

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 1st February, 2017

The House met at 2.30 p.m.

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

PRAYERS

Hon. Deputy Speaker: Ring the Quorum Bell.

(The Quorum Bell was rung)

MESSAGES

APPROVAL OF NOMINEE FOR APPOINTMENT AS CHAIRPERSON OF COMMISSION ON REVENUE ALLOCATION

Hon. Deputy Speaker: Hon. Members, I have a Message to deliver.

Hon. Members, pursuant to the provisions of Standing Order No. 42(1) of the National Assembly Standing Orders, I wish to report to the House that I have received a Message from His Excellency the President, seeking the National Assembly's approval of the nominee for appointment as Chairperson of the Commission on Revenue Allocation (CRA). In the Message, His Excellency the President conveys that, in exercise of powers vested on him under Article 215(2)(a) of the Constitution and pursuant to the provisions of Sections (3) and (5) of the Parliamentary Appointments (Parliamentary Approval) Act, 2011, he has nominated Dr. Jane W. Kiringai for appointment as the Chairperson of the Commission on Revenue Allocation (CRA).

Hon. Members, Section 8 of the said Act provides that the relevant Committee of the House will consider the suitability or otherwise of the nominee and table its report for consideration by the House within 14 days from the date when the notification of nomination is conveyed to the House. Further, the Act requires that the public be given seven (7) days notification to submit their views regarding the suitability or otherwise of the nominee proposed for appointment to an office requiring parliamentary approval.

In this regard, and in accordance with the provisions of Article 259(5)(a) of the Constitution as read together with Section 5 of the said Act, the seven days notification to the public shall start running on the day following the day when the notice is published in the dailies.

Hon. Members, given the critical role played by the Commission for Revenue Allocation (CRA) within the framework of issues of Division of Revenue, which are currently under consideration within the budget process, it is advisable that the concerned Committee expeditiously proceeds to notify the nominee and the public. Indeed, it should be noted that the

House approved the Commissioners of the CRA on 20th December, 2016, and their swearing-in has been stayed, pending the appointment of a substantive Chairperson.

In this regard, the Committee should commence the approval hearings after the seven day notification period, and table a Report on or before Wednesday, 15th February, 2017, to enable the House to consider the matter within the statutory timelines. This Message, together with the resumé of the nominee stand committed to the Departmental Committee on Finance, Planning and Trade for consideration.

I thank you.

PETITIONS

AMENDMENT OF THE TRAFFIC ACT AND ENACTMENT OF

MODEL TRAFFIC LAW FOR COUNTIES

Hon. Deputy Speaker: Hon. Members, we have two petitions. I shall present one, followed by the one by Chris Wamalwa.

(Hon. Abongotum and Hon. Njuki walked into the Chamber)

Can Hon. Kamama and Hon. Njuki settle down, so that I can present the Petition?

(Hon. Abass walked into the Chamber)

Member for Ijara, I am waiting for you.

Hon. Members, pursuant to the provisions of Standing Order No. 225, I hereby convey a Petition, signed by Messrs Laban Maina, Peter Kuria Wanjama, Lawrence Kimani and Job Nzioka on behalf of Kenya Taxi Cabs Association, praying that the National Assembly amends the Traffic Act, Cap 403, Laws of Kenya and enacts model traffic legislation for counties.

Hon. Members, the Petitioners are concerned that the Traffic Act, Cap 103 Laws of Kenya lays ground for unfair competition by disproportionately regulating the taxi subsector. They allege that whereas Sections 70 to 74 of the Act obligates taxi cabs to be registered and among others, bear a continuous yellow line for identification, the same law appears to confer inverse statutory liberty to corporate taxi cabs and those contracted by Electronic Cab Hailing Applications like Uber.

Hon. Members, the Petitioners have stated that the disproportionate regulation of the subsector has subjected yellow line taxi operators to unfair competition, thereby raising disquiet and sometimes causing incidents of aggression between the Petitioners and their counterparts, especially those operating using Electronic Cab Hailing Applications. They are concerned that efforts to have their grievances addressed by both the national Government and county governments have so far not yielded any fruits.

Hon. Members, the Petitioners are therefore praying that the National Assembly speedily amends the Traffic Act Cap 403 of Laws of Kenya by making provisions for equitable and inclusive regulation of players in the taxi sub-sector, particularly with respect to:

- (i) Regulation of fares chargeable to passengers with a view to eliminating unfair competition through price manipulation.

- (ii) Making provisions for a uniform physical identification mark for all taxi cabs, whether independent, corporate or from the Electronic Taxi Cab Hailing Companies, so as to enhance security of drivers and passengers.
- (iii) Repealing provisions of the Act that restrict taxi cabs with yellow lines from accessing certain areas, particularly within cities; and,

The Petitioners also pray that the said law be drafted to incorporate provisions that apply in the counties so as to cascade equity and fairness in the enactment of county legislation on regulation of the transport sector at county level.

Hon. Members, the Petition stands committed to the Departmental Committee on Transport, Public Works and Housing for consideration. The Committee is required to consider the Petition and report its findings in accordance with the provisions of Standing Order No. 227(2). Owing to the enormity of the matters raised in the Petition, the Committee is directed to extensively look into the issues and widely engage all stakeholders in the industry with a view to conclusively resolving the unease existing in the taxi sub-sector.

I thank you.

Hon. Deputy Speaker: Let us have the one by Hon. Wamalwa.

ALLEGED KILLING OF HAGGAI CHIMAKILE MULATI BY POLICE/KPR

Hon. Wakhungu: Thank you, Hon. Deputy Speaker. I would like to present this public Petition on behalf of the family of the late Haggai Chimakile Mulati from Meso Farm, Kiminini Constituency, Trans Nzoia County, who was killed by the police/the Kenya Police Reservists (KPR).

I, the undersigned, on behalf of the family of the late Haggai Chimakile Mulati, a resident of Meso Farm in Kiminini Constituency, Trans Nzoia County, draw the attention of the House to the following:

THAT, on 27th January 2017 while Haggai Mulati was herding cattle at his father's home in Meso Farm in Kiminini Constituency, the late Haggai Chimakile Mulati of ID. No.32882209 was allegedly shot dead by police/KPR under mysterious circumstances.

THAT, it is alleged that the young man met his death in an attack by the police/KPR who were evicting residents of Meso Farm due to a land dispute.

THAT, this eviction was being conducted without the knowledge or involvement of the chief or the local administration

THAT, this killing is a gross violation of Article 26(3) of the Constitution on the right to life.

THAT, efforts to address and resolve the matter have been futile.

THAT, issues in respect of this Petition are not pending before any court of law, tribunal or constitutional or any legal body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Lands or Departmental Committee on Administration and National Security, recommends that the National Land Commission looks into the matter of Meso land dispute and makes the necessary recommendations

It also makes any other order or direction that it seems fit in the circumstances of the case of the killing of the late Haggai Chimakile Mulati caused by the KPR.

Your humble Petitioners will forever pray.

Thank you.

(Loud consultations)

Hon. Deputy Speaker: Order Members! The consultations are too high. Do these Members whose cards are in the intervention list want to make comments on the two Petitions that have been presented?

Cyprian Iringo is first on my list.

Hon. Kubai Iringo: Thank you, Hon. Deputy Speaker for giving me an opportunity to comment on the Petition on amendment of the Traffic Act and enactment of model traffic laws in the counties.

I support the Petitioners who have raised the Petition. I would request that when it goes to the Committee which is going to look into it, they should have a holistic overview of changing traffic rules and regulations. The *matatu* business has become a menace in this country especially in terms of the operators and how they conduct themselves on the roads, how they drive and where they pick and collect passengers. Some make their motor vehicles *matatus* during the day and turn them into private vehicles in the evening. This has to be regularised. There should be designated places where they can pick passengers and not anywhere. Proboxes have been turned into *matatus* and carry almost 20 people when they are supposed to carry five people. This risks the lives of people. I strongly recommend that when the Committee sits down, it should not only restrict itself to the particulars of this Petition, but they should also go out and make up a clean-up of this industry.

Thank you.

Hon. Deputy Speaker: Hon. Members, remember you only have half an hour. Make brief comments. So, let us share the time effectively.

Hon. Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Deputy Speaker. I want to support the Petition by Hon. Chris Wamalwa, my colleague from Trans Nzoia. It is very tragic that the KPR have been very notorious especially in Trans Nzoia. There is a question I raised seeking an answer from the Cabinet Secretary on the audit of police reservists in Trans Nzoia and how they operate. I am still waiting for answers.

It is very important that the Independent Oversight Policing Authority (IPOA) moves with speed especially in Trans Nzoia because this is not the first killing. In Olkandongo, we have had two killings of individuals from Kitalale. These individuals were killed and up to date, nothing has happened. The KPR and the police---

(Loud consultations)

Hon. Speaker: Hon. Members, the consultations are too high. We cannot hear the contributions.

Hon. (Dr.) Pukose: Police based at Olkandongo Agricultural Development Corporation (ADC) have been very notorious. Every weekend, they confiscate cows that have been taken to the dam to drink water, keep them and solicit for funds from people from Kitalale. The people have complained several times to even the Commandant of Police and this has been going on. People have been killed even by the Kenya Wildlife Service (KWS) officers within that area and so far, there has been no response at all or even an inspection by IPOA. I do not know whether they do their job selectively or what is happening.

It is very important that they move with speed to investigate that case of murder by the KPR and other pending matters of killings that have been perpetrated by the police in Trans Nzoia.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Ferdinand Wanyonyi.

Hon. F.K. Wanyonyi: Hon. Deputy Speaker, I take this opportunity to add my voice to the Petition raised by my neighbour, Hon. Chris Wamalwa, on the unfortunate case that happened to a very innocent young man who was looking after cattle. As I talk, police reservists in Trans Nzoia are taking the law in their hands. As my colleague has just mentioned, they are going beyond their mandate. As we now look for a way of compensating this particular victim's family, I strongly believe something should be done on the vetting of police reservists in Trans Nzoia.

Apart from this incident which is very unfortunate, we have had cases where police reservists, not accompanied by regular police who are supposed to accompany them, go round breaking into people's houses. This is very common in Trans Nzoia. We have very many communities living in Trans Nzoia and this can easily spark tribal clashes if not checked.

I ask that those responsible, particularly the Officers Commanding Police Divisions (OCPD) and Officers Commanding Stations (OCSs) to take it into consideration and have these officers properly vetted, so that they can carry out their responsibilities as mandated. As for this particular case, I assure you that the family is so depressed. I hope the County Commandant will take it up and get a way of compensating the late Haggai's family.

I support.

Hon. Deputy Speaker: Hon. Francis Waititu.

Hon. Francis Waititu: Thank you, Hon. Deputy Speaker. I stand to support the Petition by the taxi operators especially in big towns in our country like Kisumu, Nakuru, Mombasa and Nairobi. Kenyans who operate taxis have been experiencing a rough time. A good case is in Nairobi where most of the taxi operators took loans to buy taxis, but the competition is not fair as the Petition says. Owners of personal cars are now interfering with the operations of taxis. They do this by operating as taxi in the evenings. The security of this country has sometimes been affected by such people. In Nairobi, you hear that people have been hijacked in a taxi, but if you go to check at the county government offices, you find names of taxi operators. When taxi drivers were demonstrating in Nairobi and fighting for their rights, nobody listened to them. I pray that the National Assembly would take up this matter seriously.

I visited Uganda where my two sons have been studying at Makerere University and what they call taxis are *matatus*, only that they have a blue line on them that shows that, indeed, they are *matatus*. In Kenya, you will not even differentiate between a personal vehicle and a taxi. Before, taxis used to have a yellow line on them and there was law and order in the City of Nairobi. Today, you cannot tell who is a taxi driver and who is not. The Petitioners need to be supported by Parliament. We need to instil law and order in this country. I wish to ask the county governments and the national Government to pull together so that we can make laws that will help our taxi drivers.

Hon. Deputy Speaker: Onesmus Njuki.

Hon. Njuki: Thank you, Hon. Deputy Speaker, for giving me the opportunity to support these two petitions. On the issue of police reservists, I am wondering whether we really need them especially at this time when we are recruiting 10,000 police officers. Those are hit squads! Cases of police reservists killing innocent Kenyans have been there for many years. I do not

know when we will learn our lesson. It is high time we did away with police reservists. That way, Kenyans will know whether it is an Administration Police officer or a regular police officer who has killed a person and not police reservists who are unregulated.

On the issue of taxis, in the line of entrepreneurship, there is a concept by a man called Joseph Schumpeter who came up with a theory called Creative Destruction where a new technology usually replaces an old technology and totally crashes it out for those people who are not willing to change. Electronic taxis all over the world, including the famous ones like Uber, are here to stay. It is high time the Kenya Taxi Cab Association realised and woke up to the reality of the electronic concept and so they need to change. Unless they do so, they are bound to crash out of business. I am safer in an Uber because the moment you register as a driver of Uber, all your information is there. The moment you call an Uber taxi---

Hon. Deputy Speaker: Hon. Njuki, you are now debating. Do you not think the taxis are also entitled to protection? Can you take those matters to the Committee, please?

Hon. Njuki: I was coming to that. I just thought it would be good to say the truth that new technology is definitely going to crash out the old one as much as we may want to think that those electronic taxis are not well registered. As much as I support the Petition to regularise these two types of operators, there is need to upgrade the taxi operators. They can use a very simple concept like having a metre in the taxi whereby if I enter your taxi, we do not have to negotiate how much you will charge me, say to Kawangware. You just need to install a metre and we move. When I get to my destination, I pay.

Hon. Deputy Speaker: I am going to cut you short because you are now debating.

Hon. Njuki: I want to support the Petition and say as the Committee looks at this---

Hon. Deputy Speaker: Just support it and we will get the details later on.

Hon. Njuki: I support the Petition. The Committee should advise taxi operators to upgrade, so that we can also have less hustle in trying to standardise them with the law.

Hon. Deputy Speaker: Wesley Korir.

Hon. Korir: Thank you, Hon. Deputy Speaker, for giving me the opportunity. I support the Petition by my neighbour and my friend, Chris Wamalwa, on the killing of an innocent young man who was going about his work. The fact is that police reservists in some areas like Trans Nzoia are now getting out of hand. The police engage police reservists to do police jobs. Nowadays, some police reservists drive around in Probox cars as they go to people's houses and alcohol dens. That is not supposed to be the work of police reservists. We need, as a House, to come up with a way of regulating the work of police reservists. You cannot train somebody and give them a gun without paying them. As the Committee responsible looks at that Petition, it should take a step further and look at ways of utilising these police reservists who have been trained in using guns, so that they can help us more than harm us. We need to even find a way of absorbing police reservists who have served for more than five years and have good conduct, so that they can be controlled and get paid because they are using guns.

On the second Petition about the taxi, mine is a mixed reaction. When you think about it, the world is actually changing fast as the Member has said and so, we cannot regulate the freedom of taxi drivers especially when it comes to digital taxi driving. The Member has said that when you ride in an Uber taxi, it is less safe because they are less regulated than when you ride in a taxi. I have used Uber and I will say here that I feel more comfortable using an Uber taxi because it is more of an online system. I can see the person who is coming to pick me up and the number plate of the vehicle he or she is using. I can send that information even to my wife or

somebody else. So, taxi drivers should know that the world is changing and they should change with the world.

