

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 26th August 2015

The House met at 2.30 p.m.

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

PRAYERS

PETITIONS

REGULATION OF MEDICAL LABORATORY PRACTITIONERS

Hon. Speaker: Order, Members! Hon. Wandayi, just remain upstanding.

Hon. Members, Standing Order No.225 (2)(b) requires that the Speaker reports to the House any petition other than those presented through a Member. I, therefore, wish to convey to the House that my office is in receipt of a petition signed by one Dennis Kithinji, allegedly on behalf of university students and graduates of Bachelors, Masters and Doctorate degrees in the field of laboratory medicine in Kenya regarding enactment of legislation to provide for registration and regulation of the practice of laboratory science. In the petition, Mr. Githinji prays that the National Assembly, through the Departmental Committee on Health, initiates the process of enacting legislation relating to registration and regulation of medical laboratory practitioners.

Hon. Members, as you are aware, the Health Bill (National Assembly Bill No.14 of 2015) was published on 17th April, 2015 and is awaiting Second Reading. I am also aware of a legislative proposal to publish a Bill to provide for the regulation and registration of medical laboratory scientists. While addressing this petition, the Departmental Committee should, therefore, appraise the petitioner on the contents of the two pieces of legislation, as proposed.

Pursuant to the provisions of Standing Order No.227, the petition stands committed to the Departmental Committee on Health for consideration.

Is Hon. Zuleikha Juma present? She is supposed to present a petition. If she is not present, let us have Hon. Richard Makenga.

RELEASE OF 2014 ECDE EXAMINATION RESULTS

Hon. Makenga: Hon. Speaker, the following is a public petition for the release of the 2014 Early Childhood Development Education (ECDE) Examination results by Kenya National Examinations Council (KNEC) to the students of the Foundation Institute of Africa.

I, the undersigned, on behalf of the candidates of the Foundation Institute of Africa, draw the attention of the House to the following:-

(i) THAT, aware that the Foundation Institute of Africa is a non-profit tertiary training institution that seeks to assist needy and deserving youth with limited financial resources wishing to pursue their tertiary education;

(ii) THAT, the institution is fully accredited by the Ministry of Education, Science and Technology, the Kenya National Examinations Council (KNEC), the Kenya Accountants and Secretaries National Examinations Board (KASNEB), and the Institute of Commercial Management (ICM), among others;

(iii) THAT, the Foundation supports pre-primary teachers' education under a beneficiary programme funded by the Kenya Youth Education Scholarship Fund;

(iv) THAT, the core mission of the Institute is to enhance the capacity of pre-primary teachers with the aim of developing their competencies and skills towards Early Child Development Education (ECDE) mainstreaming;

(v) THAT, a number of candidates in the said institution registered and paid their registration fee for the 2014 Early Childhood Development Education (ECDE) examinations on time, through the Kenya National Examinations Council (KNEC) as is the requirement;

(vi) THAT, the said students sat for the examinations in December 2014 but to-date they have not received their results on account of a supposed late registration penalty fee of Ksh4,000 per student levied by KNEC, thus causing them untold suffering and great inconveniences;

(vii) THAT, efforts to resolve this matter have been futile; and,

(viii) THAT, the issues in respect of which this petition is made are not pending before any court of law or any constitutional or legal body, your humble petitioners pray that the National Assembly, through the Departmental Committee on Education, Research and Technology, recommends-

(a) an audit of the late registration penalties and other levies charged by the Kenya National Examinations Council and verifies their legality;

(b) that the Kenya National Examinations Council immediately and unconditionally releases the 2014 ECDE Examination results for all the affected students;

(c) that the Kenya National Examinations Council undertakes unconditional registration of the Year 2015 candidates in the Foundation Institute of Africa immediately;

(d) review of the Kenya National Examinations Council Act with a view to making the institution more effective in conducting and management of examinations in the country, particularly in its imposition of fees and levies; and,

(e) that the Kenya National Examinations Council makes any other order or direction that it deems fit in the circumstances of the case.

Hon. Speaker, your petitioners will ever pray.

Hon. Speaker: Hon. Zuleikha Juma Hassan, for the second time! The Member has lost the opportunity to present the petition. When Members do not take the work of

Parliament seriously, they should suffer the full consequences. However, we will allow the nominated Member one more chance, perhaps, tomorrow.

Next Order!

PAPERS LAID

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

The Report of the Auditor-General on the Financial Statements of Chuka University for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Postal Corporation of Kenya for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Teachers Service Commission for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Ewaso Nyiro South River Basin Development Authority for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein

The Report of the Auditor-General on the Financial Statements of Meru University of Science and Technology for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein

The Report of the Auditor-General on the Financial Statements of National Cereals and Produce Board for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the National Irrigation Board (NIB) for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Embu University College for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Annual Report and Financial Statements of Kenya Maritime Authority for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Annual Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Lurambi Constituency) for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

Thank you, Hon. Speaker.

Hon. Kamau: Hon. Speaker. I beg to lay the following Papers on the Table of the House today, Wednesday, 26th August 2015:-

The Report of the Departmental Committee on Energy, Communication and Information on its consideration of the tour of Kenya Electricity Transmission Company substations on 6th to 8th July 2014 and 20th and 21st March 2015.

The Report on consideration of the Petition on the failure by Telkom Kenya Limited to pay retrenchment dues to the 997 former employees.

I thank you.

NOTICE OF MOTION

ESTABLISHMENT OF A COMPREHENSIVE POLICY ON FURTHER STUDIES

Hon. (Ms.) Emanikor: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that a sufficiently skilled and trained workforce is an essential pillar for the attainment of Kenya's Vision 2030; further aware that the number of doctors, accountants, engineers, teachers, nurses, lecturers, scientists and other professionals in the public sector undertaking further studies in specialised skills within or outside the country is on the increase; deeply concerned that quite a number of professionals get demoralised by the fact that on returning from studies abroad, or after undertaking studies locally, they are either deployed to lower positions, placed below supervisors whose skills they exceed, or stagnate in the same positions they were before furthering their skills; further concerned by the fact that most of them thereafter opt to leave the public service for the private sector, civil society, non-governmental organisations or even migrate abroad in search of greener pastures, leading to regrettable brain drain, this House resolves that the Government establishes a comprehensive policy to guarantee career advancement, promotions and security of tenure for public servants and officers who undertake to refine their skills through further studies.

Thank you, Hon. Speaker.

STATEMENTS

FATE OF JOINT COMMITTEE ON PRESIDENT'S MEMORANDA

Hon. Sakaja: Thank you, Hon. Speaker. I rise under Standing Order No.44 to make this Statement, whose objective is to inform the House on the fate of the Joint Committee appointed by the House on 7th July 2015 to consider the President's Memoranda on the Public Procurement and Asset Disposal Bill, 2015 and the Public Audit Bill, 2015.

