

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 17th November 2015

The House met at 2.30 p.m.

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

PRAYERS

PETITIONS

LAND GRABBING AND ILLEGAL EVICTIONS IN ISIOLO COUNTY

Hon. Speaker: Hon. Members, Standing Order No. 225(2)(b) requires that the Speaker reports to the House any petition other than those presented through a Member. I, therefore, wish to convey to the House that I am in receipt of Petition No. 28 of 2015 signed by over 60 members of a group called Okoa Jahazi SACCO. The petitioners cite various issues including cases of forcefully being evicted from their land, irregular allocation of community land to individuals and land grabbing. The petitioners also claim that there have been irregularities in land adjudication process in Kambi ya Juu and Mabatini and forceful evictions in Mwangaza, Kiwanjani and Chechelesi areas.

Hon. Members, the petitioners are, therefore, praying that the National Assembly, through the Departmental Committee on Lands:-

- (a) Inquires into the circumstances under which the residents of Mwangaza, Kiwanjani and Chechelesi were forcefully evicted from their land.
- (b) Recommends investigation of the activities of the Nyara Sand Loader based in Isiolo County.
- (c) Recommends investigations to be carried out on the culpability of all State/public officers involved in eviction of the petitioners and irregular allocation of land in Isiolo; and,
- (d) Considers enacting legislation to govern evictions and resettlement of residents especially in light of the upcoming infrastructural projects.

Pursuant to the provisions of the Standing Order No. 227(1), this Petition stands committed to the Departmental Committee on Lands for consideration. The Committee is encouraged to engage the National Land Commission (NLC) and the Ministry of Lands, Housing and Urban Settlement, with a view to exploring a solution to the issues contained in this Petition.

I thank you.

Hon. Speaker: There was a Petition by the hon. Member for Mathira. I had approved it. Member absent not desiring to be present---

Hon. Members: He is present.

Hon. Speaker: Where? Hon. Weru, You must show yourself through insertion of your card so that you can be seen.

ESTABLISHMENT OF STRATEGIC RESERVES OF
LONG-LIFE MILK AND POWDERED MILK

Hon. Kinyua: Sorry Hon. Speaker, forgive my height. I have a petition by the dairy farmers on establishment of strategic reserves of long-life milk and powdered milk by the Strategic Food Reserve Trust Fund to cushion milk prices.

On behalf of the dairy farmers in Mathira Constituency, and in particular small-scale farmers, I draw the attention of the House to the following:-

- (i) THAT, in early this year, the Government established the Strategic Food Reserve Trust Fund following the repeal of the Strategic Grain Reserve and the subsequent establishment of Strategic Food Reserve Trust Fund to include maize, beans, rice, fish, powdered milk and canned beef.
- (ii) THAT, the Strategic Food Reserve Trust Fund was tasked with the responsibility of procuring and storing adequate stocks of food.
- (iii) THAT, milk was one of the non-cereal foods to be included in the country's strategic food reserve strategy to help protect dairy farmers from price volatility and ensure constant supply of commodity throughout the year.
- (iv) THAT, Kenya has been struggling to feed its growing population and, therefore, expansion of food reserves to include non-cereal items was one way of improving the country's food security status.
- (v) THAT, farmers have experienced low milk prices due to oversupply especially during times like this when we have the rainy season, despite having incurred huge losses during the preceding dry spell.
- (vi) THAT, Kenya Dairy Board was appointed as one of the players in the Strategic Food Reserve to ensure adequate food reserve in the country.
- (vii) THAT, the Kenya Dairy Board is a State Corporation established under Section 4 of the Dairy Industry Act Cap. 336 mandated to regulate, develop and promote the dairy industry in Kenya and under Section 17(c), to ensure reasonable and stable prices to the producers of dairy produce.
- (viii) THAT, since the establishment of the Strategic Food Reserve Trust Fund, dairy products are yet to be incorporated in the stock.
- (ix) THAT, milk reserves will not only ensure adequate supply of the product, but also improve the country's nutrition status; and,
- (x) THAT, the issues in respect of which this petition is made are not pending before any court of law or any constitutional or legal body.

Therefore, your humble petitioners pray that Parliament, through the Departmental Committee on Agriculture, Livestock and Cooperatives, recommends to the Government, through the Ministry of Agriculture, Livestock and Fisheries and Kenya Dairy Board, to establish strategic reserves of long-life and powdered milk.

And your petitioners will forever pray.

Thank you.

Hon Speaker: Hon. Members, if you look at your Standing Orders, you will see the ones which are supposed to be commented on are those ones that come through the Speaker. I did not see anybody desiring to comment on the earlier one. Is your intervention on that, Hon. Nyokabi?

Hon. (Ms.) Kanyua: Thank you, Hon. Speaker for extending what we call the Chancellor's Foot to allow just a quick intervention on the petition that has been brought by the Member for Mathira. It is, indeed, important that the strategic reserves consider long-life milk and also the powdered milk, and there are very good reasons for that - the distribution in the country, the employment and the value-addition. So, this is to urge the Departmental Committee on Agriculture, Livestock and Cooperatives to give that petition the due concern that it desires and to hope that there will be improved dairy farming in our country as one of the areas in which we can earn more money.

Thank you.

Hon. Speaker: Hon. Gumbo, is it about this?

Hon. (Eng.) Gumbo: Yes, Hon. Speaker. The petition by Hon. Weru is a very important one. About two years ago, we discussed the problem of food inadequacy in the country. What was emerging is that part of the problem that we have arises from the fact that we are unable to provide adequate storage. That time, it was estimated that of all the food that we produce in this country - over Kshs50 billion worth of food - is wasted merely because of poor storage. Other than the issue of milk that Hon. Weru has raised, I would urge the Departmental Committee on Agriculture, Livestock and Cooperatives to try to expand it because we tend to have a country where, sometimes, one part of the country is unable to afford merely because of the distribution and the fact that we are unable to store what we have. This is a good petition, but let us expand the scope so that we can look at this issue of ensuring preservation of food and, particularly, the perishable food like fish. For those of us who come from the fishing community, you find that a lot of fish that we catch in the lake is unable to reach the market because of poor storage and the inability to provide preservation.

I thank him and ask the Committee to expand the mandate.

I thank you.

Hon Speaker: Hon. Wesley Korir.

Hon. Korir: Thank you, Hon. Speaker for giving me the opportunity to add my voice to the petition. There is a problem especially with milk. Right now in the country, the processors are claiming that we have a lot of milk, and they have reduced the price. The price is very low for farmers and yet, the price at the market for the processed milk is still as high as it was during the dry season. The Departmental Committee on Agriculture, Livestock and Cooperatives, while you are looking at this petition, please also look at the work of the Kenya Dairy Board by making sure that they maintain the price. If the price of milk from the producers is going down, the price of milk at the consumers' level should also go down because of the amount of milk available.

Thank you.

Hon. (Dr.) Pukose: Thank you, Hon. Speaker. The petition by the Member for Mathira is very important. It is not just a petition that is affecting the people of Mathira. I would like the Committee to look at other milk producing areas. It will be good to extend it to other areas, especially the constituency I represent. We produce a lot of milk and we are thankful to His Excellency the President. During the weekend, through the collaboration between Kenya and the Government of Poland, he was able to give about 150 cooler plants to Nandi, Uasin Gishu,

Elgeyo Marakwet, Trans-Zoia and West Pokot. The debt of Kshs500 million owed by Kenya Co-operative Creameries (KCC) in Eldoret was taken over by the Government, which will repay it. There are other KCC plants within the nation. One is in Kitale District which is one of the oldest KCCs. If the Jubilee Government moves the way it is moving, it will assist the farmers quite a lot. We have a pool station for Artificial Insemination in Endebess which is the second one to the one at AHITI. This is going to improve both the quality of our milk and the animals that we have.

I would urge that the Committee looks at it, consults even the Budget and Appropriations Committee so that resources can be allocated to support the Government to achieve Vision 2030 within the shortest time possible.

Thank you.

Hon. Speaker: Very well. Of course the, Departmental Committee on Agriculture, Livestock and Co-operatives should consider what you are saying. When they are considering this petition, they can then widen their scope. Daniel Maanzo.

Hon. Maanzo: Thank you, Hon. Speaker for giving me this opportunity. I am in the Departmental Committee on Agriculture, Livestock and Co-operatives. Previously, in the Ministry of Co-operatives where I was a secretary, this was one of the agenda. I would like to mention to the petitioner that, ordinarily, the New KCC does this sort of thing. We have also very many other milk co-operatives. So, it will also be good for Githunguri farmers to think of forming a processing co-operative by themselves with the assistance of the Government. I am sure this will go a long way to assist.

Thank you.

Hon. Speaker: Hon. Sabina Chege.

Hon. (Ms.) S.W. Chege: Thank you Hon. Speaker. I stand to support the petition by Hon. Weru. I would also want to mention that the Murang'a County Government, which is my county, has invested a lot of money in milk coolers. Last weekend, we hosted the Deputy President who added us 15 more milk coolers. If this petition is treated with a lot of urgency by the Departmental Committee on Agriculture, Livestock and Co-operatives - and I also urge the Budget and Appropriations Committee to put aside some money so that they can fund the Kenya Dairy Board - we will not have a repeat of what we saw some years ago where the milk farmers had to pour their milk. We saw such cases in Nyandarua County and also parts of Murang'a County, where the farmers had surplus milk and did not know where to sell it.

I support and urge the Departmental Committee on Agriculture, Livestock and Co-operatives and the Budget and Appropriations Committee to work on the petition and implement it.

Hon. Speaker: Very well. Before we proceed, allow me to recognise the 13 Members and staff from the Privileges Committee of the County Assembly of Kisumu, seated in the Speaker's Gallery.

Welcome to Parliament.

(Applause)

Hon. Speaker: Hon. Yusuf Chanzu.

Hon. Chanzu: Thank you, Hon. Speaker. I just want to support the petition by Hon. Weru. Kenya is an agricultural country and if you remember what we saw when some of us were

still young and what we are seeing now, sometimes, you wonder whether we were capable of learning. In the milk sector, you can get a lot of products. Kenya has got a lot of rainfall throughout the year. So, it is possible that we can extend this service to many parts of the country. The Agricultural Development Corporation (ADC) was financing it but nowadays, something seems to have happened and they are no longer doing it. I would just like to encourage the Committee to look at this in great depth so that we can rear more dairy animals in the country, and get more products for export as a country.

Thank you, Hon. Speaker.

Hon. Speaker: Finally, the newly installed elder, Hon. John Olago Aluoch. Congratulations.

(Laughter)

Hon. Aluoch: Thank you, Hon. Speaker. That does not come very easy, but I am glad I got it. As I listened to Hon. Weru making the presentation on the petition, I thought the issue of strategic food reserves should be the concern of all of us. The Leader of Majority Party should give me a bit of time. I know he is a bit excited about me being an elder.

As I was saying, the issue of strategic food reserves should be a concern of all of us so that we do not just talk about milk alone, but other food stuffs as well. But, as he was making the presentation I thought, as a country, how much grain food reserve we do have in practical terms. When we talk about strategic food reserves, it is only in theory or are we talking about existing reserves in reality? Where I come from, we need to be thinking about how to preserve fish as a strategic food reserve. As we talk about dried fish, it should be in industrial terms and in a way that it does not only concern Kenya as a nation, but can also be exported to the rest of the world. I support the petition by Hon. Weru and I think we should extend it to fish in Lake Victoria as well.

Thank you, Hon. Speaker.

Hon. Speaker: For purposes of *bonga* points, your neighbour from Muhoroni.

Hon. Oyoo: Thank you, Hon. Speaker. I want to support the views expressed by my colleague Member of Parliament for Mathira and say that the Committees must take their job very seriously. Most of the Members of Parliament and especially from my neighbourhood the Rift Valley, I heard them lauding the efforts by the Deputy President and President during their recent tour. The President gave them considerations in terms of cooler machines. I believe the era when we had to wait for the President to give coolers or other goods is long gone. We have Committees like the Budget and Appropriations Committee which does that work.

(Applause)

We want the Government to take this issue very seriously and make sure that things are done without necessarily waiting for the President or his deputy. Otherwise, I support Hon. Weru.

Thank you, Hon. Speaker.

Hon. A.B. Duale: On a point of order.

Hon. Speaker: The Leader of Majority Party.

Hon. A.B. Duale: Hon. Speaker you have heard Hon. Oyoo, and you know his history. He was a serious Member, until recently, of the '*baba na mama*' party, which is known

historically even in the United States of America (USA) for dishing out goodies. Is he in order to mislead? We have only become better students because of Hon. Oyoo and Mzee Moi and the rest who taught us this. So, is he in order to accuse us for something he taught us?

Hon. Speaker: Well, as we all know, everybody is at liberty to change course. Even rivers do change course. Hon. Oyoo is at liberty to now see things differently and he is still within his rights to see them that way.

The Minority Party Whip, your card seems to have a problem.

Hon. Mwadeghu: Nakushukuru Mhe. Spika kwa nafasi hii ambayo umenipatia nami niunge mkono ombi ambalo limetolewa na Mhe. Weru. Naomba nichukue nafasi hii kukosoa Kamati ya Kilimo. Tangu tuanze, mmeleta ripoti ngapi hapa Bungeni? Nauliza, Waheshimiwa, hebu tuangalia haya mambo. Mhe. Spika Kamati za Mbunge zimepewa nafasi zijadiliane na ziangalie mambo ambayo yanaletwa kutoka kwa wananchi ili ipate kuyaangaziya na kutoa ripoti Bungeni.

Lakini Mhe. Spika nina wasiwasi kwa sababu kuna uzembe ambao hauwezi kukubalika katika Kamati ya Kilimo. Huu uzembe naomba Mhe. Spika, ukomeshwe na hii Kamati. Kama hayo unayosema, tuko na Ripoti katika Kamati ambayo inahusika na mswala ya ratiba ya Bunge na mimi ni mmoja wao. Sijawahi kusoma ripoti zimekamiliwa nikilinganisha hii Kamati ya Kilimo na zingine. Mhe. Spika wako huru kujitetea lakini kuna uzembe wa hali ya juu na lazima huo uzembe ukomeshwe na uishe. Watu ambao wamepatiwa kazi na wanazembea lazima wabadilishwe katika kamati za Bunge. Kama hamtafanya kazi. Mhe. Spika, naomba uchukulie hili jambo kuwa la busara. Kama si hivyo, hii Kamati na wenzake wote naomba uwapatie nafasi wajitete lakini vile ninavyojua waheshimiwa wenzangu, hebu niambieni ni ripoti ngapi tumesoma kutoka kamati ya Kilimo? Mambo yao ni mengi. Kuna sukari, samaki na leo hii maziwa. Yatakaa siku ngapi kabla hamjaleta ripoti yenu? Naomba Mhe. Spika, wawache uzembe na wafanye kazi.