Hon. Deputy Speaker: Hon. M'eruaki.

Hon. M'uthari: Thank you, Hon. Deputy Speaker. I rise to support the Petition by taxi operators. It is high time the law was repealed, so that the rights of taxi operators and their safety can be taken into consideration. These people play a critical role in terms of movement of people. It will be helpful if we regulated their activities as per their prayers. We need to support them by putting in place a proper mechanism so that their safety is guaranteed. The whole of that industry needs to be recognised. When somebody is in a taxi, it is important that they know the owners of the taxi. The safety of both the taxi driver and the passenger would be guaranteed if we put in place a proper registration and identification mechanism.

This is a good idea and we need to support it.

Hon. Deputy Speaker: Before we move to the next Order, I am committing Hon. Wamalwa's Petition to the Departmental Committee on Administration and National Security. The matters raised here have been more on the issue of murder rather than land, but if you need any support from the Departmental Committee on Lands, you can always approach the Chairman. The main matter seems to revolve around security.

The petition on amendment of the Traffic Act is committed to the Departmental Committee on Transport, Public Works and Housing.

PAPERS LAID

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

The Reports of the Auditor-General on the Financial Statements in respect of the following constituencies for the year ended 30th June 2015, and the certificates therein:

- (i) Wajir North Constituency;
- (ii) Mumias West Constituency;
- (iii) Matungu Constituency;
- (iv) Mwingi Central Constituency;
- (v) Navakholo Constituency;
- (vi) Butere Constituency;
- (vii) Teso South Constituency;
- (viii) Tigania West Constituency;
- (ix) Kitui Rural Constituency; and,
- (x) Emuhaya Constituency.

Hon. Deputy Speaker: Next Order!

NOTICES OF MOTIONS

RATIFICATION OF AGREEMENT ON COOPERATION IN THREAT REDUCTION BIOLOGICAL ENGAGEMENT PROGRAMMES

Hon. (Ms.) R.K. Nyamai: Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Health on the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United States of America concerning Cooperation in Threat Reduction Biological Engagement Programmes, laid on the Table of the House on Tuesday, 22nd November 2016, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the agreement between the Government of the Republic of Kenya and the Government of the United States of America concerning Cooperation in Threat Reduction Biological Engagement Programmes.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: We also have two Notices of Motions by Hon. Kamama.

ADOPTION OF REPORT ON ALLEGED IRREGULARITIES IN DISBURSEMENT OF FUNDS BY NACADA

Hon. Abong'otum: Hon. Deputy Speaker, I beg to give notices of the following Motions:

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

ADOPTION OF REPORT ON GARISSA UNIVERSITY TERRORIST ATTACK

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

PERSONAL STATEMENT

ALLEGED INVOLVEMENT IN ILLEGAL ACTIVITIES

Hon. (Ms.) Otucho: Hon. Deputy Speaker, pursuant to Standing Order No.84, I wish to make a Personal Statement regarding my alleged involvement in illegal activities relating to poaching of Uganda nationals to register as voters in my constituency.

On 30th January 2017, wild allegations were levelled against me in sections of print and social media that I evaded being apprehended by Ugandan authorities for allegedly attempting to illegally poach Ugandan nationals to Teso South Constituency to register as voters so as to swing the outcome of the August 2017 General Election results in my favour.

Hon. Deputy Speaker, I want to offer a public alibi that on the said day, I was in my country and was shocked to read that I was in Uganda. I also wish to categorically clarify that I am not aware of any irregular recruitment of foreigners to be registered as voters in my constituency or any other part of this country. It is sad that the imagination that persons not

registered as Kenya nationals may be enlisted as voters in the on-going voter registration exercise has become a matter of public notoriety. As a matter of fact, the law on registration of voters in the country clearly outlines that for one to be eligible for enlisting as a voter in Kenya, that person must have a national identification card as proof of Kenyan citizenship.

Hon. Deputy Speaker, to imagine that foreigners who in all manner and intent do not bear national identification cards as Kenyans would be registered as voters in a country where they are not citizens is the highest order of fallacy. I want to refute and condemn in the strongest terms possible the allegations that I am involved in poaching Uganda nationals to register as voters in my constituency. Those are mere fabrications being milled and peddled by my opponents, who have already sensed defeat so as to tarnish my name and portray me as a bad leader ahead of the August 2017 General Election. I also wish to reassure my supporters, friends and the entire nation that I am safe. I was not detained by security agencies in Uganda or in Kenya.

Hon. Deputy Speaker, considering that general elections are usually characterised by high emotions, I wish to implore the security and intelligence agencies to investigate and apprehend persons found culpable of peddling such dangerous rumours that are likely to put the country on the brink of election-related violence.

Hon. Deputy Speaker: There are Members leaving the Chamber, please, give us five minutes to conclude this.

Hon. (Ms.) Otucho: Finally, I want to take this opportunity to urge all eligible Kenyans to voluntarily go and register as voters so as to have their opinion counted in the upcoming and subsequent general election.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: There are no comments on Personal Statements. If you want to comment, please, go and see Hon. (Ms.) Otucho personally.

Let us move to the next Order.

BILLS

Second Reading

THE HYDROLOGISTS BILL

(Hon. Katoo on 31.1.2017)

(Debate concluded on 31.1.2017)

Hon. Deputy Speaker: Hon. Members, please, settle down, so that I can put the Question. The debate on the Hydrologists Bill was concluded yesterday. What remained was for the Question to be put. I have confirmed that we are properly constituted. Therefore, I will proceed to put the Question.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

(Hon. Katoo on 31.1.2017)

(Resumption of Debate interrupted on 31.1.2017)

Hon. Deputy Speaker: This Bill had been moved, but not seconded. So, I would like the person seconding to take the Floor now. It is the Member for Nyeri County.

Hon. (Ms.) Kanyua: Thank you, Hon. Deputy Speaker. I rise to second the Statute Law (Miscellaneous Amendments) Bill 2016. This is an omnibus Bill that brings together amendments to 36 pieces of legislation on fairly minor matters or what we call matters that are not substantial. The amendments brought together by a Statute Law (Miscellaneous Amendments) Bill usually arise out of the implementation of the parent Acts and many of the amendments in this particular one arise out of the need to align with the new Constitution and the language of the new Constitution. Also, the amendments sought to be brought in by the Statute Law (Miscellaneous Amendments) Bill seek to bring clarity to matters that have arisen during implementation of the Act.

The Bill passes the requirements of a Statute Law (Miscellaneous Amendments) Bill in terms of not amending substantial matters. I will just highlight a few laws that are of interest.

(Loud consultations)

Hon. Deputy Speaker: Members, the volumes are going up again. Members, please, find a place to consult.

Hon. (Ms.) Kanyua: Thank you, Hon. Deputy Speaker. I will just highlight a few laws whose amendments are of much more import to us here as Members of the Assembly. The Judicature Act seeks to be amended to clarify and bring to closure the debate on the retirement age of judges. The retirement age of judges under the Judicature Act is now set at 70 years. There is confusion that has arisen with judges appointed before the new Constitution and judges appointed after the new Constitution. That is what the amendment to the Judicature Act seeks to end. From now on, no judge, whether appointed under the new Constitution or the old Constitution, is going to be in doubt on their retirement age of 70 years. The judges were not saved when the Constitution was being written. All the judges now will retire at 70 years. The law suit that the judges brought to try and retire at 74 years that almost killed the Supreme Court is regrettable. This debate seeks to be settled by this House from now on.

There are other amendments in the Judicial Service Act, especially allowing the senior most Supreme Court judge to act as the Chief Justice in the circumstances that affected the country when both the Chief Justice and the Deputy Chief Justice were not available to exercise the functions of the office. The senior most Supreme Court judge would then be appointed to serve as an acting Chief Justice with the functions of the Office of the Chief Justice. The Advocates Act seeks to be amended to protect clients whenever an advocate who has not attained or acquired a practising certificate is sought to be removed from the roll of the practising advocates.

There are fairly minor amendments on the Insurance Act, the Auctioneers Act and the Income Tax Act relating to issues of wives' employment, profession and employment income rate. The amendments are fairly minor, but we want to ask the Cabinet Secretary for the National

Treasury to look at the matter of combined incomes. When you have both a husband and a wife paying tax, there ought to be some considerations done to that particular institution of marriage. In many other countries, the people who are unmarried pay higher taxes than those who are married. I think it is time that we in Kenya also implemented such rules. The singles should pay more and those who are married should pay less because they are also bringing up children and it is only fair that the taxman has that consideration when they are shaping the rates of tax. We urge the CS in charge of the National Treasury, as he reviews taxes, to also review taxes that relate to a husband and wife in the same institution.

I want to spend a bit of time on the Sexual Offences Act that seeks to be amended. There are areas of concern in this particular law. It is, indeed, true that the implementation of the Sexual Offences Act of 2006 has commenced, has worked and is in progress. There are lessons learnt from the implementation of the Sexual Offences Act, but even as we seek to amend the Sexual Offences Act, a lot of consideration needs to be put on the reasons that we had when the first law passed. The implications of the Act and the emerging question of young offenders who are around 18 years of age need to be looked at. Judges are lamenting that when they have a young man aged 18 years and they have to send that young man to prison for life or for many years and the young man is accused of having had sexual contact with a young lady, there are questions arising out of that. However, the whole intent of the law was to protect women, girls and boys.

As we seek to amend the Sexual Offences Act, the original intent of the law must be kept and the original intents of the law are to create a country that is safe for women, boys and girls. I would want the Kenya Women Parliamentarians Association (KEWOPA) Members in particular to have very serious consideration, actually toothcomb consideration to the amendments sought, especially the one seeking to reduce the age limit from 18 to 16 years. I think that is an area that needs a lot of care and concern. In Kenya, 18 is the age of maturity. It is the age of getting an ID card and the age of registering as voters as we are involved in right now in this country. The age of 18 should be age of consent for sexual conduct. The attempt to reduce the age from 18 to 16 years is very worrying and the Members of this House need to have particular regard to that particular issue.

The question of protecting youthful offenders is already covered by the parent Act. Youthful offenders are supposed to be sent to bolster institutions and not to prison. There is already particular attention paid by the law on the question of youthful offenders. So, in this particular law, the age should remain at 18 and there should be no attempt at reducing this age to 16. Reducing this age to 16 is going to cause a lot of other problems in the society as was intended to be resolved by the Sexual Offences Act. As we debate this Statute Law (Miscellaneous Amendments) Bill, there are many other sections and parts that are sought to be amended. Many of them are not raising as much concern and debate. Many of them align language in our laws. Before, we had the language of Minister. We used to have Ministers before the new Constitution. Under the new Constitution, we have CSs and it is only fair that we clean up most of the laws that continue to refer to Minister instead of CS.

The Persons with Disabilities Act of 2003 is sought to be amended by making changes to the Council. Many of them are not bad changes, but it is important to note that the whole legislation of the Persons with Disabilities Act needs to be implemented. Even as we seek to amend parts that have come under consideration in the implementation, it is important to note that the whole law has not been implemented. There are sections of that law that allow persons with disability to pay less tax and to import their equipment without paying tax. There are

particular sections of the law on how buildings should be constructed so that persons with disability can access them. I think the point to make is that the entire law should be implemented even as we seek to align that which we want to align in this Bill.

Hon. Deputy Speaker, the National Police Service Act seeks to be amended as well to define a member of the Service meaning a police officer from the Kenya Police Service, Administration Police Service or the Directorate of Criminal Investigation (DCI), Special Police, the National Police Reserve and any other service established under this Act. All of those are sought to be brought under the ambit of the National Police Service Act. The point to note is that in the reforms of this country, a time must come when we only have one National Police Service. The dichotomy between the Kenya Police and the Administration Police at a time when the administrators are working differently---

Hon. Deputy Speaker: Proceed to summarise because your time is up.

Hon. (Ms.) Kanyua: Thank you. I am almost done. The point to make is that a time has come when we combine the Kenya Police Service and the Administration Police Service and have only one Kenya National Police Service without the dichotomy.

Hon. Deputy Speaker, the other laws that are sought to be amended include the Retirement Benefits Act to introduce the retirement for the Chief Justice (CJ). We have a CJ who has retired. So, the Retirement Benefits Act (Deputy President and Designated Officers) Act are sought to be amended to cover the retirement of the CJ. The package that is considered is sufficient to enable CJs and other persons who retire to leave institutions and to plan well for their succession.

The Water Act has minor amendments. I urge Members to look at the laws that are sought to be amended.

I beg to second the Statute Law (Miscellaneous Amendments) Bill.

Hon. Members: Put the Question.

Hon. Deputy Speaker: Thank you. Hon. Sakaja, Hon. Zakayo Cheruiyot and Hon. Nyikal, if you could allow me to propose the Question, I will do so.

(Question proposed)

Daniel Maanzo is the first on my list.

Hon. Maanzo: Thank you, Hon. Deputy Speaker, for giving me an opportunity to comment on this Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.45 of 2016).

I have looked at the whole Bill. My attention went to the Sexual Offences Act, 2006. Being aware that Hon. Florence Mutua has brought similar amendments to this and also considering all these miscellaneous amendments, the one on the Sexual Offences Act is quite substantive. In fact, it should have been a Bill on its own. It will be my proposal to the lawyers on the other side that this should be treated on its own. It is extremely sensitive. As a practising lawyer, I am aware there are very many people faced with sexual offence cases, especially defilement of high school children. You know by the time a young girl gets to 18 years of age, she has most probably left high school. The Bill proposes to amend the Sexual Offences Act to provide for the correct expression as in the words used in this Act. The Bill proposes to reduce the consensual age with regard to the offence of defilement from 18 years to 16 years. This is a big mistake. Somebody is sneaking this amendment so that an accused son of theirs or an accused person somewhere gets off the hook because defilement is a very serious offence.

Just like it has been said by Hon. Nyokabi, the Vice-Chairlady of the Departmental Committee on Justice and Legal Affairs, there is no way it is possible to change this age because we are going to put to risk many children in high schools. It will mean young girls in Form Two could get misused sexually and there is no legal remedy and so, this is extremely dangerous. In fact, it will be my proposal at the Third Reading that it is removed and consolidated with Hon. Mutua's amendments, some of which are extreme.

We should relook at the Sexual Offences Act together and make sure that we do not endanger any Kenyan just to serve selfish interests of someone's son; somebody influential and whose child may be facing a life jail term and wants to use the law before their case is over. Someone will then say that now that the law has changed, they can be left off the hook. I do not think there is an excuse, at all, for anybody who seeks to mistreat children who would be in high school. It is really extreme.

On the issue of the Advocates Act, it is proper because there are many people who are not proper lawyers and who practise illegally.