Hon. Speaker, you will recall that on request of the Senate, this House constituted a Joint Committee comprising of the following Members: Hon. Sakaja Johnson, Hon. Mary Emasse, Hon. Jakoyo Midiwo, Hon. Adbikadir Aden and Hon. Samuel Chepkong'a. The Senate was represented in the Joint Committee by Sen. Billow Kerrow, Sen. Mutahi Kagwe, Sen. (Dr.) Agnes Zani, Sen. (Prof.) Anyang Nyong'o and Sen. Beatrice Elachi.

In your Communication on 7th July 2015, you directed the membership of the National Assembly in the Joint Committee to convey, uphold and put emphasis on the

decision of the National Assembly and the decisions that had been made on 18th June 2015 and 23rd June 2015 on the two Bills.

Hon. Speaker, the Joint Committee commenced its meetings on Tuesday, 28th July 2015. Prior to that, the National Assembly delegation had separately met and agreed to convey and uphold the National Assembly decisions as directed by the Speaker. Committee meetings were conducted in accordance with the Standing Orders of both Houses and Joint Rules, save for Standing Order No.155 of the National Assembly that was suspended on 16th June 2015.

The reports of the Joint Committee were not adopted during the fourth sitting of the Joint Committee meeting held on Thursday, 6th August 2015 at 10.00 a.m. being the sitting day preceding expiry of the 14 days. Efforts to have the Chairman of the Committee, Sen. Billow Kerrow, formally convene a second meeting on Thursday, 6th August 2015 at 5.00 p.m. for purposes of considering and adopting the two reports did not materialise.

It is worth noting that pursuant to provisions of Standing Order No.155 of the National Assembly, which stands suspended, and Standing Order No.158 (1) of the Senate, the 14 days timeline within which the report of a Joint Committee should be laid on the Table of the House lapsed. Now that the Joint Committee is time-barred and further in consideration of the fact that the Joint Committee had not agreed on the Report, including amendments to the Presidential Memoranda on the two Bills, the membership of the National Assembly in the Joint Committee wishes to make these facts known to the House, and hereby seeks guidance from the Chair on this matter.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Sakaja, the issue you have raised is one of great moments. There are timelines that are supposed to be obeyed. Standing Order No.155 (5) says that if a joint committee fails to submit their report under paragraph (2), or the report of the committee is to the effect that the Committee has failed to agree on the President's reservations, or where the Committee fails to agree on a version of proposed amendments to the President's reservations, the President's reservations shall be taken to have been approved by Parliament upon the laying of the Report on the Table of the House under paragraph (2).

Unfortunately, you are not laying a report on the Table. You are giving a kind of progress report. So, when is it that you consider that you will be able to lay some report? Maybe your Committee can lay a report on the Table that you have either agreed, or you have been unable to agree one way or another, so that the legislative proposal, or the Bill, can be taken to the next level.

Hon. Sakaja: Hon. Speaker, we face a dilemma in two ways. Actually there are two dilemmas. One, the time has elapsed for us to even convene again to present or adopt a report.

Secondly, at the time the Joint Committee was constituted, the National Assembly had already made its decision on the matter. We would need guidance to know how we would bring back the matter to a House that has already dealt with the matter. In our opinion, we felt that the Committee was *functus officio* on that issue. In any case, we were just helping the Senate deliberate on those amendments. It is only to the Senate that that report can go. Either way, even for it to go to the Senate, we needed to all have

signed the report if they were to present a report of the Joint Committee, but they were not able to present it. In as much as it was only signed by the Chair, the meeting that had been constituted did not have a quorum, and we were not able to hold it. When we tried to have another meeting later, it was not possible.

Hon. Speaker, I do not envy you at this point because the decision, or Communication, that you are to make will set a precedent. This is the first time we are dealing with a Presidential Memorandum that concerns two Houses and on how to deal with it, especially given the fact that the time has already lapsed, and the National Assembly has already declared its position on the same matter.

Hon. Speaker: Yes, Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker. I am the Mover of those two Bills, the Public Audit Bill, 2015 and the Public Procurement and Asset Disposal Bill, 2015. Those Bills had a constitutional deadline of 27th May 2015, which both Houses met. When the President returned them under Article 115 of the Constitution---

(Loud consultations)

Can you talk later? He has started some business next to me.

When the memoranda came to the House within the reading of Article 115, the National Assembly expressed its opinion one way or another on it and disposed of it. That Bill left this House. When it went to the Senate, the same Article 115 on Presidential Assent and Memoranda also applied. We have seen a Committee which was formed. These pieces of legislation were made for the people of Kenya. The Senate cannot keep a piece of legislation. Hon. Speaker, you need to give direction because even if Hon. Sakaja and his team agree with the Committee that was formed, in the first place, any Joint Committee of the two Houses must be approved through a Motion by either House. I do not remember this House forming a joint committee under Standing Order 213. In my opinion, what Hon. Sakaja and his team are doing is illegal. It was unconstitutional. Now that he has come back and said that he has nothing to offer, you need to give direction; I am sure that when our colleagues, the Senate, resume they will go through what Article 115 says. They need to raise the two-thirds majority if they disagree with the President as we did. If they cannot raise the two-thirds majority, then the amendments in the Memoranda of the President will pass and these Bills will again be brought to you for onward transmission to the President for assent, and the Public Audit and the Public Procurement and Asset Disposal Bills, which are constitutional Bills, will become law for use by the people of Kenya.

Hon. Speaker, you need to give direction later on the fate of these Bills because, Hon. Sakaja has come back with no consensus and our friends on the other side want to create Committees outside the procedure of the Standing Orders.

(Loud consultations)

Hon. Speaker: Order in that corner, women representatives!

There is too much noise near where Hon. Emanikor is. Is it the nominated Member? Share whatever may be exciting you in low tones, so that we can deal with business which is more serious than the excitement.

Hon. Abdikadir Omar, you are a Member of that Committee.

Hon. Aden: Thank you, Hon. Speaker. I am a Member of that Committee. I want to echo the sentiments of Hon. Sakaja. Indeed, as Members from the National Assembly guided by your earlier ruling, ours was to carry with us the position of this House, which we did. That is the fact that this House had dispensed with the two Bills, and that the Memoranda from the President came and was passed in this House. This Committee was coming in to do something which was not clear at all. So, we were in a very difficult position. We explained this time and again. We brought to the attention of that Committee your guidance and rulings, that the work of the Committee was not going to bear any meaningful fruit. As the Leader of the Majority Party said, those were constitutional Bills bound by timelines; we needed to pass them by 27th May 2015, which is gone.

Even as we concluded our meetings, our position, as representatives of the National Assembly, was clear that we did not see how an outcome, or a report, of that Committee was going to negate or change a decision that had already been taken by this House. So, your guidance will be very important. You should guide us now that, as Members representing this House in that Committee, we have communicated our disagreement as a Committee. We did not agree on any conclusion to the mediation process.

I thank Hon. Sakaja who was the Vice-Chairperson of the Committee for bringing up the issue. We want to hear your direction. This matter should be dispensed with once and for all.