(Loud consultations)

Hon. Speaker: Order! Order, Members! Some of you, even if you belong to that Committee and your Chairperson is present - like the Hon. Member for Juja--- You can see your able Chairman is there. Sasa twataka Mwenyekiti atuelezee ikiwa amezembea kazini, ana yapi. Labda unaweza kujibu kwa Kiswahili.

(Laughter)

Hon. Nooru: Hon. Speaker, is it in order for Hon. Minority Whip to cast aspersions, when he has failed in his job of whipping people in this House? In Committees, he has failed to whip his Members to come to committee sittings. By the way, we do not write reports in Kiswahili. That is why, maybe, he cannot get them.

Hon. Speaker, the Committee is capable but if he is looking for a report in Kiswahili, I am very sorry he needs a translator to do it in Kiswahili. But I promise this House that we are a competent, capable Committee on Agriculture and we have done our best. If the issue is how many reports we have brought, we also report here in the House how many reports are pending and how many have been tabled. For those who do not remain in the House to know that, I am very sorry! You have to go back to the HANSARD and read those reports.

On the issue of strategic food reserves, for the last 50 years there has only been one strategic grain reserve. It is a policy we have adopted and changed to strategic food reserve. You have to congratulate this Committee for that in the first place. That is all inclusive. It does not only include grain or milk, but meat, fish and all types of food. So, whatever is in excess that we have, as long as there are enough facilities of storage, is stored. If it fish, you require cold storage and the facilities we use at the moment is National Cereals and Produce Board (NCPB). It does not have the facility for cold storage of fish and the rest but, if it is dry fish, I am sure those things have been catered for and today we have been discussing the Strategic Food Reserve Bill which was forwarded from the Senate and we are looking at it and we are going to incorporate every type of food.

Hon. Members should understand that this is a liberalized market. It is such that whenever there is an excess, it is the market which is going to control the price. But if we wait for ages that the Government is going to buy maize at the price that is not in the market and keep the maize in the stores, it will rot there. Do you want us to do the same with milk, meat and fish? It is not sustainable. It is a reality that we have to face. We have to tell our people that the Government is not a buyer of food. It can only buy for strategic reasons and to a certain limit. However, we are not going to buy any food that is produced in this country and keep it in the store. It is a reality that the Government cannot afford to do so and Hon. Members have to tell their constituents the same.

Thank you very much.

Hon. Speaker: Very well. Other Members of the Committee, please, hold your horses. The Chairperson has spoken. Indeed, if you recall our new method of reporting, the Departmental Committee on Agriculture, Livestock and Cooperatives has already reported on the various businesses that have been processed by that Committee, among other things, including Bills which have been referred to the Committee. This is not the first petition to be referred to that Committee. I can confirm there was that very old petition which came from the Hon. Deputy Speaker and was referred to the Committee which they have processed. That I can confirm, but it was only fair that the Chairperson explains it himself. He has done a good job.

Hon. Members: Point of clarification, Hon. Speaker.

Hon. Speaker: There is nothing to clarify. Not to me. I do not need your clarification. The Hon. Chairperson and everybody in this House must know that once a petition has been referred to a Committee, the Committee has 60 days within which to consider and report on the petition. So, there is nothing to be clarified or explained. The petition has been read out and the Hon. Chairperson is seized of it. They will have to deal with it in the normal way. So, there is nothing to be further explained. We cannot make this a session for explanations and clarifications.

Next Order!

PAPERS LAID

Hon. Speaker: Let us have the Hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Tuesday, 17th November, 2015:-

The Reports of the Auditor-General on the Financial Statements of the Constituencies Development Fund for the year ended 30th June 2014 and the Certificate therein, in respect of the

following constituencies: Subukia Constituency; Samburu West Constituency; Malava Constituency; Likuyani Constituency; Teso North Constituency; Garsen Constituency; Ganze Constituency; Tiaty Constituency; Kasipul Kabondo Constituency and Ndhiwa Constituency.

Thank you. Hon. Speaker.

Hon. Speaker: Let us have Hon. Kamama, the Chairman of the Departmental Committee on Administration and National Security.

Hon. Abongotum: Thank you, Hon. Speaker, I beg to lay the following papers on the Table of the House today Tuesday, 17th November, 2015:-

Reports of the Departmental Committee on Administration and National Security on the following:-

A fact-finding visit to Moyale from 7th to 9th May 2014, to assess the issues for conflicts between two communities.

Investigations into the alleged irregularities in the disbursement of funds to civil society groups by the National Authority for the Campaign against Alcohol and Drug Abuse (NACADA).

Investigations into the Garissa University College Terrorist Attack.

Therefore, I wish to lay the papers on the Table of the house.

Hon. Speaker: Let us have Hon. David Were, the Chairman of the Departmental Committee on Labour and Social Welfare.

Hon. Were: Hon. Speaker, I beg to lay the following papers on the Table of the House today Tuesday, 17th November, 2015:-

Reports of the Departmental Committee on Labour and Social welfare on its consideration of:-

The Persons with Disabilities (Amendment) Bill, Senate Bill No. 24/2014

The National Youth Service (Amendment) Bill, Senate Bill No. 26 /2014.

Thank you.

Hon. Speaker: Next Order.

NOTICES OF MOTIONS

INVESTIGATION INTO GARISSA UNIVERSITY TERRORIST ATTACK

Hon. Abongotum: Hon. Speaker, I beg to give notice of the following Motions:-

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on investigations into the Garissa University College terrorist attack, laid on the Table of the House today, 17th November, 2015.

INVESTIGATION INTO ALLEGED IRREGULARITIES IN DISBURSEMENT OF FUNDS BY NACADA

THAT, this House adopts the Report on the Departmental Committee on Administration and National Security on the investigations into alleged irregularities in the disbursement of funds to civil society groups by NACADA, laid on the Table of the House on Tuesday 17th November, 2015.

Thank you.

Hon. Speaker: Next Order!

BILL

THE HIGH COURT (ORGANIZATION AND ADMINISTRATION) BILL

Third Reading

Hon. Speaker: Order Hon. Members, including the Hon. Leader of the Minority Party!
Hon. Members, business on this Order was concluded and what remained was for the Question to be put and I proceed to do so.

(Question put and agreed to)

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

MOTION

REPORT OF THE COMMITTEE OF THE WHOLE HOUSE

THE MAGISTRATES' COURTS BILL

Hon. Speaker: Hon. Members, the business on this Bill had been concluded, but there was a report. It is important that Hon. Members pay attention. There is a small procedure to be followed.

I will propose the Question because the Chairperson of the Committee did not think that there was quorum for that to happen.

Hon. Maanzo, I have been told that you are holding brief for Hon. Kaluma.

Hon. Maanzo: Thank you, Hon. Speaker. I am holding brief for Hon. Kaluma on the Magistrates' Courts Bill, National Assembly Bill No. 40 of 2015.

I beg to move that the Motion for agreement with the Report of the Committee of the whole House on its consideration of the Magistrates' Courts Bill (National Assembly Bill No. 40 of 2015) be amended by inserting the words "subject to re-committal of Clause 8."

That, Clause 8 of the Bill be amended:-

(a) In sub-clause (1) ---

Hon. Speaker: Hon. Maanzo, we have not got there. The procedure is what you have explained, which is very well. You need to be seconded. I have been told that the Chair of the Departmental Committee on Justice and Legal Affairs agreed with Hon. Kaluma, but it is good that it is confirmed. Is there somebody seconding your proposal? Hon. Olago Aluoch.

Hon. Aluoch: Hon. Speaker, I wish to second this amendment because in effect it brings in sharp focus on how to deal with cases of abuse of the court process, particularly in the lower courts. I discussed this with Hon. Kaluma and we came to a conclusion that the House should debate it. I, therefore, have the pleasure to second the amendment.

Hon. Speaker: Hon. Members, go to page 2048 on the Order Paper. I know that it not everyone of you who reads the Order Paper, but it is just for purposes of procedure. The Question that I am going to propose is the proposal from Hon. Kaluma as moved by Hon. Maanzo and seconded by Hon. Olago Aluoch.

(Question proposed)

Hon. Members, the effect of that is that when you go into the Committee of the whole House, the proposal by Hon. Kaluma will be considered. That is the net effect of what we have done now. However, I wish to give further guidance with regard to re-organisation of business consequent upon carrying of that Motion. Pursuant to the provision of Standing Order No. 40(2), I direct that the business in the Committee of the whole House will be transacted in the following order:-

(1) The President's Reservations on the Higher Education Loans Board (Amendment) Bill, National Assembly Bill, No. 9 of 2015.

(2) The Magistrates' Courts Bill (consideration of the re-committed Clause 8) National Assembly Bill No. 40 of 2015.

(3) The Small Claims Court Bill, National Assembly Bill No. 51 of 2015.

(4) The Court of Appeal (Organisation and Administration) Bill, National Assembly Bill No. 52 of 2015.

Further, after the Committee of the whole House is over, the business appearing under Order No. 13 will be transacted immediately after Order No. 10. This is the Tax Procedures Bill which is in the Order Paper. The rest of the business will be transacted as it appears in the Order Paper. That is for the convenience of the House because some of the Bills that you have passed may require being fast-tracked. They will be done in the interest of order.

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PRESIDENT'S RESERVATIONS ON THE HIGHER LOANS BOARD (AMENDMENT) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we are now in the Committee of the whole House. Please make reference to page 2058 of the Order Paper on the President's Reservations on the Higher Education Loans Board (Amendment) Bill, National Assembly Bill, No. 9 of 2015.

(Loud consultations)

Hon. Members who are withdrawing, please do it quietly, so that we can continue with the business of the House. We have four clauses. We will start with Clause 3.

Clause 3

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 3 of the Bill be amended by:-

- (i) deleting the proposed sub section 13(1A); and,
- (ii) deleting the proposed sub-section 13(1B).

Hon. Temporary Deputy Chairlady, the purpose being that the current existing legal framework provides the Board with the power to grant loans directly to students who, by age of majority, will have attained 18 years on admission to recognized institutions. The President is saying that the existing law is sufficient.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Order, hon. Members! Please consult in low tones because we are transacting business.

Proceed Hon. A.B. Duale.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, Hon. Oyoo should know that we are no longer in the 7th Parliament, when KANU had the majority.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Go on, Hon. A.B. Duale.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, Clause 3 should be amended as proposed by His Excellency the President. The President is saying that the existing framework, as contained in the Act, provides the Board with the power to grant loans directly to students who will have attained the age of 18 years. The current law is enough.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I can see that there are Members who want to contribute to this debate.

Hon. (Ms.) Nyokabi, do you want to speak to this debate?

Hon. (Ms.) Kanyua: Not to this one, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Sabina Chege, do you want to speak to this one?

Hon. (Ms.) S.W. Chege: Thank you, Hon. Temporary Deputy Chairman. I want to support the amendment.

I would like to explain to hon. Members the issue of age. We have new regulations on basic education. Parts of the considerations were on the specific age of students by the time they join Standard One. If you follow the regulations, by the age of 18, majority of the students who will be completing secondary school education and joining university will have attained the age

of 18 years. Only a small percentage will be affected. From next year, there will be a specific age within which our children will be allowed to be in school.

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

(Clause 3 as amended agreed to)

Clause 4

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 4 of the Bill be amended by deleting Sub-section (6).

The proposal being deleted is firstly discriminatory and secondly unconstitutional, in that there is no special treatment for a category of applicants referred to as “regular government undergraduate students”. This is not legally tenable as a criterion for granting loans. Every applicant who submits their application to the Commission should be treated fairly. Further, the Board is able to identify the needy and vulnerable students within the procedure set out in the application form.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Makali Mulu!

Hon. Mulu: Hon. Temporary Deputy Chairlady, I know that even if I oppose the reservations expressed by the President, my wish will not go through. However, we need to realise that in this country, we have Module II students and regular students. It is a fact that for parents to enlist their children in the Module II programme, they must have considered their financial position. The purpose of this amendment is to ensure that the regular students, who have no choice, are given priority. It is unfortunate that there are reservations. This is an amendment which should not have been carried through.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Isaack Mwaura!

Hon. Mwaura: Thank you, Hon. Temporary Deputy Chairlady. I rise to support this deletion.

As we canvassed on this issue, Hon. Dalmas Otieno and I opposed it. That is because if you got a mean grade of C+ (plus) and, therefore, never attained the university admission cut-off point for the regular programme but you are rich, you cannot say that the only students who should get the HELB Fund are those who are Government sponsored. That is very discriminatory. The HELB Fund cannot be compelled to give loans to certain individuals and leave out others. We are all Kenyans. It is only fair that, that role is not legislated on but rather, is left to be dealt with administratively so that, everybody who applies can have a fair chance. In fact, many students who have enrolled in the Module II programmes come from a similar background as the regular students. The only difference is that the Module II students qualified to go to the university, but never got the cut-off points. They deserve HELB Fund backing more because the burden of paying school fees is very high.

I rise to support.

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

(Clause 4 as amended agreed to)

Clause 5

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended by:-

- (i) Deleting the proposed sub-section (1A); and
- (ii) Deleting the proposed sub-section 15 (1B).

Hon. Temporary Deputy Chairlady, the purpose being that under the current legal arrangement, loanees are required to repay their loans within one year after completing their studies, or within a period the board may deem appropriate to recall the loan with a repayment period. This repayment period is spread over a maximum period of 12 months or 48 months, depending on the circumstances. The current Act provides for what the Member was trying to gerrymander. After one year, if you get a job, you will repay within the instalments. If you do not find a job, the moment they find you either in the public or private sector, they will start their deductions. When I completed university many years ago, I did not join the public service and so, I did not bother to pay. The day I came to this House in 2008, my first payslip was slashed Kshs120,000. I was shocked. I asked the Clerk what had happened and I was told I did not pay my HELB loan. The President is saying that arrangement on how payment will be done is already found within the existing legal framework.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Sakwa Bunyasi.

