendment that has been proposed in the Order Paper. If you look at the amendment that has been proposed by Hon. Nooru which is on the next page, part (d)(5) under Clause 22, the very last paragraph says: "by deleting sub-clause (5) and substituting therefor the following new sub-clause—

"The Service may open and maintain an account with a bank approved by the National Treasury under the Public Finance and Management Act 2012 and shall at all times maintain one account and shall pay all its money into such account."

There is already a problem with the Treasury allowing institutions of this nature to open separate accounts. This is going against the guidance of the Treasury. They do not allow separate accounts to be opened. That particular amendment goes against the guidelines of the Treasury. I would like to ask the Mover to kindly check that out.

The Temporary Deputy Chairman (Hon. Cheboi): Well, even without the Chair having to look to that, I am looking at this specific one stating very clearly that there will be an account which will be maintained and that account will be approved by the National Treasury. That is why I would be wondering why you would think that it would be against the rules of the Treasury, but I think the Chair will be in a better position to say the correct position. It does not come out well, Hon. Shabbir. I am really not getting you clearly but probably the Chair has heard you and therefore will be able to--- I will give him an opportunity. Let us have Hon. Nooru.

Hon. Nooru: Hon. Temporary Deputy Chairman, in this original Bill, it anticipates that the institution or the Service can open one account. That is against the Public Finance Management Act. So, we are confining them to operating one account as per the Treasury's approval. The bank they should open an account in should be a reputable one that must be approved by Treasury. They should be able to operate one account. That is what the amendment is proposing. So, I do not know what Hon. Shabbir is opposing.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, then Members will make a decision. At least, you have heard both sides of the story. Did I see Hon. Tongi? Yes, Hon. Tongi, let us hear from you before--- I also see Hon. Wanyonyi, who has just removed his card.

Hon. Tong'i: Thank you, Hon. Temporary Deputy Chairman. I have been quietly consulting the Chairman here to help me understand the provisions in Clause 22, sub-clause 2(c) on contracts for technical consultants, observers, advisers, researchers and other personnel, activities or operational issues. If you look at the (b) part of it, it talks of remuneration of staff and workers in the Service.

As a country, we are struggling to reduce the wage bill. Why would we then provide in law that this body can hire services that are not necessarily technical when the staff can be used

for the same purpose? What is the value addition of having this in law when it can be managed at the local level? That opens up an avenue of corruption. I may need more guidance on why this must be put in black and white.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, make your decision.

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

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

(Clause 22 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chair, you have to be very keen. If you are moving an amendment, unless you convince yourself that it is not a good one, we should hear you supporting it.

(Clause 23 agreed to)

Clause 24

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 24 of the Bill be amended in sub-clause (3) by deleting the words “or in pursuance of the Board’s approval given with prior written approval of the Cabinet Secretary to the Treasury”

This is just an editorial amendment for the sentence to flow.

(Question of the amendment proposed)

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

(Clause 24 as amended agreed to)

Clause 25

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 25 sub-clause (2) of the Bill be amended by deleting the expression “2003” and substituting therefor the expression “2015”.

This is just to update it. The Public Finance Management Act has been amended from 2003. The new amendment was done in 2015. So, this amendment is only correcting that error.

(Question of the amendment proposed)

(Question, that the word to be left

out be left out, put and agreed to)

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

(Clause 25 as amended agreed to)

Clause 26

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 26 of the Bill be amended in sub-clause (4) by inserting the word “Secretary” after the word “Cabinet”.

This is a very straightforward issue, in line with the Constitution.

(Question of the amendment proposed)

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

(Clause 26 as amended agreed to)

Clause 27

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 27 of the Bill be amended in sub-clause (3) by deleting the word “facilitate” and substituting therefor the words “provide supplementary funding for”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see some interest in this amendment. We will start with the Member for Lungalunga, Hon. Khatib Mwashetani. Do you want to speak to this one?

Hon. Mwashetani: Thank you, Hon. Temporary Deputy Chairman. I need to get some clarification. We are talking about supplementary funding and yet Clause 27(2) (a) says that the monies may be provided by Parliament. So, when we delete the word “facilitate” and put the word “supplementary”, it means we have the powers to approve supplementary funding. It has already been indicated in Clause 27(2) (a) that any monies that will be provided for the Board will be approved by Parliament. So, the word “facilitate” is better than the words “provide supplementary funding for”.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear from Hon. Tong’i, the Member for Nyaribari Chache.

Hon. Tong’i: Thank you, Hon. Temporary Deputy Chairman. The words “facilitate” and “provide supplementary funding” sound one and the same. When we say supplementary, we are

already anticipating the monies falling short of their targets. I would be more comfortable if we had a provision where instead of supplementary we ask the body to source money from donors. There is a lot of interest in this industry. Many people out there are willing to invest a lot of their money in research with a view to coming up with new ways of doing things. I would want us to kill the culture of depending on the Government. We need the managers who are going to be in charge of this body to come up with more innovative ways of looking for money other than having to depend on the Government. The Government can only do so much. I would be comfortable if the Chairman can adopt the words “donor funding” as opposed to “supplementary” because we have already provided that Parliament will give money for the body. Therefore, there is no need of anticipating shortage of money to necessitate supplementary funding.

Hon. S.S. Ahmed: Hon. Temporary Deputy Chairman, my colleagues have said it better than I can. I also support them and agree that the word “facilitate” should remain and the proposed amendment should not be accepted.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): I will give Hon. Nooru an opportunity to clarify that amendment. In the meantime, hon. Members can prepare to make their decision.

Hon. Nooru: Hon. Temporary Deputy Chairman, the word “supplementary” includes donor funding. We want to leave it open. It does not mean that it has to come from the Exchequer alone.

This is a research institution and they can look for external funding or they can generate their own funding. We left it open so that it remains as supplementary income. Apart from what Parliament has approved from the Exchequer, it can seek for any supplementary funds from donors or any other sources. That is the intention, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): It is the turn of hon. Members to make their decision.

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

(Clause 27 agreed to)

Clause 28

The Temporary Deputy Chairman (Hon. Cheboi): Let me be clear, Hon. Chairman. It looks like there are some amendments from Hon. Millie which are not from you. I want to be clear. Hon. Millie is not in the House as we speak. So, are you proposing an amendment on Clause 28?

Hon. Nooru: Hon. Temporary Deputy Chairman, most of Hon. Millie’s amendments have been accommodated by the Committee.

The Temporary Deputy Chairman (Hon. Cheboi): So, does it, therefore, mean that whatever we see proposed by Hon. Millie would as well be coming from you?

Hon. Nooru: It is one and the same thing.

The Temporary Deputy Chairman (Hon. Cheboi): That is good clarification. Proceed.

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 28 of the Bill be amended by—

(a) deleting sub-clause (4) and substituting therefor the following new sub-clause—

“(4) The trust shall be administered by a five member Board of Trustees nominated through an open and competitive process and they shall meet requirements of Chapter six of the Constitution.”;

(b) inserting the following new sub-clause immediately after sub-clause (4)—

“(5) The Members of the Board of Trustees shall include—

- (i) two fisherpersons from fresh waters and marine waters;
- (ii) two persons nominated by the traders exporters association and fish processors;
- (iii) one person appointed by the Cabinet Secretary responsible for fishing with background in aquatic science.

Hon. Temporary Deputy Chairman, the original Bill leaves a lot of discretion to the Cabinet Secretary (CS). This Board can be appointed by the CS as and when he finds it fit. Also in the original Bill, the number of members of the Board of Trustees has not been specified. So, in the amendment, we are trying to specify the number to be five and also give some kind of synergy in the appointment so that the CS does not just have any loophole to misuse it.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see some interest. Let us start with Member for North Horr.

Hon. Ganya: Thank you, Hon. Temporary Deputy Chairman. I support this amendment. It is very good for us to have people with merit and who have preferred qualifications to serve in our Board of Trustees. It should not be left to politicians or the Executive to make that decision on their own. Having a competitive process which is open to all Kenyans is the best way to go.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Member for Magarini.

Hon. Kombe: Thank you, Hon. Temporary Deputy Chairman. Mine is to seek some clarification. The composition of the Board will have two fisherpersons from fresh waters and from mariners. Is it one from each or two from each?

The Temporary Deputy Chairman (Hon. Cheboi): Let us also have Hon. Mwaura. Hon. Ng'eno should be advised to follow suit, if Members understand what I am saying. This is because there has been difference since Hon. Mwaura changed status. Hon. Ng'eno has not.

Hon. Mwaura: Thank you, Hon. Temporary Deputy Chairman. I take that as a compliment. I just want to seek clarification because if you look at the enumeration of the five members, it is very good when we speak about “in an open and fair manner” but I do not see any listing of some form of umbrella association that is agreeable. As it is, it will be very difficult to have an election of a fisherperson from the marine or from the fresh water or trade persons without any guidance. I do not know how that is going to be executed.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Much as I see quite a number of Members who want to speak to this, it will add more value if we get clarification from Hon. Nooru so that the other Members can get settled. There is an issue which was raised by the Member for

Magarini as to whether the salt waters and fresh waters will have two members each. There is also an issue by Hon. Mwaura. Let us have you clearly stating what the position is so that Members can make their decision.

Hon. Nooru: Hon. Temporary Deputy Chairman, in the original Bill, this composition of the members was not specified. That is why we are trying to put it as an addition to the same Clause 5. The composition is one member from each and not two from the salt water and fresh water.

The Temporary Deputy Chairman (Hon. Cheboi): That is clarified. I hope Hon. Kombe is up to speed. Let us hear what you have to say about Hon. Mwaura's clarification request.

Hon. Nooru: This is just a Board of Trustees and we only have five members. We cannot afford to expand it to a bigger board of more than five members. On the issue of Hon. Mwaura, part (ii) has taken care of the business fraternity. They will also have to nominate two members and then one specialist at the discretion of the CS who has the knowledge of Aqua Science.

The Temporary Deputy Chairman (Hon. Cheboi): I would have put the Question at this point but I see immense interest. So, let me just give quick chances to Members for Westlands and Kwanza. Be brief.

Hon. Wetangula: Hon. Temporary Deputy Chairman, I am not very sure about this amendment about competitive process. What is contained in the Act is better. I do not know what they intend to achieve in this area because they will just introduce politics into these appointments. When you just leave it vague like this, that there will be a competitive process without providing how it is going to be done, it will introduce politics.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Wanyonyi.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairman, just to answer my colleague, we thought this amendment was important because, as you know the history of this country, sometimes if you leave it just like that, you will have appointees being appointed through corruption. So, we thought it wise to have these appointees competitively appointed. This means they have to be vetted before they get into those positions. That is the import of the whole thing. Therefore, I support the amendment as proposed by my Committee Chair.

The Temporary Deputy Chairman (Hon. Cheboi): I will give the last chance to Hon. Zuleikha and then Members will make their decision.

Hon. (Ms.) Juma: Thank you, Hon. Temporary Deputy Chairman. I support the amendment for similar reasons that have been mentioned here. The original Bill does not talk about the divisions that have been mentioned here. I ask other Members to support this. Recently, I went for a trip to Mauritius that had been organised by the Indian Ocean Rim Association. Of the 11 person delegation who went there, I was the only person from the Coast or places close to the ocean. So, it is very important to mention this so that the people who come from those areas are represented.

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

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

(Clause 28 as amended agreed to)

Clause 29

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 29 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) Nothing in this Act shall be deemed to prevent any member of the community from using, subject to such conditions as may be prescribed under this Act, such fisheries or fisheries resources as it has been the custom of that community to use.”

Our intention is to promote customary fishing and let it continue so that it is not interfered with or hampered by commercial fishing.

(Question of the amendment proposed)

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

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

(Clause 29 as amended agreed to)

Clause 30

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 30 of the Bill be amended by—

(a) inserting the words “County governments” immediately after the words “in consultation with”; at the opening clause;

(b) inserting the following new paragraph immediately after paragraph (g)—

“(gg) promote the development of other sustainable methods of *in situ* and *exsitu* fishing;”

This is to make it inclusive because majority of fish development, marketing and management is now a devolved function and we intend to bring the county governments on board.