I thank you, Hon. Speaker.

Hon. Speaker: This is a unique situation. As you appreciate, we are dealing with a very tricky situation where this House operated within the confines of the law, specifically our Standing Order No.155. We formed a Committee within the seven days stipulated but within the 14 days within which the Joint Committee was supposed to table its report, no report has come. It, therefore, means we are in a very unique situation. In fact, even as Kenyans were busy talking about *thuluthi mbili*, they ought to have been alerted to the fact that this House had extended the timelines within which to pass those two Bills to some date in May this year. These are the reasons why Kenyans should go and seek some directions from the courts if they were not excited about *thuluthi mbili*. Even these are very critical Bills. The Members of the Committee from the National Assembly admit that no report has been produced.

In the course of the day tomorrow, I should communicate what then becomes of this kind of scenario where a Committee, which has been given a period within which to table a report, fails to table a report. This is something that can easily affect the entire House. We must have a way of putting an end to this matter of the two Bills. We may recall the Bills and present them for assent because we cannot wait forever. If we continue doing this, we will not be helping the country in moving forward. So, tomorrow I will make a Communication in that regard.

Hon. David Ochieng.

Hon. Ochieng: Thank you very much, Hon. Speaker. I rise under Standing Order Nos. 62, 72 and 1. Yesterday afternoon, this House expressed itself on the Constitution of Kenya (Amendment) Bill, 2015 that seeks to move the election date from August to December.

I rise to appeal to you based on a ruling you made yesterday on a related Bill. The voting on that Bill went as follows: 216 Members voted in favour of the Bill and 28 Members voted against it. Standing Order No. 62(2) states as follows:

“Notwithstanding paragraph (1), whenever a Bill or a special Motion, the passage of which requires a special majority in the Assembly, fails to obtain the required majority in the “Ayes” but the “Noes” have not numbered at least one third of all the Members of the Assembly, the Speaker may direct that a further vote be taken on the particular question, and the further vote shall be taken within five sitting days from the day the first vote was taken.”

The application of the foregoing Standing Order would easily lead you to a conclusion that this is one of the Bills that would merit your intervention in terms of exercising your discretion to enable this Bill to be brought before the Assembly for a further vote.

(Applause)

Standing Order No. 62 has not been operationalised before in this Assembly. A third of the Members of this Assembly would be 116 Members. I have done my calculations and the 28 “Noes” of yesterday are less than a quarter of 116 Members, yet the Standing Order says they should be at least one-third of the Members of the Assembly. If they are less than one-third, you can exercise your discretion to allow a further vote.

Someone would ask why we did not stand up to claim a Division. Standing Order No. 62 is very clear. I want to distinguish this Standing Order from Standing Order No. 72 where on a normal vote by acclamation and there is a contestation of the result, Members may rise in their places to claim a Division. If more than 30 rise in their places, you would then call for a roll call vote.

Standing Order No. 62 does not allow that. In fact, the Bill we are dealing with does not even allow for an acclamation vote. It is very clear that this kind of a Bill can only be voted on through a Division. When I saw my colleagues standing up after Hon. Lelelit’s Bill had been defeated, I laughed because there is no provision for Members to call for a Division after a Division. We were already in a Division when we were voting on that Bill. There is no Standing Order or constitutional provision allowing for a Division in a Division.

The problem we have is that Standing Order No. 62 has no provision for operationalising it. That is why I request you, probably through a ruling, to advise us as Members on how and when we can move you to exercise your discretion under Standing Order No. 62. There was no way I was going to stand on my feet and interrupt you after you announced the result of that vote.

(Applause)

There is no provision in the Standing Orders that allows me, when you are on your feet, to stand up and ask you to exercise this discretion. Settle to us this question: When should the Speaker rule on this kind of matter? Under Standing Order No. 72, it is instant. At least 30 Members rise in their places, you make a ruling and we go back to a vote. However, under Standing Order No. 62 there is no such provision. That is why it says a vote shall be taken within five days. It is five days because a vote under this section is on a very weighty matter that may require your considered opinion, which may not be given on your feet. That is why I am requesting you to consider this matter and order a further vote based on the numbers and the specific provisions of the Standing Orders.

Hon. Speaker, I hope that my request will meet your kindness. Thank you so much.

(Applause)

Hon. Speaker: Hon. Members, let me make this point clear: The Hon. David Ochieng approached me yesterday before we went into the other business, by which time it was not possible for me to react to his request. Therefore, I advised him to make a formal application, which he did and I have gone through it this morning.

Indeed, he is raising an issue which is not provided for. Even as you respond, please note that what he is saying is largely true. Standing Order No. 62 does not require Members to rise in their places to claim a Division within a Division. There is a clear distinction between what is in Standing Order Nos. 62 and 72. However, since this is the House that makes rules, I would want to give a few Members an opportunity to ventilate on this matter, so that even as we rule we do it for posterity. If need be, we can make clear provisions. That option is open to you. I would want to hear a few interventions on this matter.

The Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker. I totally agree with you that there is no provision for a Division within a Division. However, this is a House of rules. I have nothing against this Bill. My only duty is to stand and protect the procedures, precedents and Standing Orders.

You cannot read provisions of the Standing Orders in isolation. There is a total difference between the two Bills which Hon. Ochieng is referring to. When the result of the vote on Hon. Lelelit's Bill was announced, several Members rose in their places based on the provisions of Standing Order No. 62(2). You made the direction for a further vote before you declared yourself on the HANSARD on whether that vote was positive or negative. Standing Order No. 62(3) says:

“If the Speaker does not so direct any further vote, or if on such further vote the fixed majority is not obtained, the Hon. Speaker shall declare that the Motion is negatived.”

Hon. Members: No! No!

Hon. A. B. Duale: If you allow me---

Hon. Members: No! No!

Hon. Speaker: Order, Members! Let us allow Hon. Duale to speak. It is good to see how we are going to carry the House along as we move on.

Hon. A.B. Duale: Hon. Speaker, we need to protect our own Standing Orders. I am sure the HANSARD will prove me right.

When we were dealing with the Bill by Hon. David Ochieng, you pronounced yourself on the HANSARD that the Bill had been negatived and so lost. It can only come back after six months. That is the procedure of this House.

Thank you, Hon. Speaker.

Hon. Members: No! No!

Hon. Speaker: Hon. Olago Aluoch.

Hon. Aluoch: Thank you, Hon. Speaker. What Hon. Ochieng is asking you to do is to set a precedent for this House. Indeed, you and this House are standing in a special time in the history of Kenya. You are implementing Standing Orders made under the Constitution of Kenya, 2010.

I am glad that you have noticed that Standing Order No. 62 has a lacuna. There is a lacuna because a proper reading of this Standing Order will reveal to you that the issues under discussion are so weighty that the Standing Order says you will ask for a further vote only within five days and not instantly.