On the issue of the Judicature Act, the retirement age of judges is now clear from the court of law, by judgements and pronouncements of the Supreme Court and the High Court. Therefore, it is proper. The amendments on who would be in charge in the event the Chief Justice and the Deputy Chief Justice are not around for some reason, it says that the senior most judge will take over and act as a Chief Justice. The role of a Chief Justice in the judicial system is very important. They allocate cases. So, if in the event you do not have a Chief Justice and a Deputy Chief Justice, it is proper to bring in the senior most judge in the Supreme Court. In legal practise, seniority is very important. There is no way I will overtake Sen. Kiraitu Murungi, Sen. Orengo or any other lawyer who is my senior. That seniority is perfectly within the practise and culture of advocates and the legal profession. It is quite in order.

If you look at most other publications, they are quite within the limits of what we can put in the Statute Law (Miscellaneous Amendments) Bill other than the Sexual Offences Act. In my opinion, we have many laws which have to be checked like the Counterfeits Act and the Refugees Act. You know the issue of refugees is very sensitive in the country right now.

On the Insurance Act, the Bill proposes to amend it by conferring additional functions to the authority to educate the public on the right to elect an underwriter of their choice. It is also to regulate bank insurance. Many banks are now working together with insurance companies. An example is the Cooperative Bank which is in partnership with the CIC Insurance Group Limited. You are able to buy your insurance through the bank. There are some amendments which touch on this. I believe we will make sure they do not infringe on the rights of trade of either of those companies at the Third Reading. There are not many companies other than those two who are in that business. It is good we make sure we do not infringe on the rights of others while we are trying to make a law or the source of the law has not been a competitor for these companies. The amendment should come here in good faith.

There is the issue of auctioneers. Auctioneers are executors of the courts. Many people who are not familiar with the law have been coned by auctioneers, including advocates. So, it is good when that Act is also done well so that somebody does not take advantage and misuse the Auctioneers Act to enrich themselves unfairly or take advantage of other people. It has happened in the past. I find that to be a very good law of a good purpose for the country of Kenya.

The Children Act seeks to empower the Cabinet Secretary (CS) to restrict international adoptions of Kenyan children. The area of adoption has been very tricky. Kenyans have been shipped out of the country irregularly through alleged adoptions which have been processed

through court. The moment they leave, because they are citizens of this country, many issues arise like dual citizenships and other things. But it must be restricted so that we do not give away all our children, whether they are orphans or not through a process where they could suffer in future without remedies from this country. Once a child is outside the jurisdiction of Kenya, the laws of Kenya cease applying for that child. It is important for us to protect our children.

There is also the Public Officers Ethics Act. While there is a board responsible for witness protection, it is a very sensitive matter. Many witnesses do not want to give evidence in court. From sexual offences to any other person you witness committing an offence to corruption cases, people fear for their lives even with regard to international crime. It is good to make sure that the law is proper. When there are corruption matters involved and the person is the whistleblower, their life should be protected. When they give evidence, they should not be exposed. We all know corruption fights back. People who are involved in mega corruption and big money are likely to endanger witnesses. A conviction can only be obtained through a witness. Therefore, the moment you knock out the witness, there is no case. Witness protection is very good more so when the public notices that our witnesses are protected.

There are also persons with disabilities, so that we can take care of our very able Kenyans who have one or two challenges to access public places and buildings. The other day a school of children with disabilities visited Parliament. I discovered Parliament is very compliant because there is a lift you use and you end up finding these people at the Speaker's Gallery. But there are many other places where people with disabilities have no access to public places or public property.

I believe there are enough lawyers in the House who will contribute extensively on many other sections of this Bill. I wish to support this except the matter of sexual offences. This is between the Leader of the Majority Party, because this is his Bill and the Departmental Committee on Justice and Legal Affairs, and there are enough ladies in the House. I believe even KEWOPA will come in to save the girl-child.

Hon. Deputy Speaker: Hon. Wanjiku Muhia.

Hon. (Ms.) Muhia: Thank you, Hon. Deputy Speaker. I stand to support these amendments, but without reservations having seen several issues which are of concern, mainly the sexual offences which Hon. Nyokabi has already pointed out. In this country, we have known 18 years as the age of obtaining an ID card, voting and it is termed as the age of maturity. For this reason, I am sure all KEWOPA members will not accept any minimum age, not even 17 years and nine months.

When I look at the amendment to the National Police Service Act, it is in good order to have police officers, APs and administration police and the rest. Very recently, we have had issues in the counties where the Kenya Police, who are commonly known to be in blue uniform and APs, who are commonly known to be in different uniform, not having a correlation while handling issues. In fact, in my Committee, we have had this issue time and again. We realised that in some counties, conflicts always emerge when the police in blue are in charge of a situation or a place and something happened. There were always issues that the other police were not responsible for. When all members of the Service mean all those other Service members, it will make the work easier.

I cannot fail to point out the issue of persons with disabilities, particularly noting the Persons with Disability Act is of concern. I have amended this Act some time back and I am happy with the media houses because they have already implemented the law. It is working through sign language interpreters. I am very happy with this amendment which says that the

representatives should come from different types of disabilities. We have known people with disabilities, particularly physical disabilities as the most visible. People with disabilities like the deaf are not seen because sometimes they are not even able to speak out. When this law makes it mandatory to have different categories represented, that will bring equity.

The issue of the Children Act is necessary, though most of it is clean-up. As I conclude, I cannot fail to speak about the Refugees Act. We have known this country to have hosted refugees for the last 25 years in Dadaab and Kakuma camps. All attempts to close these camps have become a big headache to the Government, considering people living within those areas have experienced several negative effects from the camps. We appreciate this law to be amended to be in line with the current situation.

With those few remarks, I know many Members are concerned because there are several laws. For that reason, I constrain myself to allow other Members to contribute. Thank you.

Hon. Deputy Speaker: Hon. Ken Okoth.

Hon. Okoth: Thank you, Hon. Deputy Speaker. I rise to contribute to the discussion on the Statute Laws (Miscellaneous Amendments) Bill. I will begin with the point that Hon. Muhia has just mentioned. We need to be very careful in this country about our attitude towards refugees. The fact of the matter is that Kenya is a signatory to the Geneva Convention on Refugees and we have obligations to protect refugees and treat them appropriately. We have just finished the Second Reading during the last Session of a new and comprehensive Refugees Bill brought by Hon. Agostinho Neto. I would urge Hon. Wanjiku and other Members who have concerns about the regime of refugee management in this country to participate at the Committee of the whole House stage with any necessary amendments to make sure that the final law that we pass on refugees is very good. But we have to be careful as leaders to remember that refugees are also people and that our utterances do not contribute to a culture in which they are seen as less than people and as foreigners or as enemies. This is a sad thing that is happening even in a country that used to be the beacon of freedom and international rule of law.

Under President Trump, sadly, the United States of America is doing very crazy things, with bans on Muslims and other things. I do not think Kenya should be like that. We can make rules for security in our country and we can also live up to our values to treat people with dignity and take care of those who are fleeing countries where there is no peace and their lives are in danger. Kenya is beautiful because we have people of all religions and we welcome them too.

When we get to the citizenship laws that are proposed to be amended, it talks about how citizenship by marriage is to be gained. But it is silent on issues of refugees who have married in Kenya. When we talk about management of places like Kakuma and Dadaab, especially Dadaab where there is a close-shared culture among the Kenyan population in Garissa County and parts of Wajir County that host Dadaab as well as the people of Somalia across the border where many of these refugees have come from, you will notice that in the over 20 years that have since passed, there has been a lot of intermarriages, children born, even some grandchildren born. If we wanted to shut down Dadaab and reduce it in a humane way, we would start with a recognition of Kenyans who have been double registered, take them out of the refugee database, give them Kenyan ID cards and let them vote in the 2017 elections. Who are the people of Dadaab who have married into Kenyan families or intermarried, and if they have lived without a criminal record and have had marriages that last over three years and are valid at the time of registration, we need to allow those refugees to become citizens by marriage or, at the very least, be granted as Section 37 proposes, permanent residence, so that they can move freely and get out

of the camp, get integrated and contribute as taxpayers, as employers and as good citizens of our country.

Hon. Daniel Maanzo brought up the issue of the purported amendment to the Sexual Offences Act to reduce the age of consent from 18 to 16. This is a very sensitive issue. I have listened carefully to the feedback from many people in this country who are very concerned and they think 16-year-olds are too young. I agree that 16-year-old is still a child. No boy can decide that at 16 they are ready to be a father with those responsibilities. They should be in school completing their education and gaining skills to become parents at a later date. Studies all over the world have shown that 16-year-old is still a child and should not be a bride in the case of girls, and that girls who get into motherhood and become wives at a later date do much better than girls who get married off too young, without proper education, independence and psychological maturity, even physical maturity of their bodies.

We should reject the proposal to turn the age of maturity from 18 to 16 for consent. There are a lot of people involved in paedophile and paedophilia and taking advantage of young people to bring them into sexual activity. We should oppose that. We should make sure that even if we are trying to save the boy-child, because under the current Sexual Offences Act, there is the issue that many boys have been victimised, taken to court and sentenced to prison because of engaging in sexual activities with underage girls of their age group, we should be careful.

There is the Romeo and Juliet principle where youths and minors of certain age groups play it safe. For children within a five year age range, it is a different case. A boy and a girl aged 18 and 17 years respectively should not engage in sexual relations. However, if they do, because they go to the same school, we must appreciate that their case is very different from that of an adult aged 50, 60 or 70 going to a school to prey upon 16-year-old girls. Therefore, while we need to look at that subset of issues of the Romeo and Juliet principle, we must ensure that all our children are protected. Sixteen year old boys are too young to give consent and make those decisions just as 16-year-old girls are too young to become brides. They are children we should be educating them to become the next generation of leaders in our country. I think that is really important.

That section on sexual offences should be amalgamated with the proposals by the Member for Busia County, Hon. Florence Mutua, as contained in her more comprehensive amendments on the Sexual Offences Act that he is moving. I hope he will do that in a speedy manner.

I completely support the issue of supervision of dangerous sexual offenders. This is a very important issue. Dangerous sexual offenders are not trapped by whoever employs and engages them to work in the presence of, for instance, young children. We should have a proper database for tracking and monitoring them. We should have a reporting system for sexual offenders who have served their terms and undergone rehabilitation. Even when they are re-integrated into the community, there should be a system of tracking them to establish the activities they might be engaged in. If they are engaged in employment categories where they will be working with vulnerable populations, there must be limitations in the kinds of situations they might work on.

Last week we discussed the Privatisation (Amendment) Bill, which was laid on the Table on Thursday afternoon. The 20 or 30 Members who were still in the Chamber then spoke vehemently against the Bill, highlighting the risks involved in moving the powers of privatising companies and appointing the Board of the Privatisation Authority, to the Cabinet Secretary for the National Treasury. According to the Bill, all of them should be appointed without the

participation of Parliament. The Executive will then appoint board members without consulting Parliament and the board that will be appointed without consulting Parliament will then make decisions and recommendations on what companies to be privatised. Chemelil and Muhoroni sugar companies and Kenyatta National Hospital (KNH), could all be sold off without any reference to Parliament. At the end of the debate, everybody was against it. I remember Hon. Dalmas Otieno, a senior Member of this House, making it very clear. The Question was put to vote yesterday afternoon and it was carried unanimously. That is a little bit of an irony and a frustration to the Members of this House. When the Question to such an important Bill is finally put without briefing Members as to how the debate ended, with 20 out of the 30 Members who spoke opposing it, it begs many questions. There was no summary or brief provided.

In the House of Commons, summaries on debates and briefs are provided to Members on the day before they vote on a Question. However, yesterday, Members came in and the Question on the Bill was put. People voted without knowing where the debate had reached. It is a little sad, but all is not lost.

I want to bring to the attention of the House the fact that the Privatisation (Amendment) Bill, as passed, will lead to public companies being sold at a song without consultation. Yesterday, the Bill was approved though we had opposed it. We still have a chance to amend it during Committee Stage. If the amendments do not suffer defeat, they will meet the wishes of this House. I hope Members at that point will get together and make sure that the Bill is rejected. I look forward to moving amendments during the Committee of the whole House.

With those few remarks, I beg to support.

Hon. Deputy Speaker: Hon. Florence Kajuju, Tom Kajwang, Joseph M’eruaki and Cyprian. Those are the only Members I have on my list.

(Loud consultations)

Hon. David Gikaria will have an opportunity thereafter. You had already logged in. Let us give a chance to those four Members.

Hon. (Ms.) Kajuju: Thank you, Hon. Deputy Speaker. I stand to support the Statute Law (Miscellaneous Amendments) Bill, 2016, but with very serious reservations on some of the concerns that have been raised.

I support the proposed amendments to the Children Act No.8 of 2001. It is known that when it comes to adoption of children, there are some regulations that are normally followed to ensure that if a family is adopting a child, they are not just doing so for the sake of it or to expose the child to any suffering. Such family must meet some standards. Therefore, I support the fact that the CS is supposed to ensure that there are restrictions, especially in international adoptions. Normally, adoption of children is done before the High Court. That gives it the status that it deserves. Therefore, it would be good if the CS is able to ensure that they sieve the applications that are made.

On the issue of persons with disabilities, our disabled persons have not been given due respect and the dignity that they deserve. It is therefore important so that we can comply with Article 100 of the Constitution. This amendment is being done to ensure that there is equity in representation in the council and in any other place where disabled persons are concerned.

My main reservation is on the Sexual Offences Act, 2006. The particular amendment that has been proposed is really bad for the children, mothers and fathers of Kenya.

*[The Deputy Speaker
(Hon. (Dr.) Laboso) left the Chair]*

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

Hon. Temporary Deputy Speaker, as a nation, we cannot agree to be parties to an illegality. Passing this amendment is accepting an illegality. We cannot reduce the consensual age of a child from 18 to 16 years. A 16-year-old girl is still a child. We have sought to protect our children when it comes to exposing them to sexual matters. The legal age is 18 years. It is, therefore, illegal to even imagine that we can reduce that age from 18 to 16 years. This particular amendment also goes further to seek to protect dangerous offenders. Paragraph (g) states that a person cannot be declared a dangerous offender unless and until they exhaust the appeal process. The moment someone has been convicted of a sexual offence, especially if it is defilement, that person has to be taken to be a dangerous offender. At the end of the day, if they proceed on appeal and the appeal succeeds, then the court and any other person would get to understand if that person is dangerous or not.

However, it cannot be said that offenders are given such a leeway that unless they exhaust the appeal process, they cannot be declared dangerous offenders. The moment someone has defiled a child, he is a dangerous sexual offender. Defilement is different from rape. Rape is when you rape someone who is over 18 years while defilement is when you defile a minor. Therefore, before someone is arrested for defilement, they would have defiled several children. Most of them are repeat offenders. By the time they are arrested, they would have committed the offence several times. It was in the newspapers the other day that someone had committed defilement with three children before he was arrested.

I am praying that this matter be committed to the Departmental Committee on Justice and Legal Affairs so that it can make a report. I believe that the Committee cannot make a mistake to approve this kind of an amendment.

Hon. Temporary Deputy Speaker, I also support the Judicial Service Act amendment as proposed. In the Judiciary, there is the ranking order where we have the Chief Justice (CJ) the Deputy Chief Justice (DCJ) and the senior most judges. However, the Judicial Service Act, as it is today, has no delegation of duty when there is no CJ or DCJ. It is, therefore, important when the Act is amended, to provide for delegation of duty to seek the senior most judge in the unlikely event that the CJ and the DCJ are not present. That is a good amendment because it allows the courts to proceed with the business in case the two heads of the institution are not present.