Hon. Bunyasi: Hon. Temporary Deputy Chairlady, I really wanted to contribute to the previous amendment. On this one, I prefer the most flexible requirement because people do not get jobs within a year after completion of their undergraduate studies, not even within five years and that causes hardship as well.

I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Wilber Ottichilo.

Hon. (Dr.) Ottichilo: Hon. Temporary Deputy Chairlady, I want to support the proposal by the President.

In the current legislation, there are provisions which allow that if the loanee has not got a job, they can always report back and be given more time. The proposal by the President is the right one.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Daniel Maanzo.

Hon. Maanzo: Hon. Temporary Deputy Chairlady, I rise to support that we should rely on the existing framework. Without going to what is in the current law, there are contractual obligations that the loanees are aware of. That once they are employed, they should repay the loan. If not, they are supposed to report.

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

put and agreed to)

(Clause 5 as amended agreed to)

Clause 2

(Hon. (Eng.) Gumbo consulted loudly)

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, before I move, the Chairman of the Public Accounts Committee (PAC) is running another---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Hon. Gumbo, reduce your consultations.

Hon. A.B. Duale: Chairman of PAC, you know there are facilities provided. You can laugh and do whatever you are doing with those great ladies. That is on a light touch. You know the Chairman is my old colleague in the last Parliament.

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

THAT, Clause 2 of the Bill be amended by:-

(i) deleting the proposed paragraph 4(1)(ia); and,

(ii) deleting the proposed sub-section 4(2A).

This proposal is disadvantaging and, again, omits representation from the technical and other institutions. That is students who are in those technical and other institutions, including students within the East Africa Community (EAC), who are funded by the Higher Education Loans Board (HELB). In itself, the content of the amendment of the private Member creates an implementation challenge. There is no single and all-inclusive recognised university students' body. So, it was trying to create one students' body but that does not exist. Different universities, both public and private, have their own bodies. This again will create, to some extent, some discrimination. The amendment itself also looks very unconstitutional. So, I urge my colleagues that those are the reasons the President gives in rejecting paragraph 4(1)(ia) and sub-section 4 (2A).

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, unfortunately, my screen is off. I do not see anybody who is interested. Hon. Isaac Mwaura. Approach the Dispatch Box, Hon. Mwaura.

Hon. Mwaura: Hon. Temporary Deputy Chairlady, I rise to oppose that deletion. To give reasons that student leaders cannot be organised to elect their representatives is not convincing for me. That can be done. Maybe, what would have been proposed is actually to increase the membership of representation so as to have the tertiary institutions. It is important if students were actually represented in the HELB Board. We know that there has been resistance from HELB itself. They would have been able to assist in ensuring there is fair administration of that Fund.

I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ottichilo. You might have to approach the Dispatch Box.

Hon. (Dr.) Ottichilo: Hon. Temporary Deputy Chairlady, thank you for giving me this chance to comment on this proposal by the President. I want to support the President on this proposal because, first of all, the practical aspect of this is very difficult. HELB always meets to adjudicate on loans. When will the students get time to be sitting at HELB to be part and parcel of it? So, practically this is not possible.

Therefore, I support the President.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Sabina, are you interested? I will give you the last one and then I will put the Question.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Temporary Deputy Chairlady. I stand to support. It is important for this House to know that the Board sits to discuss about loans. It is a body that needs a lot of seriousness and attention. What was proposed in the Bill was for the students to elect representatives and rotate them after every two years. It is important for this House to know that every two years if we are going to be changing student leaders who come in it will cause problems. I support.

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

(Clause 2 as amended agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the recommendations by His Excellency the President on the Higher Loans Education Board, National Assembly Bill No. 09 of 2015 and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That marks the end of that Bill. We now move to the Magistrates' Courts Bill (National Assembly Bill No. 40 of 2015).

THE MAGISTRATES' COURTS BILL

*(The Temporary Deputy Chairlady
(Hon. (Ms.) Shebesh) left the Chair)*

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

*(Resumption of consideration interrupted in Committee of
the whole House on 12.11.2015)*

(Re-committal of Clause 8)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, we want to step on to the Magistrates' Courts Bill (National Assembly Bill No. 40 of 2015) and you are aware that we have nearly looked at all the clauses except for Clause 8, which the Member for Homa Bay intends to resubmit for re-committal. I do not see the Member for Homa Bay in the Chamber. Member for Makueni, if you have instructions to hold his brief, you may proceed then.

Hon. Maanzo: Thank you, Hon Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang'): Just a minute. Hold on. I am just trying to be sure that you have instructions to hold his brief.

Hon. Maanzo: Yes. I am the one who moved when the substantive Speaker---

The Temporary Deputy Chairman (Hon. Kajwang'): Just hold on. I will come back to you. Just give me a minute. Let us proceed. Next Clause.

Clause 8

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Member for Makueni.

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

THAT, Clause 8 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “claims for compensation for loss or damage suffered in consequence of a violation, infringement, denial of a right or fundamental freedom in the Bill of Rights” appearing immediately after the word “determine” and substituting therefor the words “applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights”;
- (b) in sub-clause (3) by deleting the words “any matter relating to Articles 47, 48, 49, 50 and 51 of the Constitution” appearing immediately after the word “determine” and substituting therefor the words “claims for compensation for loss or damage suffered in consequence of a violation, infringement, denial of a right or fundamental freedom in the Bill of Rights”

The import of Clause 8 is that when people make small claims for compensation in the Magistrates' Courts or whereby payments are going to be made by way of compensation after breach of human rights, such claims have to find a place in such courts, depending on their jurisdiction and also such claims can have a procedure of appeal if one is not satisfied in those circumstances. That is the import of Clause 8. The explanation given, and what the Member for Homa Bay intended, is that if a person's rights have been infringed and the matter fits within the jurisdiction of the Magistrates' Court, then such a person can be compensated.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Is the Member for Molo in the Chamber? Are you consulting somewhere? Can you go to your console?

Hon. Macharia: Hon. Temporary Deputy Chairman, I had intended to contribute to an earlier amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Then do not keep the button to your console pressed.

Member for Kitui Central!

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. From the explanation given by Hon. Maanzo---

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Kipipiri, is this an intervention or would you like to wait until you make a contribution? Alright, then just hold on.

Hon. Mulu: Hon. Temporary Deputy Chairman, the import of this amendment, as explained by Hon. Maanzo, makes a lot of sense.

I support the amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Nyeri, put your thoughts together. I can come back to you later.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, my thoughts are now together.

The Temporary Deputy Chairman (Hon. Kajwang'): Can I keep you aside and come back to you later?

Alright, Member for Kipipiri!

Hon. Gichigi: Hon. Temporary Deputy Chairman, the passage of Clause 8 is likely to be a disaster for this country. If there is a Government agency that is in problems, it is the Office of the Attorney-General. There are so many petitions being taken to the High Court. As we speak, it is impossible for the High Court to cope with the amount of work that goes there. If the Attorney-General is aware of this and he has given his go-ahead, I can tell this House without any doubt in my mind that we will require about 500 State counsel to be distributed to all the Magistrates' Courts across the country. This is a clause which is likely to cause a lot of problems. I agree that we ought to devolve justice but since we have High Courts in all the counties, perhaps, we should restrict it to the High Court. If we are going to place this jurisdiction on the magistrates, we should just wait and see.

I completely oppose the amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Ainabkoi.

Hon. Chepkong'a: Thank you very much, Hon. Temporary Deputy Chairman.

I have been consulting with regard to this amendment. The import of this amendment is to make provisions for the Magistrates' Courts to make a determination as to whether there have been breaches of human rights. Once a court makes such a determination, for compensation to be awarded, you go to the High Court. I agree with Hon. Kaluma that we are trying to take justice closer to the people. Instead of people going to the High Court, you make it easier for them to get justice within the Magistrates' Court level. The Magistrates' Courts are available right across the country – in almost all the counties. High Courts are only in a handful of counties.

Therefore, this is an appropriate amendment, which I support. I would like to tell my colleagues that the intention of the amendment is not for the magistrates to award compensation, but to determine whether there have been breaches of constitutional rights as enumerated by Hon. Kaluma.

I support the amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Nyeri!

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman. It has taken us a bit of time to read and understand the implication of this recommitted Clause 8 but it appears that Hon. Kaluma is seeking to repeat the language in the Constitution, in Clause 22 (a). If this is the only effect of using the language in the Constitution, it would be okay.

On Clause 22(b), Hon. Kaluma appears to be removing the limitation that had earlier been put in the Bill on Articles 47, 48, 49, 50 and 51. Although we have difficulties around this new introduction, the language can pass. What I want to put on record as far as the interpretation is concerned is that the Committee is very clear that Magistrates' Courts must have some jurisdiction on human rights matters so that such matters do not have to go to the High Court all the time. Some human rights matters can be handled by the Magistrates' Courts where the pecuniary jurisdiction of magistrates has been put in this law. To the extent of that pecuniary jurisdiction, a Magistrate's Court can handle human rights matters. The question we have today is whether compensation can be awarded at the magistracy level or it will have to go to the High Court. The clauses, as drafted, suggest that a Magistrate's Court can determine that a right has been violated. If you need compensation, because the power of interpreting the Constitution is only given to the High Court, on a question of how much compensation you need, you will have to go to the High Court. The Magistrate's Court determines that your right has been violated. If you need any compensation, you need to go to the High Court.

To that extent, I support the clauses and I would allow them to pass.

The Temporary Deputy Chairman (Hon. Kajwang'): Prof. Nyikal!

Hon. (Prof.) Nyikal: Thank you, Hon. Temporary Deputy Chairman. The people of this country need justice to be close to them. To split this process into two parts for one court to determine that there has been a violation of justice is unnecessary. If that role is assigned to the Magistrates' Courts, it is in order. The matter of compensation, as it has been indicated, can be sought at a higher level. This makes things easier for the people in terms of accessing justice.

I support the amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Kipipiri, so as to carry you along with us, if you look at the text of this amendment, you will see that the Mover is proposing to change the words so that the issue of compensation can be within the jurisdiction of the High Court as determination of redress and interpretation remains within the jurisdiction of the Magistrates Court. If you think about it, you will see that even if that amendment were not carried, the Bill would remain as it is. This means that the magistrates will still be handling claims for compensation for loss and damage. You cannot compensate for loss and damage before you make a determination that there is a violation. In other words, they will still need to determine that there is violation.

This will not help the issue that state counsel will be in the Magistrates' Courts. One way or the other, state counsel will be in the Magistrates' Courts. The spirit would be that, since the magistrate is a trained lawyer, even without state counsel in his court, he should be able to make a determination that there is violation and infringement. That is where we are. We either amend it or leave it as it is. One way or the other, you will still need state counsel in those courts.

*(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 8 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): The Deputy Leader of the Majority Party, are you the Mover of this Bill?

Hon. (Dr.) Shaban: Yes, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Do I hear you on a Motion to Report?

Hon. (Dr.) Shaban: Yes. Hon. Temporary Deputy Chairman, I beg to move that the Committee doth Report to the House its consideration of Clause 8 of the Magistrates’ Courts Bill, National Assembly Bill No.40 of 2015 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): I am proceeding with the directions from the Speaker. We will move on to the business appearing as (i) Small Claims Court Bill, National Assembly Bill No.51 of 2015.

THE SMALL CLAIMS COURT BILL

(Clauses 3 and 4 agreed to)

Clause 5

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Fatuma, your amendments are competing with those of the Chair.

Can you proceed on Clause 5(2)(a)? I understand that your amendment relates to Clause 5(2)(a).

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

THAT, Clause 5 be amended-

(i) in sub-clause (2)(a) by inserting the following words after the words “High Court of Kenya” “or a holder of a degree in social science”

The purpose of my amendment is to expand access to justice for ordinary people. In addition, these small courts will ensure that there is access to justice for small cases. This is an area any professional can handle because of the experience required. This will ensure that some areas like northern Kenya or Turkana that may not have qualified lawyers to handle such cases are not disadvantaged.

My amendment seeks to provide opportunity all the time so that all professionals who can understand the Constitution and the law are able to handle small cases in order for the clients to benefit.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. We have got the gist of your amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): I always like recognising the constituencies that you represent rather than your names.

I have a list of requests in case you are trying to speak to something else. Who wants to speak to Clause 5(2)(a)? The Member for Makueni, are you on Clause 5(2)(a)? Hon. Chairman I know that you are definitely on that amendment. What about the Members for Nyeri, Kipipiri and Taita Taveta? Are you all on Clause 5(2)(a)? I will take you in the order that you come. Let us have the Member for Makueni.

Hon. Maanzo: Hon. Temporary Deputy Chairman, I support the Member’s amendment. In fact, those courts can accommodate people who can help with the diversity of communities in Kenya. I, therefore, support.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Yes, Hon. Chairman.

Hon. Chepkong’at: I thank you, Hon. Temporary Deputy Chairman. Hon. Fatuma is a Member of the Departmental Committee on Justice and Legal Affairs and listening to her, I am very sympathetic. The only reason I am opposing this amendment is because she has not provided for the qualifications of the degree holder. How many years should a degree holder have practised and in what field? The reason she has given is that there are fewer lawyers in this country. Just for her information, last year, there were 800 lawyers who were admitted as advocates. This year, we are going to admit 1,000 lawyers. We do not even have courts as we speak to fit the 1,000 advocates. The nature of these courts is arbitrating over conflicts between two individuals and you need legal training on this issue. If probably, Hon. Fatuma had said that the person should have, at least, a diploma in law then that would have been a totally separate question.

As you may be aware, these courts were the ones that we referred to as District Magistrates Courts and were occupied by people called “Article Clerks” who were trained at the Kenya School of Law (KSL), like Hon. Muite. As an Article Clerk, you at least, had to go through legal training. We are going to ask someone who is trained in political science to arbitrate over legal issues, yet the only difference between the Small Claims Courts and other courts is the amount. We have limited it to Kshs100,000 as proposed in the Bill, otherwise it is a court like any other court of law as contained in the Constitution. It is even unconstitutional for someone who is not a lawyer to preside over matters that are in conflict and are provided for under the Constitution. The Constitution is very clear that you need to have someone with legal training. It is not that we do not want other professions to be magistrates or adjudicators.