Yesterday there was a lot of pressure on the Bill by Hon. Lelelit. However, you stood your ground and said you would not allow another vote immediately. You were right when you did so. In these circumstances, what was happening was that the House was dealing with a very serious issue. A Bill to amend the Constitution is not a small matter. That is why within the Constitution and Standing Orders, there is a special mechanism for dealing with such Bills. There is a procedure for passing those Bills and taking the count. Still, we must see how to implement Standing Order No. 62 without adverse effect on any of us or anything else. What we are being asked to do, which in my view falls within your purview, is to guide the House on what we need to do, not just in respect of the appeal by Hon. Ochieng, but even in amending our Standing Orders, so that a weighty issue like the one we are dealing with now is addressed with the seriousness it deserves.

Hon. Speaker, I plead with you to allow the appeal by Hon. Ochieng, because if you do that, you are going to give this House the chance to look back at what we have done and how we can do things in a better way, as we go forward. Hon. Speaker, it falls within your purview. You have the capacity and I humbly request you to allow the appeal by Hon. Ochieng.

Hon. Speaker: Let us hear the Deputy Leader of the Minority Party.

Hon. Midiwo: Thank you, hon. Speaker. I want to say briefly that it is important that we canvass the importance of Standing Order No. 62. Yesterday, you saw the pressure on Hon. Lelelit's Bill, because of the special issues of poverty in his county. The House was near unanimous in its support for that Bill. Hon. Speaker, I suppose you also reacted the way you did because that Bill of Hon. Lelelit was not on the Order Paper until sometime yesterday. The Bill for Hon. Ochieng, which has been in the offing for a very long time, was on the Order Paper.

You are being asked to do something which is thoroughly irregular. For those of us who may seem to be in the minority, and who voted “no”, what somebody is asking you to do is that they needed time to defeat us. At the end of that vote, you ruled on Standing Order No. 62 (3) that the Motion was negatived. The question that we have to deal with now is not about the merits and demerits of the request by Hon. Ochieng, because that would plunge us into the debate on the Bill. The question is, having ruled yesterday on the basis of Standing Order No. 62 (3), would it be within your purview and authority to withdraw your ruling before the House and make another ruling? That should be the argument before this House. I am saying that, that issue was dealt with and spent yesterday when you pronounced yourself on Standing Order No. 62 (3). It will be the most irregular thing that we can then come back so many months, or days, later to deal with a Bill that has been dealt with just because the Speaker changed his attitude. You are supposed to be asked. On this one the mood did not show as it showed on the other one. You will be offending those of us who have issues with the approach. Many of us do not mind the date. We have no problem with it. However, as the leader of the Member who moved the Bill, I have tried to engage him but he seems not to want to engage us. There is the issue of Supreme Court judges and the Independent Electoral and Boundaries Commission (IEBC) Commissioners.

Hon. Members: On a point of order, hon. Speaker.

(Loud consultations)

Hon. Midiwo: Hon. Speaker, this is your House. I will stand my ground because this is not a shouting House. You must stop what we saw here yesterday, and what we see rearing its head here. We cannot come here to shout at each other even when we are making points about the date of elections. Many of these Members making noise were not here when Kenyans were letting blood. In fact, some of them were still toddlers.

(Loud consultations)

So, we must talk about this issue with all the seriousness it deserves. You can make all the noise but the argument I am making is that there is no way you can make a ruling on a dead Bill and then bring it back and make it alive for a vote for the sake of it just to pass. I plead with you.

Hon. Speaker: Of course, it is fair to allow everybody to make their point. Hon. Midiwo ended by saying that the Speaker cannot resurrect something that is dead. So, Hon. Midiwo does not believe in resurrection.

(Laughter)

Hon. Eseli.

Hon. (Dr.) Simiyu: Thank you, hon. Speaker. Whether we believe in resurrection or not, it is important that we realise that yesterday a precedent was set in the sense that quite a number of us were not aware of that opening within the Standing Orders when we are dealing with a Bill related to the Constitution. The few who were aware might have

stood up after Hon. Lelelit's Bill was lost. In the case of Hon. Ochieng's Bill, many of us were not aware of that kind of provision. It is so because we must all realise that the new Standing Orders are actually a result of the new Constitution. In that sort of situation, this House, which you lead, therefore, has to be setting precedents and traditions as to how we handle these matters. Now that such a provision does exist, which many people were not aware of, giving the benefit of the doubt to Hon. Ochieng would be useful because he approached you immediately after his Bill was lost. So, in a situation like this, it is not a question of resurrecting anything. It is a question of just following the Standing Orders as they are and allowing that next time when we reconvene we reconsider Hon. Lelelit's Bill; perhaps, at that time we can also reconsider Hon. Ochieng's Bill. This is because we are a House of representatives. We represent Kenyans.

We are also aware that the polls that have been conducted in the country regarding the election date have overwhelmingly supported the December date. We as the people's representatives, therefore, must be given adequate time to deliberate on this matter and make a judgement that favours the Kenyans who sent us here. I suggest that perhaps in this one time, using Standing Order No. 1, you should allow a revisit of this Motion.

Thank you.

Hon. Nassir: Thank you very much, hon. Speaker. I would like you to protect me from---

Hon. Speaker: Just make your point.

Hon. Nassir: Thank you. I am one of the 16 Members who are quoted to have voted against this particular Bill. Right now is not the time for me to explain why I voted against that particular Bill. If it comes again, I will, probably, vote "no". In the interest of being fair, a similar constitutional amendment was brought to this very House within a span of just minutes.

In the interest of being fair, on the amendment by Hon. Lelelit, you made a ruling that it should be within five sittings. I know that the Leader of the Minority Party will attest otherwise, but you made a ruling that Hon. Lelelit can reintroduce that particular Bill within five days. In the interest of fairness, the Standing Orders give you that discretion. As much as we have wished to declare that this is dead and we wish to resurrect it, we know for a fact that you do not have the powers of prophets to resurrect it, but this is not dead. These are Bills. To be fair to the hon. Member, I insist on my behalf and on behalf of others, including Hon. Duale and the Leader of Minority Party, that I will vote "no" again when this Bill comes back. But in the interest of fairness, I would request you, in your wisdom, to do proper and due fairness to every single Member who brings Bills to this House.

Thank you very much, Hon. Speaker.

Hon. Speaker: Hon. Priscilla Nyokabi.

Hon. (Ms.) Kanyua: Thank you, Hon. Speaker. I also wish to join in this debate, and state always that the law allows a second chance. It also allows a window and it allows us to rethink. I cannot celebrate enough Standing Order No.62.

Having looked and seen how Parliament can take a vote in its wisdom and in the wisdom of the drafters, Standing Order No.62 has allowed a window of opportunity where dissenters do not reach 116, or the one-third; that matter can be brought in for a

further vote. I join in asking that you allow this matter to come back, using Standing Order No.62, for a further vote.

Hon. Speaker, this is a matter of great national interest and great public interest. It is in the interest of everybody that we have a further vote within five days as envisaged by Standing Order No.62.