(Question of the amendment proposed)

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

(Clause 30 as amended agreed to)

(Clause 31 agreed to)

Clause 32

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 32 of the Bill be amended in sub-clause (1) by deleting the words “the Director-General shall” appearing immediately after the expression “section 31(1)”.

That is just a repetition of the same.

(Question of the amendment proposed)

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

(Clause 32 as amended agreed to)

(Clauses 33, 34, 35 and 36 agreed to)

Clause 37

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting Clause 37.

Hon. Temporary Deputy Chairman, this is because the function of fisheries management plan is entirely the function of county governments and we leave it to the counties to regulate rather than leave it to the national Government.

(Question of the amendment proposed)

Hon. Ganya: Hon. Temporary Deputy Chairman, I commend the Departmental Committee on Agriculture, Livestock and Cooperatives for that observation. This is purely a devolved function and it would really have created a constitutional issue if it were to go as it is. I commend them.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

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

(Clause 37 deleted)

Clause 38

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 38 of the Bill be amended in sub-clause (2) by inserting the following new paragraphs immediately after paragraph (e)—

“(ea) the protection of vulnerable groups, especially youth and women;”

“(eb) processes necessary to ensure that not more than two thirds of the Beach Management Units are of the same gender and to ensure the inclusion of youth and persons with disability in the leadership.”

We are just trying to make it inclusive so that the appointment by the Cabinet Secretary (CS) becomes in tandem with the Constitution with regard to the gender, youth and people with disability. They can now be considered in the appointment of this management committee of the beach.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see Hon. Zuleika on intervention. Do you want to speak to this specific one or are you are waiting for the next one?

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, it is on this one.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Proceed.

Hon. (Ms.) Juma: Thank you, Hon. Temporary Deputy Chairman. I just wanted to again plead to the Members to support this one because one of the things it does is to empower these groups of youth and women that have been mentioned and have been left out of leadership even at community level. That way, as we go into the future, we will have more people involved in the decision-making of this industry.

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

(Clause 38 as amended agreed to)

(Clause 39 agreed to)

Clause 40

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 40 of the Bill be amended—

(a) in sub-clause (1) by inserting the word “special” immediately after the word “requires” appearing in paragraph (b);

(b) in sub-clause (3) by deleting the opening paragraph and substituting therefor the following new opening paragraph—

“The Director-General shall, in consultation with the counties and other stakeholders, develop guidelines and standards for the development of fisheries management plans that must conform to this Act and shall include—“

(c) in sub-clause (3) by inserting the following new paragraph immediately after paragraph (m)—

“(mm) social impact assessment of the plan with reference to disadvantaged groups including women, persons with disability and the youth”;

(d) by deleting sub-clause (9) and substituting therefor the following new sub-clause—

“(9) Any person who fails to comply with the management plan commits an offence and shall be liable—

(i) in case of industrial fishing, to a fine not exceeding five hundred thousand shillings; or

(ii) in case of artisanal fishing, to a fine not exceeding one hundred thousand shillings.”

(e) in sub-clause (10) by deleting the words “not exceeding six months, and in respect of all other activities not exceeding two years or both” and substituting therefor the words “not exceeding three months, and in respect of all other activities not exceeding six months or both”.

Hon. Temporary Deputy Chairman, this is a conservation section of this Bill.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let us give the first shot to the Hon. Member for Westlands.

Hon. Wetangula: Hon. Temporary Deputy Chairman, first, I wanted to make my contribution on the earlier amendment but you ignored me. On this one, I support this amendment, especially that part dealing with social impact assessment of the plan with reference to disadvantaged people, including people with disability, women and the youth. These are very valid amendments.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, but the comments you made are not true at all, Hon. Wanyonyi. I make the decision on how many Members will speak to every particular clause. Sometimes there are many Members and we give opportunity to a certain number of them. If you noticed, you had quite a number of opportunities to contribute this afternoon, including to this one.

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

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

(Clause 40 as amended agreed to)

Clause 41

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 41 of the Bill be amended—

(a) in sub-clause (1)—

- (i) by inserting the words “in accordance with the best scientific advice and such other relevant information as may be available” immediately before the words “The Director-General may”;
- (ii) by deleting paragraph (a) and substituting therefor the following new paragraph—
“(a) closed seasons and or areas for species of fish or methods of fishing provided that customary fishing rights are protected”;
- (iii) in paragraph (d) by inserting the words “provided that customary fishing rights are protected” immediately after the words “engage in fishing”;
- (iv) by deleting paragraph (i) and substituting therefor the following new paragraph—
“(i) regulate trade in endangered species of fish and fish products”;
- (v) by inserting the following new paragraph immediately after paragraph (j)—
“(jj) prohibit the possession, trade in or manufacture of prohibited gear in a specified area or areas”;
- (b) by deleting sub-clause (2);
- (c) in sub-clause 3 by inserting the words “in respect of industrial fishing, and to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding three months or to both in respect of artisanal fishing” at the end of the sentence; and
- (d) by inserting the following new sub-clause immediately after sub-clause (3)—
“(4) The measures referred to in this section may include, inter alia—
 - (i) refusal to issue or renew licences;
 - (ii) imposition of special licence or catch fees; and
 - (iii) preferential licensing.”

This Clause is dealing with the management of fisheries. To be specific, we are trying to enrich the original Bill by adding some few new sections so that at least it can be specific rather than general.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I can see Hon. Zuleikha.

Hon. (Ms.) Juma: Again, Hon. Temporary Deputy Chairman, you see that in the suggested amendment (a)(ii) there is:

“(a) closed seasons and or areas for species of fish or methods of fishing provided that customary fishing rights are protected”.

There has been a lot of debate on the ground as to when Cabinet Secretaries decide that in a certain period, people cannot fish. Many people in fresh water areas and in the ocean depend solely on fishing for their livelihood. So, when we have added “customary fishing rights”, it is to ensure that those people who are just fishing for their living are able to fish. So, their rights are protected and not people who are fishing for commercial purposes. So, that is the reason we have asked Members to support this amendment. It will ensure that the poorest of the poor who

depend on fishing for their daily livelihood, and there is no other way in which they can get food, are able to fish. Even during periods when Cabinet Secretaries decide that people are not allowed to fish, they can still do that.

The Temporary Deputy Chairman (Hon. Cheboi): The comments are straight to the point.

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

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

(Clause 41 as amended agreed to)

Clause 42

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 42 of the Bill be amended—

(a) by deleting sub-clause (2);

(b) by deleting sub-clause (3).

We are trying to reduce the powers of the Director-General which have been given by the relevant sections; that he has immense powers.

(Question of the amendment proposed)

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

(Clause 42 as amended agreed to)

Clause 43

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting Clause 43.

It has already been dealt with in relevant sections of this Bill. This is just repetition of the penalties which should not have been legislated.

(Question of the amendment proposed)

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

(Clause 43 deleted)

Clause 44

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 44 of the Bill be amended—

(a) in sub-clause (l)–

(i) by deleting paragraph (l) and substituting therefor the following new paragraph–

“(l) firearms or other electrical shock devices for the purpose of fishing, including stunning, disabling or killing fish, or in any way rendering fish to be caught more easily”;

(ii) in paragraph (m) by deleting the words “in a fisheries management plan” and substituting therefor the words “by regulations established under this part”;

(b) in sub-clause (7) by inserting the following words after the words “or to both”–

“in respect of industrial fishing, and to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months or to both in respect of artisanal fishing”; and

(c) by deleting sub-clause (8).

This is simply to protect the special species of fish such as *omena*.

(Question of the amendment proposed)

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

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

(Clause 44 as amended agreed to)

Clause 45

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 45 of the Bill be amended—

(a) in sub-clause (1) by deleting the opening paragraph and substituting therefor the following new paragraph–

“No person shall while using a vessel, wilfully and negligently damage, destroy, interfere with, endanger or cause injury in respect of in sub-clause (1)”;

(b) in sub clause (3)–

(i) by deleting paragraph (a);

(ii) by deleting paragraph (d) in sub-clause (3) and substituting therefor the following new paragraph–

“(d) make a full report of the incident and steps taken to the police”

(c) deleting sub-clause (4) and substituting therefor the following new sub-clause—

“(4) A person who contravenes sub-section (1), (2) or (3) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding one year or to both, and in addition that person shall fully compensate the owner of the fishing gear for any damage or injury caused under civil law as a consequence of the action unless there is sufficient proof that the damage, destruction, interference or endangerment took place in an area where the person or vessel that caused such consequences were legally entitled to be at that time and it was not reasonably possible to detect the fishing gear or vessel and any relevant fishing gear was not marked in accordance with the requirements pursuant to this Act.”;

(d) by inserting the following new clause immediately after sub-clause (4)—

“(4A) Where life is lost as a consequence of any negligent or wilful action under sub-section(1), the responsible person shall be liable on conviction to a fine not exceeding one million shillings or imprisonment for a term not exceeding ten years or to both, and in addition that person shall fully compensate the estate of the deceased under civil law.”;

(e) in sub-clause (5) by deleting the words “as soon as possible and in any case within a reasonable time after the damage, destruction, interference or endangerment took place, and shall produce all available evidence” and substituting therefor the words “within a period of three years”.

The purpose of this amendment is just to state that the law which has created a criminal liability must be clear. In the original Bill, it was not clear. We are just trying to state the penalties clearly and also enhance the sentences for loss of life occasioned by the negligence of the marines or fishermen.

(Question of the amendment proposed)

Hon. (Ms.) Juma: Again, Hon. Temporary Deputy Chairman, this is a very important aspect. It is not just about *omena* in fresh waters. It is also about other fish in the oceans as well. For example, in areas at the Coast like Shimoni and Vanga, there are fishermen from Tanzania and Kenya who collide. They bomb certain areas of the sea and kill a lot of fish in the process of fishing. This puts people into harm and destroys various species of fish in that area.

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

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

(Clause 45 as amended agreed to)

Clause 46

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting Clause 46.

The penalties that have been indicated in Clause 46 have already been dealt with in Clause 44.

(Question of the amendment proposed)

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

(Clause 46 deleted)

Clause 47

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 47 of the Bill be amended in sub-clause (2) by inserting the words “in respect of industrial fishing or to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding three months in respect of artisanal fishing” immediately after the words “or to both”.

This is just to separate the two penalties. That is, the people who do large-scale fishing for commercial purposes and the small person who does it for domestic consumption. So, the penalties should not be the same. We are trying to separate the two penalties.

(Question of the amendment proposed)

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

(Clause 47 as amended agreed to)

Clause 48

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 48 of the Bill be amended by—

(a) deleting sub-clause (3) and substituting therefor the following new sub-clause—

“(3) A person who contravenes subsection (2) commits an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or to a term of imprisonment not exceeding three years or to both in respect of industrial fishing, or to a fine not exceeding fifty thousand shillings or a term of imprisonment not exceeding six months, or to both.”;

(b) inserting the following new sub-clause immediately after sub-clause (3)–

“(3A) where a species of fish has been declared as endangered under subsection (1), the Cabinet Secretary shall take special measures for its protection.”

This is dealing with the penalties, more so because of the foreigners who come and fish in our waters. The original Bill proposes smaller penalties, but we are proposing stiff penalties for the same.

(Question of the amendment proposed)

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

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

(Clause 48 as amended agreed to)

(Clause 49 agreed to)

Clause 50

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 50 of the Bill be amended by—

(a) in subsection (1) by

(i) inserting the words “stakeholders” immediately after the words “Advisory Council” in the opening paragraph; —

(ii) deleting paragraph (k);

(b) deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) The Cabinet Secretary may, subject to approval by the National Assembly, make regulations to give effect to this subsection”;

(d) deleting sub-clause (3)

Our intention is to have stakeholders’ inclusivity and include that the National Assembly must approve the regulations that shall be drafted by the Cabinet Secretary.