I also have reservations on the proposed amendments to the National Police Service Act and I beg that the Departmental Committee on Administration and National Security looks at this proposed amendment. It is not enough to say that the Act proposes to amend the status of Deputy Inspector General for the Director of Criminal Investigation (DCI) in the event of any fall out, retirement or someone opting out. When they are employing, the Constitution requires equality in so far as gender is concerned. So, if the Inspector General is a man, the Deputy Inspector General under the law should be a lady.

Therefore, it is not just status but gender. I propose that the issue of gender ought to be reflected in that proposed amendment so that we know that equality in terms of ranking is observed, so that not only the Constitution is implemented but any other laws that relate to the

issue of gender. I also support the issue of retirement benefits for the Deputy President and designated State officers, including a retired CJ. Under our laws, there are three arms of Government; the Executive, Legislature and Judiciary. The CJ is the head of the Judiciary. This means that if the head of the Judiciary retires, he or she must be recognised under the retirement benefits so that they also enjoy benefits conferred on the President, the Deputy President or the Speaker of the Assembly. That is a good amendment.

I also support the Court of Appeal (Organisation and Administration) Act 2015. This will enable the Court of Appeal and the High Court to understand their calendars so that when one court is on recess, it must work in harmony with the other. It is not good to have one court on recess and the other court's mode of operation is not known in so far as the recess is concerned in the Judiciary. That is a good amendment. I also support the Legal Aid Act. This amendment refers to *pro bono* services. Traditionally, we have situations where advocates offer legal aid free of charge to persons who have been convicted of crimes of capital offences.

As a practitioner, I witnessed that when advocates give legal aid or support to persons who have been charged with capital offences, they are supposed to be paid some amount of money by the Judiciary. That is why we call it a pauper brief. We have very many cases where advocates complain that they are never paid any monies by the Judiciary when they conduct pauper briefs. It is important that an accused person who has been charged with a capital offense be entitled by law---

The Temporary Deputy Speaker (Hon. Omulele): You will have an extra two minutes by the mercy of the Hon. Temporary Deputy Speaker because you are submitting on matters that also concern the present Hon. Temporary Deputy Speaker.

Hon. (Ms.) Kajuju: Thank you, Hon. Temporary Deputy Speaker. You are my learned friend although you came after me. Legal aid is very important but the Judiciary should note when advocates offer their services they need to be given some stipend to appreciate the service that they conduct.

I, therefore, support these amendments but with serious reservations. I am praying that the Sexual Offences Act amendments be committed to the Departmental Committee on Justice and Legal Affairs so that Members can raise issues. This is because it is not a good law. We cannot pass bad law, especially for our children and for posterity.

The Temporary Deputy Speaker (Hon. Omulele): Very well. I want to just confirm that you and my brother Hon. T.J Kajwang' will always be my seniors as far as being an advocate is concerned. We shall now have Hon. M'eruaki, the Member for Igembe North.

Hon. Kajwang': (*Inaudible*)

The Temporary Deputy Speaker (Hon. Omulele): I have not skipped you. I just recognised that you are my senior. You are the next one.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Speaker. I support this amendment but with reservations as I highlight the question of reducing the age at which a child is considered sexually offended from 18 years to 16 years. It is dangerous thinking and I am not sure what was in the mind of those who were thinking about this. Why should they reduce the age from 18 years to 16 years? We know that a child needs protection at 18 years. That is not in good taste.

I support certain changes in the Judicial Act where we have clarified the age of retirement for our judges. We have had cases where the previous Deputy Chief Justice and the Supreme Court Judge went to court because of this issue of retirement age. This is good because it aligns this Act to the Constitution.

I support the Bill of Exchange Act because when we are talking of the East African Community (EAC), we need to include all the Member countries which were not there before. I support the Prisons Act changes because it gives the opportunity for the prison wardens to play the role of police and that equalises in terms of how they operate under law.

I support the question of the rights of refugees. We have to be sympathetic to other people when they are in need and not allow them to be mistreated as if they have no rights. Circumstances change and that can happen to anybody.

I support the Children Act in terms of clarifying the membership to the council. I also support the changes in the Police Act as this will bring alignment. Most of the changes proposed here are aligning provisions to ensure that the Acts are in line with our new Constitution and for clarity, where we have State officers such as Cabinet Secretaries (CS) or Members of Parliament. Most of these provisions are for purposes of clarifications. On the retirement benefits for the President and other officers like the Chief Justice (CJ), this is good because it will take care of such persons who have dedicated their time in serving this country.

I also support the Water Act, 2016 on the extraction of sea water. Those people who extract water from the sea for purposes of salt extraction should not be taxed double because it will discourage others who may want to invest in that particular sector. I support these amendments with reservations especially on the areas I have stated dealing with sexual offences.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Omulele): Very well. I have just remembered what Hon. Nyokabi submitted on the proposed amendments to the Sexual Offences Bill. I expected to hear submissions from the women representatives in this House. Anyway, I think they will make their submissions later. We shall now have Hon. Tom Kajwang', Member for Ruaraka.

Hon. Kajwang': Thank you, Hon. Temporary Deputy Speaker. The devil lives in the detail. After receiving the Statute Law (Miscellaneous Amendments) Bill, we have to be very careful. This is the time when many of the authorities charged with the duty of proposing legislation bring what can be termed as mischievous legislation. If they are not properly scrutinised, we will find ourselves with a lot of pieces of legislation which can neither be enforced or are entirely unconstitutional.

I have looked at this Bill and I am happy that it was signed by the Leader of the Majority Party, Hon. Duale, for the first time. Before, this Bill was signed by the Attorney-General (AG), he never understood that his role in the Constitution ended at advising the Government. He still thought that he would propose legislation. Luckily, the Leader of the Majority Party has taken up his role meaning that legislation is done by this Chamber. That is the only good thing about this Bill and the rest is subject to debate.

For example, take The Advocates Act, the Bill proposes that advocates will be forced to practise whether they want or not. Practice is business. You can open a hardware for two or five years and then close shop. After two, three or four years you decide to open again. When an advocate goes to school and is qualified to practise, it is the skill he has learnt. You cannot regulate it more by telling a fellow that while doing the job he or she must be licensed.

If you look at this legislation, it is trying to tell advocates that they can never fail to renew their annual practising certificate and that is preposterous. For a number of reasons, an advocate can be out of the country, go to school or be a legislator like me representing Ruaraka and I have taken time off. When I go back to practising, I will only dust my certificate and start

working. That is how it should be and how other professions manage their systems. I am sure my friend Hon. (Dr.) Nyikal who is behind me does the same in the medical practice.

What is a practising certificate? It is just tax. The Government is taking money from people and the Law Society of Kenya (LSK) wants to take subscription money. There is nothing skilled about it that can regulate someone one way or the other. What they should say is that while you are in business you must have a practising certificate that is valid and makes sense. In the Bill of Exchange Act, it is unnecessary to include the words “Rwanda” and “Burundi” because the definition of East African Community states all the countries under the Community. So, it is unnecessary to specify any specific country. When you go to the East African Community Treaty which is an Act of this House, it defines and has a schedule of all the member countries.

You look at the Auctioneers Act and get the impression just like other several provisions here that some of the things which are proposed in the Statute Law (Miscellaneous Amendment) Bill are substantive issues which should be dealt with in the pieces of legislation where they fall. For example, this one is incorporating a board and also expanding functions of auctioneer services. Those are substantive things which should be debated and realised within those pieces of legislation. You can go on and find several pieces of legislation which exist in such a manner that they would have been better if they were exposed to public debate and scrutiny and debate in the Chamber and, therefore, passed in the normal manner in which legislation should be done.

Let me discuss the Sexual Offences (Amendment) Bill, which I have heard several Members speak about this afternoon. First of all, to the fair gender, this is a matter that concerns both genders and I rise as an advocate of the boy-child not because I do not have a daughter. My first born is a girl and I love her so much, and I love my son equally. So, one has to step back and try to understand the rationale that is being discussed here.

I have listened to members of the Judiciary and particularly the Judges in the High Court, who have bemoaned that many children are jailed for defilement, rape or attempted rape. If you look at the Act, it gives you the parent legislation on attempted rape and defilement. Section 3(1)(a) reads:

“3. Rape

“(1) A person commits an offence termed rape if—

(a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;”

Sub-section 3 reads:

“(3) A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.”

Section 4 on attempted rape reads:

“4. Attempted rape

Any person who attempts to unlawfully and intentionally commit an act which causes penetration which his or her genital organs is guilty of the offence of attempted rape is liable upon conviction for imprisonment for a term which shall not be less than five years but which may be enhanced to imprisonment for life.”

Section 8(4) on attempted rape reads:

“8. Defilement

(4) A person who commits an offence against a child between the ages of sixteen and eighteen is liable upon conviction to imprisonment of a term of not less than fifteen years.”

This is the point. There are so many boys languishing in prison for terms of 10 or 15 years and life imprisonment for the charges of rape, defilement and attempted rape. Nobody says that rape should be dealt with by a lesser term or we should not be strict or not increase the punitive terms for rape, attempted rape or sexual offences. At the same time we must be judicious about the fate of several children who find themselves imprisoned. If a child is convicted at the age of 16 and he is given a 15-year sentence at the minimum, he comes out of jail at the age of 30 or more years. Sometimes they go for life imprisonment. The statute has been defined in such a way that it gives judges very little opportunity in terms of sentencing. The drafter of this legislation did not get it right. The point should not have been to decrease or bring down the age of consent. That is not possible. It is disgusting to think that you can reduce the age of consent. It is disgusting. What we should be talking about is that if a child is convicted on those terms, is there a way in which we can make those young people useful in the society or to themselves? Are we able to graduate sentences or find alternative sentencing which is effective and will punish the offence but also preserve the boy-child? Judges will tell you how there is a very vivid example of this case which went to the Court of Appeal of a boy who was convicted. He was handed down a sentence of life in prison yet the facts of the case would have been dealt with in a different manner.

The Temporary Deputy Speaker (Hon. Omulele): Hon. T.J, you will have an extra two minutes to wind up.

Hon. Kajwang’: Thank you. I will do it within half a minute. Whereas we are talking about sexual offences, and whereas sexual offences do not in any case choose the gender--- In fact, right now boys are more prone to sexual offences than even girls. But can we have a sentencing policy which, therefore, takes care of the brittleness of the children that we are dealing with? That is what we should be dealing with. This Bill needs thorough scrutiny and debate in the Committee. We should not make it a habit to bring pieces of legislation through statute law amendments because that way, we are unable to follow the policy from the Ministry and the stakeholders.

I support the Bill to the extent that we will subject it to thorough debate, particularly in Committee, so that we can separate what is chaff but also uphold what is grain.

The Temporary Deputy Speaker (Hon. Omulele): Very well. I hope that you will be keen enough to do that when it comes to the Committee Stage so that we can clean it up. We will now have the Member for Nakuru Town East, Hon. Gikaria.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to give my views.

As it has been said, I totally agree with my colleagues. Hon. T.J has just alluded to the fact that these are laws that we really need to scrutinise properly. When I came to this Parliament as a first time Member, for the first amendments that were brought under the Statute Laws (Miscellaneous Amendments) Bill we were told to be very careful because this is where most of the things are hidden. But, I want to believe that as much as that is the case, we also need not to have substantive amendments to the parent Acts. It may only be necessary sometimes when it is just to align them with the Constitution, as was said by Hon. Nyokabi when she was seconding the Motion, so that we do not have any conflict. At the same time, it is important for us to---

First, I want to talk about the Legal Aid Act. It is important for us to say that every accused person--- As it is now, it is only in those very huge cases that sometimes advocates are paid for by the Government to give legal advice to the accused persons. Most of the people in prison are innocent. It is only that most of them did not know what to do when they were in court. It is important for us to think about how best the State can provide for advocates to assist accused persons and at the same time try and reduce the huge expenses and numbers in our prisons. As it is, we have not been able to increase or improve the facilities in the prisons. Our prisons are overcrowded. I am in the Departmental Committee on Administration and National Security and we have been visiting some of these prisons within the country. They are overcrowded by innocent Kenyans, some of whom were unable to defend themselves in court.

Secondly, with regard to the High Court (Organisation and Administration) Act, more often you find justice delayed. Most of the time, it is because every time you check the calendar of the judges, you find that they are away on recess or tending to other issues for almost half of the year. The amendment that has been brought to try and harmonise the recess of the Court of Appeal with the other courts is important. If it is not harmonised, you find that some courts are on recess while other courts are ongoing and it becomes very difficult for you. You find cases delaying for too long because of the conflict of the recess periods for the different courts.

Regarding the National Police Service Act, it is true as it has been said. In the Departmental Committee on Administration and National Security, we have found these problems where we have the regular police and the Administration Police (AP). At times, you try to bring them together and it becomes very difficult. I remember at one point there were two deputies; one from the Administration Police and the other one from the regular police. At some point they were literally arguing in a meeting as to how they should not be brought together. It is high time, as Hon. Nyokabi said, we started thinking of how we can bring the police service as one unit under one command. I will give a case of Nakuru County where we have an AP in charge of the county as the commander. When you go to the police cells, an AP officer is not supposed to even book anything in the Occurrence Book (OB). It becomes very difficult and you get a lot of rivalry between the two forces. I remember at some point the regular traffic police arrested an AP who had committed a traffic offence. The AP came to the rescue saying that the regular police have always had a bad feeling against their forces. It is high time we cleaned up and had one uniform so that we can harmonise.

Regarding the retirement age of police officers, I do not know how practical that will be. I know that in the army if you are a major and cannot progress to the next level, you are retired at a certain age. It is important to have that retirement age. It would be important if the National Police Service was like under the Civil Service Act where people know when they are supposed to retire. We will propose some amendments to some of these issues in the Third Reading stage.

With regard to retirement benefits, we are only talking about the Chief Justice. Why are we forgetting about the Deputy Chief Justice? It is not right for us to just think about the Chief Justice to be included for purposes of earning retirement benefits under the Retirements Benefits Act. We also need to include the Deputy Chief Justice. We cannot just include the Chief Justice and forget the Deputy Chief Justice.

On the Prisons Act, I think it is important for us to change it. This aspect where if you are found guilty, you are jailed for so many years, subjected to hard labour and caned--- The removal of hard labour from the Prisons Act is important. If you have committed an offence, the only thing you should serve is the jail term and not another punishment over and above it.

Hon. Temporary Deputy Speaker, it is important for us to look at the Prisons Act and, as it has been suggested, to get it right.

What has been proposed under the Childrens' Act is important and there are restrictions that have been alluded to in adoption of children. It is important that we are giving the Cabinet Secretary (CS) some powers in this Bill to make regulations. We have seen people from abroad misusing this provision by adopting children. Under this Act, we really need to look at the Adoption Act itself and see the conditions placed for one to adopt a child.