Hon. Temporary Deputy Chairman, I am taking a bit of time because Hon. Fatuma has been saying that the 18 lawyers in our Committee behave like they are more important than the rest who are not lawyers. We recognise every other person’s profession, but for purposes of arbitrating or deciding on conflicts, this is a matter that requires legal training. As Hon. Fatuma has just said, she was thinking that there are fewer lawyers. Maybe with the information that I have given her now, that in the previous year and last year, we had over 800 lawyers admitted as advocates, she will understand. This year alone, we are going to admit over 1,000 lawyers. Every university now including Presbyterian Church of East Africa (PCEA) University is now offering law. We have a minimum of ten universities offering legal education. These universities have opened law schools. If the question is about shortage of lawyers, it may not be relevant right now.

The Temporary Deputy Chairman (Hon. Kajwang’): Alright. I gave you more time because you are the Chair of the Departmental Committee. We wanted to understand where this was coming from.

Yes, the Member for Kipipiri.

Hon. Gichigi: Thank you, Hon. Temporary Deputy Chairman. I also oppose this amendment. We have a situation where we are giving room to somebody who may have no clue on legal procedure in the determination of disputes to preside over a court of law.

What the Member for Wajir has in mind is taken care of by Clause 18 of this Bill since the adjudicator is allowed to refer a matter for alternative dispute resolution so that it can be dealt with quickly. It will be very dangerous if any Tom, Dick and Harry will be permitted to arbitrate a legal dispute. This is a court and we have enough legal personnel to handle these matters all over the country.

I oppose the amendment. I request Hon. Ali to accept that Clause 18 takes care of the issue.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us move faster.

Let us have the Member for Nyeri.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman. I have a lot of sympathy for what the Member for Wajir wants to introduce in terms of a holder of a degree in social sciences being qualified to be appointed as an adjudicator. Unfortunately, for the purposes of the legal procedures and processes, this would introduce a standard that will really water down what happens in the Small Claims Court.

In terms of application of the law, we must have uniform standards across this country. A degree in social sciences can be in environmental studies, a Bachelor of Arts or a Bachelor of Commerce. It is going to be a degree in anything and we do not know what standards are going to be applied. Even the poor people of North Eastern region of this country – this is the question we have always had in discussions on access to justice – are entitled to the highest level of justice as much as the rich people. The fact that people are poor and marginalised does not mean that you give them less justice. Having somebody not properly trained in legal procedures and law is going to water down the level of justice accessible.

For those reasons, I oppose the amendment and urge the country to find ways of redressing marginalisation. Giving lesser justice has never been an answer to the poor people and marginalised areas. We must insist on the same standards across the country. So, a law degree becomes very critical for anybody who serves in the Small Claims Court.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): I will hear just two more Members on this amendment. Make your contributions very brief. There will be other exciting clauses to speak to. So, let all of us not speak to one clause.

Yes, the Member for Taveta!

Hon. (Dr.) Shaban: Thank you, Hon. Temporary Deputy Chairman. I hear what my sister, the Member for Wajir, is saying because we both come from remote parts of this country. It sounds right now that it is quite impossible to get lawyers in those areas.

However, we have come a long way from the time when we did not have people trained in the law profession. Over the years, we have evolved. In the past, we used to talk about not having enough trained people, but we have enough trained people now. It is high time people

went to work in some of those rural areas instead of being in Nairobi and Mombasa. Because of the reforms that the Judiciary is undergoing and because of the way we have been doing things traditionally, this has to change. In this day and age, after 52 years of Independence, it is not easy for us to start dealing with people who are not trained in this profession.

I wish to ask my sister to withdraw the amendment. Alternatively, I want to tell her it is unfortunate that the frustration is there, but I beg to oppose.

The Temporary Deputy Chairman (Hon. Kajwang'): Shall I hear the Member for Subukia? Hon. Zuleikha and the Member for Isiolo, you will have to say something.

Hon. Gaichuhie: I also oppose the amendment. Everybody should stick to his or her profession. If lawyers are supposed to be in court, then accountants should be in the accounts department, and economists in the economic department. If we start mixing professions, we will have lawyers claiming to be accountants.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang'): Let us hear the Nominated Member, Hon. Zuleikha Juma.

Hon. (Ms.) Juma: Thank you, Hon. Temporary Deputy Chairman. I support the Member for Wajir 100 per cent. As Hon. Naomi Shaban has said, right now doctors and nurses are running away and teachers have run away from the North Eastern region because of terrorism. At least, if we have some young people with degrees in social sciences, they can take up these jobs. We can also do in-house training.

When I graduated from university, I was told that when you have a degree it means that you are trainable in almost any job. So, we could do three or six months' in-house training because it is a junior position and it is not like being a magistrate or a judge.

In Kenya, we should not just do things according to how other countries do them but we should look at the situation in our country. The people of North Eastern region have suffered for long and we should accord them some fair play. Later on, we can review the law.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang'): The last person to speak on this amendment is the Member for Vihiga.

Hon. Chanzu: Thank you, Hon. Temporary Deputy Chairman. As much as I sympathise with the situation we have already made strides in matters to do with affirmative action in this country. In fact, some of the best lawyers in this country come from those same areas which we are saying we cannot get professionally qualified people in those fields.

For that reason, I would like us to maintain what is going on right now. Let us do a bit of affirmative action to support those areas, but let us maintain the standards.

So, I oppose the amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, are you suggesting that in personnel matters, people will just serve the areas they come from so that a person from Turkana will not serve in Taveta? Do we just want to look at whether Taita Taveta has enough professionals in this or that field? Should we not be looking at the country in one context?

Yes, Member for Wajir.

Hon. (Ms.) F.I. Ali: Thank you, Hon. Temporary Deputy Chairman. I appreciate all the opinions. However, 99 per cent of all lawyers in this country – the Chairperson of the Departmental Committee says there will be many more – are based in urban areas like Mombasa

and Nairobi. It will be very unfortunate that some of the qualified social scientists, like people who have qualified to be agriculturalists, economists, finance experts and even doctors are not able to adjudicate in certain cases at a lower level.

The unfortunate part for this country is that most lawyers defend their profession to keep off other professionals who are likely to move and provide the same services to the public.

The Temporary Deputy Chairman (Hon. Kajwang'): This is why I hold no opinion on this matter.

Hon. (Ms.) F.I. Ali: Hon. Temporary Deputy Chairman, if you were not on the Chair, maybe you would have opposed this amendment. This country requires such professions. Highly developed countries have layman judges and magistrates in courts. This is a much lower court which will be handling small cases.

A procedure is a basic thing to understand and apply. To say that it is only lawyers who can apply procedures, regulations, rules and the law is unfair to people who are able to interpret the law. Some Members of this House who do not belong to the legal profession might interpret the Constitution and the law better than some traditional or conventional lawyers. I still think that this opportunity needs to be reinforced. I still pursue that the amendment be taken on board.

The Temporary Deputy Chairman (Hon. Kajwang'): We got stuck on that, but now I want to put the Question to Clause 5(2)(a).

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

All right. Let us move on to Clause 5(2)(b). Hon. Chairman, we can now move faster. That was very controversial and now we can move faster.

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

THAT, Clause 5 of the Bill be amended in subclause (2)(b) by deleting the word "five" appearing immediately after the words "at least" and substituting therefor the word "three".

The import of this is to reduce the qualification of the advocates or lawyers to occupy those positions. As you know, we have many young people who are graduating and we must afford them an opportunity. We know that someone is grounded in law after practising for three years. It is important that we reduce that period so that we allow many young people to sit as adjudicators.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, the Member for Kitui Central.

Hon. Mulu: Hon. Temporary Deputy Chairman, I want to support this amendment. Listening to Hon. Fatuma arguing for the remote areas of this country, it is important for us to reduce the requirement from five to three years so that we can have even young lawyers taking presiding over some of these courts. Otherwise, it will be a bit tricky if we leave it at five years. So, I support the reduction from five years to three years.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. The last one on this is the Member for Seme.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, as I support this, I realise that the legal profession is one where people take a long time to progress. One goes through university, gets a degree and then has to go through the KSL, which looks like a whole university

course on itself. In that context, if we reduce this period from five years to three years, we will be compensating for the length of period that they have taken in training.

I support.

*(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)*

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Wajir County, you have an amendment on Clause 5(2)(b). I suppose so. Would you then go on the HANSARD as either withdrawing it or you need to make up your mind on what you want to do with it?

Hon. (Ms.) F.I. Ali: Hon. Temporary Deputy Chairman, I am still strongly persuaded that that amendment needs to be on. I am still requesting that it can be considered as part of the amendment.

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

THAT, Clause 5 be amended-

(ii) in sub-clause (2)(b) by deleting the words "legal" and substituting therefor the word "relevant".

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, I hope you are following the drift of the amendments. The Member has stood with her proposed amendment. So, I have proposed it.

Let us have the Member for Subukia.

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I strongly oppose this further amendment because I am not seeing the use of us having 1,450 small courts. With 290 to start with, we will be able to clear backlogs. When we go to the ward level, we will have 1,450 small courts and yet we are always complaining of the huge wage bill.

The Temporary Deputy Chairman (Hon. Kajwang'): Are we together the Member for Subukia? Members, I do not know whether we are together. If you are on Clause 5(2)(b), you will find that we have amended the first one, which means we have substituted "three" for "five".

Hon. Gaichuhie: Sorry, I think I jumped the gun. I went to Clause 11.

The Temporary Deputy Chairman (Hon. Kajwang'): No. The Member for Wajir County has an amendment on the same 5(2)(b) to use the word "relevant field" instead of "legal". That is where we are. Yes, the Member for Nyeri County.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, this amendment was consequential to the earlier one. So, to the extent that the earlier one did not pass, this one is superfluous. We do not need to say "relevant field", but we need to say "legal". So, I would urge the Member to consider withdrawing it because it is hanging. Having lost the first one, it is hanging.

However, if she does not withdraw, I want to oppose it. With a lot of respect to the Member, I want to say that everybody understands the issues of marginalisation. Borrowing from what the Chairman was saying, Public Service is going to be Public Service in the Republic of Kenya. These lawyers with three years of practice should be prepared to serve anywhere in the Republic including Wajir, Mandera and many other parts of this country. It is Public Service. There is no reason for that amendment.

I oppose it.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. The Member for Wajir County, give your last word on this.

Hon. (Ms.) F.I. Ali: Hon. Temporary Deputy Chairman, for that reason, I want to withdraw the amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Really? Can you, therefore, go on the HANSARD and speak to it?

Hon. (Ms.) F.I. Ali: Hon. Temporary Deputy Chairman, the further amendment to Clause 5(2)(b) was in line with Clause 5(2)(a). I withdraw it.

(Ms. F. I. Ali's amendment to Clause 5(2)(b) withdrawn)

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much.

(Clause 5 as amended agreed to)

(Clauses 6 and 7 agreed to)

Clause 8

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

THAT, Clause 8 of the Bill be amended—

(a) in paragraph (a) by deleting the word “and” appearing immediately after the word “experience” and substituting therefor the word “or”;

(b) by deleting paragraph (b) and substituting therefor the following paragraph—
“(b) has trained as a paralegal at the Kenya School of Law.”

The import of this is to allow persons who are trained as paralegals to qualify for appointment as registrars of the Small Claims Court. As you know, there are paralegals who have been trained at the KSL and other colleges who are supposed to assist the adjudicator. We are proposing that they can also qualify to be appointed as registrars.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Shall I put the Question? Yes, the Member for Kipipiri.

Hon. Gichigi: Hon. Temporary Deputy Chairman, I am having a problem with this. The first amendment that we have just deals with an advocate of the High Court. I am sorry I am confusing this with Clause 5 which required experience.

The Temporary Deputy Chairman (Hon. Kajwang'): We are talking about registrars.

Hon. Gichigi: Hon. Temporary Deputy Chairman, I wanted this to also have an element of experience, but since it is about registrars, it is okay. I agree.

*(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 8 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang'): I do not see your amendment on the Order Paper. Is your amendment on the Order Paper, Committee Chair? Can you approach the Table?

The Deputy Leader of the Majority Party, I understand that you have an amendment to Clause 9. How do you want us to deal with it? This is because we do not seem to have it on the Order Paper. Before we go into it, can you, first, let me know what you want to do with it? Please inform me what you want to do with it.

I know your sugar levels are coming down, but because you have remained faithful with me in the Chamber, I will allow you those little exigencies. The Deputy Leader of the Majority Party, I understand that you have no amendment on Clause 9, do you?

Hon. (Dr.) Shaban: I do not.

The Temporary Deputy Chairman (Hon. Kajwang'): That is how the table has done its duty. We will do Clause 9 and 10 again.

(Clauses 9 and 10 agreed to)

Clause 11

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

THAT, Clause 11 be amended in sub-clause (2) by deleting the word "sub-county" and substituting therefor the word "ward".

The amendment aims at determining the local limits of the jurisdiction of the court. Instead of sub-county, I propose to change it to ward. I propose that because some of our areas are very vast; they cover 200 to 300 kilometres. If the courts are located at the headquarters of sub-counties, residents will be limited from accessing them. They will be inaccessible to people who live almost 300 kilometres away from sub-counties. Sometimes public servants like to locate their offices in comfortable areas which are easily accessible to the public.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): I can see very many people have put requests to contribute to this amendment. I do not think you need to make very many

requests as this is a very straight forward amendment. So, let me start with the Hon. Members I have not recognised. I will give the first chance to the Hon. Member for Makadara.

Hon. Kangara: Thank you, Hon. Temporary Deputy Chairman. I oppose this amendment because the recommendation the Committee gave was based on the Judicial Service Commission (JSC) Report. We also need to agree that it was done on the needs assessment basis and it was not a random figure.

Therefore, I oppose.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Member for Subukia.

Hon. Gaichuhie: I am sorry, Hon. Temporary Deputy Chairman. I had spoken on the same in the beginning when I was saying that if we create these courts we will have 1,450 courts.

The Temporary Deputy Chairman (Hon. Kajwang'): How many courts will we have?

Hon. Gaichuhie: We will have 1,450 courts at ward level. I know some areas are very big but regarding the population, I think those courts will be idle. We also have the wage bill and other issues.

Therefore, I strongly oppose this amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): The Hon. Member for Kitui Central, can you fund these 1,450 courts?

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. I am a bit sympathetic to Hon. Fatuma. I think the proposal is really difficult to implement. Currently, we have alternative dispute resolution mechanisms. The Chiefs, Assistant Chiefs and the village elders are doing a good job. We should retain the sub-counties as a start and think about the ward as we move forward. For now, 1,450 courts will be impossible to fund.