As I end, I want to just point out that we are working with the new Constitution; we are working with new Standing Orders; we are working with a new National Assembly, and you are called upon to create precedent and show how the country will guide itself in future. Let us not waste that opportunity. This is our time to create precedent; seize the moment and allow a further vote.

Hon. (Ms.) Kajuju: Thank you, Hon. Speaker. I stand to support Hon. Ochieng in his application before you today.

(Applause)

You are being asked to review a decision that was arrived at. There is a reason why Standing Order No. 62 was put in the Standing Orders. When you sit on that seat as the Speaker of this National Assembly, you have the power to do that which is right, especially where a Member feels aggrieved.

I sit with Hon. Ochieng in the Departmental Committee on Justice and Legal Affairs. This is a Private Member's Bill that was brought for the amendment of the Constitution. All of us appreciate that it is not easy to prepare a Private Member's Bill seeking to amend the Constitution. The Member has undergone a lot of pain and suffering and committee processes to bring that Bill to this House. If we frustrate the hon. Member's efforts, especially in a situation where he feels aggrieved by a certain decision, then we shall not be walking the talk because we have always said we want more Members to bring Private Member's Bills. You know between you and I, any person who has the power to make a decision also has the power to review that decision. You are not just doing this for the purpose of Hon. Ochieng's Bill. There will be other Bills that will come that will concern the Constitution. You will be called upon to make various other decisions. We are asking you to rise to the occasion. Do not be moved by the fact that some persons outside, or inside here, are not happy with the substance of the amendment, or the fact that it is Hon. Ochieng who is bringing this particular amendment. He is doing this for every Kenyan in this country today and for posterity.

For the years that I have served in this Parliament, I have seen you make decisions with solomonic wisdom.

(Applause)

I am asking you not to look at Hon. Ochieng, or the fact that it is a Bill seeking to amend the date of election of this country; Look at the fact that this is a constitutional matter that you will be required to make similar decisions on over and over again.

Hon. Speaker, the Leader of the Majority Party is saying you look at me. I am not saying you look at me, I want you, as the Hon. Speaker, to look at the substance and lead us in the right manner. I, therefore, beg you to give this opportunity to this House.

Section 62(2) says where the “noes” are not more than a third--- Those who opposed are not even 20. Hon. Ochieng was able to raise 216 Members who voted for the Bill. I, therefore, beg you to give the innocent Hon. Ochieng, an opportunity. Reading from the mood of the House, I beg you to review this decision.

(Laughter)

Hon. Speaker: Hon. Members, let me end this by hearing words of wisdom from Hon. Dalmas Otieno, the Member for Rongo.

Hon. Anyango: Thank you, Hon. Speaker. The matter to me appears straightforward. We have Standing Orders that allow the Speaker to review his own decisions. In this case the Standing Orders failed to give the manner in which an aggrieved Member needs to move the Speaker to exercise that discretion. It was our experience for the first time yesterday when a wild protest drew your attention to the existence of the opportunity for a review. The Standing Order does not provide for the manner in which you may be moved to exercise your discretion; it does not provide for the period within which you may be moved to exercise that discretion.

This being the first experience, as Hon. Eseli has pointed out, it is appropriate. Yesterday Hon. Ochieng raised the matter with you after you revealed the existence of the opportunity. As usual you said he had to raise it in plenary, which he has done at the first opportunity today. Since the Standing Orders do not provide for the manner in which you may be prompted to exercise the discretion, neither the period, we can only believe that it must be within five days, otherwise the opportunity has expired. I appeal to you to exercise it since it is not too late when we have moved you to review your own judgment and declaration.

Hon. Speaker: Hon. Kimani Ichung’wah.

Hon. Ichung’wah: Thank you, Hon. Speaker. I also rise to support the Hon. Ochieng in his plea. I went home a very dejected man last evening. One, I had the opportunity to interact with a quite a number of Members, not below 40 Members, who were locked out when the bar was drawn up last evening. They were actually locked out and they could not vote.

I am sure that among those 40 Members who were locked out were a good number who were in support of that Bill by Hon. Ochieng. Even Hon. Kaluma, I am informed, whose Bill was being passed was locked outside. It is only in the interest of fairness, not in fairness to the Hon. Ochieng and Hon. Members of this House, but millions of Kenyans who are looking at a very good opportunity to review a decision that was made in 2010; they feel it was not right. Many Kenyans feel that the decision to have elections in August, 2017 or whichever year elections will be held, was not the right decision in 2010. Kenyans have that right through their elected representatives to review that position. It is the same right that we are saying that you, as Speaker, also have the right and the opportunity. I heard Hon. Kajuju talk of solomonic decisions, I do not know whether we will call yours a “justinonic” decision this afternoon to at least give us that review. I know there are feelings that the amendment proposed by Hon. Ochieng will also have a bearing on the term of office of Independent Electoral and Boundaries Commission (IEBC).

It is an opportunity also to cross one bridge before we get to the other. As much as this will also affect the term of office of IEBC, if we change the date, we will also have that opportunity to bring in a new provision to extend the term of office of IEBC. I, therefore, beseech you, in the interest of this great nation, to allow the Hon. Ochieng's Bill to have a second chance; at least, even allow the people's representatives who were locked outside of the Chambers when the bar was drawn up yesterday, to have an opportunity to vote on this.

Thank you.

Hon. Speaker: Hon. Members, I ordered that the Division Bell be rung. So, I am unlikely to be persuaded that anybody was locked out. As we conclude, it is fair for us to appreciate that with the new Constitution, there are many areas we are seeing interesting developments in, including people going on appeal and being told unless you pay, you cannot even be heard. Hon. Aluoch will agree that these are very interesting times we are living in. You find it in the Supreme Court and the Court of Appeal. We are also mindful of the principle that if we were in courts of law, we would be asked not to deal so much with the form but with substance. We need to administer justice with due regard to substance as opposed to form.

Now that she has been looking at me and even raising her hand, let me give her a chance; Member for Mbita.

Hon. Ms. Odhiambo-Mabona: Thank you, Hon. Speaker. I know Hon. Simba Arati is saying, "Hon. from Zimbabwe". However, this is an honourable from Zimbabwe who has settled in Lambwe Valley, Mbita Constituency.

(Laughter)

I want to thank you because what you have concluded with is what I wanted to start with, that is the issue of form and substance. I know when we go to the High Court we may be forced to look at issues of substance. What the Members are asking you right now is an issue of form. I know for instance, Hon. Ichung'wah is speaking to the issue of substance. Some of us voted one way on the issue of substance. If a new vote is called I may change my mind on the issue of substance. What you are being called upon now to do is to rule on the issue of form.