I do not want to say what I am doing in Nakuru. I had a big problem when I found a policeman beating street children. I spoke to the children and took them to a social worker. They are in the streets because of disjointed families. It is not their choice. A man may have married a wife with a child from another man and that child never gets peace. When I tried to help those children by getting somebody to take care of them, it became a big issue for the Children Department. They wanted us to follow the due process. I told them that I was not adopting the children, but was just trying to bridge a gap by creating a stopover place for the children to--- All the 20 children are now in school and are staying in a certain place. Of course, we agreed with the Children Department. So, we need to change the law so that we are not caught off guard.

Regarding the Independent Policing Oversight Authority (IPOA) Act on the confidentiality, it is doing a very good job in trying to bring sanity in the Police Force by taking action against rogue policemen and policewomen. At the same time, we need to protect some of this information that a serving or retired officer gives to IPOA. This is important because most of the time, particularly those serving police officers, are scared to go and give their version of a story to IPOA because the information is not confidential. It will be exposed. At the end of the day, their bosses start intimidating them because of giving information.

Regarding the Business Restriction Service Act, it is high time also this country started thinking about decentralising the---

The Temporary Deputy Speaker (Hon. Omulele): Hon. Gikaria, are you done? I add you one minute.

Hon. Gikaria: Thank you. The last point that I want to make is the one Hon. T.J. Kajwang' raised. I am not a lawyer, but I agree with what Hon. T.J. Kajwang' has said regarding the law profession. Students going to the Law School take a long time to get their qualifications. At the end of the course, they are admitted either to the Bench or the Bar. At the same time, for the advocates, particularly, it is not fair to restrict, as Hon. T. J. Kajwang' has said. You might, after some time, want to take a break. If it is going to have a lot of unnecessary conditions such that by the time you want to make a comeback you find very many hurdles, I believe what Hon. Kajwang' has said is that the years of training go into the head. But, at the same time, the aspect of advocates giving free services needs to be brought on board. It is going to help the common *mwananchi*.

Thank you. I support.

The Temporary Deputy Speaker (Hon. Omulele): Member for Wajir, do you now have your card with you?

Hon. (Ms.) F.I. Ali: I will speak on the next one.

The Temporary Deputy Speaker (Hon. Omulele): Okay, the next one. We shall have the Hon. Member for Westlands, Hon. Tim Wanyonyi.

Hon. Wetangula: Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to contribute to the Statute Law (Miscellaneous Amendment) Bill. First, I will talk on the issue of the Judiciary. This is a very good amendment. When you look at other jurisdictions, you

find that in the transition from a retiring Chief Justice and if a vacancy falls in that office, there is a provision on how it will be filled. There should be no vacancy in that office. You find that the next senior-most judge always takes over in an acting position. This is very important because it ensures that there is no vacuum in that office. The office will always be functional and will always have a transitional mechanism that ensures that the office is not vacant.

This is very important because of the experience we have had in the recent past when the Chief Justice and Deputy Chief Justice were retiring. There was a challenge on the age of retirement of the Deputy Chief Justice. It became very difficult on how we were going to handle that position. But, this Bill will address that position and we should even go further and make sure that even the appointment of the Chief Justice should be based on seniority in the Judiciary.

I now address myself also to the proposed amendment on the Persons with Disabilities Act. There is a comprehensive proposed amendment on that Act. I do not know why they want to bring it in here now in the Statute Law (Miscellaneous Amendment) Bill. This is a piecemeal amendment. We had proposed a comprehensive amendment to the Act, but that Bill is yet to come to the Floor of this House. I do not know what we are going to achieve by this, but I believe that if we can do it in the Act itself, we will achieve much more than what we want to in this amendment. I believe this Statute Law (Miscellaneous Amendment) Bill is what has derailed the implementation of that Act. This Act was enacted in 2003 and took a very long time to come into force. In fact, the first time it came into effect was in 2010, which was seven years down the line and yet, there were people with disabilities who needed services prescribed in that law. I believe that the amendment we have proposed in the Act should take precedence to this amendment that has been proposed in this Statute Law (Miscellaneous Amendment) Bill.

There is also the issue of retirement of the Chief Justice and his emoluments. All that is addressed here! I believe this is good because we have had issues where, for example, when the former Vice-President and former Prime Minister retired. We started playing politics with it. They could not even address the issues of their retirement benefits. This is their right which they should enjoy because they have given service to this country. It does not matter whether they remain active in politics or not. They are entitled to it because they served in those offices and capacity for this nation. So, the retirement of the Chief Justice and his retirement benefits are well captured. I believe that we should go further and address other officers who have also retired.

On the issue of Sexual Offences Act, the person who brought this amendment must have his head examined because this is outrageous. A person at the age of 16 is a child. I believe that if we play these kinds of games with our children, then we are not serious. I believe this House should not allow this kind of amendment to see the light of the day. We are literally going to make bad laws that will allow abuse of our children. We are going to allow sexual offenders to take advantage of this law and start harassing those young kids. At the age of 16, a child is in Form Three. I do not see what kind of responsibility such a child can undertake. He or she is still dependent on others to make informed decisions. This amendment is not the right one. I do not know what informed the person who brought it. When it gets to the Committee Stage, this should be removed.

On the issue of the Independent Policing Oversight Authority (IPOA), we are making one step forward and two steps backward. Every time, we have had issues with that Authority because there are people who are anti-reforms in the police sector. They have always wanted to remove this IPOA from existence. Whatever the functions of this office, it should be allowed to do its work. I do not know why we are trying to bring in the issues of documents, information

and all that. Let us allow them to perform their duties. It is a constitutional body and it is an office that has brought some order in the police sector. We went to South Africa and looked at how a similar institution is performing. We looked at what they have achieved. It is so amazing that we are still grappling with ours. We are not very sure whether it should be there or not. We should allow IPOA to function without putting hurdles in its way. This is something that we must address.

Finally, I want to speak on the issue of the Advocates Act. I do not know why they want to say that you cannot take leave even from practice. You can because there are many other professionals who do that. People are appointed in different capacities. They are not actively in practice. Why should you be forced to be taking practising certificates every year? Why are they making it an offence or misconduct for you not to take a practising certificate? It should be for those who are actively involved in the practice of the legal profession. At the moment, when I am here as a Member of Parliament, I am doing some other work. They should not force me to keep on taking a practising certificate. It should be left optional that people who want to remain active on the Roll of Advocates should take out the practising certificate. But we should not make it a misconduct for anybody who fails to do that. It also involves a cost element and other aspects.

I want to thank you for giving me an opportunity to contribute to this. I believe that we shall clean up these amendments at the Committee stage before the Bill is eventually passed. Some amendments are good, but we must deal with others.

The Temporary Deputy Speaker (Hon. Omulele): Hon. Member for Westlands, in fact, with regard to the advocate's issue, people take sabbatical leave and come back. You should take it upon yourself that when this Bill comes up at the Committee stage, you can propose the terms that you have submitted. We shall have hon. Member for Kakamega.

Hon. (Ms.) Amolo: Thank you, Hon. Temporary Deputy Speaker. From the mood of the House, I request that you call upon the Mover to reply.

The Temporary Deputy Speaker (Hon. Omulele): I thought you wanted to make submissions. I can see there is still quite a bit of interest. I am aware that Hon. Wafula Wamunyinyi and Hon. Nyikal have a lot to say on the critical aspect of it, which nobody has spoken to. We shall have Hon. Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Speaker. Hon. Rachel, my friend, we want to speak on this important Statute Law (Miscellaneous Amendments) Bill. I can tell you that in the past, miscellaneous amendment Bills that have been brought before this House, have been used to sneak in a number of undesirable legislative pieces which went through without Members' knowledge. You can see even in the House right now, Hon. Rachel is asking the Mover to reply. There are issues here which must be corrected. Even if there are good proposals in this Bill, there are others which must not be allowed to go through, like the reduction of consensual age for sexual offences. How can you allow this kind of legislation? That you want to reduce the age of girls from 18 years to 16 years? Is this so that it can be said that any girl at the age of 16 years will not be said to have been defiled? Those who set this age at 18 years had good thoughts. They must have had something in mind. They had good reasons. I want to be told why somebody wants to change it now. What is motivating this change? What do they want to achieve? What do they want to realise? What is the goal of reducing this age?

The Temporary Deputy Speaker (Hon. Omulele): Hon. Wamunyinyi, without interfering with your train of submission, I feel your agitation on this.

Hon. Wamunyinyi: I can see the Leader of the Majority Party.

The Temporary Deputy Speaker (Hon. Omulele): The Leader of the Majority Party is now here and he is the owner of this Bill.

Hon. Wamunyinyi: Fresh from Addis Ababa! We feel sorry for what happened. We will be asking the Leader of the Majority Party, Hon. Duale, what motivated the need to reduce the age from 18 years to 16 years. I have been looking at it. This Bill proposes to amend the Sexual Offences Act, 2006 to provide for and correct some expressions and words used in the Act. The Bill proposes to reduce the consensual age with regard to the offence of defilement from 18 years to 16 years. This needs to be explained clearly. As far as I am concerned, from the drafters of the original law, it was known that you had to attain the age of 18 years to be issued with an ID and allowed to vote and also get married and become an adult.

They knew why they came up with that age. Twenty one years was the age set for acquiring the old generation national IDs. I strongly oppose that provision. I will move an amendment or ask the Leader of the Majority Party to harmonise his proposal so that we do not go on with this legislation as it is. I have also noted that this Bill has good proposals. The prisons are supposed to offer rehabilitation and correctional services. I am aware that is your baby. When someone is sent to prison, they are not convicted just for punishment. Rehabilitation is important. This includes counselling and provision of psychological services such as psychotherapy. This will ensure that when prisoners leave prisons, they would have reconciled in their minds if they committed some offences. They should be counselled and trained to acquire specific skills that will help them to lead good lives when they get out of prisons. They should not just be subjected to hard labour. Caning and hard labour should be subjected to persons convicted of rape or defilement. Terrorists should be subjected to hard labour, caning and life imprisonment. They are not supposed to be part of the ordinary community. Offences like simple theft and fighting should be looked at and good correctional measures put in place to rehabilitate the perpetrators.

The other issue is on adoption of our children by foreigners. In my community, we value children and, therefore, we do not let them to be taken away easily by anyone. Not even by people who have done extraordinary things for them. The issue of adoption of children by foreigners must be controlled. Measures must be put in place to ensure that nobody just comes into our country to take a child to their country. I want to support the proposed amendment to have controlled measures on adoption of children by foreigners.

There is also an amendment proposed on the Refugee Act. We are part of the world community. We are part of the conventions that we have signified acceptance. We are part of the Rome Statute as well as the Geneva Convention. If there are proposed amendments on the Refugee Act, we must take into account the obligations that we have signified acceptance to and ensure that we do not come up with amendments that will contradict the spirit envisaged on refugees. We have refugees in our country, and some Kenyans are in other countries. We expect that treatment is harmonised so that nobody feels that they are being treated unfairly and subjected to treatment that contravenes the internationally accepted law. I want to appeal to leaders to look at this Bill with a view of making sure that we take into account domiciled international law.

There is a saying that goes: "When two bulls fight, it is the grass that suffers." The National Police Service (NPS) has units within it. In the past, we had the Special Branch Unit, which was responsible for intelligence gathering.

The Temporary Deputy Speaker (Hon. Omulele): Hon. Wamunyinyi, your time is up. I will add you a minute, so that you conclude.

Hon. Wamunyinyi: I did not even get a warning.

The Temporary Deputy Speaker (Hon. Omulele): From my desk, I can see that your 10 minutes have run out, but I will allow you to wind up.

Hon. Wamunyinyi: Thank you, Temporary Deputy Speaker. The NPS is important in the Ministry of Interior and Coordination of National Government because they deal with internal security, matters of crime and protection of people's lives and property. All the units within the NPS, including the General Service Unit (GSU) and the Administration Police (AP), should be put together. An intelligence unit should be introduced. As things stand now, we do not have an investigation department. The National Intelligence Service (NIS) is independent. The police can only get intelligence from NIS. An internal intelligence wing in the NPS is very necessary for prevention of crimes and for ensuring that they pursue sources of crime. It is a good idea to introduce the intelligence wing within the NPS, and to harmonise the different formations to ensure that there are no contradictions. They can work together to ensure that they protect the people of Kenya. We do not want to hear stories where formations fight over command. Such issues must be clearly harmonised to make sure that Kenyans enjoy protection and quality services from the police. The police should get further training to enable them relate well with *wananchi* as they enforce the law.

With those few remarks, I want to thank you for adding me a minute and ask Members to look at the various pieces of legislations that are lined up for amendment in this Bill to ensure that only good laws are passed.

The Temporary Deputy Speaker (Hon. Omulele): Let us now have the Member for Seme and then the Mover will reply.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity. I just want to make few general comments. Increasingly, what I see is that miscellaneous amendments are actually becoming a major process of making laws. I think we are losing out because the miscellaneous amendments are actually meant to do minor amendments which are correcting typing errors and words. We are making major changes in the law, particularly when it comes to this time and cycle of Parliament. Very few Members get to actually read through this very seriously. I, therefore, propose that when we have miscellaneous amendments, we should not just take the whole amendment Bill to one Committee of Parliament like the Justice and Legal Affairs Committee. I think we should take various parts of the Bill to appropriate Committees so that each part is looked at in greater detail. In fact, if you were to look through, it needs enormous knowledge of the law to look at a whole miscellaneous amendment Bill. I think that is something we should adopt so that when we have the reports on each and every Act that is intended to be amended, you will actually have an enormous issue you are dealing with.

There are some parts of this Bill that are acceptable and I think are making good improvement in our legal structure. However, there are some parts we will have to look at very carefully. Those are the parts that motivated me to think of the best way of looking at miscellaneous amendments. I repeat: Let each bit go to a different Committee and they will all bring us reports, however brief they may be. Members have made comments on the Advocates Act. It is not necessary to force the lawyers to pay for times when they are not practising. That is just common sense and I agree with that.

I want to take this opportunity to also address another issue that, maybe, the lawyers can advise us on. There is an issue of LLB graduates whether from Kenya or from other countries. They get into the country and they want to practise as advocates. They must go through the Kenya School of Law. I have lived long enough to see the period taken in this institution

increasing from six months to two years now. The other aspect of it that I have wondered is the amount of fee that is paid. You need Kshs200,000 to go to the Kenya School of Law. It is much more expensive now than to go to the University of Nairobi or any other university and get your first degree in law.

There are many young lawyers who fail to go to the Kenya School of Law because they cannot afford the fees because some are poor. Their parents have been struggling to get them through university and they just end up doing jobs and cannot be advocates. I think the Council for Legal Education should look at that. What is it that is being done in the universities that actually, when you go to the Kenya School of Law, you do another two years? It makes me think that probably, the curriculum at the university, for example, at the University of Nairobi, is not adequate. However, I have asked some lawyers and they have said that they probably go into more details of what you have done. My bigger worry is that it has become a hindrance to some young people who would want to be advocates. That has been stated and I think that is something the legal profession should look into.