(Question of the amendment proposed)

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

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

(Clause 50 as amended agreed to)

Clause 51

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 51 of the Bill be amended by—

- (a) deleting sub-clause (1) and substituting therefor the following new sub-clause—

“(1) Any person or Government Ministry or other agency that plans to conduct any commercial activity other than fishing which is likely to have an adverse impact on fish and their habitat, shall apply to the Director-General in the prescribed form prior to the commencement of the planned activity with a view to ensuring the conservation and protection of such resources.”;

- (b) deleting sub-clause (2) and substituting therefor the following new sub-clause—

“Where an application is made under subsection (1), the Director-General shall refer the matter to the National Environment Management Authority who shall give a report regarding the likely impact of such activity on the fishery resources, including their habitat, and possible means of preventing or minimizing adverse impact.”;

- (c) inserting the following new sub-clause immediately after sub-clause (3)—

“(3A) Any report made under sub-section (2) must be completed within six months of the making of the application.”;

- (d) deleting sub-clause (4) and substituting therefor the following new sub-clause—

“(4) Any person who violates any provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both, and in addition such person shall be liable to pay compensation in respect of any resulting loss or damage as well as the full cost of restoring the affected habitat to its previous state.”

This is just to comply with the existing provisions of the law, for the Environmental Management and Coordination Act to apply when they are assessing this provision.

(Question of the amendment proposed)

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

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

(Clause 51 as amended agreed to)

Clause 52

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 52 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “or accidentally”;

(b) in sub-clause (2) by deleting the words “five hundred thousand shillings or to a term of imprisonment not exceeding five years” and substituting therefor the words “five million shillings or to a term of imprisonment not exceeding ten years or to both”

This is just to provide for stiffer penalties for people who pollute our water, namely the fishermen, whether foreign or local. The original penalty that was proposed was not enough so we propose stiffer penalties than what was provided.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I can see the Hon. Member for Lungalunga.

Hon. Mwashetani: Thank you, Hon. Temporary Deputy Chairman. My worry is that pollution is one area that is caused by so many factors. One of the factors which cause pollution is fishing. Another one is sand harvesting. Some months back, there was sand harvesting which was going on in Kwale that really caused pollution. I was inquiring whether these penalties are also going to be imposed on those who are not fishing.

The Temporary Deputy Chairman (Hon. Cheboi): I give a chance to Hon. Nooru before we make that decision.

Hon. Nooru: Hon. Temporary Deputy Chairman, in this Bill we only dealt with the issues of fishermen and marines. If there is any other issue that concerns the pollution of the sea, there are bodies which can deal with it even at the international level. There are marine agencies which can deal with this. They should be reported to the National Environment Management Authority (NEMA). I am sure there is no vacuum. There are always institutions to deal with the issues that the Hon. Member has raised.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear from the Member who actually served guests with fish during her homecoming ceremony. That is the Member for Othaya.

Hon. (Ms.) Munene: Othaya people like fish.

Hon. Temporary Deputy Chairman, I just want to support the Chairperson. We have not left any vacuum. Most of the fishermen are youthful. They must talk to those people because even villages are putting up fish ponds. I support the amendment so that everybody in this country can know how fishermen from the Coast and Lake Victoria enjoy fish. We should not leave a vacuum.

I support the amendment.

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

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

(Clause 52 as amended agreed to)

Clause 53

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 53 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (2)—

“(2A) No person other than a sport fisherman shall land any fish at any point except at a fish landing station or port.

(2B) A person who contravenes the provisions of subsection (3) commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three months or to both in the case of fish landing stations, or to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or to both in the case of ports.”

This was just to deal with the fish landing stations and prevent smuggling by these fishermen so that they do not go and land in undesignated areas. We need to specifically deal with the issue of smuggling of fish.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Zuleikha in brief.

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, there are people who have private property along the beach and have been encroaching on the fish landing sites saying that those areas are part of their plots. If they are gazetted then at least we will know who they are.

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

(Clause 53 as amended agreed to)

(Clauses 54 and 55 agreed to)

Clause 56

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 56 of the Bill be amended—

(a) in sub-clause (2) by inserting the words “or to areas where the boundaries are disputed or not clear” immediately after the word “flag” at the end of the sub-clause;

(b) in sub-clause (3) by inserting the following new words immediately after the words “or both”—

“in relation to industrial fishing, and to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both in relation to artisanal fishing.”

This is just to ensure that foreigners who are fishing in our waters clearly indicate who they are by hoisting their flags so that issues of boundaries in places such as Migingo do not arise.

(Question of the amendment proposed)

Hon. Ganya: Thank you, Hon. Temporary Deputy Chairman. I want to oppose this amendment simply because I find the amount of penalty imposed on industrial fishermen who come with large vessels and do so much damage to our coast so minimal. A fine of Kshs100,000 is too little.

The Temporary Deputy Chairman (Hon. Cheboi): That is the voice of the Member to the east of Lake Turkana.

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

(Clause 56 as amended agreed to)

Clause 57

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 57 of the Bill be amended in sub-clause (1) by inserting the following new words immediately after the word “prescribed” –

“and the approval shall only be given upon production of an Environmental Impact Assessment report on the effect of each introduction.”

We intend to make the following amendment for this purpose; the different species of fish which are being introduced in our waters could have a possibility of predating on other species within those waters. The species breeding in our water must be protected and the environmental impact assessment must also be done before we introduce fish to such areas.

(Question of the amendment proposed)

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

(Clause 57 as amended agreed to)

Clause 58

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 58 of the Bill be amended in sub-clause (1) by deleting the words “such procedures as the Director-General may notify to the public or as may be prescribed” and substituting therefor the word “regulations”.

We intend to regulate this matter as regulation is a better tool since it will be subject to approval of Parliament.

(Question of the amendment proposed)

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

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

(Clause 58 as amended agreed to)

(Clause 59 agreed to)

Clause 60

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 60 of the Bill be amended by inserting the words “in consultation with the Fish Marketing Authority and” after the word “may” appearing in the opening paragraph.

The import of this amendment is to create the synergy between the relevant authorities that is, the Marketing Authority and the service providers, so that they consult when they are dealing with the issue of promotion of fish.

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

*[The Temporary Deputy Chairman
(Hon. Kajwang') took the Chair]*

(Question of the amendment proposed)

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

(Clause 60 as amended agreed to)

Clause 61

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 61 of the Bill be amended—

(a) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) The Cabinet Secretary shall establish a technical committee on Fish Quality and Safety”

(b) in sub-clause (3) by—

(i) by deleting the words “competent authority” appearing in the opening sentence and substituting therefor the word “Committee”;

(ii) deleting paragraph (a);

(iii) deleting paragraph (e);

(iv) deleting paragraph (k);

(v) inserting the following new paragraph after paragraph (l)—

“(m) maintain a register of fishers”

(c) by deleting sub-clause (3) and substituting therefor the following new subclause—

“(4) The Cabinet Secretary may for the purposes of subsection (2), make regulations with regard to conduct of the affairs of the technical committee”.

This amendment is meant to provide for who should appoint the technical committee on fish quality and safety, so that the Cabinet Secretary can work in consultation with the existing institutions.

(Question of the amendment proposed)

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

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

(Clause 61 as amended agreed to)

Clause 62

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to hand over the baton to the member of the Committee who is conversant with the issues in this Bill. Hon. Zuleikha can do it on my behalf.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, and take a glass of water. Proceed the Vice Chair.

Hon. (Ms.) Juma: Thank you for the promotion, Hon. Temporary Deputy Chairman since you called me Vice Chairperson.

The Temporary Deputy Chairman (Hon. Kajwang’): You are not the Vice Chairperson but you are a member of that Committee.

Hon. (Ms.) Juma: I am not the Vice-Chair, I am a member of that Committee. It is a very long Bill.

The Temporary Deputy Chairman (Hon. Kajwang’): It is good to aspire to be the Chair and not just the Vice-Chair. You are quite in order. The Chair, being a senior Member of the House, is doing a good thing to hand over the baton to younger people.

Hon. (Ms.) Juma: Yes, I appreciate that, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Proceed then.

Hon. (Ms.) Juma: But he is not very senior.

The Temporary Deputy Chairman (Hon. Kajwang’): He is the senior most in the Assembly. If you work out his---

Hon. (Ms.) Juma: Okay, if you say so. Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 62 of the Bill be amended by inserting the words “Pursuant to the Treaty Making and Ratification Act” immediately before the words “The Director-General may”.

This section, Hon. Temporary Deputy Chairman, is just to make sure that the Bill is aligned to other Acts.

(Question of the amendment proposed)

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

(Clause 62 as amended agreed to)

Clause 63

Hon. (Ms.) Juma: Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 63 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) A person who knowingly and willfully contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both, and in addition any fish or fish products involved in the transaction and those owned or controlled by such person shall be forfeited.”

This is a very serious offence and we wanted to put a heavy fine for it. Selling contaminated fish or fish products is wrong.

(Question of the amendment proposed)

Hon. Ganya: Thank you, Hon. Temporary Deputy Chairman. I want to support this amendment. Initially I have been opposing some of the amendments because the penalties that they were imposing were so modest, but with this I am so happy with the kind of penalty they have proposed.

Hon. F.K. Wanyonyi: I think this is punitive and I support because we would otherwise have somebody maliciously dumping fish which is not compatible with the environment. Therefore I support the move.

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

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

(Clause 63 as amended agreed to)

(Clause 64 agreed to)

Clause 65

The Temporary Deputy Chairman (Hon. Kajwang’): For the purposes of HANSARD, I will be addressing you as Chair because you carry the flag of the Chair.

Hon. (Ms.) Juma: Okay, that is fine. This amendment is meant to ensure that when we are saying “at least” in the Bill it is not construed to be a period any less than three years.

The Temporary Deputy Chairman (Hon. Kajwang’): First of all, try to propose the amendment in the conventional form.

Hon. (Ms.) Juma: Okay, sorry.

THAT, Clause 65 of the Bill be amended by deleting sub-clause (2) and substituting therefor, the following sub-clause—
Do I have to read the rest of it?

The Temporary Deputy Chairman (Hon. Kajwang’): Actually, what you could have done, and you can adopt that in future is say, “that the Clause be amended as proposed in the Order Paper.”

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 65 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) Any aquaculture development plan developed under sub-section (1) shall be for a duration of three years”;

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): You realise that we also had a proposal of amendments by Hon. Millie Odhiambo. For purposes of HANSARD, the hon. Member is not in the Chamber, and I do not have information that anybody has her brief. Member for Kwanza are you rising in your place?

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairman, I am a Member of the Committee. Whatever amendments we have here have been proposed by the Committee. Hon. Millie Odhiambo is just one of the proposers of this amendment, and we are carrying it as the

Committee on Agriculture, Livestock and Cooperatives. Even in her absence, we are in conformity with her proposal. It does not matter whether she is there or not.

The Temporary Deputy Chairman (Hon. Kajwang’): I have studied the content of the amendments. They are basically similar in substance. I was saying that for purposes of the record, so that when the Member for Mbita comes back and reads the HANSARD, she can find that it was dropped not because of anything but because she was not in the Chamber to prosecute it.

Let us deal with the amendment we have before us. Member for Othaya, do you have some discussions on this one?

Hon. (Ms.) Munene: Hon. Temporary Deputy Chairman, I just want to support it. As a Committee, we discussed the matter of fish and supported the amendment. Whether Hon. Odhiambo-Mabona is present or not, we are aware of what is happening. She cannot come back to question.

(Question of the amendment proposed)

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

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

(Clause 65 as amended agreed to)

(Clause 66 agreed to)

Clause 67

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 67 of the Bill be amended in sub-clause (1) by inserting the words “and without first consulting the affected community” at the end of the sub-clause.

The reason for this amendment is so that nobody is able to take advantage of local communities.

(Question of the amendment proposed)

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

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 67 as amended agreed to)

Clause 68

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Mandera North, now that you are back, you have resumed your position as the Departmental Committee Chair?

Hon. Nooru: Hon. Temporary Deputy Chairman, we are helping each other. I will do some clauses and she will do others.

The Temporary Deputy Chairman (Hon. Kajwang’): I am just clarifying for purposes of the HANSARD now that you are back in the House and on your feet.