The Temporary Deputy Chairman (Hon. Kajwang'): Let us hear from your counterpart, the Member for Kitui East.

Hon. Muluvi: Thank you, Hon. Temporary Deputy Chairman. These amendments have really exposed the fact that some areas of this country have been marginalised over time. As much as we sympathise with my sister, at the moment, the Judiciary is committed to serious reforms. Let us go their way and maybe, in the interest of time, we will go to the wards later.

The Temporary Deputy Chairman (Hon. Kajwang'): The last one is the Member for Saku.

Hon. Dido: Thank you very much, Hon. Temporary Deputy Chairman. I rise to support that amendment. Like Hon. Muluvi has said, some parts of this country continue to be marginalised to the extent that even today when we have devolution, many of us still feel strongly that we are marginalised. For that reason, the courts can do that selectively in expansive areas, particularly in northern Kenya.

In the areas where people feel comfortable, the courts can be put at the sub-county level. We cannot put everything in the same level because of fear that it is going to be expensive. If we do otherwise, we will continue to marginalise those parts of the country which have been left behind for long.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much. Hon. Members, even as we are doing this, let us be cognizant of the Constitution. You need to find out if some of the amendments you propose do not exert financial implication on the Ex-chequer. Therefore, as you propose these amendments, you should always be reminded about Article 114 of the Constitution at any given time.

The Member for Nyeri, do you think we still need information? I want to put this Question.

Hon. (Ms.) Kanyua: Yes, Hon. Temporary Deputy Chairman. Very quickly for the Justice and Legal Affairs Committee where Hon. Fatuma sits as a Member, we are now on 26 High Courts; one in every county. We have not even done 47 High Courts which is the vision of the Constitution. To really aspire for 1,450 Small Claims Courts is way above what the country can afford. The first step is to put the 47 High Courts so that every county has a High Court and then we go to the sub-county. In the fullness of time, as the country develops, we can do the rest. It is absolutely not possible in terms of budgetary allocations and the growth of the Judiciary to aspire for 1,450 Small Claims Courts. If you look at the economies of scale, you will find that you set up a place where we can process these cases in a faster way, but in the fullness of time, these are some of the aspirations that the country could have. The Committee opposes this amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): I was just consulting with my very good and able assistants on the Table, now that there is no amendment on Clause 11. I propose the question that Clause 11 be part of the Bill.

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

(Clause 11 agreed to)

Clause 12

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

THAT, Clause 12 of the Bill be amended—

- (a) in subclause (1) (a) by inserting the word “or” immediately after the word “goods”;
- (b) in subclause (1) (C) by deleting the word “of” appearing immediately after the word “delivery” and substituting therefor the word “or”;
- (c) in subclause (3) by deleting the word “one” appearing immediately after the words “limited to” and substituting therefor the word “two”;

First, we got mixed up with Clauses 9 and 12. We are seeking to correct grammatical errors that are contained in the Bill. Secondly, we seek to increase the pecuniary jurisdiction of the Small Claims Court from Kshs100,000 to Kshs200,000. As you know, inflation and many other factors have eroded the Kenya Shilling. The figure of Kshs100,000 is too small and Kshs200,000 is likely to be the most appropriate figure.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang): The Member for Makeni, you want to add on to this.

Hon. Maanzo: Hon. Temporary Deputy Chairman, I just want to agree with the Chair that Kshs200,000 will be appropriate.

*(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 12 as amended agreed to)

Clause 13

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

THAT, Clause 13 of the Bill be amended—

- (a) in subclause (1)(b) by deleting the words “or abandoned” appearing immediately after the word “withdrawn”;
- (b) by inserting the following subclause immediately after subclause (2)—
“(3) subject to section 12 (3), a higher Court may transfer a claim to a Small Claims Court.”

First, we are seeking to remove superfluous words like “abandoned” which ought not to be in the text of the clause. Secondly, we are seeking to enable the High Court or any court to transfer a claim that falls within the jurisdiction of the Small Claims Court of Kshs100,000. That will ensure that we unclog the High Courts and the Magistrates Courts from those small claims that are pending in those courts at the moment.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, Hon. Chair. I hope you have spoken to the amendments and the New Clause.

(Question of the amendment proposed)

Hon. Macharia: Hon. Temporary Deputy Chairman, I support the proposed amendment.

*(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 13 as amended agreed to)

(Clause 14 agreed to)

Clause 15

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

THAT, Clause 15 of the Bill be amended—

- (a) by deleting subclause (2);
- (b) by deleting subclause (3);

(c) in subclause (4) by deleting the expression “, (2) and (3)” appearing immediately after the expression “(1)”.

This is a small amendment. We are seeking to remove unnecessary provisions that exclude corporate bodies or non-corporate bodies from instituting suits in the Small Claims Court.

(Question of the amendment proposed)

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

(Clause 15 as amended agreed to)

(Clauses 16 and 17 agreed to)

Clause 18

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

THAT, Clause 18 of the Bill be amended in subclause (2) by inserting the word “mechanism” immediately after the word “resolution”.

We are seeking to insert the word “mechanism” that was missing immediately after the word “resolution”.

(Question of the amendment proposed)

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

(Clause 18 as amended agreed to)

(Clauses 19 and 20 agreed to)

Clause 21

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

THAT, Clause 21 of the Bill be amended by deleting subclause (3).

The import of this is to remove a provision that was allowing parties to choose their own interpreters. It is very dangerous to allow a litigant to come with his or her own interpreter. That means that the interpreter will be choosing how to translate that which fits into their suit. There are normal procedures for obtaining an interpreter who is independent of the litigants according to the court rules.

(Question of the amendment proposed)

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

put and agreed to)

(Clause 21 as amended agreed to)

(Clause 22 agreed to)

Clause 23

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

THAT, Clause 23 of the Bill be amended in subclause (2) by deleting the word "the" appearing immediately after the words "prejudice to".

This is to remove unnecessary words contained in that clause.

(Question of the amendment proposed)

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

(Clause 23 as amended agreed to)

(Clauses 24 and 25 agreed to)

Clause 26

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I have a further amendment to this clause.

The Temporary Deputy Chairman (Hon. Kajwang'): Just a minute. Move the amendment first and then we will come to the further amendment.

Hon. Chepkong'a: I beg to move:-

THAT, clause 26 of the Bill be amended—

- (a) in sub-clause (3) by deleting the word "had" appearing immediately after the words "on the claim" and substituting therefor the word "has";
- (b) in sub-clause (5) by deleting the expression ", (3) or (4)" appearing immediately after the expression "(1), (2)" and substituting therefor the expression "or (3)".

We are seeking to correct grammatical errors contained in that Clause which is using past tense instead of present tense. We are also seeking to correct references to sub-clauses within the Clause itself.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Chairman, can I hear you on the further amendment?

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

THAT, Clause 26(ii) be amended as follows:-

In sentence two, immediately after "made" remove the word "an" and replace with the word "a final" so that any application can be made thereafter.

Secondly, on Clause 3 in sentence (iii), before “any” remove that word “any” and replace it with the word “a final”.

That makes a lot of sense because if you just say every quarter---

The Temporary Deputy Chairman (Hon. Kajwang’): Alright, I hear you. So that it reads:-

“The court may permit respondent at any time before the court has made a final order on the claim.”

Let us deal with the further amendment first.

(Question of the further 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 26 as amended agreed to)

Clause 27

Hon. Chepkong’a: Thank Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 27 of the Bill be amended in sub-clause (3) by deleting the expression “(1)” appearing immediately after the word “subsection” and substituting therefor the expression “(2)”.

This is to substitute the correct tools with the correct reference.

Thank you.

(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 27 as amended agreed to)

Clause 28

Hon. Chepkong’a: I beg to move:-

THAT, Clause 28 of the Bill be amended in sub-clause (2) by deleting the word “had” appearing immediately after the words “on the claim” and substituting therefor the word “has”.

This is a grammatical correction. We are seeking to improve the grammar in the Clause.

Thank you.

(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 28 as amended agreed to)

(Clauses 29, 30 and 31 agreed to)

Clause 32

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chair. I beg to move:-

THAT, Clause 32 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “by the strict” appearing immediately after the word “bound” and substituting therefor the words “wholly by the”;

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

This is to allow the courts discretion to employ various rules of evidence on case by case basis thus granting courts flexibility.

Secondly, this is to require that the courts maintain records. Previously, the Clause did not require that the courts maintain any records. The reason being that we are requiring these records to be maintained because there is a possibility that litigants can appeal. Therefore, it is important that there must be records just in case any litigant seeks to appeal against a decision of an adjudicator.

Thank you.

(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 32 as amended agreed to)

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

Clause 37

Hon. Chepkong'a: Thank you. I beg to move:-

THAT, Clause 37 of the Bill be amended—

- (a) by deleting sub-clause (2);
- (b) in sub-clause (5) by deleting the expression “46 (3)” appearing immediately after the words “under section” and substituting therefor the expression “40”.

That is purely to correct the references that were wrongly inserted in that Clause.

Thank you.

(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 37 as amended agreed to)

Clause 38

Hon. Chepkong’a: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 38 of the Bill be amended by deleting the word “matter” appearing immediately after the words “High Court on” and substituting therefor the word “matters”.

This is purely to correct grammatical errors that were in the clause.

Thank you.

(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 38 as amended agreed to)

Clause 39

Hon. Chepkong’a: Thank you. I beg to move:-

THAT, Clause 39 of the Bill be amended by inserting the following paragraph immediately after paragraph (a)—

“(aA) order the attachment of the salary of the judgment debtor; or”

The reason for this amendment is to allow the court discretion to grant orders of the attachment of salaries of a judgment debtor whenever a judgement has been issued against that particular debtor to ensure that the judgment is satisfied.

Thank you.

(Question of the amendment proposed)

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

(Clause 39 as amended agreed to)

Clause 40

Hon. Chepkong'a: Thank you. I beg to move:-

THAT, Clause 40 of the Bill be amended by inserting the words "or any other of his or her assets" immediately after the words "immovable property".

This, again, is to allow the courts discretion to grant orders of attachment of a judgement debtor's salary and any other---

(Question of the amendment proposed)

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

(Clause 40 as amended agreed to)

Clause 41

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 41 of the Bill be amended—

(a) in sub-clause (1)—

(i) in the prefatory statement by deleting the word "its" appearing immediately after the words "party or on" and substituting therefor the words "his or her";

(ii) by inserting the following paragraph immediately after paragraph (d)—

"(e) new facts previously not before the Court have been discovered by either of the parties."

(b) in sub-clause (2) by inserting the words "or such other period as the Court may allow" immediately after the word "reviewed".

The import of this amendment is to allow the court to review its orders. At times, new facts could be brought to the attention of the adjudicator and they, therefore, need to review their orders. So, this is just purely to allow the court to review its orders.

(Question of the amendment proposed)

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

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

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

(Clause 41 as amended agreed to)

(Clauses 42, 43, 44, 45 and 46 agreed to)

Clause 47

Hon. Temporary Deputy Chairman (Hon. Kajwang’): The Member for Homa Bay Town, are you in the Chamber?

Hon. Maanzo: Hon. Temporary Deputy Chairman, I will represent him.

Hon. Temporary Deputy Chairman (Hon. Kajwang’): The Member for Makueni, do this for the last time. Next time, the first thing you will hear is to table your letter of authorisation to hold brief for another Member, but I will allow you to do so, all the same.

Proceed.

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

THAT, the Bill be amended by deleting Clause 47 and substituting therefor the following clause—

Power to punish
for contempt of
Court.

47. (1) A person who—

- (a) assaults, threatens, intimidates or wilfully insults an adjudicator, judicial officer or a witness, involved in a case during a sitting or attendance in a court, or while the adjudicator, judicial officer or witness is travelling to and from a court;
- (b) wilfully and without lawful excuse disobeys an order or directions of the court in the course of the hearing of a proceeding;
- (c) within the premises in which any judicial proceeding is being heard or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being heard or taken;
- (d) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being heard or taken after the witnesses have been ordered to leave such room;
- (e) causes an obstruction or disturbance in the course of a

- judicial proceeding;
- (f) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority taken;
 - (g) publishes a report of the evidence taken in any judicial proceeding that has been directed to be held in private;
 - (h) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he or she has given evidence in connection with such evidence;
 - (i) dismisses a servant because he or she has given evidence on behalf of a party to a judicial proceeding; or
 - (j) commits any other act of intentional disrespect to any judicial proceedings, or to any person before whom such proceeding is heard or taken, commits an offence.
- (2) A police officer may, by order of the Court, take into custody and detain a person who commits an offence under subsection (1) until the Court adjourns.
- (3) A person who commits an offence under subsection (1) shall on conviction be liable to imprisonment for a term not exceeding five days, or to a fine not exceeding one hundred thousand shillings, or to both.
- (4) In exercise of its powers under this section, the Court shall observe the principles of fair administration of justice set out in Article 47 of the Constitution.

The Member for Homa Bay Town had given notice of the amendment on Clause 47 so that there is power to punish for contempt. The import of all the subsections given there is to make sure that there is order in that court, so that while proceedings are going on, the judicial officer can punish any person who offends the court by any of the actions as described from (a) to (j). It goes on to (2) where a police officer may, by order of the court, take into custody such a person who commits an offence until the court adjourns. The punishment and the detention are limited to where the court is sitting.

I move this amendment on behalf of Hon. Kaluma.

(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 47 as amended agreed to)

(Clauses 48, 49 and 50 agreed to)

New Clause

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 50—

Code of Conduct for
Adjudicators.

51. The Chief Justice shall, within six months of the commencement of this Act, prescribe the code of conduct applicable to an adjudicator.

We are seeking to allow the Chief Justice to prescribe a code of conduct for the adjudicators who are going to be very many. If there is no code of conduct to regulate the manner in which they run their courts, we may have serious integrity problems with regard to these courts. So, we are suggesting that the Chief Justice, within six months of the commencement of this Act, will prescribe a code of conduct that will govern the adjudicators.

(Question of the new clause proposed)

(New Clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

*(Question, that the new clause be read a Second Time,
put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

Hon. Temporary Deputy Chairman (Hon. Kajwang'): Who is the Mover of this Bill? Do I hear you on a Motion to report?

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Small Claims Court Bill, National Assembly Bill No.51, 2015 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

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

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

THE COURT OF APPEAL (ORGANISATION AND ADMINISTRATION) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we are now considering the Court of Appeal (Organisation and Administration) Bill, National Assembly Bill No.52 of 2015.