I do support the need for categorisation of prisoners because some offences are actually really minor. It brings into my mind one particular issue where you have criminal offenders who have mental illnesses and they actually get confined at Mathari Mental Hospital. There is no provision as to when they will be released. Some are there for life and if they are mentally unwell and they have been treated and they are better, it is not probable that they should actually go to other prisons. However, as the situation is now, they linger there forever and actually become a great risk. I think that categorisation should look at that issue as well.

I like the provision of the auctioneers and building their capacity and the provision for regulation of auctioneering services. Many people go through a lot of problems with auctioneers and that service needs to be regulated.

There is also the issue of the Copyright Act. I agree that we need to amend that to provide for a structured compensation of performers and producers because this is one area where a lot of our people with talents never really get anything for themselves. In other countries, you see the royalties are well collected and the performers are fairly wealthy. However, I noted one issue that needs to be looked at in this Bill. There is a provision now that those who are trying to collect royalties are looking even in private homes and cars if there is something to be levied. That is because you have a disc player in your car and for that purpose, you are likely to play music and you should pay for that. I think that is not necessary.

Let me make a contribution to reducing the age of consent to 16 for children. This is something we need to look at very seriously. Unfortunately, biological maturation is not always in tandem with social maturation. This has come about because people see children at the age of 16 looking biologically mature. It has to be remembered that socially, they are not mature and they cannot take responsibilities for the outcome of the biological activities that they will get into. As somebody has said, those are Form Two students and if we say that they are free to make those decisions, I think that is something we need to look into. We will go into details on that area and see if we need to amend it.

I am happy that it has been realised that we need to make provisions for what can happen if both the Chief Justice and the Deputy Chief Justice are not in office and there is need for somebody to act. I raised this when we were appointing the first Deputy Chief Justice and I actually indicated that we will have a problem because of the age difference between the two. It actually happened and I am happy that we have now seen it and we are making amendments for that.

I am concerned with the National Police Service. I have looked at the areas that we are seeking to amend and my worry is that they are so broad that I think this should have come as an amendment of the Act itself and not in a miscellaneous amendment Bill. That is an area that we will have to look at very deeply because it is looking at very broad areas. If you look at all that, surely, it cannot be done through an amendment Bill. When we get to the Committee of the whole House, we will have to pull out some of these so that they come out as amendments for the individual Acts.

I am happy with the Legal Aid Act. I think many Kenyans suffer because they do not get legal aid. It should actually be made mandatory that every person should get legal aid. On the Water Act, it is just reasonable that you do not ask people to pay taxes for using sea water to make salt.

With those remarks, I support this Bill, but we will go through it in the Committee of the whole House with fair amount of detail. As I end, I want to repeat that we should make it a process where the miscellaneous amendment Bill is not looked at by one Committee, but by several Committees depending on the Acts that are being amended.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Omulele): Those are very enlightening submissions. We shall now have the Mover to reply.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. At the outset, I would like to thank Members for contributing to this Bill. But before I proceed, after listening to Hon. Wamunyinyi, I want to say something.

Hon. Temporary Deputy Speaker, I want to make it clear and go on record that once a Bill is read the First Time and is referred to Committees, there is no law that bars any Committee from looking at it. So, Hon. Nyikal, Standing Orders still provide that if there are matters of health, your Committee can look at it and bring a Report. But, ideally, the mother Committee is always the Departmental Committee on Justice and Legal Affairs because majority of them have legal terms but, I am sure each Committee has an opportunity to look at it.

Secondly, when these Bills arrive from the Executive, they go through our Legal Department in our legislative organ. They look at it and they are the ones to give advice on whether the amendment is substantive or minor. I am sure our legal team must have been thorough.

Coming to the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 45 of 2016), I am sure there are no major issues raised on the Judicature Act. There are no major issues raised on the Advocates Act and there are changes to the provisions of the Sexual Offences Act, Cap. 64, the Prisons Act, the Explosives Act, the Income Tax Act, the Insurance Act, the Auctioneers, going down up to the Industrial Property Act.

On the Children Act, I totally agree with Hon. Wamunyinyi and other Members who have spoken. We are under obligation, as a country, to set a certain piece of legislation to protect our children. You cannot just walk into Kenya, pick our children, go to the airport and take them with you. That happens in other jurisdictions. The amendment to that Act is very important as well as the one by Hon. Nyikal on the Copyright Act. It is timely. It is the same for the persons with disability.

I have listened to Members on this Sexual Offences Act, 2006. I totally agree. I am sure before we come to the Third Reading, we will do something. This Sexual Offences Act talks about many issues in this Bill. It proposes to amend the Sexual Offences Act, 2006 to provide for and correct certain expressions and words used in the Act. With that, we have no problem. It

seeks to protect the rights of a suspected sexual offender for the purpose of ensuring that all the avenues of appeal against a conviction are exhausted before a court can declare such person a dangerous sexual offender. We have no much issue with that.

The issue I have really listened to and I have been following debate on this afternoon is the impression created that the amendments to this Act intend to lower the age of sexual consent from 18 years to 16 years. In order to cure this, we shall be introducing a provision or I will go further and, maybe, write to the Speaker so that, that section is withdrawn, and so that it does not reach the Third Reading. That is provided for. I will do that.

A very important Act is the Judicial Service Act, 2011 No.1 of 2011. We are providing a mechanism that we were faced with as a country; the absence of the Chief Justice (CJ) and the Deputy Chief Justice (DCJ). What happens? Who becomes the acting CJ? I am sure this law is very clear that the senior-most judge at the Supreme Court will act as the recruitment of the CJ and the DCJ goes on or in their absence. They could be out of the country or, maybe, one is out of the country and the other is indisposed. There are a number of issues that can happen. That Judicial Service Act amendment is important.

In the National Police Service, we have the regular police, Administration Police and all that. Over the last four years, I am sure this has created conflict in terms of command structures. So, it is dealing with that. It is also dealing with a provision that will allow the National Police Service to have a department where they will have the mandate to do and collect criminal intelligence that will help make our country safe. It is also trying to confer on the service the function of criminal intelligence within the National Police Service. It also deals with the retirement ages of the two Deputy Inspector-Generals, Director of Criminal Investigation Department and all uniformed officers of the department. What is their retirement age?

Hon. Temporary Deputy Speaker, I am developing a consensus on the Independent Policing Oversight Act, 2011. I have already received communication from Independent Policing Oversight Authority (IPOA) on the extent to which we can declare certain documents privileged. The IPOA is supposed to deal with complaints and grievances from citizens. So, to what extent can the National Police Service say: "We cannot give you these documents because they are privileged?" So, I have told our Legal Department, the Attorney-General's Office and IPOA to come together and build a consensus on that provision. If they do not develop, I will pull this out and write to the Speaker so that it only comes when they have agreed.

On the Treaty Making and Ratification Act, this is the third time the Attorney-General (AG) is sneaking back this provision. It is very clear that treaty making and ratification function in all jurisdictions is a function of the Ministry of Foreign Affairs. We removed it in 2014, 2015 and in 2016. I do not know what is making the Attorney-General own that function. That is a function of the Ministry of Foreign Affairs in all jurisdictions. They send it to House for ratification. So, I will also write to the Speaker and remove that specific provision.

On the retirement benefits of the Deputy President and designated officers, the only person who is an orphan in this law and the reason we brought it is the great man, former Chief Justice Willy Mutunga. He left and we realised that the law did not cater for that. So, I am sure where he is sitting--- I have confirmed to him that the House will expedite this process so that the former retired Chief Justice is included as one of the entitled persons under that Act. The rest were not very contentious - the Legal Aid Act, the Companies Act and the Excise Duty Act.

On the reorganisation and administration of the High Court, the Bill proposes to amend the High Court (Administration and Organisation) Act of 2015 which we passed just to deal with the periods of recess and align it with what is obtaining in the Court of Appeal.

I want to assure Members that for the sections of Sexual Offences, the Independent Policing Oversight Authority (IPOA) and, the Treaty Making Ratification, we will look at them and make a decision either to delete them at the Committee of the whole House or if the House agrees with me after consulting the Legal Department and the legislative arm of Parliament, to see whether we can write to the Speaker and remove them.

With those many remarks, I thank the House and tell my good friend, Dr. Nyikal, that Parliament will be sitting until a day to the election. So, for the House to sit and staff to work, there must be business. So, there will be Bills for the 11th Parliament. I am sure those of us who will come back will deal with Bills of the 12th Parliament. So, Hon. Nyikal, we will have more business. Even after this, we have more Bills. You are one of the most diligent Members of the House. We ask you to remain diligent until that April just before elections. I am sure you will come back. You have done great work in your constituency and in the House.

I beg to move.

The Temporary Deputy Speaker (Hon. Omulele): For obvious reasons, I will not proceed to put the Question. We will move on to the next business. As the Leader of the Majority Party has clearly indicated, and as we all know, we shall be in this House until the very last day of the term which will be 7th August 2017. Therefore, we have business to deal with. We shall move to the next Order.

Second Reading

THE NATIONAL CORONERS SERVICE BILL

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. I beg to move that the National Coroners Service Bill be read a Second Time.

This Bill seeks to establish national coroners service. It prescribes procedures for investigation into unexplained death that can occur. I want to give the highlights of the various provisions of the Bill. I am sure Members have gone through it.

Part I of the Bill deals with preliminary matters which include the definition of interested persons, in relation to a deceased person, who may seek the services of the coroner in particular cases. Part II of the Bill establishes the service as a State corporation and provides for the appointment of the staff of that service. This will include coroner-general and other coroners to work with under his direction.

Part III of the Bill deals with the functions and powers of the service. The coroner-general is vested with the powers to issue burial and cremation permits, postmortem permits, waiver of postmortem and the authority to repatriate remains to another country if the court process is followed.

Part IV of the Bill imposes an obligation for the reporting of any death to a coroner by citizens. When any person reasonably suspects that the death has occurred in a suspicious circumstance, for example, due to violence, malpractice causes other than disease, or any other cause which warrants an investigation, then that citizen must disclose that information to the service. Other reportable deaths are those that occur while the person is in police or military custody.

That is why this Bill is very important. There are many people who for one reason or another die in police custody, or they die under the custody of security agents. This Bill provides an avenue for that institution to report how that person died while under their custody. It

provides where the coroner finds the cause of death amounting to an offence under the law, the report shall be forwarded to the office of the DPP and the AG for appropriate action.

That is why we say Kenya has come of age. We are among the very few countries in the world which are enacting or have this piece of legislation. If, for instance, a prisoner or a suspect dies in Shauri Moyo or Pangani police station, an investigation will be done by the coroner-general. If the report that comes out finds a certain officer culpable or an offence has been committed, then that file is forwarded to the office of the DPP and that of the Inspector-General of Police for appropriate action. Individuals who serve under our security agencies must be accountable for citizens who are under their custody. This is one of the best pieces of legislation that the Jubilee administration under President Uhuru Kenyatta has brought in line with his policy of respecting the rule of law. Nobody has ever done it.

Part V provides that investigation be conducted and that particulars be included in the coroner's report. The reporter cannot say: "Oh, somebody has died in Shauri Moyo Police Station." The particulars and the conduct of that investigation must be part of the report that will be submitted to the DPP.

Clause 24 of the Bill provides that the coroner's report shall be deemed to be *a prima facie* evidence during the investigation and prosecution. Even the threshold of that investigation and the report is well set out in this Bill. The threshold must be high for any court of law to establish a conviction. That clause also allows a person dissatisfied with the findings to seek second opinion. There are people who will be dissatisfied with the report of the coroner-general and his service and they may want to seek a second opinion. That empowers the Cabinet Secretary in charge to make regulations to this House on the preservation and movement of dead bodies which are subject of investigations. That is why if a foul play has taken place, some people can, through the service, just give a burial permit to conceal evidence and particulars of that case. Those who are not happy with the findings can seek a second opinion. That empowers the CS in charge of internal security to bring regulations to this House to support this Bill.

Clause 44 provides the power of the coroner to order an exhumation or recovery of cremated remains if he is of the opinion that the death was reported under the Act and to conduct an autopsy. Under Clause 45 the Bill provides for who may observe an autopsy, postmortem and all these. Clauses 44 and 45 give the coroner-general and his service powers to carry recovery of cremated remains or to give an order for exhumation.

Clause 51 provides that the coroner shall have control over a deceased person's body from the start of investigations into the death until the investigations are complete. Here, we do not want to anticipate that this service will have bureaucracy. They can have the powers of custody of the body of a deceased person. But for how long can they keep the body? I think we are going to make those amendments in the Committee of the whole House. There must be a timeline. You cannot keep the family of the deceased for years, purporting to be carrying out investigations. Both the Committee and ourselves, when it comes to the Committee of the whole House, we must give specific timelines.

Part IV provides for making complaints by interested persons out of procedures. Of course, there is the miscellaneous provision for the cost of undertaking a post-mortem to be borne by the state. It says that the state must pay for that cost. This is where conflict of interest might arise on the part of the coroner and finally protection from personal liability for members of the service, and for persons who give information to the service. They must carry certain personal responsibility and liability.

There is also a part that establishes the National Coroners Council. The function of the Council will be to formulate and review policies relating to the service, among other functions. It would be like the apex. That part also confers powers to make regulations.

Those are the highlights. I will ask my good friend, the Member for Kibra to second. He is a very diligent Member, like Hon. (Dr.) Nyikal and the Member for Likuyani. You are the only few Members who have remained in the Chamber until this later hour. We even have a club. I ask the Member for Kibra to second because this is a matter which is deep in his heart. He has researched on this matter, and this time around let him be part of those who will contribute to this Bill.

With those remarks, I beg to move and beg my colleague to second.

The Temporary Deputy Speaker (Hon. Omulele): Member for Kibra.

Hon. Okoth: Thank you, Hon. Temporary Deputy Speaker. I thank the Leader of the Majority Party for moving this Bill which is very timely. I thank you for the kind words in asking me to second it.

I rise to second and support this Bill. This Bill is very important, first, for context. The Attorney-General and Kenyan Government officials are called every couple of years to report on the status and conditions of our human rights. This is according to the treaties that we have signed and other obligations.

In fact, the President, during the state of the nation address brings one special report, as required by the Constitution, on the status of our undertaking international obligations. He also brings other reports on national security and national values. It is, therefore, on that context that this Bill is important.

During the last universal peer review undertaken by the African Commission on People and Human rights in Banjul, Kenya was told to come up with laws like the National Coroner Service Act and the Prevention of Torture Act, which is also on the Order Paper. I am delighted to note that it has been brought by the Leader of the Majority Party. These are rules of justice and access to justice questions.

Sustainable Development Goal 16 relates to access to justice and the rule of law. If you think about the functions of coroners, as laid out by the Leader of the Majority Party, it will be enhancing the rule of law in Kenya. It will also enhance access to justice. In case of a natural death occurring, you can actually have proper investigations and credibly establish *prima facie* evidence from a competent authority.

The Constitution of Kenya, 2010, in the Bill of Rights, speaks to issues such equal protection under the law, fair administrative action, right to life and dignity. These are all important issues that you see amongst the poorest people in Kenya in our current regime. If you need a post-mortem or a professional death investigation and you are poor, you will not get it in this country. However, now that we are passing this law, everyone will have access to it. That is good and it promotes the rule of law, adherence to human rights and dispensation of justice for all Kenyans regardless of whether or not they can afford death investigation. This includes a professional post-mortem.