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 68 of the Bill be amended—

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

“(1) County governments shall monitor aquaculture and mariculture practices and operations in areas under their respective jurisdiction pursuant to this Act.”

(b) by deleting sub-clause (2) and substituting therefor following new sub-clause—

“(2) Where any person or any county government has cause to believe that any fish and fish products from any waters used for aquaculture activities are infected with a disease which can reasonably be foreseen to become, or which has become, of epidemic proportions, such county government shall, in consultation with the Cabinet Secretary, give notice in writing to the owner of the relevant waters requiring the destruction of all fish or fish products in the said waters or the taking of such other measures as the county government may specify in the notice.”;

(c) by deleting sub-clause (3);

(d) in sub-clause (5) deleting the words “Director-General’s”; and

(e) by inserting the following new sub-clause immediately after sub-clause (5)–

“(5A) Where an officer wilfully, negligently or without justifiable cause issues a notice under sub-sections (2), the officer shall be held personally liable for any resultant loss.”

Hon. Temporary Deputy Chairman, the purpose of the amendment is just to urge the county government to be responsible for aqua-fishing, so that in case of any infection they can give notice and report to the Cabinet Secretary so that relevant action can be taken.

The last inclusion of 5(A) is dealing with the officers who are supposed to give notices, so that they can take responsibility since they will be liable for whatever action or mistakes they will make.

(Question of the amendment proposed)

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

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

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 68 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Mbita had proposed amendments to Clauses 67 and 68 but even if she was in the Chamber, the situation would be the same since the amendments are similar to those of the Departmental Committee Chairperson. Therefore, since the amendments by the Departmental Committee Chair have been taken care of, the amendments by the Member for Mbita would be considered spent.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

Clause 69

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 69 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “with the endorsement” and substituting therefor the words “on the advice”;

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) Permission for any activity in sub-section (1) may be granted subject to such conditions as the Director-General, with the written approval of the Board, considers appropriate and after an impact assessment has been undertaken.”

Hon. Temporary Deputy Chairman, the purpose of this amendment is to reduce the powers of the Director-General.

(Question of amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for North Horr, you are very studious this afternoon although I am not so sure that in North Horr you also have fish.

Hon. Ganya: Hon. Temporary Chairman, my constituency occupies the whole of Eastern shore of Lake Turkana.

The Temporary Deputy Chairman (Hon. Kajwang’): I am most obliged.

Hon. Ganya: Hon. Temporary Deputy Speaker, while I agree with this amendment, I would like to have clarification as to whether the last statement, which is “impact assessment” refers to environmental impact assessment or another type of assessment?

The Temporary Deputy Chairman (Hon. Kajwang’): Which one are you referring to?

Hon. Ganya: I am referring to part (2) of the proposed amendment to Clause 69.

The Temporary Deputy Chairman (Hon. Kajwang’): The substitution?

Hon. Ganya: Hon. Temporary Deputy Chairman, it is ambiguous because it just refers to impact assessment.

The Temporary Deputy Chairman (Hon. Kajwang’): Are you looking at the Bill before amendment or at the proposed amendment?

Hon. Ganya: I am looking at the proposed amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Sub-clause (2)?

Hon. Ganya: Yes; the last sentence.

The Temporary Deputy Chairman (Hon. Kajwang’): Which is on impact assessments that have been undertaken?

Hon. Ganya: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): What is the point of your discussion?

Hon. Ganya: Hon. Temporary Deputy Chairman, I am wondering whether this is in reference to environmental impact assessment or any other form of assessment.

The Temporary Deputy Chairman (Hon. Kajwang’): Departmental Committee Chair, is this reference to an environmental impact assessment or any other form of assessment?

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, it is environmental impact assessment.

The Temporary Deputy Chairman (Hon. Kajwang’): Do you want to make this legislation clearer by proposing a further amendment to your amendment? It is your amendment. If the Member agrees, you can add the word “environmental” before the word “impact”. Let me hear you propose on record that you want to introduce a further amendment to your amendment by inserting the word “environmental” before the word “impact”. Just repeat those words on record.

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I propose that we further amend Clause 69 by inserting the word “environmental” before the word “impact” in the proposed new sub-clause (2) in part (2) of the amendment.

(Question of the further amendment proposed)

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

The Temporary Deputy Chairman (Hon. Kajwang’): Member for North Horr, we now have the word “environmental” inserted before the word “impact” in the proposed substitution under part (2) of the amendment to Clause 69. What is your discussion?

Hon. Ganya: Hon. Temporary Deputy Chairman, that is the clarity I wanted. I am happy with the amendment.

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

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

(Clause 69 as amended agreed to)

(Clauses 70, 71 and 72 agreed to)

Clause 73

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, the Member for Mbita had proposed an amendment to this Clause but since she is not present, it is dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 73 agreed to)

(Clauses 74, 75 and 76 agreed to)

Clause 77

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Mbita being absent from the Chamber. Please, give the Chair the microphone.

Hon. Nooru: Hon. Temporary Deputy Chairman, with regard to some of these amendments by Hon. Millie, as a Committee, we have harmonised them. We quite agree with her. Maybe we can take them on her behalf. This is proposed in our amendments. It is the same proposal in her amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): But you agree that the amendments can be dropped?

Hon. Nooru: No, Hon. Temporary Deputy Chairman. We can agree to take on some of them.

The Temporary Deputy Chairman (Hon. Kajwang’): Do I hear you to be urging the Chair to allow you to take over the amendments by the Member for Mbita?

Hon. Nooru: Hon. Temporary Deputy Chairman, the fact of the matter is that we harmonised some of her amendments with ours. We are in agreement with her amendments in most cases. Most of them are just editorial and they do not change the substance of the Bill. Rather than dropping them, we can take them on, on her behalf. For example, Clause 77 is just a matter of putting the word “Part” instead of “Act”. They are minimal amendments. If they can add value to the Bill, then we can take them on, on her behalf.

The Temporary Deputy Chairman (Hon. Kajwang’): I hear you, Hon. Chairman. I am only dealing with issues of procedure. It would be very difficult for you to take over the amendments of the Member unless the Member has given you authority in writing to take it over. I sympathise with your position, but the procedure does not allow me to give you that leeway. I am sorry. In future, if the Member is absent and you think you really want to take over those amendments, she perhaps may, in writing, signal some type of authority to that extent.

So, we were in Clause 77. I have just said, therefore, that the amendment by the Member for Mbita is hereby dropped.

Yes, Member for Kwanza.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairman, I just want to restate what I said and what my Chairman has just said that we took time with the Hon. Member for Mbita. We even met at a hotel. We have gone through these amendments with her. The only thing is that she took a keener interest more than other Members. We agreed that when they come to the Floor of the House, we would all support her amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): Why were they not Committee amendments? I am asking a question, please. Why did those amendments not come as

Committee amendments through the Chairman? What was the wisdom in proposing them through the Member? That is where the game changes. Member for Kwanza.

Hon. F. K. Wanyonyi: Hon. Temporary Deputy Chairman, I do not know whether the Chairman will have something different from what I am saying, but I remember I took a lot of time with her. We agreed that these amendments should not be dropped at any one time. So, if we drop these amendments, it means we have to do this work again.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, I am just going through the issues of procedure. Hon. Member, you know that many of us were not with you. So, when you come before us, we go through the procedure. Hon. Chairman, can you explain the wisdom in carrying these amendments as the Member’s amendments rather than Committee amendments?

Hon. Nooru: Hon. Temporary Deputy Chairman, this is the Order Paper in my hands and there are no other amendments by Hon. Millie.

The Temporary Deputy Chairman (Hon. Kajwang’): For example, Clause 77, you do not have it on the Order Paper?

Hon. Nooru: It is in the Order Paper, but it is an amendment of the Committee. It was a proposal which came from Hon. Millie, but it has been harmonised and incorporated in the amendments of the Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman, I understand you fully. We have had this discussion as to whether a Member can delegate another Member to carry an amendment before the Floor. It is a big issue which we have debated in several other Bills. So, we want to create some consistency. The ruling that we have made which concurs with the Standing Orders is that yes, a Member can delegate another Member to do so, but must be with written authority. That is what the Standing Order says.

So, we are trying to be faithful to the rules that we have. But, Hon. Chairman, if, for example, you look at Page 975 of the Order Paper, you will see the Member for Mbita proposing an amendment in Clause 77. So, when you say that you have harmonised the amendments and they are part of the Committee amendments, then you see, I have to look at them as the Member’s amendments and you cannot drop them when the Member is not here to say that we drop it.

Member for North Horr, you are a senior Member. Can you help us in this?

Hon. Ganya: Hon. Temporary Deputy Chairman, in terms of the procedure, I fully concur with your position. However, on Page 975 of the Order Paper that I have it shows that these are Committee amendments. It does not show anywhere Hon. Millie’s name. So, unless we have different sets of Order Papers, it does not show Hon. Millie’s name at all on the Order Paper.

The Temporary Deputy Chairman (Hon. Kajwang’): All right, Member for North Horr, you have asked a question which has challenged me and so, I have just had to consult. I do not know if you have the same Order Paper, but if we have the same Order Paper, the Committee’s proposals are all the way from Page 533 to Page 956. Those are Committee’s proposals. When you begin from Page 956, you can see the Member for Mbita giving notice of several amendments all the way. It is on Page 975, where, for example, she is making a proposal on Clause 77. So, if we dangerously allow a Member to take over the other Member’s amendment, it is not only unprocedural, but we do not have the authority of that Member to do that which we are being requested to do. So, I can see and feel where you are going, but the rules do not allow me to do that.

All right, let us proceed. We were at Clause 77 and I have just, therefore, announced that the amendment by the Member for Mbita thereby stands dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 77 agreed to)

Clause 78

The Temporary Deputy Chairman (Hon. Kajwang'): The proposal by the Member for Mbita has been dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 78 agreed to)

(Clause 79 agreed to)

Clause 80

The Temporary Deputy Chairman (Hon. Kajwang'): Later on, Members, you know after 60 days you still can propose similar amendments and we can carry them. Proceed, Hon. Chairman.

Hon. Nooru: Thank you, Hon. Temporary Deputy Chairman for your guidance; it is well taken.

Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 80 of the Bill be amended in sub-clause (3) by deleting the words "five hundred thousand" and substituting therefor the words "one million".

Hon. Chachu had fear that there was a small little fine. The original figure was Kshs500,000 penalty, but we have increased it to Kshs1million.

(Question of the amendment proposed)

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

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

(Clause 80 as amended agreed to)

Clause 81

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 81 of the Bill be amended in sub-clause (1)—

- (a) by inserting the word “Kenya” immediately after the words “harvested in the” appearing in the opening paragraph;
 - (b) inserting the word “Kenya” before the word “fishery” appearing in paragraph (a).
- This is to include the word “Kenya” for the purpose of jurisdiction.

(Question of the amendment proposed)

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

(Clause 81 as amended agreed to)

Clause 82

The Temporary Deputy Chairman (Hon. Kajwang'): The amendment sought to be proposed by the Member for Mbita has been dropped in her absence. I therefore, put the Question.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 82 agreed to)

Clause 83

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 83 of the Bill be amended—

- (a) by deleting the word “Minister” wherever it appears and substituting therefor the word “Secretary”
- (b) in sub-clause (8) by deleting the words “three hundred and fifty thousand” and substituting therefor the words “one million”

The reason for this is to comply with the Constitution. Section (b) is to increase the fine.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): This is how we will go; we will finish with the Chair and then we will make a ruling on Member for Mbita's amendment. Shall I put the Question?

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): We have an amendment by the Member for Mbita which if she was present, she would have moved in the form that (b), (c) and (d) have been proposed. Therefore, by her absence, those proposals are dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 83 as amended agreed to)

Clause 84

The Temporary Deputy Chairman (Hon. Kajwang'): In the absence of the Member for Mbita, the proposed amendment is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 84 agreed to)

(Clauses 85 and 86 agreed to)

Clause 87

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 87 of the Bill be amended in sub-clause (2) by deleting the word "Kenyan" and substituting therefor the word "Kenya".
It is meant to correct a typographical error.