(Clauses 3, 4, 5 and 6 agreed to)

Clause 7

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 7 of the Bill be amended by deleting subclause (1) and substituting therefor the following subclause—

“(1) The President of the Court may, in consultation with the Chief Justice, organise the Court into such divisions as may be necessary for specialised and expeditious disposal of appeals before it.”

We are seeking to ensure that the president of the court consults with the Chief Justice before organising the divisions of the court, so that we can have order in the management of courts.

(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)*

(Clauses 8, 9, 10, 11 and 12 agreed to)

Clause 13

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 13 of the Bill be amended in subclause (2)—

- (a) in the prefatory statement by inserting the words “,in consultation with the Chief Justice,” immediately after the word “shall”;
- (b) by deleting paragraph (b) and substituting therefor the following paragraph—

“(b) developing guidelines that ensure the expeditious disposal of cases;”.

We are seeking to require the President of the Court of Appeal to develop guidelines on the expeditious disposal of appeals before the court. There have been high backlog of cases because of court management. So, we are requiring that the President of the Court of Appeal develops guidelines to ensure that these cases are done away with as quickly as possible.

(Question of the amendment proposed)

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

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

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

(Clause 13 as amended agreed to)

(Clause 14 agreed to)

Clause 15

Hon. Chepkong’a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 15 of the Bill be amended—

- (a) in sub clause (1) by deleting the words “not less than three quarters” appearing immediately after the words “at which” and substitute therefore the words “more than half”;
- (b) by deleting sub clause (3) and substituting therefor the following sub clause—

“(3) A judge who desires the removal of the President of the Court shall give notice, in writing through the Registrar, stating the reasons for the intended removal.”
- (c) in sub clause (4) by deleting the word “half” appearing immediately after the words “at least” and substituting therefor the words “one third”;
- (d) in sub clause (5) by deleting the words “forty-five days after receipt of the communication under subsection (3) respond to the accusations” appearing immediately after the word “within” and substituting therefor the words “fourteen days after receipt of the communication under subsection (3) respond, through the Registrar, to the accusations”;
- (e) in sub clause (6) by deleting the words “in such a manner as to reach all the judges within the period set out in that subsection” appearing immediately after the word “communicated” and substituting therefor the words “by the Registrar to all judges within seven days”;

- (f) in sub clause (7) by deleting the word “shall” appearing immediately after the words “Chief Justice” and substituting therefor the word “may”.

Hon. Temporary Deputy Chairman, we are seeking to clarify the manner in which the President of the Court can be removed from office by providing a threshold. We are reducing the threshold from two-thirds to, at least, half.

In the National Assembly, you can remove a Chair of a Committee by having slightly over 50 per cent of the Members supporting a motion for removal.

We are also requiring that the Registrar of the Court of the Appeal receives and transmits the communication relating to the removal process and reduce the time period stipulated for the service of the documents related to the removal process. We are aligning the process of removal of the President of the Court from office in a manner that flows without hitches.

(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 15 as amended agreed to)

(Clauses 16, 17 and 18 agreed to)

Clause 19

Hon. Chepkong’a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 19 of the Bill be amended in sub clause (3) by deleting the word “but” appearing immediately after the word “shall” and substituting therefor the word “put”;

Hon. Temporary Deputy Chairlady, this is just to correct a grammatical error in the clause.

(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 19 as amended agreed to)

Clause 20

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 20 of the Bill be amended in sub clause (1) by deleting the words “the Commission may determine” appearing immediately after the words “Court as” and substituting therefor the words “may be appointed under the Judicial Service Act, 2011.

Hon. Temporary Deputy Chairlady, the import of this amendment is to subject the recruitment process of the Deputy Registrar of the Court of Appeal to the established procedures as contained in the Judicial Service Commission Act. They should not be recruited without following the laid down procedures as contained in an Act of Parliament.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, when you are responding, please be a bit louder so that the HANSARD can capture you.

(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 20 as amended agreed to)

(Clause 21 agreed to)

Clause 22

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 22 of the Bill be amended in sub clause (1) by deleting the prefatory statement and substituting therefore the following statement—

“The Registrar shall perform such duties as the Chief Registrar or the President of the Court may direct, and in particular be responsible for—”

Hon. Temporary Deputy Chairlady, we are seeking to subject the functions of the Registrars of the Court of Appeal to that of the Chief Registrar or the President of the Court to ensure there is seamless management within the Judiciary so that we do not have orders given by different people. The registrars know that their Chief Executive Officer (CEO) is the Chief Registrar.

(Question of the amendment proposed)

Hon. Maanzo: Hon. Temporary Deputy Chairlady, I want to support this amendment. There are several registrars in the courts. It is good when each section of the court, like in this case the Court of Appeal, has its own registrar who is responsible. A registrar is an equivalent of a Principal Secretary in a Ministry. There should be a registrar who can administer that particular court.

I support.

*(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 Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I would like to recognize students and teachers from Kapsaret Girls' High School, Nandi County who are seated in the Speaker's Gallery.

You are welcomed to Parliament.

(Applause)

(Clauses 23, 24 and 25 agreed to)

Clause 26

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 26 of the Bill be amended in sub clause (1)—

- (a) by deleting paragraph (a) and substituting therefor the following paragraph—
“(a) from the Thursday before Good Friday to the Wednesday after Easter Monday, inclusive;”
- (b) in paragraph (b) by deleting the word “September” and substituting therefor the word “August”;
- (c) in paragraph (c) by deleting the expression “13th” and substituting therefor the expression “7th”.

Hon. Temporary Deputy Chairlady, the import of this amendment is to reduce the number of days provided for the recess of the court. Part of the work of the advocates has been impeded. Determination of conflicts or appeals at the High Court has always taken too long because of the number of days the courts go on recess. Judges are still entitled to one months' leave notwithstanding the recess.

As explained in the High Court Bill that we have just passed, we stated very clearly that if you want to go on recess, you can take your leave days. Ordinarily, courts do not sit in the afternoon. They only sit in the morning so that they can write their judgments in the afternoon. We still allow them time for recess but we have just reduced the time to allow them to conclude matters fairly quickly.

(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 26 as amended agreed to)

Clause 27

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 27 of the Bill be amended—

- (a) in sub clause (1) by deleting the words “adopted by the Court” appearing immediately after the word “policy” and substituting therefor the words “determined by the Commission”;
- (b) by deleting sub clause (2).

Hon. Temporary Deputy Chairlady, the import of this amendment is to subject the judges of the Court of Appeal to a transfer policy that has been put in place by the JSC, as the body charged with the responsibility of promoting the welfare of the members of the Judiciary, so that we do not have arbitrary transfers that do not follow a particular policy.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Maanzo.

Hon. Maanzo: I would like to support this. What has been happening is that judges have found themselves transferred. When judges get transferred without a proper policy, some of the cases suffer; you find a case was midway and then a judge gets transferred and the new judge cannot make head or tail of a case. So, this is a very good proposal and I support it.

Thank you.

*(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 27 as amended agreed to)

Clause 28

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Chair.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 28 of the Bill be amended—

- (a) in the prefatory statement by deleting the word “under” appearing immediately after the word “prescribed” and substituting therefor the words “by written law.”
- (b) by deleting paragraphs (a), (b) and (c).

The import of this is to require the court to employ the rules of practice and procedure prescribed under an Act of Parliament and not those rules that are prescribed. If you say prescribed you do not know under which law, but written laws are those laws written by Parliament.

Thank you.

(Question of the amendment proposed)

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

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

(Clause 28 as amended agreed to)

Clause 29

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 29 of the Bill be amended in sub-clause (1) by deleting the word "initiate" appearing immediately after the words "judge shall" and substituting therefor the word "implement".

The import of this is to require the Presiding Judge of the Court of Appeal to ensure that he or she implements a case management system that is expected to be developed or guidelines that are prepared by the Chief Justice and the Judicial Service Commission, so that they do not develop their own procedures in managing cases. We want cases to be expedited.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Hon Maanzo.

Hon. Maanzo: Thank you, Hon. Temporary Deputy Chairlady. One of the biggest problems in the country has been delay of court cases, where especially land cases take 15 to 30 years. Many people have died while waiting for justice. So as to have a case management system mandatory words are used. This will make the Judiciary very effective.

*(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 29 as amended agreed to)

Clause 30

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 30 of the Bill be amended in sub-clause (1) by deleting the words "There shall be" and substituting therefor the words "The Registrar shall maintain".

The import of this amendment is to assign the role of maintaining records of the Court to the Registrar. Many times we have run into problems as advocates when we cannot find records, and nobody takes responsibility. So, we want to assign this responsibility to the Registrar to ensure that records can be found whenever they are required.

Thank you.

(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 30 as amended agreed to)

Clause 31

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 31 of the Bill be amended in sub-clause (1) by—

- (a) deleting the words "Chief Justice and the Chief Registrar" appearing immediately after the words "consultation with the" and substituting therefor the word "Commission";
- (b) deleting sub-clause (2).

We are seeking to require the Principal Judge to implement a performance management system in consultation with the Judicial Service Commission, which is the body actually charged with the responsibility of promoting the welfare of the members of the Judiciary. We do not want the Presiding Judge or the Principal Judge in this matter to decide the performance indicators that will apply to the Judges of the Court of Appeal. It should be that particular body that has been charged with the responsibility of ensuring the welfare of members of the Judiciary. It is the body that liaises with the Principal Judge.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Richard Makenga.

Hon. Makenga: Thank you, Hon. Temporary Deputy Chairlady. I stand to support the amendment as proposed by the Chair of the Committee.
Thank you.

*(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 31 as amended agreed to)

(Clauses 32 and 33 agreed to)

Clause 34

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 34 of the Bill be amended in subclause (1) by deleting the words “under the Civil Procedure Act or the Criminal Procedure Code” appearing immediately after the word “prescribed” and substituting therefor the words “by written law”.

This is to require the Court of Appeal to deliver judgments in a manner prescribed under an Act of Parliament and not just as merely prescribed. It must be under a written law.

Thank you.

(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 34 as amended agreed to)

Clause 35

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We will start with the Chair's amendments because there is also an amendment by Hon. Kaluma. Chair.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended by deleting Clause 35 and substituting therefor the following clause—

Contempt of
Court.

35. (1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.

(2) A person who, in the face of the Court—

(a) assaults, threatens, intimidates, or insults a judge of the Court, the Registrar of the Court, a Deputy Registrar or officer of the Court, or a witness, during a sitting or attendance in Court, or in going

- to or returning from the Court;
- (b) interrupts or obstructs the proceedings of the Court;
or
- (c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding, commits an offence.
- (3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.
- (4) In the case of criminal proceedings, the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which—
 - (a) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court;
 - (b) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice, constitutes contempt of court.
- (5) A police officer, with or without the assistance of any other person, may, by order of a judge of the Court, take into custody and detain a person who commits an offence under subsection (2) until the rising of the Court.
- (6) The Court may sentence a person who commits an offence under subsection (1) to imprisonment for a period not exceeding six months, or a fine not exceeding five hundred thousand shillings, or both.
- (7) A person may appeal against an order of the Court made by way of punishment for contempt of court as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the Court.
- (8) The Chief Justice may make Rules to regulate procedures relating to contempt of court.

We are seeking to provide penalties for contempt of court. That is imprisonment for a maximum of six months or a fine not exceeding Kshs500,000. This is purely to expand the definition of contempt. As you know, many a times the courts have what they think in their view is contempt. What we must now provide in the law is what we think is contempt, so that every person who appears before a judge in a Court of Appeal knows what amounts to contempt, so that you are not surprised when judges decide that your conduct is contemptuous. So, we are making it very clear in the law that this is the process and this is what amounts to contempt. We are also prescribing the penalties, so that it is also not arbitrary. Once you are sentenced for contempt, you know how much you are supposed to pay or what the penalty ought to be.

Thank you, Hon. Temporary Deputy Chairlady.

(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 35 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We go to the next amendment by Hon. Kaluma.

Hon. Maanzo: I hold brief for Hon. Kaluma. He is away and very apologetic. He went to rescue the children you saw in the newspapers. He was lucky to have got them in Tanzania just now.

He has explained to me about this. With your permission, I would like to proceed.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Go ahead.

Hon. Maanzo: Thank you. Notice has been given by Hon. Kaluma for amendment of Clause 35, so that there is power to punish for contempt of court where the contempt is committed on the face of the court. Any other method of dealing with contempt is already prescribed by law the way the Chairman of the Committee has put it. For that reason, all these provisions between (a) and (j) are to give the manner of dealing, if a particular person commits contempt in court while the proceedings are going.

I urge hon. Members to support the new amendment by Hon. Kaluma, seeking to give the court power to punish a person because of contempt of court. Before this Bill was introduced, the court used to decide on the spot, or assume that it had such power. We now want to give the court that power, so that by law, it is allowed to punish anybody who is guilty of contempt of court.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, this House is guided by rules. Once my amendment was carried then his amendment failed because they are similar. Once my amendment deleted Clause 35 and it was carried, it meant that his amendment failed. He cannot delete a Clause that has already been deleted and replaced.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You are right, Hon. Chepkong'a. Hon. Maanzo, do you understand that explanation by Hon. Chepkong'a?

Hon. Maanzo: I understand the explanation by Hon. Chepkong'a. In this Clause, Hon. Kaluma had proposed that the Bill be amended by deleting Clause 35 and replacing it with Clause 35 (1)---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have already passed Clause 35. Therefore, we cannot consider Hon. Kaluma's amendment.

Hon. Maanzo: There is contempt of court and then there is a totally different subject on the power to punish for contempt of court. I do not know whether the Hon. Chair will find it appropriate that we add another sub-clause to Clause 35. It is part of Clause 35. The two do not clash.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chepkong'a, it will be in order for him to move a further amendment to your amendment, so that we can carry what Hon. Kaluma's amendment says if it does not contradict with what we have already passed. Maybe you can explain it clearly.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, once my amendment was carried, and it is similar to his--- It is similar. His Clause 35 (8) provides that the Chief Justice may make rules to regulate procedures relating to contempt. It is similar to what is contained in my amendment, which we have just accepted, namely that the Chief Justice may regulate procedures relating to contempt of court. Clause 35 (1) states that the court shall have power to punish for contempt a person who in the face of the court--- That is what his Clause is also providing for. It is a similar provision. Since mine was carried, his must be dropped because they are similar.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I understand that Hon. Chepkong'a. Are you saying that looking at both amendments, his amendment is offers nothing new? Hon. Maanzo, if there is nothing new then we cannot go against the rules of the House. If there was something new we could have added it as a further amendment, if the House would have accepted it. If there is nothing new then there is no point of any further amendment to what the House has already passed.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairlady. I sympathise with Hon. Maanzo. Hon. Kaluma is a Member of our Committee. Maybe he had left or stepped out and, therefore, he never saw the amendments of the Committee. But he was one of the people who made this proposal which was carried by the Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Maanzo, we are comfortable in knowledge that we have carried Hon. Kaluma's concerns in the amendments that have been done by Hon. Chepkong'a, who is also the Chairperson of the Committee.