The reason why you are being told about the issue of form is because we have what I call "a penumbra of law". It is actually clear in Standing Order No. 62(2), what Hon. Ochieng has alluded to. It talks of the "Noes" being no less than one-third, which was not obtained yesterday. We are going to be faced with similar situations. For me, the issue is that we can borrow from what has been done in other jurisdictions. I would like to give an example of the USA. I would want to refer to a case, even though this one is dealing with penumbra rights. I want you to borrow this and use what I would call penumbra powers. It is the case of *Chriswold vs. Connecticut*. It is 381/US/479. This case will not only affect this decision, but it is going to affect several other constitutional issues that we will be dealing with in this House.

I would want you, if you could, to direct yourself not just this, but the possibilities of such crisis arising again. Maybe the framers of the Standing Orders had foreseen this and gave you discretion under Standing Order No.1, under which you may exercise

discretion. I do not agree with the Leader of the Majority Party when he says that Hon. Ochieng should have stood up; under Standing Order No. 2 Hon. Ochieng did not have those powers. If, indeed, the one-third was reached, then Hon. Ochieng would have been blocked; that is true. He would have been blocked. However, this is a case where he is not blocked and there is no alternative procedure that is given.

The only recourse is Standing Order No. 1. Beyond this, I would want to urge the people who are in the relevant committee to relook at it and to give your office guidance for when you will be faced with similar situations.

I thank you. I am not speaking to substance; I am speaking to form.

Hon. Linturi: Thank you, Hon. Speaker. Allow me to make my submissions on the application before you this afternoon from Mr. Ochieng.

One, I must appreciate what Mr. Ochieng has done in terms of coming up with this Bill and pushing it through this Parliament to where it is today. That is no mean achievement. Unfortunately, what happened yesterday was a matter over which I would want to agree with what many Members have said, that many Members may have missed out because of certain reasons that were beyond their control. Today, there is an opportunity provided for by the Standing Orders. I would want to persuade you to find that what is before this House is completely within your jurisdiction. When you look at Standing Order No. 62(2), it talks of “Nays” or the “Ayes” being a majority, but the nays do not reach a third. My interpretation of this particular paragraph is that the framers of these Standing Orders anticipated a situation where these numbers will not be achieved.

The framers expected that to garner two-third majority to pass a constitutional amendment Bill would require more than just putting it on the Order Paper, and people coming to vote. Hon. Ochieng managed to mobilise 216 Members to come and support this Motion with all the difficulties that there were. I would not want to agree with anybody that this matter is not provided for in the Standing Orders. Standing Order No. 1 gives you the discretion to make a decision on matters that are not expressly provided for by these Standing Orders. Because you have that discretion, my request to you, Hon. Speaker, is to make a ruling that as long as this matter is within your jurisdiction, then your discretionary power should only be exercised in a manner that is fair, democratic and meant for public good. To that extent, I believe that Hon. Ochieng, given another opportunity, will have nobody else to blame, or this House will have nobody to blame in the event that it does not achieve the required threshold. It is my humble submission that you kindly allow this matter to come for a second time.

Thank you.

Hon. Aden: Thank you, Hon. Speaker for the opportunity to contribute. At the outset, I want to say that Hon. David Ochieng was motivated to sponsor this Bill so that he can help many Kenyans. As we go through the learning process, which my colleagues have spoken to, of the new constitutional dispensation among the many things that are uncertain is exactly the issue of the date of the next general election. Some bodies like the county assemblies are under the current Constitution. It states that they last for a period not less than five years. It is also a fact that presidential and parliamentary elections in this country are to be done within the fifth year after a general election. For that purpose, this was a very important Bill. It cures a certain unfortunate state of our current

Constitution. For that reason, that Bill was in fact very important. It deserves to be given due consideration.

My colleagues have read and re-read the Standing Order No.62. When you compare Standing Order Nos.62 and No.72, it is very clear that in Standing Order No.62(2)--- I wish to read it because every time I read it, I find this pretty very much obvious. It says: “Notwithstanding paragraph (1), whenever a Bill or a Special Motion, the passage of which requires a special majority in the Assembly, fails to obtain the required majority and the vote results in majority of “Ayes” but the “Noes” have not numbered at least one third of all the Members of the Assembly, the Speaker may direct that a further vote be taken on the particular question, and the further vote shall be taken within five sitting days from the day the first vote was taken.”

Under this discretion, when you read this Standing Order together with Standing Order No. 1, which my colleagues have pointed to earlier, we wish to persuade you. I was moved and persuaded by Hon. Kajuju’s very passionate persuasion. I join her just like many of my other colleagues. What happened yesterday was a historic moment. The ruling will set a precedent for this House just as our Constitution requires re-shaping and ensuring that we put it into a shape that will guide very many generations. This Standing Order and the precedent, which your guidance will set, will make future rulings of this kind of situations to be a lot clearer. We are likely to face this kind of a situation again in various forms. Therefore, just as the two-thirds gender rule, which is coming our way in the very near future, there are many near future possible occurrences which we can point a finger at to say that a good precedent set now might help us in difficult days ahead.

I join my colleagues in persuading you to allow this House to retake a vote, so that we can once and for all ensure that our Standing Orders are well set for the future.

I thank you, Hon. Speaker.

Hon. Gethenji: Thank you, Hon. Speaker. The matter at hand is whether what we are discussing here is within the realm, or sphere, of possibility and probability. I want to speak to my friend, Hon. Washington Jakoyo Midiwo’s resurrection metaphor. I am not a preacher but in the Bible, John II speaks of Jesus visiting his friend, Lazarus. By the time Jesus arrived, he had been dead for three days. My brother, Hon. Washington is acting like Lazarus’ sister, Martha who said: “You cannot move the stone in the grave because there is stench. He has been dead for so long.” So, he is saying: “Do not look at this thing, do not touch it.”

(Laughter)

This is well within the realm of possibility and probability. Standing Order No.62 gives this House the power for resurrection. It gives you, Hon. Speaker, the power for resurrection. All we need to do, as a House, is to believe that we have the power to make and change precedent. We have the power for resurrection. So, it is not a debate of whether it is possible to do what Hon. Ochieng is asking you to do. We are already very clear in our minds. It is very possible. We just need to review Standing Order No.62 and yesterday’s events. You remember that by the time Hon. Members rose on their feet to ask for a Division on Hon. Lelelit’s Bill, it was already energised by three failures of the previous Bills, which had been there, including hon. David Ochieng’s. So, this was

accumulated frustration of the House which culminated in Members rising spontaneously on their feet. That feeling of frustration still remains as you heard it articulated by Hon. David Ochieng and many other Members of this House, not only inside in this House but also outside. The public are watching. They are questioning us since yesterday. They are asking us every hour what happened because the mood in the Republic of Kenya is that we must give the nation an opportunity to have full five years of this House in its activities. This House will give energy to that notion and that sentiment when we live up to our role and our abilities to give resurrection in this House.

I thank you, Hon. Speaker.