(Question of the amendment proposed)

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

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

(Clause 87 as amended agreed to)

Clause 88

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 88 of the Bill be amended in sub-clause (1) by inserting the words "but shall require to apply for registration" immediately after the word "licence"

The reason for this is to ensure that the fishing industry is streamlined.

(Question of the amendment proposed)

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

(Clause 88 as amended agreed to)

(Clause 89 agreed to)

Clause 90

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Mbita being absent in the National Assembly, the proposal to amend is hereby dropped. Therefore, there being no amendment, I put the Question.

(Clauses 90, 91, 92, 93, 94, 95 and 96 agreed to)

Clause 97

The Temporary Deputy Chairman (Hon. Kajwang'): That is the Nominated Member, Zuleikha Juma on behalf of the Chair. Proceed, please.

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 97 of the Bill be amended in paragraph (a) of sub-clause (1) by inserting the words "or relevant applicable law of a third country" immediately after the word "measures"

The reason for this is to make sure that we are clear about the laws that are applicable.

Question of the amendment proposed)

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

The Temporary Deputy Chairman (Hon. Kajwang'): I hereby rule that the proposal for amendment by Member for Mbita is dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 97 as amended agreed to)

(Clause 98 agreed to)

Clause 99

The Temporary Deputy Chairman (Hon. Kajwang'): There being no Member to prosecute the amendment in Clause 99, the amendment is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 99 agreed to)

(Clause 100 agreed to)

Clause 101

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 101 of the Bill be amended in sub-clause (2) by —

(a) deleting the words “one million” and substituting therefor the words “fifty million”.

(b) deleting the words “three years” and substituting therefor the words “five years”.

This is to enhance the penalties of these big fishermen from overseas from Kshs1million to Kshs50 million and the sentence from three years to five years.

(Question of the amendment proposed)

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

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

(Clause 101as amended agreed to)

Clause 102

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 102 of the Bill be amended in sub-clause (2) by—

(a) deleting the words “one million” and substituting therefor the words “fifty million”.

(b) deleting the word “three years” and substituting therefor the words “five years”.

This is about the “big fish”. It is about fishermen from overseas. It also deals with conditions of industrial fishing. Therefore, we need stiffer penalties in case they default to abide by the law.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, you realise that the Member for Mbita had an amendment. In her absence, it is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 102 as amended agreed to)

(Clauses 103 and 104 agreed to)

Clause 105

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 105 of the Bill be amended in sub-clause (2) by deleting the words “five hundred thousand” and substituting therefor the words “five million”.

((Question of the amendment proposed)

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

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

(Clause 105 as amended agreed to)

Clause 106

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, in the absence of the Member for Mbita, the proposal to amend Clause 106, is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 106 agreed to)

Clause 107

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, in the absence of the Member for Mbita, the proposal to amend Clause 107, is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 107 agreed to)

(Clauses 108 and 109 agreed to)

Clause 110

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 110 of the Bill be amended in sub-clause (8) by deleting the words “one million” and substituting therefor the words “fifty million”.

Hon. Temporary Deputy Chairman, this is for trans-shipment where people can do fishing and transfer fish to other areas without consent from the authorities.

(Question of the amendment proposed)

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

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

(Clause 110 as amended agreed to)

(Clauses 111, 112, and 113 agreed to)

Clause 114

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 114 of the Bill be amended in sub-clause (2) by deleting the words “five hundred thousand” and substituting therefor the words “ten million”.

This is for the disposal of un-authorized fish within our territories.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, in the absence of the Member for Mbita, her proposal to further amend Clause 114, has been dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 114 as amended agreed to)

(Clause 115 agreed to)

Clause 116

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 116 of the Bill be amended in sub-clause (1) by deleting the words “ten years” and substituting therefor the words “one year”.

Hon. Temporary Deputy Chairman, we felt that 10 years was too long for the validity of a licence.

(Question of the amendment proposed)

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

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

(Clause 116 as amended agreed to)

(Clause 117 agreed to)

Clause 118

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, in the absence of the Member for Mbita, her proposal to amend Clause 118, is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 118 agreed to)

Clause 119

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, in the absence of the Member for Mbita, the proposal to amend Clause 119 is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 119 agreed to)

(Clauses 120, 121, 122, 123, 124, 125 and 126 agreed to)

Clause 127

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, in the absence of the Member for Mbita, her proposal to amend Clause 127, is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 127 agreed to)

Clause 128

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 128 of the Bill be amended by deleting the words “two million shillings” and substituting therefor the words “fifty million shillings or to an imprisonment of a term of more than one year or to both”.

We thought that Kshs50 million was an unrealistic fee even if it is about a foreign vessel coming to our waters.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Now, according to the proposal by the Member for Mbita, she had an amendment which was overlapping and which had more information than what the Chair had. But in her absence that proposal is hereby dropped.

(Proposed amendment by Hon. (Ms) Odhiambo-Mabona dropped)

(Clause 128 as amended agreed to)

Clause 129

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 129 of the Bill be amended in sub-clause (2) by—

(a) deleting the words “not exceeding one million” and substituting therefor the words “not less than five million”;

(b) deleting the words “not exceeding five years” and substituting therefor the words “not less than five years”.

The reason for this is to ensure that illegal fishing is lessened.

(Question of the amendment proposed)

(Question, that the words to be left out

be left out, put and agreed to)

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

(Clause 129 as amended agreed to)

Clause 130

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 130 of the Bill be amended in sub-clause (2) by—

(a) deleting the words “not exceeding one million” and substituting therefor the words “not less than ten million”;

(b) deleting the words “not exceeding five years” and substituting therefor the words “not less than ten years”.

Many people lie when it comes to transportation of fish, so we thought of increasing the fine.

(Question of the amendment proposed)

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

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

(Clause 130 as amended agreed to)

Clause 131

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 131 of the Bill be amended in sub-clause (1) by deleting the words “Oceans and”.

(Question of the amendment proposed)

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

(Clause 131 as amended agreed to)

Clause 132

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 132 of the Bill be amended by—

(a) inserting the word “fishing” immediately after the word “unregulated” in paragraph (e);

(b) deleting the words “section 139” and substituting therefor the words “section 137 in paragraph (f)”.

This is just editorial. We have got the wrong section of the Bill. Instead of Clause 139 we quoted Clause 137.

(Question of the amendment proposed)

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

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

(Clause 132 as amended agreed to)

Clause 133

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 133 of the Bill be amended in sub-clause (2) by inserting the words “Advisory Council and” immediately before the words “Director General”.

The Cabinet Secretary or the Director-General should not make decision without the advice of the Advisory Council. That is why they were created.

(Question of the amendment proposed)

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

(Clause 133 as amended agreed to)

Clause 134

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 134 of the Bill be amended in sub-clause (1) by inserting the word “Kenya” immediately before the words “fishery waters”.

Clause 134 is just editorial.

(Question of the amendment proposed)

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

(Clause 134 as amended agreed to)

(Clauses 135 and 136 agreed to)

Clause 137

The Temporary Deputy Chairman (Hon. Kajwang’): In the absence of the Member for Mbita who gave notice to give an amendment to it, the notice is hereby dropped.

(Proposed amendment Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 137 agreed to)

(Clause 138 agreed to)

Clause 139

Hon. Nooru: Hon. Temporary Deputy Chairman---

The Temporary Deputy Chairman (Hon. Kajwang’): Just a minute. If the Member for Mbita was in the Chamber, we would have started with her because sequentially, her amendment takes priority. But in her absence that amendment has been dropped and therefore, we go to the Chair.

(Proposed amendment Hon. (Ms.) Odhiambo-Mabona dropped)

The Temporary Deputy Chairman (Hon. Kajwang’): Please, Chair, proceed.

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 139 of the Bill be amended by —

(a) inserting the words “or ordering” immediately after the word “bringing” in sub-clause (3).

(b) inserting the following new sub-clause immediately after sub-clause (6)—

“(6A). Monitoring Control and Surveillance(MCS) in this section means the mechanism for implementation of agreed policies, plans or strategies for oceans and fisheries management and includes collection, measurement and analysis of data and information on fishing activities and using the same to specify the terms and conditions under which fisheries resources can be harvested; checking and supervising fishing activities to ensure all applicable laws and regulations are being observed by the fishers and all licence holders and the components include surveillance on land, air and at sea.”

The essence of this is to monitor and control civilians. So, we are giving clarity on the meaning of “monitoring control and surveillance”.

(Question of the amendment proposed)

(Question, that the words to be inserted

be inserted, put and agreed to)

(Clause 139 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): In the absence of the Member for Mbita, that amendment is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 140 agreed to)

(Clauses 141, 142 and 143 agreed to)

Clause 144

The Temporary Deputy Chairman (Hon. Kajwang’): In the absence of the Member for Mbita, the amendment is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 144 agreed to)

Clause 145

The Temporary Deputy Chairman (Hon. Kajwang’): In the absence of the Member for Mbita, the amendment is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 145 agreed to)

Clause 146

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 146 of the Bill be amended in paragraph (a) sub-clause (1) by deleting the word “take” and substituting therefor the word “order”.

This is to correct an editorial error. When there is a direction to be given to the ship by either the master or the investigating officer who is on board, then we do not say “take” but “order”.

(Question of the amendment proposed)

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

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

(Clause 146 as amended agreed to)

(Clause 147 agreed to)

Clause 148

The Temporary Deputy Chairman (Hon. Kajwang’): In the absence of the Member for Mbita, whose proposal it was to amend this clause, the proposed amendment is dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 148 agreed to)

Clause 149

The Temporary Deputy Chairman (Hon. Kajwang’): In the absence of the Member for Mbita, that amendment is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 149 agreed to)

Clause 150

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 150 of the Bill be amended in sub-clause (1) by deleting the words “The shall establish” appearing in the opening paragraph and substituting therefor the words “There shall be established”.

This is to correct typing error.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, you realise that the Member for Mbita also had an amendment to this clause which may or may not have cured the mischief. However, we have begun with the amendment by the Chair.

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): The amendment by the Member for Mbita is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 150 as amended agreed)

Clause 151

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 151 of the Bill be amended in paragraph (b) sub-clause (1) by deleting the words “section 152” and substituting therefor the words “section 150”.

This is to correct another typing error.

(Question of the amendment proposed)

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

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

(Clause 151 as amended agreed to)

(Clauses 152 and 153 agreed to)

Clause 154

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 154 of the Bill be amended in sub-clause (3) by—

(a) deleting the words “not exceeding five hundred thousand” and substituting therefor the words “not less than ten million”;

(b) deleting the words “not exceeding three years” and substituting therefor the words “not less than five years”.

The reason for this amendment is to increase the fine and the number of years of imprisonment for people who refuse to give our authorities access to their vessels. There have been a lot of problems with vessels coming with illegal items into the country.

(Question of the amendment proposed)

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

(Question, that the words to be inserted in place

thereof be inserted, put and agreed to)

(Clause 154 as amended agreed to)

Clause 155

The Temporary Deputy Chairman (Hon. Kajwang’): In the absence of the Member for Mbita, the amendment is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 155 agreed to)

(Clause 156 agreed to)

Clause 157

The Temporary Deputy Chairman (Hon. Kajwang’): In the absence of the Member for Mbita, the amendment is hereby dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 157 agreed to)

(Clause 158 agreed to)

Clause 159

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Mbita had an amendment which would have been first, but in her absence that amendment is hereby dropped. I allow you to prosecute your amendment, Chair.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 159 of the Bill be amended in sub-clause (3) by deleting the words “not exceeding two million” and substituting therefor the words “not less than fifty million”.

Again, this is about people who deny our authorities access to their vessels. So, we are increasing the fine.

(Question of the amendment proposed)

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

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

(Clause 159 as amended agreed to)

Clause 160

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 160 of the Bill be amended in sub-clause (7)—

- (a) by deleting the words “not exceeding five million” and substituting therefor the words “not less than ten million”;
- (b) deleting the words “not exceeding five years” and substituting therefor the words “not less than ten years”.

The reason for this amendment is to increase the fine for the crime of refusing our authorities to track the movement of vessels.