(Proposed amendment by Hon. Kaluma dropped)

Clause 36

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 36 of the Bill be amended by deleting the words “,so far as it is appropriate to do so” appearing immediately after the word “Republic”.

This is to remove the limitation on the requirement that the court is to ensure reasonable access to its services in all parts of the country.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Maanzo, do you have something to say on this Clause?

Hon. Maanzo: Clause 36 is good. I support the Chairman. He has given the word “Republic” power of law. I support the amendment by the Departmental Committee Chairman.

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

(Clause 36 as amended agreed to)

Clause 37

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 37 of the Bill be amended in sub-clause (1) by deleting the word “person” appearing immediately after the words “or other” and substituting therefor the words “judicial officer”.

This is to clarify that the protection from personal liability afforded by the Clause only applies to judicial officers. It does not apply to any person who sits in the court as employee of the Judiciary.

(Question of the amendment proposed)

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

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

(Clause 37 as amended agreed to)

Clause 38

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 38 of the Bill be amended by inserting the following sub clause immediately after sub clause (1)—

“(1A) Without prejudice to the generality of subsection (1), such Rules may provide for the—

- (a) conduct of the election of the President of the Court;
- (b) procedure of removal of the President of the Court;
- (c) form of notification of the sittings of the Court;
- (d) disposal of urgent and priority matters during Court recess;
- (e) automation of Court records, case management, protection and sharing of Court information and the use of information communication technology;
- (f) form, style, storage, maintenance and retrieval of Court records; and,
- (g) procedure relating to contempt of court.”

We are seeking to prescribe the instances in which the Chief Justice can make rules. As it is at the moment, it is in contravention of Article 94(6) of the Constitution, which makes it mandatory that any legislation that gives power or delegates power to any other person to make law must state the instances in which that person can make law.

We have provided instances in which the Chief Justice can make regulations. Those regulations, as you know, will be brought before the Committee on Delegated Legislation to ensure that they are in consonance with the Constitution as well as this particular legislation.

(Question of the amendment proposed)

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

(Clause 38 as amended agreed to)

New Clause 38A

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 38—

Code of Conduct for
Judges of the Court.

38A. The Chief Justice shall, within six months of the commencement of this Act, prescribe the code of conduct applicable to a judge of the Court.

We are seeking to empower the Chief Justice to prescribe the code of conduct applicable to judges of the Court of Appeal within six months. At the moment, we have a code of conduct that is attached to the Ethics and Anti-Corruption Commission (EACC) Act, which was promulgated in 2003. That particular code is not in tandem with the new Constitution. All the judges of the Judiciary took an oath of office pursuant to the new Constitution. It is incumbent upon the Chief Justice to ensure that he promulgates, or prescribes, a code of conduct applicable to the judges of the Court of Appeal that is in line with the new Constitution. We are seeking that this new Clause be included in the Bill.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be read a Second Time,
proposed)*

*(Question, that the new clause be read a Second Time,
put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Mover, do the reporting.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairperson, I beg to move that the Committee doth report to the House its consideration of The Court of Appeal (Organisation and Administration) Bill, National Assembly Bill No. 52 of 2015, and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Hon. Deputy Speaker (Dr. Laboso) in the Chair]

REPORTS AND THIRD READINGS

Hon. Deputy Speaker: Hon. Members, we will proceed in the order in which the Bills were prosecuted in the Committee. We will, therefore, start with the President's Reservations on Higher Education Loans Board. Hon. Chairlady.

THE PRESIDENT'S RESERVATIONS ON THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL

Hon. (Ms.) Shebesh: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the President's Reservations on the Higher Education Loans Board Bill, National Assembly Bill No. 09 of 2015 and approved the same without amendments.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

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

Hon. A. B. Duale seconded.

(Question proposed)

Hon. Deputy Speaker: Hon. Members, since this is the last consideration of Presidential Report, we will need to have quorum. So, we will put this Question when we have the numbers.

*(Putting of the Question on agreement with the
Committee Report deferred)*

THE MAGISTRATES' COURTS BILL

Hon. (Ms.) Shebesh: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered Clause 8 of the Magistrates' Courts Bill, National Assembly Bill No.40 of 2015, and approved the same with amendments.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

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

Hon. A.B. Duale seconded.

(Question proposed)

Hon. Deputy Speaker: Hon. Members, as you are aware, we also need the numbers for putting the Question. That too will be deferred.

*(Putting of Question on agreement with the
Committee Report deferred)*

Next.

THE SMALL CLAIMS COURT BILL

Hon. (Ms.) Shebesh: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Small Claims Court Bill, National Assembly Bill No.51 of 2015, and approved the same with amendments.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

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

Hon. Katoo seconded.

(Question proposed)

(Question put and agreed to)

Hon. (Dr.) Shaban: Hon. Deputy Speaker, I beg to move that the Small Claims Court Bill, National Assembly Bill No.51 of 2015, be now read the Third Time.

I request Hon. Metito to second.

Hon. Katoo seconded.

(Question proposed)

Hon. Deputy Speaker: Hon. Members, since we are not properly constituted we will put the Question on this Bill in the next sitting.

(Putting of the Question on Third Reading deferred)

Next is the Court of Appeal (Organization and Administration) Bill, National Assembly No.52 of 2015.

THE COURT OF APPEAL (ORGANISATION AND ADMINISTRATION) BILL

Hon. (Ms.) Shebesh: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Court of Appeal (Organisation and Administration) Bill, National Assembly Bill No. 52 of 2015, and approved the same with amendments.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

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

Hon. Katoo seconded.

(Question proposed)

(Question put and agreed to)

Hon. (Dr.) Shaban: Hon. Speaker, I beg to move that the Court of Appeal (Organization and Administration) Bill, National Assembly Bill No.52 of 2015, be now read a Third Time.

I request Hon. Metito to second.

Hon. Katoo seconded.

(Question proposed)

Hon. Deputy Speaker: As in the other cases, we will defer the putting of the Question up to when we will be properly constituted.

(Putting of the Question on Third Reading deferred)

Hon. Members, if you go back to the Magistrates' Courts Bill, we skipped one area; for the record, I will ask that we repeat the Magistrates' Courts Bill so that it is properly recorded in the HANSARD.

Hon. Chairlady.

THE MAGISTRATES' COURT BILL

Hon. (Ms.) Shebesh: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has reconsidered Clause 8 of the Magistrates' Court Bill (National Assembly Bill No. 40 of 2015), and approved the same with amendments.

Hon. Deputy Speaker: Yes, Mover.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said report.

I request Hon. Chepkong'a to second.

Hon. Chepkong'a seconded.

(Question proposed)

(Question put and agreed to)

Hon. Deputy Speaker: Yes, Mover.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, I beg to move that the Magistrates' Court Bill (National Assembly Bill No. 40 of 2015), be now read the Third Time.

I request Hon. Chepkong'a to second.

Hon. Chepkong'a seconded.

Hon. Deputy Speaker: Thank you, Hon. Chepkong'a.

(Question proposed)

(Putting of the Question of Third Reading deferred)

Hon. Deputy Speaker: The Question will be put when we have quorum.

Hon. Members, you will remember the Speaker's guidance on where we move next, which is Order No. 13 on the Order Paper.

The Leader of the Majority Party.

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

Hon. Deputy Speaker: Order, the Leader of the Majority Party. We are rushing a little bit. Can the Clerks-at-the-Table read out the Order?

BILL

Second Reading

THE TAX PROCEDURES BILL

Hon. A.B. Duale: Hon. Deputy Speaker. I beg to move that the Tax Procedures Bill, 2015 be now read a Second Time.

First, I thank Members of this 11th Parliament for the continued support they have given to the Government in the modernisation of our tax laws, and in the improvement of the tax administration system in our country. We have been restructuring our tax laws in order to make tax administration easier, efficient and to enhance compliance by the taxpayers. This was evident in the enactment of the Value Added Tax, 2013 by this House.

The Tax Procedures Bill, 2015 is aimed at consolidating common tax procedures into one piece of legislation. Such tax procedures include filing of returns, record keeping, assessment, communication with the taxpayers, objections raised by the taxpayers, appeals and enforcement, which are common in all tax laws across the globe. For example, the Value Added Tax (VAT), the Excise Duty and the Income Tax will all be consolidated in one piece of legislation called the "Tax Procedures Act". An investor who wants to invest in the country will not find it

cumbersome to look for the VAT law, Income Tax law and Excise Duty law. This will give the economy, investors and taxpayers a one-stop legislation that will contain all pieces of tax legislation like the VAT Act, Excise Duty Act and Income Tax Act.

The object of this Bill, therefore, is to provide uniform procedures for the promotion of a more consistent, more efficient and more compliant administration of tax law. The other importance of the Bill is to create an infrastructure to facilitate tax compliance by the taxpayers. This Bill also gives the Kenya Revenue Authority (KRA) an effective and efficient platform for collection of taxes from the citizens. That is the essence and object of the Bill.

Let me highlight some provisions of the Bill since Members will have an opportunity to debate the entire Bill. The Bill gives power to the Commissioner of VAT, Commissioner of Domestic Taxes and the Commissioner of Customs to disclose documents, or information, obtained in the course of the administration of tax laws to an authorised officer, a tribunal, a court of law or to the director of the Kenya Bureau of Standards (KEBS) for him to give an economic outlook, or to the Auditor-General or the Ethics and Anti-Corruption Commission (EACC). The moment we enact this law, the EACC, the Auditor-General and the Director-General of KEBS will have an opportunity to ask the Commissioner-General of KRA to provide documents and information in as far as the administration of tax laws will be concerned in the country.

This Bill provides procedures on how to register or deregister taxpayers. This Bill provides a more efficient procedure on how citizens can obtain Personal Identification Number (PIN). The usage of the PIN is being documented in law for the first time. The procedure for the cancellation of a PIN is also proposed in the Bill. So, all these provisions will facilitate tax collection and compliance.

When the National Rainbow Coalition (NARC) Government was taking over, KRA was collecting barely Kshs600 billion. Thirteen years down the line, KRA has surpassed the Kshs1 trillion mark. As a country, the way we are proud of the Kenya Defence Forces (KDF) for protecting our country from external forces, we must be proud of the men and women who collect revenue from taxpayers in order to make the Budget that we pass successful. You can be an independent country, but if you do not have economic independence and you keep begging--- I want to say it here, without fear of contradiction, that 95 per cent of our Budget is funded with resources collected by the men and women working for KRA, and we must thank them.

The Income Tax and VAT departments of the KRA do a lot of auditing of financial records of the taxpayers where cases are brought and books of accounts are kept in languages other than English or Kiswahili. This Bill proposes, for the first time in the history of this country, that record keeping of any documents required under a tax law, be either in English or Kiswahili. If a company is based in the Middle East and has a branch here, the chances are that its books will be in Arabic, French, Spanish, or in vernacular. The Tax Procedures Bill that we are going to enact says that for any auditing firm to audit the financial records of any taxpayer, the language will be English or Kiswahili. The unit of currency in any document shall be in Kenyan shillings for ease of tax administration.

There are many multinational companies and Kenyan companies that do business out of the country with other people. They do business in foreign currencies, but in order to create a procedure, the unit of currency in any document must be in Kenya shillings. This is to make tax administration easy.

Finally, the Bill proposes procedures on submissions of tax returns and the time required to fill the returns. It proposes how it should be filled and when to be returned. It provides for the tax payment on the digital platforms, measures being put in place and whether you do it electronically. All these are provided.

There has been a lot of talk that the economy is not doing very well, there is a cash crunch and we are broke. For you to say that the economy is not doing well, you must be an economist of very high standard. For you to say that we are broke, it is not like when you are selling *mitumba* and then you say that you are broke. That can be understandable. But a Kshs1.2 trillion or Kshs2 trillion Budget approved by this House--- It cannot be said that the resources required for funding that Budget are not available.

We get our taxation revenue from three sources, namely the Excise Duty, the Value Added Tax and the Income Tax. If the Commissioner- General was here, he would tell us that our VAT in terms of revenue has surpassed the 18 per cent projected growth. So, we are doing better than what we projected in terms of the growth of revenue from VAT. If you look at the Excise Duty, in the last six months, revenue has also grown by over 28 per cent. Where we have not reached the 18 per cent growth rate, and we are not doing very badly - we are doing about 10 per cent - is on the Income Tax. This is because of a number of reasons. Income Tax is mainly the resource that we get from the Pay-As-You-Earn (PAYE).

In the last two years, there has been a Government freeze on employment; the Government has not been employing. Two, the corporate sector was doing more of outsourcing than employing employees. Finally, the September teachers' salaries that were not paid affected the KRA, because they could not collect PAYE from the Teachers Service Commission (TSC). They did not pay. You can imagine that the PAYE paid by the teachers is a huge. So, on the Income Tax, according to the documents tabled in the House by KRA, the growth rate is not as projected. But we have done very well in the Excise Duty and the VAT.

Under the new Constitution, there must be close co-ordination between the Governor of the Central Bank of Kenya (CBK), the National Treasury and the Commissioner-General of the KRA. If you look at whether we are over-borrowing, the United States (US) Government, one of the biggest economies in the world, borrows. Your borrowing must be in tandem with the Gross Domestic Product (GDP). Why do Governments borrow? They borrow for the citizens and the economy to accelerate and create more income, wealth and resources. I am sure Parliament has the obligation to approve the borrowing of the Government, so that it is always in tandem with the GDP of our country; this we have done not once or twice.

In conclusion, this is a very important Bill. It is good for investors. It will make Kenya among the first countries in Africa to create a one- stop piece of legislation of all the taxation regimes that we have. If you are in Singapore, for example, and you want to invest in the Special Economic Zones (SEZ) that this Government is going to create in Naivasha and the Industrial Park, you will not need to tell your experts to look for the VAT, Income Tax and the Excise Duty laws. The one piece of legislation, namely the Tax Procedures law in Kenya will give that person the opportunity to go round and understand it and make a decision whether Kenya is a favourable destination for business.