(Laughter)

Hon. Speaker: Hon. Members to be fair, we have had sufficient material on which I can make a considered ruling. The only thing that appears not to have been addressed by many of you is the fact that in the course of yesterday, I indicated that Hon. David Ochieng approached me and many of you stood in a manner to suggest that you were claiming a Division. You were out of order because there was no requirement for you to do that. Indeed, that same Standing Order No. 62 says that:

“Notwithstanding paragraph (1), whenever a Bill or a special Motion, the passage of which requires a special majority in the Assembly, fails to obtain the required majority and the vote results in majority of “Ayes” but the “Noes” have not numbered at least one third of all the Members of the Assembly, the Speaker may direct that a further vote be taken on the particular question, and the further vote shall be taken within five sitting days from the day the first vote was taken.”

It had no business with you standing, sleeping, shouting or yelling. It says that the Speaker may either direct that a second vote be taken within five days. More importantly, the Speaker did not direct that a second vote be taken. It was never done. However, Standing Order No.62(3) says:

“If the Speaker does not so direct any further vote, or if on such further vote the fixed majority is not obtained, the Speaker shall declare that the Motion is negatived.”

More importantly and factually, is the fact that there was another similar Constitution of Kenya (Amendment) Bill in which I directed that a second vote be taken within five sitting days.

So, the issue that, perhaps, I had expected to hear, Hon. Dalmas Otieno alluded to it. Some things are spoken out there that what is good for the goose should be good for the gander. That is the only issue that I wanted to hear and address, but I am sufficiently socially informed about that kind of a situation. Let us look at our Standing Orders and see whether something upon which the Speaker has expressed himself, or herself, is open for re-opening, what Hon. Midiwo refers to as “resurrection”. We also need to look at the practice in other jurisdictions. Our Standing Order No.362 does not seem to provide a good response save, of course, for going to the omnibus Standing Order No.1, which Hon. Millie, Hon. Dalmas and everyone of you is urging me to fall back to.

Supposing it is not applicable, what else should we do? Let us look at what is happening in other jurisdictions. I am glad that Hon. Millie Odhiambo-Mabona referred to something in the jurisdiction of the United States of America. I will make a ruling bearing in mind that with regard to the other Motion; I directed that the vote be taken after the House resumes from recess. I will take into account all the contributions that you have made and the practice in other jurisdictions alongside the traditions that we are all aware of.

We can end it there and go to the next Order. Before we do so, allow me to recognise students from the following institutions:- Serve Academy from Sabatia Constituency in the Speaker's Gallery, Kapsabet Boys Academy from Nandi County sitting in the Public Gallery, Tumuge Primary School in Kesses Constituency, Kisii Campus Primary School in Nyaribari Chache Constituency, DEB Kiamakoro in Imenti Central Constituency, Laboso Vision Academy in Kipkelion West Constituency, Chewoyet High School in Kapenguria Constituency, St. Alloys Ojolla Primary School in Kisumu West Constituency and Mbiri Primary School in Murang'a County. They are all welcome to Parliament to observe the proceedings.

Next Order!

BILLS

Third Readings

THE BUSINESS REGISTRATION SERVICE BILL

(Hon. A.B. Duale on 25.8.2015)

(Resumption of Debate interrupted on 25.8.2015)

Hon. Speaker: Hon. Members, debate on this Bill was concluded and what remains is for me to put the Questions. Hon. Abass, just pay attention to what is happening; that one; Hon. Ngunjiri, please.

(Question put and agreed to)

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

THE SPECIAL ECONOMIC ZONES BILL

(Hon. A.B. Duale on 25.8.2015)

(Resumption of Debate interrupted on 25.8.2015)

Hon. Speaker: Again, Hon. Members, what remains is for me to put the Question with regard to this Bill.

(Question put and agreed to)

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

MOTION

ADOPTION OF SESSIONAL PAPER ON NATIONAL POLICY FOR PEACE BUILDING AND CONFLICT MANAGEMENT

THAT, this House adopts Sessional Paper No.5 of 2014 on National Policy for Peace Building and Conflict Management, laid on the Table of the House on Thursday, 31st July 2014.

(Hon. Abongotum on 20.8.2015)

*(Resumption of Debate interrupted on
20.8.2015 – Morning Sitting)*

Hon. Speaker: Hon. Ferdinand Wanyonyi was on the Floor and he has a balance of three minutes. I am also aware that the Member has my permission to join the Pope somewhere in Italy, Rome; he and other Members are somewhere in Italy. Therefore, I know he is not in the Chamber.

Any other Member is at liberty to contribute to this one. I also want to let the House know that debate on this Motion has a balance of only 26 minutes.

Hon. Patrick Ole Ntutu.

Hon. ole Ntutu: Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Motion. I support the adoption of the Sessional Paper No.5 of 2015 on the National Policy on Peace Building and Conflict Management.

A number of factors contribute to conflict in our country, but let me just mention a few. I am happy that finally as a country, we are coming up with a Sessional Paper on how to address conflict. There is an interconnection between poverty and conflict. Poverty is a major cause of structural conflict resulting from unemployment, class struggle, landlessness, marginalisation, underdevelopment, inequitable distribution of resources among others. In our country, a number of issues contribute to poverty. One of those is the fact that many of our youths are unemployed. That is why there is conflict between those who have and those who do not have.

In Kenya, scarce resources, increased population and worsening environment conditions have resulted in stiffer competition for land, pasture, water, fish and minerals among other resources. In the pastoral communities of north eastern and counties like Tana River and Narok, every time there is drought, pastoralists go around looking for pasture. Most of the animals walk for long distances and when they get to places where there are farmers, there is always conflict between pastoralists and farmers.

With regard to cattle rustling, our people in the entire north eastern region and even in parts of Turkana, Samburu and Narok are still doing what we call economic cattle rustling, where people go to other communities and steal animals. This causes a lot of conflict. The practice overwhelms security operations personnel, erodes traditional conflict management mechanisms, adversely impacts pastoralists' mobility and triggers ethnic tensions, which hamper development and exploitation of natural resources.

When you also look at issues of cross-border conflicts, Kenyan communities living along borders have continued to experience conflicts with those in neighbouring countries, namely Ethiopia, Somalia, South Sudan, Tanzania and Uganda. A classic example is that of the Karamojong near Uganda. There is always conflict between two communities. They are either fighting due to cattle rustling or other reasons. In my own constituency, the pastoralist communities that are living in my area are always fighting with those in Uganda and Tanzania.

The other issue is land conflict. Land ownership is an emotive issue in Kenya and has been a central theme of politics. We all know the land issue in this country has always been one of the sources of conflict. Land-related conflicts have historically taken the form of evictions, squatters' problem and non-utilisation of land by individuals.

Lastly is the issue of human-wildlife conflict, particularly in communities that live around parks. There is always conflict between wildlife and communities that live around national parks.

With those few remarks, I support this Motion.

Hon. Speaker: Onyango Oyoo, Member for Muhoroni.

Hon. Oyoo: Thank you very much, Hon. Speaker. I had intended to speak to the other Bill, which has since been finalized.