The National Coroner Service (NCS) will allow us to have a Coroner-General with teams of staff in various regions of the country. If possible, we can have coroners in all the counties. In case it is not possible to have them across the counties, at the beginning we can have them in several regions of the country. This will allow that office to operate with a council of many Principal Secretaries, representatives of the various medical practitioners' bodies and the Law Society of Kenya to come together and oversee that service. It must be an independent and

reliable coroner service that is well funded to do its work on time and credibly, as Hon. Duale mentioned. This concerns timelines in death investigations.

We want to make sure that even if the coroner service has to retain samples and tissues from bodies, the bodies are released to the families in good time for burial. Only necessary samples will be retained to aid the investigation. The NCS will help us to establish a professional class of forensic pathologists, crime scene investigators and other people who will have to improve this practice in Kenya. As of now, most of the investigations are inconclusive, and the evidence that is brought for prosecution, even where there is suspected foul play, often does not meet the credibility threshold necessary for a successful prosecution in order to hold the perpetrators to account.

The cost of post-mortem and investigation of deaths will also be met by the state. This Bill resonates very well with the National Legal Aid Act that we passed last year to make sure that in case of a suspicious death, the state will meet the cost of the investigation. I will go into the details of some reportable and investigable deaths. It is a good law because it gives leeway for the coroner to give waivers and burial certificates.

I come from Kibra Constituency, with an Islamic culture. In consulting on this Bill and undertaking research, we appreciate the Muslim communities all the way from the North Eastern region to the Coast region. They are very concerned about how mandatory post-mortems will be conducted. They wonder what type of cases will be given post-mortems waivers to allow families of deceased persons to go ahead and bury them in accordance with their cultures and practices. The way Muslims do it in Kenya is very different.

In Khartoum, Sudan, they actually conduct post-mortems although it is majorly a Muslim country. The same case applies to Senegal. In Kenya, we have Muslims but they are not the majority. Kenyan Muslims are very strict. They are inclined to quick burial without post-mortems, especially where the deceased person is a female. Therefore, we have included provisions in the Bill to allow family members to attend where a post-mortem has to be conducted. Representatives of the deceased person's family should be able to participate so that they can feel comfortable about that procedure.

The proposed NCS needs to be competent, credible, independent, reliable and well-funded. We will need to advance some elements of this Bill to bring in the role of Parliament in receiving reports on an annual basis from the NCS.

In the appointment of the Coroner-General, we must make sure that the vetting process and his approval is done by Parliament. The initial competitive search should be done by the Council, as proposed in this Bill, but the Coroner-General should be an appointee of the President. They should be nominated by the NCS Council and the names taken to the President. Upon him choosing who his appointee should be, he should nominate that person to be brought to Parliament for vetting. This is because it is supposed to be a very independent office like the Office of the Director of Public Prosecutions (DPP) and the Ethics and Anti-Corruption Commission (EACC). These are people who have a very important role to play in enforcing the rule of law and ensuring access to justice by all Kenyans. Therefore, we want a strong and independent person who is answerable to the people. The process of their removal from office should be initiated through a petition to Parliament and not just dismissal by the Council or by the President, as the appointing authority. This is if their conduct is wanting, they become unprofessional or perform below standards.

The NCS Council is well structured. It is well represented by the Government. This is because it has the Principal Secretaries responsible for Interior and Coordination of National

Government, Justice and Legal Affairs, Health and the National Treasury as members. It also has a representative of the Kenya Medical Practitioners and Dentists Board. However, what is missing is a representative of the civil society.

In this case, I propose that we include the Law Society of Kenya as a key practitioner, consumer and provider of justice in this country. I want to make sure that they are also involved because this is not a health issue but a major issue of access to justice and enforcement of the rule of law. We need these people in the Council.

This is not just a health issue; it is a major issue of access to justice and rule of law. We need them for purposes of oversight and the crafting of that Authority.

The National Coroner's office is interesting. It is like the Auditor-General's office when it comes to human rights where deaths have been involved and the right to life has been taken in a questionable manner. So, their annual reporting requirement should be clear. They should somehow link with the office of the Director of Public Prosecutions (DPP) in a major way but I know when this House passes the Bill, we will have made a requirement that we have constantly been told. We need to catch up in promoting the rule of law and widening that space in Kenya even as it were at our last universal peer review in Geneva.

Apart from generalities of the Act let me mention specific bits. I have been studying this law for the last three years. I brought it to the Departmental Committee on Justice and Legal Affairs and I am happy that Hon. Duale through the Attorney General also came up with the same law which is 95 per cent the same. So, great minds speak alike and as I am seconding I would say, we must ensure it is independent enough.

Section 3 of the Bill is about providing complementary roles of forensic medical science services to the police in handling investigations. We have to look at that language to ensure that the office is independent while complementary to the police and that police are not running parallel death investigations and interfering with the mandate and sphere of the National Coroners Service.

The role of the Government Chemist must be looked at because the National Coroners Service will comprise of people who are experts in Forensic Pathology. But if you want justice in death cases, you must think of it as a three legged stool, which one part relies on the police who do the criminalistics, the other relies on some experts who might do ballistics where cases of bullets are involved, but you are relying also on the science and the evidence---

The Temporary Deputy Speaker (Hon. Omulele): Hon. Member for Kibra, you will have an extra two minutes.

Hon. Okoth: Thank you. I am sorry, I did not see the light come on to warn me that my time had run out. So, I will try to run through my two minutes carefully and do the highlights. We need to ensure that the Government Chemist helps and assists once the evidence has been taken by the forensic pathologists in the coroner's office is done.

The two issues of helping this office to be robust and independent is the question of its budgeting lines and making sure it is something that will be budgeted for and spoken for through the Consolidated Fund or in some other ways that it is not hampered in doing its duty because of budgeting constraints.

Secondly, I want to talk about the balance with regard to the role of the Public Service Commission (PSC) in appointing employees of the Coroners Service. If the Coroner-General cannot appoint the employee or the Council of the Coroners Service cannot employ its own people who are the professionals, then there is a risk. That is an issue that is subject to debate and we need to look at it carefully.

The other Members will touch on this Bill, but I think Kenyans are interested and would have loved to put it on notice. For instance, what type of death is deemed suspicious, that will have to be reported and investigated? So, it is any death that has a matter of violence, medical negligence, misconduct, malpractice, cases of suicide, homicide and accidents, deaths during pregnancy or circumstances that may be attributable to Section 24 of the Bill. It talks about deaths from disease or sickness which were not treated by legally qualified medical practitioners. Occupation and work place related deaths need to be added there because a lot of people might die from being exposed to chemicals in an industry, a flower farm and those types of things needs to be covered.

Once these reportable deaths are done, there is the nature of reporting. Even deaths in custody, when police take somebody and the next day the person is dead or they are released and they die within a few hours because they might have been tortured under police or military custody or were taken by the Kenya Wildlife Services (KWS). We have seen a lot of these cases in this country and they must be investigated. Deaths that occur after surgical procedures within a short time are things that must be looked at.

So, there is a whole range of deaths in Section 28 that must be investigated. The law is very clear as we are proposing it on what the report should constitute on the cause of death, place, possible perpetrators and the report will be *prima facie* evidence for prosecution of an inquest. That can be handed over to the DPP and the police to do their work in the criminalistics and others to help promote the rule of justice in Kenya.

With those few remarks, I must say on my own behalf and on behalf of the Parliamentary Human Rights Caucus, it is something we have been paying attention to in the last three years. I am happy it has come to the tail end of the Parliament. I hope Members will support us to pass it through Third Reading quickly along with the leadership of the House under Hon. Duale. It will be a Bill that Kenyans can benefit from once it is signed by the President as the law.

Thank you and I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Omulele): The first on my list to speak will be Hon. Cecilia Ng'etich, the Member for Bomet.

Hon. (Ms.) Ng'etich: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to be the first to speak to the National Coroners Service Bill. I support this Bill understanding the fact that the Coroners Service is important.

I had to look at what this coroner does. He is an official who will hold inquest into violent, sudden or suspicious deaths. Any death that may appear unnatural would be the work of the coroner to inquire and investigate.

There are many deaths that occur that are unnatural. Some of them are due to violence. We had the Post-Election Violence (PEV) where several people lost their lives and up to date the 2007/2008 PEV victims have not obtained any justice because of poor investigative services and they are still looking for justice. So, this service will be very specific to the Coroner-General to ensure that investigation is done within a certain limited amount of time for justice to be done.

In today's newspapers I was reading about a young girl who is claimed to have been battered by her teacher and other pupils for being unable to read. The parent was crying out for justice because when you are poor sometimes people do not listen to you. I believe this will serve justice to the poor people who may not have a voice in seeking for justice.

This investigative service is usually done by the police but we are aware that they have general duties and heavy responsibilities, hence lacking capacity and specialised training to carry out investigations. While these coroners are not necessarily medical officers, they will have investigative skills. Where they will require further investigations, they call in the services of a pathologist or a medical officer to prove their case.

Since they will have the power to even order exhumation of bodies, I believe even those who would have been killed and buried secretly can finalise investigations by exhuming the bodies and allowing detailed investigative services.

I have seen the functions and powers of the Coroners Service and I just want to add to them because they may delegate to other officers. One of the functions which I do not see here is public awareness on how to handle a crime scene. Sometimes you find that good Samaritans go to a crime scene wanting to help but in the process they tamper with evidence. Sometimes a girl may be raped and killed and you find the body being taken to the mortuary without evidence being collected from the crime scene.

On public awareness about people being allowed to---

Hon. Okoth: On a point of information.

The Temporary Deputy Speaker (Hon. Omulele): The Member for Kibra is proposing to inform you, the Bomet County Women Representative. Are you willing to be informed?

Hon. (Ms.) Ngetich: Yes, I am willing to be informed.

The Temporary Deputy Speaker (Hon. Omulele): Very well. The Member for Kibra kindly proceed.

Hon. Okoth: Thank you, Hon. Temporary Deputy Speaker, I am happy to inform Hon. Cecilia Ngetich that those two key provisions she is talking about on how to preserve a crime scene and collection of forensic evidence are well covered in the Bill in Section 29. Also, the different roles of the police, on how to secure a place until the Coroners Service comes to do their part are covered in the Bill. So, there will be good teamwork on who is supposed to do what and it is covered in the Bill and also, public awareness on how not to compromise investigations.

The Bill is very specific that it is a crime to interfere with the scene of a death investigation. In Clause 39 of the Bill, the police themselves cannot interfere and if they do that, that crime is highly punishable. I think those concerns are important and definitely, the public will need to be taught how to handle situations where an unnatural death has occurred.

The Temporary Deputy Speaker (Hon. Omulele): Good information. Member for Bomet proceed.

Hon. (Ms.) Ngetich: Thank you. That is good information. I just want to emphasise more on my point about public awareness of not tampering with a crime scene until the coroner takes evidence. When there is lack of evidence it is difficult to carry out any investigations. I support this so that there is justice.

I will mention a case which I do not know if it fits into this kind of a situation. We have seen deaths occurring in police custody or where a police officer kills an innocent citizen. But, investigations are usually very difficult because the officers are supposed to investigate their own colleagues. We rarely hear about the cases because they are delayed or compromised.

I want to mention a case which occurred in Sotik Constituency where about three weeks ago an Anti-Stock Theft Unit officer shot a young boy who was answering the call of nature and lucky enough the boy did not die. Two weeks later, another boy was shot and up to now no one has updated us on the case. The guardians are just being taken in circles. If the coroner services were here they would have helped. I want to believe that if there was an intention to kill although

in this case the boy did not die, they would have handled it. I am just mentioning this as an example of cases where police officers may be involved and, therefore, it may be very difficult to get down to the bottom of the matter in such situations.

Otherwise being a State corporation, of course we have terms of service for the coroners. Therefore, there will be justice for all and it will not depend on who is being served. I want to believe that they will uphold Chapter 6 on high integrity and also be honest in their work and give justice to all people. They should not use their positions to get bribes like we see in many public offices where instead of being offered free services there has to be some inducement of some sort.

As I end, I came in when you were concluding debate on the Statute Law (Miscellaneous Amendments) Bill. I am happy with what the Leader of the Majority Party mentioned on the Sexual Offences Act that they are going to withdraw the offensive clause of reducing the age of consent from 18 years to 16 years. I believe this was just a way of legalising sugar dadys and we do not want them to spoil our children.

I agree with what Hon. Nyikal said that while the girl may be biologically mature, socially and mentally she is not mature. I did not have an opportunity to say this before but otherwise I support this Bill of establishing---

The Temporary Deputy Speaker (Hon. Omulele): Hon. Members, our system is not giving the usual warning and we will see how to go about it. I will give you just one minute to wind up.

Hon. (Ms.) Ngetich: Thank you, Hon. Temporary Deputy Speaker for allowing me to conclude my remarks on this Bill, which I support because it is something which has been established in many countries. Kenya is one of those affected by mysterious deaths which this Service will be investigating. Under the devolved system there will be a coroner in each county and a Coroner-General to serve at the national level which I concur with and support.

On the Statute Law (Miscellaneous Amendments) Bill, I was happy with the sentiments of the Leader of the Majority Party that they are going to withdraw the offensive amendment which was seeking to reduce the consensual age from 18 to 16 years because it was amounting to legalising sugar mummies and sugar daddys.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Omulele): Very well. Hon. Members, the interest I see is from Hon. Wamunyinyi, Hon. Namwamba and Hon. Timothy Wanyonyi. I propose to proceed this way because I recognise the special circumstances of Hon. Timothy Wanyonyi. I will give him the first go and then we shall have Hon. Wamunyinyi followed by Hon. Ababu Namwamba.

Hon. Wetangula: Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Bill. First, looking at Section 8, it talks about the independence of the office of the coroner and emphasises that nobody can influence the decisions or performance of the functions of this office. Anybody who tries to do this will be committing an offence.

We have had some people dying in a suspicious manner and some of the Government pathologists come up with very dubious reports that are even amended. You remember the case of the girl who died in a national park somewhere in this country - a British national called Julie Ward - and the pathologist amended a report written by somebody else. When it appeared in court, it was really laughable.

As captured here, it is creating this office and giving it teeth such that anybody who tries to influence a decision will be committing an offence. This is very important because we need to allow institutions to function and not to be micromanaged by somebody else who is not even in the position to make that decision.

This is a very important piece of legislation. When it is passed, it will give this country a mileage in this area so that we can address issues that have been left pending. We have had political deaths. We have had people who have died in police custody. We have had people who have died in various circumstances. I believe every death is supposed to be investigated. Even the family should be satisfied that the causes of death are explained.

You remember the recent case of *Bwana Dawa*, Mark Too. There was the issue of whether or not the family should have a postmortem conducted. There were interests. This is something that we need to look into because sometimes these are the kind of things that we need to put to rest. We shall not allow any suspicious deaths or something unexplained.

As Hon. Cecilia said, there are people who died in the Post-Election Violence and we still do not know some of the causes. Some people were strangled and some had all manner of things done to them. These are things that we need to look at.