(Question of the amendment proposed)

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

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

(Clause 160 as amended agreed to)

(Clause 161 agreed to)

Clause 162

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 162 of the Bill be amended in sub-clause (3) —

- (a) by deleting the words “not exceeding one million” and substituting therefor the words “not less than fifty million”.
- (b) deleting the words “not exceeding five years” and substituting therefor the words “not less than ten years”.

This clause deals with a case whereby a vessel that may have offended our regulations and was prohibited from coming to our ports, comes back. So, the penalties have been increased from Kshs1 million to Kshs50 million and the sentence has been increased from five years to 10 years.

(Question of the amendment proposed)

(Question, that the words to be left out

be left out, put and agreed to)

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

(Clause 162 as amended agreed to)

Clause 163

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 163 of the Bill be amended—

(a) in sub-clause (3)—

(i) by deleting the words “not exceeding two million” and substituting therefor the words “not less than fifty million”;

(ii) deleting the words “not exceeding ten years” and substituting therefor the words “not less than ten years”.

(b) in sub-clause (4)—

(i) by deleting the words “not exceeding two million” and substituting therefor the words “not less than fifty million”;

(ii) deleting the words “not exceeding ten years” and substituting therefor the words “not less than ten years”.

This is because “not exceeding 10 years” may have a different meaning from “less than 10 years”. Such penalties are imposed in case a foreign vessel has been denied to dock in our ports and then they defy those orders.

(Question of the amendment proposed)

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

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

(Clause 163 as amended agreed to)

(Clauses 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187 and 188 agreed to)

Clause 189

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 189 of the Bill be amended in paragraph (d) of sub-clause

(1) by deleting the expression “section171” and substituting therefor the expression “section169”.

This was just a cross reference.

(Question of the amendment proposed)

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

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

(Clause 189 as amended agreed to)

(Clauses 190, 191, 192, 193, 194, 195 and 196 agreed to)

Clause 197

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 197 of the Bill be amended by—

- (a) renumbering the existing provision as sub-clause (1);
- (b) inserting a new sub-clause immediately after the renumbered sub-clause (1);
“(2) Where the person charged has committed a similar offence in the past, a fine of an amount not less than that previously penalized plus an additional ten percent shall be imposed.”

(Question of the amendment proposed)

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

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

(Clause 197 as amended agreed to)

*(Clauses 198, 199, 200, 201, 202, 203, 204, 205,
206, 207, 208, 209, 210, 211, 212, 213 and 214 agreed to)*

(First Schedule agreed to)

Second Schedule

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Second schedule to the Bill be amended—

- (a) by deleting the word “Vanga” and substituting therefor the word “Shimoni”;

(b) by deleting the word “Mkongoni” and substituting therefor the word “Mkokoni”;

(c) by deleting the word “Old Port” and substituting therefor the word “Mombasa”.

The reason for this is just to give the proper names that are there now.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Let us have Member for Kwanza.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairman, as we conclude these amendments---

The Temporary Deputy Chairman (Hon. Kajwang'): Are you speaking to the Second Schedule?

Hon. F.K. Wanyonyi: No, I wanted to talk on the First Schedule.

The Temporary Deputy Chairman (Hon. Kajwang'): First Schedule is water under the bridge but I will allow you to say something.

Hon. F.K. Wanyonyi: I just want to draw your attention that we have dropped most of the amendments by Hon. Millie Odhiambo. What do we do now? Can they be reintroduced?

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Mbita was not proposing any amendment to the First Schedule. She did not have any amendment to the First Schedule.

Hon. F.K. Wanyonyi: What do we do with her amendments? Maybe I got it wrong.

The Temporary Deputy Chairman (Hon. Kajwang'): They have been dropped. They will stay dropped until such a time that Member for Kwanza, in your own wisdom, after 6 months, you will be able to bring amendments to the Act.

Let us proceed.

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

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

(Second Schedule as amended agreed to)

(Third and Fourth Schedules agreed to)

Clause 2

The Temporary Deputy Chairman (Hon. Kajwang'): Just a minute. Clause 2 usually gives us problems. Let us see how we want to schedule you. I can see that the Hon. Member for Mbita had a raft of amendments but we are unable to carry them in her absence. So, I will allow the Hon. Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives to propose the amendments on Clause 2.

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I do not see--- Do you mean Hon. Millie Odhiambo's amendments?

The Temporary Deputy Chairman (Hon. Kajwang'): No. Look at the Order Paper at page 933. We have come back to the first page, and you are speaking to the amendments you are proposing there on Clause 2. Are you there?

Hon. (Ms.) Juma: Okay. Yes.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Because they are several, please, just refer to them according to the Order Paper and we will know where you are. If there is anything outstanding, you can briefly say so.

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 2 of the Bill be amended—

(a) by deleting the definition of the term “aircraft” and substituting therefor the following new definition—

“aircraft” means any propelled or remotely controlled airborne device capable of sustained movement through the atmosphere and includes helicopters and monitoring devices.”

(b) in the definition of the term “artisanal fishing vessel” by deleting the expression “25 horsepower” and substituting therefor the expression “40 horsepower”;

(c) in the definition of the term “aquaculture establishment” by inserting the word “system” immediately after the words “or other”;

(d) by inserting the following new definition in the proper alphabetical sequence—

“barter” means trade of fish and fish products by two or more persons with or without use of money;

(e) by deleting the definition of the term “buy” and substituting therefor the following new definition—

“buy” includes—

(i) barter;

(ii) purchase;

(iii) attempt to barter;

(iv) attempt to purchase;

(v) receive on account or consignment in consideration for value;

(vi) receive in order to send, forward or deliver for sale;

(vii) broker a sale;

(viii) purchase or barter for future goods or for any consideration of value; and

(ix) purchase or barter as an agent for another person”

(f) by deleting the definition of the term “buyer” and substituting therefor the following new definition

“buyer” means any person who buys;.

(g) in the definition of the term “export” by—

(i) deleting paragraph (b);

(ii) deleting paragraph (c); and

- (iii) in paragraph (d) by deleting the words “for the purpose of (a) or (b), when associated with any buying or selling of fish or fish products” and substituting therefor the words “out of the country”.
- (h) in the definition of the term “export facility” by deleting the word “food” and substituting therefor the words “fish and fish products”;
- (i) in the definition of the term “fish processing” by inserting the words “drying, chilling, salting, gutting, smoking,” immediately after the word “freezing”;
- (j) in the definition of the term “fishery” by inserting the words “existing in a delineated area” immediately after the words “or parts thereof” appearing in paragraph (a);
- (k) by inserting the following new definition in its proper alphabetic sequence—
 - “fish landing station” means a point on the shore of any waters or coastline of which the Director-General has by notice in the gazette designated as a point to land fish”;
- (l) by inserting the following new definition in proper alphabetical sequence—
 - “illegal fishing” includes—
 - (a) activity conducted by national or foreign vessels in waters under the jurisdiction of a state, without the permission of that state, or in contravention of its laws and regulations;
 - (b) activities conducted by vessels flying the flag of states that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which those states are bound, or relevant provisions of international law; and
 - (c) activities carried out in violation of national laws or international obligations, including those undertaken by co-operating states to a relevant regional fisheries management organization.”
- (m) in the definition of the term “international agreement” by inserting the words “that Kenya is a party to pursuant to the Treaty Making and Ratification Act, 2013” immediately after the word “arrangements”;
- (n) in the definition of the term “master” by—
 - (i) inserting the word “means” immediately after the words “in relation to a vessel, aircraft or vehicle”;
 - (ii) deleting the words “in relation to a vessel, aircraft or vessel the”.
- (o) by inserting the following new definition in proper alphabetical sequence—
 - “management” means an integrated process of information gathering, analysis, planning, consultation, decision making, allocation of resources, formulation and implementation of rules and regulation which govern fisheries activities in order to ensure the continued production of the resources and accomplishment of other fisheries objectives;
- (p) by deleting the definition of the term “operator” and substituting therefor the following new definition—
 - “operator” means any person responsible for the operations of, directs or controls a vessel, including the owner, charterer and master of the vessel;

(q) by deleting the definition of the term “sell” and substituting therefor the following new definition—

“sell” includes—

- (a) any method of disposition for consideration, of anything which has value or which can be exchanged for cash or barter;
- (b) disposition to an agent for sale on consignment;
- (c) offering or attempting to dispose for value or receiving or having in possession for disposal for value or displaying for disposal for value, or sending or delivering for disposal for value, or causing or permitting to be disposed for value, offered or displayed for disposal for value; and
- (d) disposition by way of raffle, lottery or other game of chance under the Betting Control and Licensing Act, 2012.

(r) by deleting the definition of the term “semi-industrial fishing vessel” and substituting therefor the following new definition—

“semi-industrial fishing vessel” includes—

- (a) a decked fishing vessel with an overall length of not less than ten meters and not more than twenty meters, less than fifty GRT and powered by an inboard engine; and
- (b) an undecked fishing vessel with an overall length of not less than ten meters and not more than twenty meters, less than fifty GRT and powered by engines of at least forty horsepower.

(s) by deleting the definition of the term “support vessel” and substituting therefor the following new definition—

“support vessel” means a vessel carrying out operations in connection with and support of a fishing vessel including transport or supply;

(t) by deleting the repeated set of definitions of the terms “subsistence fishing”, “support vessel”, and “surveillance”

(u) by inserting the following new definition in the proper alphabetical sequence—

“unregulated fishing includes—

- (a) activities conducted by vessels without nationality, or by those flying the flag of a state not party to that organization, or by a fishing identity in a manner that is not in consistent with the conservation and management measures; and
- (b) activities carried in areas or fish stocks in relation to which there are no applicable conservation or management measures in where the fishing activity is conducted.”

(v) by inserting the following new definition in the proper alphabetical sequence—

“unreported fishing includes activities which the relevant authority has not been notified ;”

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): These are amendments to do with definitions. I am sure that many Members being members of this Committee have gone through them. I am sure they have been made to clarify the legislation and to be consistent with the legislation.

Hon. (Ms.) Juma: Yes.

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

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

(Clause 2 as amended agreed to)

Long Title

The Temporary Deputy Chairman (Hon. Kajwang'): In the absence of the Member for Mbita, her amendment is hereby dropped. Hon. Chairman, may I hear you on the Long Title? Are you on Page 933?

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

Hon. Nooru: I am not there yet. I have come late.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, Page 933. It is the second page of the Order Paper.

Hon. Nooru: Second page?

The Temporary Deputy Chairman (Hon. Kajwang'): Yes.

Hon. Nooru: Yes. I am on Page 933, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, you have an amendment on the Long Title.

Hon. Nooru: I beg to move:-

THAT the Long Title of the Bill be amended by inserting the words "to enhance the livelihood of communities dependent on fishing" immediately after the words "aquatic resources".

(Question of the amendment proposed)

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

(Long Title as amended agreed to)

Clause 1

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Mbita is absent and so the amendment is hereby dropped. Had Hon. Millie's amendment been carried, the Chairman's amendment would have failed because they speak to different things.

Hon. Nooru: By precedence, I think the Chairperson comes first before the Member, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang'): Well, it depends on the contents of that amendment. Anyway, proceed.

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting Clause 1 and substituting therefor the following new clause—

"1.This Act may be cited as the Fisheries Management and Development Act, 2015, and shall come into force on the fourteenth day after publication in the Gazette"

(Question of amendment proposed)

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

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

(Clause 1 as amended agreed to)

(Hon. (Dr.) Shaban pressed her intervention button)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Mover, do I hear you on intervention? Yes, Hon. Deputy Leader of the Majority Party. Are you the Mover of this Bill?

Hon. (Dr.) Shaban: Yes, I am.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, can I hear you on your intervention?

Hon. (Dr.) Shaban: I have no intervention at this point.

The Temporary Deputy Chairman (Hon. Kajwang'): Sorry, I beg your pardon. I can see you have an intervention?

Hon. (Dr.) Shaban: No.

The Temporary Deputy Chairman (Hon. Kajwang'): Are you moving reporting?

Hon. (Dr.) Shaban: Yes, as the Mover I want to move report.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, please.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Fisheries Management and Development Bill, 2014 (National Assembly Bill No. 20 of 2014) and its approval thereof with amendments.