With those many remarks, I beg to move and ask Hon. Katoo, who is the Whip of the Majority Party, to second.

Hon. Deputy Speaker: Whip of the Majority Party.

Hon. Katoo: Thank you, Hon. Deputy Speaker. I rise to second this very important Bill as moved by the Leader of the Majority Party.

This Bill is for collection and a recovery of tax in an important way. It proposes several mechanisms that will facilitate tax payment, especially by the due day. There have always been delays in remitting tax and this Bill proposes mechanisms to harmonise all tax laws to ensure that there will be efficient and effective collection of tax by the due date.

It also proposes a late payment interest for those who pay or remit their taxes late, which is a very simple interest. The Bill says that it will be at a rate equal to one per cent per month. That is very simply calculated, which is a departure from the existing provision which talks of compounding interest. That always complicates matters for many people who do not have economic or mathematical background. Therefore, it proposes a penalty for late submission of tax at a rate of 1 per cent per month. In the case of erroneous overpayment of tax, the Bill proposes a mechanism for refunding the overpaid tax or the tax in error to the taxpayer.

The Bill also provides for a dispute resolution mechanism. Should a dispute arise between the Commissioner and the tax payer, redress can be sought through a tribunal, the High Court and also the Court of Appeal.

It also allows for settlement of cases outside the court or tribunal. Clauses 49 to 57 of the Bill are very clear. These sections deal with making tax decisions by tax collectors. That means there is room objection to those decisions and appeals against tax decisions. The process is a bit involved but is simplified. The Bill begins with making a tax decision by the Commissioner, an objection by the Commissioner, decision and then an appeal to a tribunal, and a further appeal on a justifiable ground to the High Court. It also makes provision for the procedure to be followed when filing an objection or an appeal against a tax decision. Part VIII of the Bill, which has Clauses 49 to 57, talks about sorting out disputes.

The Bill also provides for a mechanism of enforcement of tax laws. This includes providing powers to the Commissioner to search and seize documents, which give access to official information held by individuals, the national Government, the county governments or any other public bodies for tax purposes to the Commissioner. That is really detailed in Clauses 4 to 7. Some sections of those clauses talk about powers and functions of the Commissioner and the Commissioner's authorised officers.

In the plenary interpretation, the Bill talks of an authorised officer as a Commissioner of the Kenya Revenue Authority (KRA) or any appointed person by the Commissioner for that purpose. It talks about their powers and functions. One of the powers of these authorised officers is having police powers when exercising their duties. The same Clauses 4 to 7 talk of delegation and how the Commissioner-General can delegate powers to the authorised officers. It clearly says that any delegation given should be in writing. That will have a lot of weight.

It also talks of confidentiality by the authorised officers. There must be confidentiality between the taxpayer and the entity itself. To summarise, that section talks about functions, delegations, confidentiality and powers of authorised officers.

The Bill also talks of the penalties for failure to comply with the provisions of the tax laws. These include penalties relating to failure to comply with the registration or licencing requirements, failure to keep documents, late submission of returns, avoiding paying tax and failure to comply with electronic tax system. That is a very detailed area covered by Clauses 80 to 109. It will be of interest for Hon. Members to look very keenly at Clauses 80 to 109. That section talks of administrative penalties and offences. There are so many offences, including

even aiding or abetting an offence, obstruction of an authorised officer, offences by the officers and the staff of the Authority itself, failure to pay tax, offences by tax agents and offences relating to Personal Identification Numbers (PINs), as the Mover has just said. They are so many. Another one is penalties on failure to appear before the Commissioner.

Therefore, this Bill is so simplified. As I have already said, it is actually meant to harmonise all the procedural rules applicable to administration of tax laws in Kenya. It is an important Bill. It is also good to note that under Clauses 58 to 61, the Commissioner, or the authorised enforcement officers, together with other relevant authorities, have been given powers to do inspection of goods or records and search and seize documentation and goods. There is also the procedure on how you should appear before a KRA Commissioner.

In conclusion, I initially talked of harmonising all tax laws of Kenya; this Bill proposes several amendments to the existing Income Tax Act, the Kenya Revenue Authority Act and the Value Added Tax Act 2013. This is meant to remove the provisions which have been consolidated in the Bill to avoid duplication. It is of key interest to note that.

With those few remarks, I beg to second.

(Question proposed)

Hon. Deputy Speaker: Hon. Silverse Anami.

Hon. Anami: Thank you, Hon. Deputy Speaker for giving me this opportunity to contribute to this very important Bill. This Bill helps in harmonising many pieces of legislation that tend to confuse Kenyans and investors around the globe and gives us good direction. All said and done, the central issue here is the amount of resources that the Government loses because we cannot collect them. We find ourselves in the difficulties that the Mover has talked about like the cash crunch, delayed release of funds and exchequer challenges because of the systems we use.

I support this Bill because it will enable investors and Kenyans in general to get away from the laborious procedures that have been made worse by conflicting legislation. I am specifically talking about the changing technological arrangement. We are mostly electronic these days. I know that KRA has embraced the electronic collection and security of revenue, but there is also a danger.

How secure is this and how compliant is everyone who is participating in revenue collection? The fear we have as Kenyans is that sometimes it takes a click for our tax collectors to access all records. We need to be guaranteed of this kind of security, so that we do not lose money because of the changing technological arrangement.

Above all, this new procedural law should embrace the notion of creativity, where we do not see tax collection and tax remission as a punishment, because Kenyans since time immemorial have been used to viewing tax remittance as a punishment. The players in this regime want to avoid paying tax as a way of participating in corruption. Due to impunity, many citizens want to avoid paying tax. The law should embrace a system of incentives. Could we have incentives factored into this law so that people are willing to remit tax? What rewards can be given to those who remit tax consistently, so that people are anxious to remit tax and we get away from these deals that make our country look so bad? It is costing us terribly at the global level.

The Bill will give us opportunity to embrace efficiency and effectiveness. The process of tax collection, remittance and registration into the tax systems is very important for all the players. Efficiency will enable many people to participate in tax registration and remittance. But there are laborious stages that people have to go through to register as tax payers and make claims when they need to do it and obtain registration. So, we should support this harmonised approach and give it a creative approach where everyone is happy to participate in the process. One way of attaining this efficiency is sensitising people about it. Make tax collection, remittance and compliance to be one-off curriculum in the schools, so that Kenyan children grow up knowing that they have a responsibility, and not a punishment, to be part of the players in revenue collection.

This Bill should address our participation in the East African Community (EAC) and other economic communities. We need to discipline ourselves and participate effectively in this East African region. If we have tax collection systems that are friendly to all the countries and are efficient, we can embrace the East African countries within the same rhythm, momentum and spirit. Then we will have more people participating in it. It will be easy for people to comply, and so people will not evade it.

With incentives, we will attract investors. Many investors would rather do business in other countries like Mauritius and elsewhere than here because of too many bottlenecks and laborious procedures in registering as a taxpayer and as a businessman. If we can reduce some of these and collapse them into this harmonised law, then we will attract more investments.

I would like to support this and at the same time plead with the Kenya Revenue Authority (KRA) to step up tax collection and embrace this new law and procedures. Kenyans are business oriented people and we have a lot of business activities happening. All of us could contribute to the National Treasury through tax collection. I am just wondering what is happening in the counties in terms of tax and revenue collection. It is like some functions have stalled. You are told that there is no money yet you see opportunities for collecting revenue everywhere. No one is making an attempt to collect this revenue. Let us set targets in the area of tax collection, put incentives in place and educate everyone. We should open new avenues and harmonise procedures, so that people do not have to go through difficulty and laborious procedures.

I support.

Hon. Deputy Speaker: Hon. Regina Muia.

Hon. (Ms.) Muia: Thank you, Hon. Deputy Speaker. I stand to support this Bill. The Government needs money to run the country. For it to do that, it must collect taxes. I congratulate the person who brought this Bill because we have been waiting for it for a long time. I would like to request the Mover to consider some areas.

Recently, the KRA introduced taxes from landlords without considering the fact that some of the landlords have obtained loans to put up buildings. They take years before they can earn anything out of the loans that they have taken. Many people are coming into our country and the Government should come up with a mechanism to control our ports. A lot of things are being brought in through our ports. If you visit the Port of Mombasa, you will find many goods are being brought into the country. However, when you look at what is collected at our ports, you wonder what happens. Most of those goods are not for the Government.

In Government, sometimes tendering procedures take so long before payment is made. On 17th of every month they are supposed to send returns. If they will enforce the one per cent penalty for those who delay in submitting returns to Kenya Revenue Authority (KRA), some

people will be pushed out of business. If we standardize the large consignments coming into the country, some of our local businessmen will be pushed out of business; you know the way our economy is.

Let the Government monitor corruption. We may be getting a lot of business coming in with investors. At the end of the day, out of what they are bringing in the country, a lot is going into people's pockets. There must be a procedure to control and monitor what is happening.

It is not that we are not making money in this country; we are unable to collect enough taxes. There is money because people are doing business and investors are coming to the country, but at the end of the day, a certain percentage goes into people's pockets. Therefore, we are requesting the KRA to have serious laws on tax collection. Otherwise, there will be a very big letdown in this country.

We have had the same people doing the same business and we have been paying taxes. What has happened this year, or what has gone wrong? We have never heard of factories closing down. We have had the same factories and they are even increasing, yet people are unable to collect taxes; maybe taxes are collected and put into pockets of individuals. That is why you hear people saying that the Government has no money; what has happened? Last year and the years before, we had been collecting taxes. Something somewhere is very wrong.

When people are talking about corruption, taxes are being collected but people are doing their own things. If KRA is going to be very serious and strict, this country will have more than what we need.

Hon. Deputy Speaker, there is only five minutes to time and some Hon. Members want to contribute. I do not want to go beyond here. I will leave the five minutes to my colleagues. However, there is a very big question mark on KRA. If they become serious in collecting taxes, we will get more than what we need.

Thank you.

Hon. Deputy Speaker: Let us have Hon. Cecilia Ngetich.

Hon. (Ms.) Ngetich: Thank you, Hon. Deputy Speaker for this opportunity to contribute to the Tax Procedures Bill 2015. From the outset, I support the Bill because Kenya is a developing country, which relies heavily on local revenue for provision of services. If this revenue is not collected in form of taxes, then certain services are going to suffer for lack of resources.

Having been a colony, we inherited many laws that were from our masters, and since then these laws have been amended to conform to our needs. Some of them are no longer tenable. Therefore, this Tax Procedures Bill is timely for us to have a very effective way of ensuring that taxes are collected.

As mentioned in the Bill, it is very important to communicate to taxpayers. It will make the taxpayers pay, especially if they are informed of the services that the money collected from taxes finance. I know of an organisation in Karen that refused to pay taxes to the former City Council because they were not receiving services. The amounts collected can increase if there is communication between the taxpayers and the tax collector. I want to take this opportunity to hail the KRA for introducing i-tax, and ensuring that payments are made through banks. This minimises the corruption that we have always been seeing when officers go out to collect taxes from business people.

Regarding the penalties, I am aware that in other statutory deductions, there are penalties when there is a delay. Penalties are not meant to be punitive. They are meant to instil discipline.

in taxpayers and bring effectiveness, so that there are no overlaps. When you are paying for a certain month, all should then come at that particular month for easy auditing, record keeping and easy filing. I want to support the Bill. It is high time we developed centralised records. I want to recall that in this House, we passed a piece of legislation that would ensure that the logging in of your identity card should bring out all your records like birth certificate, academic qualifications and tax payments. If this is effected, then we will minimise the number of people defaulting in payment of taxes.

I support and urge all the Members to support the Bill.

Hon. Deputy Speaker: Hon. Ayub Savula.

Hon. Angatia: Thank you, Hon. Deputy Speaker for giving me this opportunity to contribute to this important Tax Procedures Bill, 2015.

There is a very interesting aspect in this Bill regarding the security on property for unpaid taxes. Always, Kenyans with the ability to pay taxes have been evading payment of tax. When you look at Clause 40 of the Bill, it provides that where a taxpayer, being the owner of a land and a building in Kenya fails to pay tax by the due date, the Commissioner may direct the Land Registrar, in writing, that the land or the building is security for tax to the extent of the unpaid tax. This is how we will catch tax evaders. Senior businessmen in this country forge records of audited accounts to the extent that they declare huge losses yet their companies are performing very well. Their properties are registered at the Registrar of Lands. If we enact this Bill, we will save this country from such tax evaders.

Secondly, the Bill also touches on failure to maintain documents. Many companies or upcoming companies of young generation businessmen, who find themselves in the briefcase business operations in this country, do not remit tax. They are a go-between of the senior businessmen and the people they provide services to. At the end of the day, they do not maintain proper records for payment of taxes. So, if we enact this Bill, we will give powers and authority to the Commissioner to ensure that all businessmen in this country keep proper records which can be inspected to ensure that there is efficiency in collection of taxes.

The Bill also merges several other aspects through which the country loses a lot of tax. It touches on fraud in relation to taxes because we have several importers. They import goods which are destined to other East African landlocked countries like Uganda---

Hon. Wamunyinyi: *(Inaudible)*

Hon. Angatia: Hon. Deputy Speaker, I am talking of importers. Could you protect me from Hon. Wamunyinyi?

Hon. Deputy Speaker: Hon. Wamunyinyi, address the Chair. Why are you addressing the Member? Anyway, can you proceed to conclude? We are almost running out of time.

Hon. Angatia: Thank you, Hon. Deputy Speaker. Businessmen who import goods destined to Uganda, Burundi and Rwanda pay a bank or insurance bond, but goods never cross the border. That is fraud. Clause 97 is dealing with fraud. We will now have to charge taxes accordingly, because the Commissioner will have powers to deal with these fraudsters.

Thank you, Hon. Deputy Speaker.

The Deputy Speaker: You had actually a balance of six minutes, but you seem to have concluded. So, another speaker will come in the next sitting, or when this Bill is next on the Order Paper.

ADJOURNMENT

Hon. Deputy Speaker: It is now 6.30 p.m. This House stands adjourned until tomorrow, Wednesday, 18th November 2015 at 9.30 a.m.

The House rose at 6.30 p.m.