This Bill is addressing very interesting issues. Clause 43(1) of the Bill says that if a coroner is of the opinion that it is appropriate and essential to ascertain the circumstances and the nature of death, the coroner may conduct a post-mortem on the body. This is where we are giving this office of the coroner the power to decide that if there is suspicion or if there are any questions, then he can conduct a post-mortem on the corpse.

We believe that when this Bill comes into operation, it will address many issues and put to rest some of the things that have been going on. Sometimes as a country, we need to make sure that justice is given to people who have died and the families also have peace of mind. I am sure the British gentleman must still be smarting because of the things that happened to his daughter in this country and he could not tell what killed his daughter.

We also need to look at the political deaths like that of Dr. Robert Ouko and others. We still cannot tell what really caused the death of Dr. Robert Ouko; whether he died at the spot where he was found or something like that. Normally, when they conduct investigations, they come up with reports that will give a conclusive report on what the cause of death was.

Most important is preserving the scene of the crime. Recently, Jacob Juma died and before anything could be done, there was already interference with the scene of the crime. The police could not tell whether he died at that spot or whether he had been taken to that place. It is also important that when the scene of the crime is preserved, proper investigations can be conducted and evidence collected that can be used later. We have had cases come to court and the reports from the coroners do not explain or give conclusive evidence that can help the court make the right decision. This is very important. We must also look at preserving those scenes of crime so that proper investigations can be conducted and evidence is collected so that nobody interferes with it.

Let me give an opportunity to other Members to contribute. This is a very important piece of legislation. It will help address a lot of issues that have remained untouched in this country.

The Temporary Deputy Speaker (Hon. Omulele): Very good summations, the Member for Westlands. We are glad to have those summations. Let us have Hon. Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Speaker. This is a very important Bill before the House. As we have been told, the Bill seeks to establish the National Coroners Service and to provide for proper procedures for investigation of otherwise

unexplained deaths under circumstances that are not clear. We have had cases where people have been killed and the police are suspects. Or even sometimes, police themselves kill and claim to have done so in self-defence or the suspect was a dangerous criminal and so on and so forth. They go ahead to investigate those deaths. Obviously, if I were involved and acted in a manner that would cause problems for me, I would have to cover up. This is natural even for you. This is natural. Therefore, the decision to bring about this Bill to establish the coroners service is laudable.

The Temporary Deputy Speaker (Hon. Omulele): Hon. Wamunyinyi---

Hon. Wamunyinyi: Hon. Temporary Deputy Speaker, I am sorry, I was not referring to you. I was referring to the Chair. I am just saying that the decision is quite laudable.

I commend the decision to table this Bill because it will go a long way in helping unravel cases which would have otherwise gone like Hon. Wanyonyi has just mentioned. Our son, Jacob Juma, was killed. Even before investigations had commenced, everything had been taken away including the car and the body. Nothing was on the scene by morning.

To date, nobody has explained. Nobody has said who killed him. This is a country where people just disappear at night and are found dead and nobody is there to investigate and give a report on what happened. This Bill seeks to put in place measures that will do away with such cases. I trust that it will also not be used to cover up cases where people have been killed. There have been attempts to cover up some cases.

We have been in court and seen rulings made in court. Even magistrates and judges have been critical of investigations. They criticise the police for poor investigations and dismiss cases for which people would have been convicted for murder. This has happened and people have been let scot free with blood on their hands.

Hon. Temporary Deputy Speaker, this Bill being introduced is going to ensure that people undertaking investigations into these cases are properly trained, are well qualified and are not just the ordinary investigators who are picked even to investigate murder. Murder is one of the most serious capital offences. So, if we have qualified investigators, medical staff working on these cases, forensic scientists and pathologists - Dr. Nyikal can tell us the qualified ones- people who can support an investigation team to unravel cases of unexplained murder, it will be good. This is what this Bill is seeking to achieve.

Clearly, the good thing about it is that it spells out in the various sections--- I have just sampled a few. Part IV in Clause 24 clearly talks about the obligation to report reportable deaths and investigations of reportable deaths. It goes further to give details of these cases; cases arising from people fighting, violence and misadventure. Even misadventure is supposed to be investigated thoroughly. This is where someone may be hit by a stray bullet or something like that and people have been killed under such circumstances. Sometimes it is not just stray bullets but out of negligence. So, it needs to be given proper attention by investigators.

This Bill gives all these details. This is one of the good pieces of legislation that have been introduced in this House. Unfortunately, it is coming at this time. I trust we will pass it so that it becomes law.

Clause 25 is very clear on the reporting of deaths that occur in custody. Where people have died in police custody, we have been given different explanations, excuses and allegations. This is one area where it clearly provides for what needs to be done and how investigations should take place and the death to be investigated by this Service. It also clearly gives the details of the death.

If you go further and look at the investigations and examinations in Clause 30 which proposes investigations and matters to be ascertained, it clearly says what needs to be done. For example, the purpose of the investigation into a person's death is to ascertain the particulars of the deceased how, when and where the deceased met his or her death, the cause and manner of death and particulars required under the Births and Deaths Registration Act. It gives all details up to the state of the person.

This Bill is laudable. We need to move with speed and I hope Members are going to support it so that we speed this process and ensure that this law is passed. We need to ensure that it protects Kenyans who have suffered under such circumstances and that in future we do not allow such cases and cover up or evidence is destroyed or scenes of crime are tampered with, which makes it very difficult even for a good investigator to undertake an investigation.

You make it very difficult for investigators even to find leads that can enable the investigator to follow up and get to the root of the matter. This Bill also provides for protection of scene of crime to the extent that it ensures that the investigator will have good time to get to investigate the matter.

Under Part IV of the Bill, Clauses 24 to 29 set out the obligations like I explained earlier; to report reportable deaths and investigations of reportable deaths. Any person who suspects that unnatural death has occurred as a result of among other things, violence, misadventure, negligence, misconduct, is expected to notify the coroner. If this happens, it is going to change a lot of things in our country, particularly where we have had suspicious deaths where people are killed for their stand in politics, people are assassinated for economic issues and so on.

I support this Bill. I hope it is not just going---

The Temporary Deputy Speaker (Hon. Omulele): Hon. Wamunyinyi, you have one minute to go.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Speaker, for that warning. When you have the coroners in place, I hope they are not going to be like others. I was telling Dr. Nyikal that we were so happy when the Ombudsman was introduced and we thought he is going to look at things and have an impact that will be visible to Kenyans. That has not happened. We hope this kind of good law when passed, is not going to be like that of the Ombudsman.

We will need to see things happen. When someone is killed, like the one who was killed in Kanduyi two months ago by the police, the matter should be thoroughly investigated and the police officer responsible should be taken to court for the killing. I saw the Inspector of Police who shot my constituent being part of the investigations and I protested to the County Commander. The police should desist from killing people unnecessarily. They have to stop. This is not a State where people are just killed like that. Those killings just end up without anything being done.

I hope this law is going to help us deal with all such cases. With those remarks, I thank you.

The Temporary Deputy Speaker (Hon. Omulele): Hon. Ambassador Wamunyinyi, did I hear you suggest that the office of the Ombudsman is not an effective office?

Hon. Wamunyinyi: I was talking about the impact. Impact is supposed to be visible.

The Temporary Deputy Speaker (Hon. Omulele): You have not felt the impact?

Hon. Wamunyinyi: I have not felt it. It is nowhere.

The Temporary Deputy Speaker (Hon. Omulele): We shall have Hon. Ababu Namwamba.

Hon. Ababu: Hon. Temporary Deputy Speaker, this is a good law because it is a transformative law. It is for laws such as this that we sit in this august House. We sit to pass laws that answer to mischief that makes society a perilous place for civilised human beings to live in. It is a good law because it provides a framework to resolve a challenge that requires the application of science diligently.

They say that the dead tell no tales. So, when a human being loses a life in circumstances that raise serious plausible doubt or questions as to the nature of the death and clearly point to possibility of homicide, it is only through proper diligent application of forensic science that you can find answers to such questions.

Hon. Temporary Deputy Speaker, through the application of science, we could have found how a brilliant young man, Mr. Tito Adungosi, died in the hands of brutal state operatives. But because the dead tell no tales, and we did not apply forensic science, we will never know what happened. He was a fine son from Busia County. We will never know what happened to Dr. Robert Ouko, another fine son of our land, who lost his life in very mysterious circumstances that clearly pointed to homicide. Countless similar cases have left more questions than answers because of the casual or Machiavellian manner in which we handle homicides in this country. This law seeks to establish the National Coroners Service to provide a framework that can give us a way to apply forensic science and diligence in helping resolve cases such as those that I have mentioned. I must applaud those behind this piece of legislation.

Hon. Temporary Deputy Speaker, a few months ago, I stood at one of the morgues in this town to view a body of a young man that had been shot dead in his house in Dandora. After viewing the grisly outcome of that homicide, I sat down to make some inquiries. I talked to the police officers who were the first people to arrive at the scene of crime. It was shocking to hear stories of how the scene of crime was handled. It was very obvious that even with Angel Gabriel flying in from Heaven, it would have been impossible for him to find answers or to decipher any meaningful information from that scene of crime, which had been tampered and interfered with. The manner in which the body had been handled was in such a way that it would have been impossible for any forensic investigation to find answers to that grisly killing of that brilliant young man.

Clause 39 of the Bill provides that a police officer or any person who is present at the time of death or who finds a dead body shall in addition to reporting the death under this Act or any other written law, preserve the scene of crime until the coroner or a member of the service presents himself or herself at the scene. Sub-Clause 2 of the Bill requires such a police officer to collect evidence that would be necessary for purposes of investigation of an offence that may have occurred in such homicide. This is a key clause that will place the burden of care on police officers in the manner in which they interact with scenes of crimes such that they will not only be persons who merely go to stand guard but they will be people who protect the scene of crime and assist in collection of forensic evidence. Those of us who indulge in watching crime investigative series are able to see how the western world handles these matters.

Those of us who indulge in watching crime investigative series are able to see how the western world handles matters such as these. We are absolutely blown away by the diligence, care, attention to detail, precision similar to that applied by a neurosurgeon that is applied in investigation of cases such as these. For instance, when you watch things like cold cases, you are able to see application of forensic science that can unravel a homicide that happened 30 or 40

years ago and it is because of diligence, attention to detail and precision in the manner in which those investigations are conducted. If this Bill contributes to moving us closer to that kind of global standard, then definitely it is a law that would rank high up there with some of the best pieces of legislation that have passed through this House.

I am also pleased with Clause 38. In relation to handling of prisoners, we have had countless cases where prisoners die in prison or in remand. This used to be almost the norm with the so called political detainees, during the dark ages when this country was defined by brutal reaction to any political dissent. You would hear of cases where a person is taken into detention in absolute perfect state of health and the next thing you hear is that the family is being informed that the person has died in custody. These people were brutalised and treated with incredible inhumanity and yet absolutely nothing came out of investigations of such cases. In fact, these cases were buried and treated in similar manner as the colonial rulers of this land handled our forefathers who fought for the Independence of this country.

In fact, the first case I mentioned of Adungosi falls in that cluster of cases where a person is taken into custody and they lose their lives in the process. The provision that whenever a person dies in a prison or in police custody, the officer in charge of the prison or the officer commanding a police station shall inform the coroner within whose jurisdiction the prison or police station is situated and a coroner who is informed of the death under sub-section (1) shall investigate into the death and prepare an investigative report is progressive. I can see the warning.

The Temporary Deputy Speaker (Hon. Omulele): Yes, you have one minute. Proceed.

Hon. Ababu: Hon. Temporary Deputy Speaker, let me conclude by applauding the Bill once again and say let us pass this Bill but let us pass it and then deploy it in terms of effecting and implementing it. I am looking around the Chamber and I hope that as the political fever starts to catch on, we can still find time to pay attention to Bills such as this. Before this Bill, I am also very happy that we were able to protect our minors by throwing out the proposed piece of legislation the proposed amendment to the Sexual Offences Act that sought to reduce the age of sexual consent from 18 to 16. There is absolutely no justification.

In my language, we say you do not eat a mango that is not ripe yet. If it is not ripe let it ripen. There is absolutely no reason why you cannot wait for two more years. That was a wise decision. I commend the Leader of the Majority Party and this House. It will take vigilance for all of us to be in this House even as we handle the political fever out there to be able to preside over these pieces of legislation so that we can end the life of the 11th Parliament on a high note.

I support this Bill.

The Temporary Deputy Speaker (Hon. Omulele): Very good submissions. We will now have Hon. Amolo, the Member for Kakamega County.

Hon. (Ms.) Amolo: Thank you, Hon. Temporary Deputy Speaker. I stand to support this National Coroners Service Bill, being a member of the Human Rights Caucus in this Parliament. This is a very important Bill.

The qualifications of this coroner should be very detailed. Just to mention that as much as they are saying that the person should be a holder of a degree in medicine, we need to add that they should also have a degree in law or some law aspect should come in. That is one thing we need to look at to make this person really balanced.

The other issue is the functions of the Coroner-General. They are well stipulated here. This will give us a proper appraisal of performance when it comes to reporting what has happened.

When we look at Section 24, it comes out very clearly that every person who has reasons to believe that the deceased died as a result of something--- They have stipulated there to include violence, misadventure, negligence, misconduct or malpractice. All these things appear there. This will come out very clearly when it comes to which type of death needs to be investigated.

Section 28 is on deaths to be investigated by the Service. We know very well that we had this issue of a young girl in Kwale by the name “Kwekwe” whose body was exhumed so that the coroner could look at it. When it was done, we know very well that the officers who were involved were arrested and, I believe, they were jailed.

When you look at Section 323, a coroner shall make a report of every investigation conducted under this Act. The reports will be submitted to the Director of Public Prosecutions (DPP). Just like any other commissions, we know they have to report to the DPP so that action can be taken. There is no way one will hide or come with some other stories because this is a well-researched Bill. It will really help some poor families who cannot afford to pay for investigations when their relatives die. Because they will be funded by the Parliament, this will be a free service to all. Kenyans will really benefit when it comes to this. It has stated very well that if you need extra investigation, you will have to do it at your own cost. It will really help quite a number of families who have been going through hardships of looking into how they can get money to pay for proper investigations.

When you look at Section 39, a police officer or any person who is present during a death should not tamper with the area of investigation. This is very important because we have to be taken through the management of the scene of crime. This goes down to the person who interferes with evidence. It will be looked at as a crime or, as commitment of an offence.

The other thing that makes this Bill very rich is when you look at Section 40; how the regulations will come about. There will be proper regulations. These regulations have not left out the dignity of a dead body and the cultural beliefs of the deceased person. They have not left out where this person’s body will be taken care of. So, the regulations will be very clear. There is room, when you look at this Bill, for the Cabinet Secretary (CS) to make regulations generally for the better carrying out of provisions of this Act. They will regulate how everything will be done.

I believe this will be a very good Bill and I stand to support it.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Omulele): Members have had very learned and rich contributions to this Bill today. This is one of those moments that I am proud of this House and the contributions that have been made by Members.

Hon. Members, the time being 6.30 p.m., this House stands adjourned until Thursday, 2nd February, 2017 at 2.30 p.m.

The House rose at 6.30 p.m.