The Temporary Deputy Chairman (Hon. Kajwang'): Well, thank you.

(Question proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Hon. Members, we want to proceed to the business appearing on the Order Paper as No. 9 (ii) which is a very short exercise. I will beg your indulgence so that we finish it before we are able to report to the plenary. This is Committee of the whole House convened to consider the Statute Law (Miscellaneous Amendments) (No.2) Bill, National Assembly Bill No.33 of 2013, Senate Amendments. Let us begin.

CONSIDERATION OF SENATE AMENDMENTS TO THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) (No.2) BILL

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, Mover. The Deputy Leader of the Majority Party, you are the one moving. This is your Bill.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Senate Amendment to the Transition to Devolved Government Act, (No. 1 of 2012) be now part of the Bill.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Did you move that properly? I did not feel you moving it properly. It is easy if you just say that you move that it be amended as it is in the Order Paper and then you can, of course, amplify after that.

So, can we hear you again moving it in conventional terms on the HANSARD?

Schedule

Senate Amendment to the Transition to Devolved Government Act, 2012

THAT, the Bill be amended in the Schedule-

(a) in the proposed amendments to the Transition to Devolved Government Act, 2012 (No. 1 of 2012) by deleting the proposed new subsection (5B) proposed to be inserted in section 23;

(b) in the proposed amendments to the County Governments Act, 2012 (No. 17 of 2012)-

(i) by deleting the proposed amendment to section 26(2);

(ii) by deleting all the proposed amendments to section 54;

(iii) by deleting the proposed new section 139;

The Temporary Deputy Chairman (Hon. Kajwang'): No, just a minute. You should say, "THAT, the Bill be amended as proposed in the Order Paper."

Hon. (Dr.) Shaban: Yes, as proposed in the Order Paper. I wish to point out---

The Temporary Deputy Chairman (Hon. Kajwang'): Allow me to propose it first then you can amplify.

(Question of the amendment proposed)

All right, you can now amplify now that I have proposed it.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairman, I reject that amendment. The reason is that the Senate proposes to delete sub-section 5(b) which was inserted under Section 23. The original effect of that provision was to empower the Transition Authority to determine

which component of a function is to be transferred to a county government so as to allow gradual transfer of functions. So, I oppose that amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): You cannot oppose your own amendment, can you? What amendment are you opposing?

Hon. (Dr.) Shaban: There is an amendment from the Senate.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Kajwang’): All right. I have been consulting. Thank you, Deputy Leader of the Majority Party. Hon. Members, so that we are together, these are amendments proposed by the Senate. So, we are considering them. I need the Deputy Leader of Majority Party to be clear where we have reached. I suggest that we consider them in bits. Let us consider 1(a) first of all so that I hear you clearly on whether you are sustaining them or rejecting them. Let us start by 1(a) and be very clear on your instructions. Repeat yourself on 1(a) alone.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairman, this is the amendment of the Senate on the Transition to Devolved Government Act of 2012 because there are several bits. That is the first bit of the Transition to Devolved Government Act. That is the one which was amended.

The Temporary Deputy Chairman (Hon. Kajwang’): I agree with you but I want you to address me in conventional terms. For example, if you are accepting number 1(a), you should address me that you wish to sustain the amendments proposed in (a). If you are rejecting, you wish to reject the amendments proposed in (a), first of all before you amplify. You are doing very well. Do not pass the baton. You are doing very well.

Hon. (Dr.) Shaban: I am not passing the baton. I was just asking.

The Temporary Deputy Chairman (Hon. Kajwang’): Proceed. We just want to be clear on the HANSARD. If you are sustaining, meaning you are accepting then you say you want to sustain.

Hon. (Dr.) Shaban: On 1(a), I am rejecting that amendment from the Senate.

The Temporary Deputy Chairman (Hon. Kajwang’): Now, allow me to propose that rejection. Then, I will allow you to amplify.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Now you can amplify and let Members understand where you are coming from.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairman, the Senate had proposed to delete sub-section 5(B) which was inserted under Section 23. The original effect of that provision was to empower the Transition Authority to determine which component of a function is to be transferred to county government so as to allow gradual transfer of functions as opposed to rapid transfer. For instance - I am just qualifying it - in the health sector, the Bill was recommending a phased process of devolving health facilities particularly the Level 5 hospitals. In this case, I want to disagree with the Senate proposal to delete the clause under the pretext that the National Assembly was usurping the powers of the Senate to determine whether a function can be transferred and whether there is enough capacity.

So, I am rejecting that amendment by the Senate.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, the import of this amendment as I have said earlier, was that the National Assembly amendment particularly on the health sector was for a gradual transfer of functions based on the capacities of the county governments. More so, it is about Level 5 hospitals. That as counties build capacities to handle Level 5 hospitals, the Transition Authority must use that.

The Senate has said that the National Assembly has no such powers. That they cannot deal with county matters. That is why we are saying we reject it. Let it go to a mediation team from both Houses so that our mediation team can convince the Senate mediation team that will be appointed so that we agree on this. What the National Assembly was only saying was that let us not just transfer functions one morning, let us follow the Constitution that we transfer gradually. Still, there are functions which the Transition Authority has not transferred. That was the import of this amendment. We agreed with the Senate on all the amendments but we rejected this and another one. I do not whether it has been disposed of.

Hon. F.K. Wanyonyi: On a point of order.

The Temporary Deputy Chairman (Hon. Kajwang'): There is a cry for a point of order. Let us take the point of order first. Member for Kwanza.

Hon. F.K. Wanyonyi: We are not clear ourselves. For us to come up and say we want gradual transfer of whatever function, we must go item by item. As far as I am concerned, most of the functions have actually been transferred to the counties. If it health, talk about health; if it is agriculture, talk about agriculture; if it is fisheries, talk about fisheries. Whatever it is, for us to put a blanket and say that functions should go gradually, we are not being clear. The Leader of the Majority Party should be very clear and come out specifically on the items we are talking about for us to understand. We are together but be specific.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, let me make it very clear.

The Temporary Deputy Chairman (Hon. Kajwang'): One minute, if you do not mind. Let me hear from the Member for Likuyani and see if you could put them together. He could be saying the same thing, so that you respond. He has been waiting in the queue, I want to hear him.

Hon. (Dr.) Kibunguchy: Thank you, Hon. Temporary Deputy Chairman. I would also want to concur with my colleague that most of the functions have been devolved. We are flogging a dead horse. There is a person who devolved those functions one morning. It was done in State House. We all know. So, if we go back on a history that is already dead and buried, we will not be going anywhere. Let us accept reality as it is. All health functions have been devolved. Some of us were against it but that is the reality. Going back will not help anybody in this country.

The Temporary Deputy Chairman (Hon. Kajwang'): I want to bring in the Leader of the Majority Party. Hon. Duale, Members are not clear on where we are. Please help us to appreciate where we are and we will be with you.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. I explained during the Second Reading this afternoon. Let me make it very clear, we are dealing with amendments from the Senate. With regard to the Clause that was touching on Transition to Devolved Government Act 2012, the Senate proposed to delete an amendment that the National Assembly had earlier brought, which is sub-section 5(B), which is at the back of the Order Paper, if Members can check. Sub-section 5(B) was inserted in section 23 of the Bill when it was at the National Assembly. The original effect of that provision, before the Senate deleted it, and that is what I

am coming to, was to empower the Transition Authority to make a determination which components of the many functions, some of which they still have not transferred, they can transfer to county governments through a gradual process. When the National Assembly introduced sub-section 5(B), they said that from then, for any function that was pending, the Transition Authority would transfer it gradually based on the capacity of the counties. These are all functions that can be transferred gradually as opposed to the current Act which talks of rapid transfer.

The element of the health sector is just an example that I have picked, if you get me clearly. If that amendment of the National Assembly was carried by the Senate, it could have done many things including the transfer of health functions now and in the future. The transfer of functions is a process. The import of the amendment was just to bring in sub-section 5(B) to say that the Transition Authority does transfer functions but does so through a gradual process. The health function is an example of the many functions that the Members argued about when they were bringing in sub-section 5(B).

The Temporary Deputy Chairman (Hon. Kajwang'): I have given the Leader of the Majority Party time so that we can understand where we are. We are not debating this. This is not the Second Reading. In simple terms, the National Assembly had made proposals for the gradual transfer of functions. The Senate rejected that proposal by the National Assembly saying that we do not have power and that under the Constitution, it is their mandate to decide on issues of devolution. Right now, the Leader of the Majority Party has rejected this proposal. In other words, we have gone back to where we were as the National Assembly. That is where we are. You need to consider whether you want to agree or disagree with the Senate. You need to consider whether you want to agree with the Senate that we should not have gradual transfer and that it should be rapid because the Senate has authority over devolved functions. That is what you need to consider. If you agree, then we will have a voice call on it. That is how I understand it.

Can I have one or two Members contributing because I am looking at the time and I really want to press us so that we clear this before the time is up? Member for North Horr, I see you are on the queue.

Hon. Ganya: Thank you, Hon. Temporary Deputy Chairman. In our Constitution, we have the Transition Authority because we wanted a constitutional commission or entity that would look into issues of transfers within certain periods. As the National Assembly, we took a position and that position is very clear. The Senate is trying to renege on that position. As a House, we have already made a decision. It will be very difficult for us to concur with the Senate when we already made a decision and sent our Bill to the Senate. The best that can be done is for a mediation committee to sort this out.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Nyeri.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker. I also want to agree with the proposals by the Leader of the Majority Party. In these matters of devolution, we have to be consistent. I support the move not to agree with the Senate in this House. However, at an opportune time, we really have to look at devolution of health. A country can go back and forth. The fact that we might need to revert some of the levels back to the national Government would not mean that we are not within the constitutional implementation.

The Temporary Deputy Chairman (Hon. Kajwang'): Lastly on this, let us have the Member for Seme.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I have a totally different view of what we are discussing. I see you looking at the clock and saying that we need to dispose of this. In my view, this is an extremely important factor and it is clear that Members are not very clear on the issue. We had the Transition Authority. It was supposed to work gradually. That was changed and everything was basically devolved. If we now say that we want to go back to gradual transition, which we had bypassed, what exact process are we dealing with? The best thing would be to reconsider this issue and let everything be done through the inter-governmental relations. That is the best way to look at it.

The Temporary Deputy Chairman (Hon. Kajwang'): Alright. Member for Awendo.

Hon. Opiyo: Hon. Temporary Deputy Speaker, I want to thank you very much. I want to dissuade you from the notion that the constituencies which we represent do not belong to counties. I do not know where the Senate usually gets this impression that when we discuss anything about devolution of counties, we do not have a mandate to do so. As representatives of the people, we have the responsibility to talk on behalf of our electorate. That electorate exists in counties. I want to side with the Leader of the Majority Party when he says that we reject the Senate Amendment.

I also want to add that almost all of the devolved functions that we are talking about have been taken to the counties. What remains is to devolve resources. We should be talking about how the central Government will devolve more resources to the counties. Otherwise, the functions had all been taken to the counties, as it were.

I want to side with the Leader of the Majority Party.

The Temporary Deputy Chairman (Hon. Kajwang'): Shall I put the Question? Do you feel you understand the subject enough to make a decision on it? The Member for Likuyani is shaking his head left and right. Before the Member for Likuyani speaks, can I hear from the Member for Mbooni? I will come to you in a short while so that you can show whether you appreciate them, so that you can help all of us.

Hon. Kisoi: Hon. Temporary Deputy Chairman, thank you very much. We are not making this law for the purpose of the Senate or the National Assembly, but it is to the benefit of all Kenyans. We must be alive to the fact that if something seems to be wrong somewhere, we have a responsibility as the National Assembly to interrogate the matter very well, put our feet down and make a sound decision as far as this is concerned.

I totally support the Leader of the Majority Party that we should reject it, but I am also alive to the fact that the Member for North Horr has also mentioned something, if we could place this to a mediation committee, but in principle, we should reject this kind of amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Well, of course, if you take a vote to disapprove the Senate Amendment, it will go to the mediation committee, but if you concur, it does not have to. That is the decision you have to make whether you concur or whether you disapprove.

Member for Likuyani, have you now reflected on this better?

Hon. (Dr.) Kibunguchy: You know Hon. Temporary Deputy Chairman, what disturbs me is, virtually all functions except roads have been devolved. Let us be realistic. Which other function is yet to be devolved? You have not given us any example. You say you gave the example of health. Health is all gone, agriculture is gone, water is gone. Which one is left?

The Temporary Deputy Chairman (Hon. Kajwang'): All right. I hear you. It is within your right to say so.

Hon. (Dr.) Kibunguchy: What I am trying to say is that I would agree with the Leader of the Majority Party, except that it has been overtaken by events.

The Temporary Deputy Chairman (Hon. Kajwang’): On the decision which I want to put to Question, I just want to feel whether you are sufficiently informed that you know where we are, because that discussion is to concur with the Senate. Let me put the Question and see how we vote on a voice call. If you are well informed I have no problem.

Member for Kwanza, what is it that you have? Is it on a point of order or what? I am sorry I am pressing you because time is not on my side.

Hon. F. K. Wanyonyi: I know it is because of time that you are looking at the clock, but I quite agree with the Leader of the Majority Party. If we now take these services including roads--- I come from a place where they just want to have the roads, for example. We will be choking the Authority. I think we should have the mediation committee to be able to vote on this. Look at procurement, the guys are not able to---

The Temporary Deputy Chairman (Hon. Kajwang’): All right.

(Senate Amendment to the Transition to Devolved Government Act, 2012 negatived)

Senate Amendment to the County Government Act, 2012

Hon. (Ms.) Shaban: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, the Bill be amended in the Schedule-

(b) in the proposed amendments to the County Governments Act, 2012 (No. 17 of 2012)-

- (i) by deleting the proposed amendment to section 26(2);
- (ii) by deleting all the proposed amendments to section 54;
- (iii) by deleting the proposed new section 139;

The Temporary Deputy Chairman (Hon. Kajwang’): No, we do not prefer an amendment. We are either concurring or rejecting. What do you say?

Hon. (Dr.) Shaban: We agreed that it should be amended as per the Order Paper.

(Question of the amendment proposed)

(Senate Amendment to the County Government Act, 2012 agreed to)

(Senate Amendment to the Agriculture, Fisheries and Food Authority Act, 2013)

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, the Bill be amended in the Schedule in the proposed amendments to the Agriculture, Fisheries and Food Authority Act, 2013 -

(a) in the proposed amendment to section 5(1) by -

- (i) deleting the word “chairman” in the proposed amendment to paragraph (i) and substituting therefor the word “chairperson”;
- (ii) deleting the proposed amendments to paragraphs (f), (g), (h) and (k);

- (iii) deleting the proposed amendment to paragraph (i);
- (iv) inserting the following rows immediately after the proposed amendment to paragraph (a)–
 - Delete paragraphs (d), (f), (g), (h) and (k);
 - Delete paragraph (i) and substitute therefor the following new paragraph–
 - (i) eight persons, being farmers representing farmer organizations in the major crop subsectors in Kenya appointed by the Cabinet Secretary in consultation with the Council of County Governors;
- (b) by inserting the following new rows immediately after the proposed amendment to section 5(1) –
 - s. 5(2) Delete.
 - s. 5(3) Delete.
 - s. 5(4) Delete the expression “(i)” appearing immediately before the word “shall” in the prefatory clause.
- (c) in the proposed amendment to section 5(4) by deleting the proposed new paragraph (a) and substitute therefor the following new paragraph –
 - (a) be a person who –
 - (i) holds a degree from a university recognized in Kenya; and
 - (ii) has knowledge and experience in agriculture, finance, law, administration, human resource management or such other expertise as the appointing authority may consider relevant.
- (d) by deleting the proposed amendment to section 10(2);
- (e) in the proposed amendment to section 16 by inserting the words “and which shall not exceed ten per cent of the levy” immediately after the words “Cabinet Secretary” in the proposed new subsection (4).
- (f) in the proposed amendment to section 42 by inserting the words “subject to any other law or regulations made under this Act and” immediately after the words “Cabinet Secretary”.
- (g) by deleting the proposed amendment to paragraph 9 of the First Schedule to the Act.

I concur with the Senate’s Amendments as proposed on the Agriculture, Fisheries and Food Authority Act of 2013.

The Temporary Deputy Chairman (Hon. Kajwang’): Do you concur?

Hon. (Dr.) Shaban: I concur.

The Temporary Deputy Chairman (Hon. Kajwang’): I am waiting for those magic words. Do you reject or you concur?

Hon. (Dr.) Shaban: I concur.

The Temporary Deputy Chairman (Hon. Kajwang’): Leader of the Majority Party.

(Question of the amendment proposed)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I just want to be very specific that the amendment on which we agree has already been taken care of by the Fisheries Management

and Development Bill that we passed this afternoon. That is why we agreed with the Senate. We wanted it to be more in this Bill – which we have done.

With those remarks, we concur.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Nyeri, do you have a different view?

Hon. (Ms.) Kanyua: I do not have a different view. The only worry is the issue of origination of legislative proposals. This afternoon, we had the Fisheries Management and Development Bill. The two Houses have to agree on where certain legislative proposals should originate from. The House might end up acting in vain if we continue to act this way. Now that the matter has been taken care of in the Fisheries Management and Development Bill, it is just in order.

(Senate Amendment to the Agriculture, Fisheries and Food Authority Act, 2013 agreed to)

Senate Amendment to the Crops Act, 2013

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the Schedule in the proposed amendments to the Crops Act, 2013 by inserting the following new row immediately before the proposed amendment to section 9(2)–

Section 8(g) Delete the word “biodiversity” appearing immediately after the words “the National” and substitute therefor the word “Biosafety”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Mbooni, do you have a different view on this one?

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairman, I concur.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Mbooni, you have a different view on this?

Hon. Kiso: No, Hon. Temporary Deputy Chairman.

(Senate Amendment to the Crops Act, 2013 agreed to)

Senate Amendment to the Kenya Agricultural and Livestock Research Act, 2013

THAT, the Bill be amended in the Schedule in the proposed amendments to the Kenya Agricultural and Livestock Research Act, 2013 –

(a) in the proposed amendment to section 6(1) by deleting subparagraph (i) and (ii) in the proposed new paragraph (i) and substituting therefor the following new subparagraphs –

- (i) one farmer representing the interests of livestock farmers;
- (ii) one farmer representing the interests of crop farmers;

(c) by deleting the proposed amendment to section 6(3);

(Question of the amendment proposed)

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, could we have a little explanation of the import of part (b)? What is the import of the proposed amendment?

The Temporary Deputy Chairman (Hon. Kajwang'): Which page are you in, Member for Seme?

Hon. (Prof.) Nyikal: This is on Page 981, the last line. I accede that I do not quite understand the import of that, if we could be explained to.

The Temporary Deputy Chairman (Hon. Kajwang'): Are you talking about the proposal to delete amendments to Section 6(3)? Is that where you are?

Hon. (Prof.) Nyikal: Yes.

The Temporary Deputy Chairman (Hon. Kajwang'): Leader of the Majority, can you just get that done, please? This is Section 6(b) of the Kenya Agricultural and Livestock Research Act, 2013.

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, I was looking at where I disagree. Part 6(3) was already deleted by the National Assembly in the original Bill.

The Temporary Deputy Chairman (Hon. Kajwang'): You know, it is a Miscellaneous Statute Law. So, it is deleting sections of the research, which exists. This is where we are.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, then in that case, we need to have the original Kenya Agricultural and Livestock Research Act, 2013. This is an omnibus and it is only dealing with some sections.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Member for Seme, is this something you feel so strongly about or you want us to pick the legislation from where we are?

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, the Member for Seme should have done due diligence. He should have read that section and asked us on which grounds we are deleting. He is asking about the import. He has no problem whether it should be deleted or not, but he wants to know the content of 6(b).

The Temporary Deputy Chairman (Hon. Kajwang'): He wants to be clear in his mind what he is voting for. So, do you want us to look at the legislation?

Member for Seme, you know that this is your work. You should go to the library, do your research and then come to the Chamber fully equipped. Can you give the Leader of the Majority Party the microphone?

Hon. A.B. Duale: Section 6(3) talks about the secretariat of the board. It shall comprise of the Director-General, the Deputy Director-General of crops and any other staff. So, we are deleting the whole of it. It is not me who is deleting. It is the Senate and hon. Members should follow. The proposed amendment is from the Senate. If you allow me, through the Chair, in this situation I represent the work of the National Assembly when this statute law passed through here. So, in this scenario, the Senate is proposing to delete the amendment to section 6(3). In that situation Hon. Temporary Deputy Chairman, we are not concurring. It was a mistake on the part of the Senate. That is a very important section of any institution unless the Senate is saying that you cannot define. This section is defining the composition of the secretariat.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much, Leader of the Majority Party.

Hon. A.B. Duale: So, we do not concur with the Senate.

The Temporary Deputy Chairman (Hon. Kajwang'): My determination of this matter is that we will report progress with a plea to re-sit because as I see it, some of the Members are still reflecting on the import of that amendment. Hon. Members would want to go to the library to research because you have to take the Bill that was before the National Assembly, the amendments and then the Statute Law. The three of them will make sense to you so that you are able to make that decision when you come.

Mover, do I hear you on intervention to report progress?

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Senate Amendments to the Statute Law (Miscellaneous Amendments)(No.2) Bill (National Assembly Bill No. 33 of 2013), and seeks leave to sit again.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE FISHERIES AND MANAGEMENT DEVELOPMENT BILL

Hon. Kajwang': Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Fisheries Management and Development Bill No. 20 of 2014 and approved the same with amendments.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

I would like to request Hon. (Dr.) Shaban to second the Motion for agreement with the report of the Committee of the whole House

Hon. (Dr.) Shaban seconded.

(Question proposed)

(Question put and agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Fisheries Management and Development Bill No. 20 of 2014 be now read the Third Time.

Hon. (Dr.) Shaban seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, I see no major interest in--- You have just moved it. Probably, I will give the Hon. Member for Mbooni. Do you want to say something to this?

Hon. Kisoi: Hon. Temporary Deputy Speaker, not at this moment.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Let us then have somebody who is willing to speak to that and that is the Leader of the Majority Party.

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, I want to thank the Departmental Committee on Agriculture, Livestock and Cooperatives led by Hon. Nooru and the membership. I do not see my great friend, Hon. Millie Odhiambo who played a very big role. Her input is in these amendments.

This is a milestone in the history of Kenya because this is the first time since Independence that we have in place a fisheries management and development piece of legislation. So, the 11th Parliament will go down in history for the many Bills it has introduced and passed; the Fisheries Management and Development Bill, 2014 being one of them.

I want to thank everybody and the Members who have stayed here. This is a huge Bill. I am sure this is a Bill that will help the constituencies where Hon. Mbadi and Hon. Millie come from. This House should go with the same spirit and bring a law that governs the development of the camel industry, where Hon. Chachu and I belong. We are helping our colleagues in managing their economic activities. A time will come when they must stand up to the occasion and bring a Bill and support it, on how to manage the camel industry.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. I hope you meant the camel rearing community because the camel community will obviously not be in this House at this particular point in time.

Hon. Members, I will not put the Question for obvious reasons. We will defer it to the next available opportunity, most likely tomorrow. That marks the end of that one.

We will now go to the consideration of the Senate Amendments Bill. We will have the Chairperson reporting progress. I do not see your---

PROGRESS REPORTED

CONSIDERATION OF THE SENATE AMENDMENTS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL

Hon. Kajwang': Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Senate Amendments to The Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly No 33 of 2013) and seeks leave to sit again.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. Let us have the Mover to move.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report and also request Hon. Naomi Shaban to second the Motion with the agreement with the Committee of the whole House.

Hon. (Dr.) Shaban seconded.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, the time being 6.50 p.m., this House stands adjourned until Wednesday, 30th September 2015 at 9.30 a.m.

The House rose at 6.50 p.m.