Hon. Speaker: Let me get an indication from the Hon. Members. I see that there is Hon. Jakoyo Midiwo, Hon. Diriye Mohammed, Hon. Abdulswamad Nassir, Hon. Yohana Ng'eno and Hon. Priscilla Nyokabi on my request list. Do those Members desire to contribute to this Motion or to others? The Member who is standing next to me will suffer because this is not where he is supposed to be. His name is here but I need to know--- Hon. Midiwo, are you contributing to this one? Your name is here. It is the next name on the list.

Hon. Midiwo: Thank you, Hon. Speaker. I just have a short contribution.

As a House, we could not be debating a more important policy paper than this one, because of the importance of peace-building in our nation. I feel compelled to contribute to this because of my experience in our country in the last six or seven years. You are aware that we have scenarios of insecurity in many parts of the country. Even when we thought that we were dealing with general political insecurity of the post-election violence of 2007---

(Hon. Members cheered)

Hon. Speaker, you can hear the way your flock has been making noise in the corridors. A Kenyan has won gold; so, it is good to celebrate. Let it not annoy you. It is a good moment. At least, we are good in something.

Hon. Speaker: Those Members who are withdrawing, please save us from heckling. Obviously, those cannot be Members of Parliament.

Hon. Midiwo: Hon. Speaker, you could not be more wrong. They are your flock. They are your Members of Parliament. Remember the way they treated Hon. Linturi yesterday, it has become part of us.

The Chairperson of the Departmental Committee on Administration and National Security happens to come from Baringo. Up north in this country we have grave instances of insecurity. Those circumstances cannot be dealt with through the power of the barrel. The gun cannot stop insecurity. We need to encourage co-existence. This House may have to deal with boundary issues one day. It is my belief that the way we have redrawn the constituencies, especially the county boundaries, is a source of conflict in many parts of our country. It is going to increase as we keep on finding natural resources under the earth. It is something this House, and I hope this Committee, will keep working on.

If you go to many parts of this country, resources are going to the counties. There are many counties in the country which consist of one-and-a-half clans. For those counties which consist of one-and-a-half clans, the half will always fight. Even if there was fairness, they would feel oppressed. I want to give you a situation of where I come from, although I do not come from that particular county. The county of Migori is unique; there you have the Kurias, the Luos and the Luhyas living together with the Luos being an overwhelming majority. If you talk to a Kuria, their biggest scare is the moment when the Luos will have all the elective posts. If you talk to Luos, they say that next time there will be no negotiation.

We need to deal with it. If the boundaries that we came up with in Bomas of Kenya were the ones this country went with, there would never have been the Lamu killings or all these things in the former North Eastern Province. That is the source of conflict. This House must address itself to these issues. We must deal with the issue of boundary conflict. It is not the animals. It is we who should be put together to live under one law, who are being forced to live apart and to share national resources. The more together we are, the better.

I support the Motion.

Hon. Mohamed Diriye: Thank you, Hon. Speaker. I wish to support this Sessional Paper because it is touching on a very important issue that concerns our people. Right now, insecurity and conflict are some of the major issues that are hampering development in this country. In many parts of this country, we are unable to deliver services and work for communities because of conflicts, including resource-based conflicts, where communities do not have adequate access to services like water. For example, in northern Kenya, people fight because of an important resource, water.

Secondly, people fight because they do not have enough land to farm and engage in other activities for their livelihood.

Hon. Speaker, it is very important that, as a country, we have a policy to guide us in this area. In the absence of a policy, we are more likely to fail. One of the reasons why we have failed in the security sector is that we do not have a clear policy. This issue touches on the lives of Kenyans. It is a matter of life and death. We also have issues of social exclusion, marginalisation and resentment as the main causal factors of insecurity

and lack of cohesion in this country. People in northern Kenyan feel aggrieved, marginalised and not part of this country because they have been marginalised for many years. They are angry and there is resentment. That is why they are always fighting, and sometimes do not contribute to nation building.

There are also many socio-political issues that contribute to conflict in Kenya, including negative ethnicity, non-issue-based conflict and inequitable distribution of resources.

Regarding the issue of boundaries, when the new Constitution was promulgated, counties came into being, together with new constituencies. The Independent Electoral and Boundaries Commission (IEBC) did not do a good job in demarcating constituencies. Instead of enjoying the fruits of devolution and equitable distribution of resources, we have communities fighting in some counties; these include my own county of Wajir. Between Wajir and Garissa counties, there is a boundary dispute which hampers development. Within the counties, constituencies are fighting. It is not good. It is important that the issue is addressed. We need to have a policy to guide us.

Hon. Speaker, the issue of cattle rustling and banditry can be addressed, if there is a proper policy in place, and the Government is serious about it. Development and infrastructural development go together. In some parts of this country, like northern Kenya, where we do not have roads, there is so much insecurity. In that area, there are not enough security officers. The area is vast and has many settlements, but has few security officers. If we do not address this issue, insecurity will continue to hamper development in this country. Unless there are deliberate efforts to invest in all parts of this country, and particularly in the neglected areas where communities have resentment that leads to conflict, cattle rustling and banditry, we will continue to have security problems. It is important to address these issues. If we do not address them, as a country, we might continue experiencing insecurity, especially in those areas where people do not feel like part of this country. It is very unfortunate that more than 50 years after---

Hon. Speaker: Hon. Diriye, your time is up!

Hon. Nassir, you have two minutes to contribute before the Mover is called upon to reply.

Hon. Nassir: Thank you, Hon. Speaker. I will request your indulgence for more minutes.

I would like to take this opportunity to congratulate the Kenyan athletics team for proving to the rest of the world that Kenya is, indeed, a hotbed of gold medals, and not a hotbed of terrorism.

Hon. Speaker, this Sessional Paper is good. I would like to re-emphasize the fact that nothing promotes proper peace building and addresses the issue of conflict more than addressing the underlying issues. The Government and this House need to ensure that the Constitution is properly implemented, so that the issue of ownership can be addressed. We should address the issue of who is meant to own what, ensure that resources revert to their rightful owners, and provide for maximum and minimum land sizes that individuals can own.

The list of the things that I wanted to talk about is long, but because of time, I would like to re-emphasize these ones. I come from an area where for as long as I can remember people have been deprived of their rights. Unemployment is high, yet we have

some of the biggest investments being undertaken there. We also have the biggest number of people squatting on their own land in the country. The proportion of land ownership amongst the population is incredibly low.

Hon. Speaker, the police force needs to be put on check in terms of the way they conduct themselves. Innocent people are arrested. Security road blocks have been converted into toll stations. Instead of---

Hon. Speaker: Hon. Nassir, your time is up!

I now call upon the Mover to reply.

Hon. Abongotum: Thank you, Hon. Speaker, for granting me the opportunity to move this Motion. I would like to plead with you to allow me to donate two of my minutes to Hon. (Ms.) Tobiko, and one minute to Hon. (Ms.) Nyokabi.

Hon. Speaker: Hon. Tobiko, you have two minutes.

Hon. (Ms.) Tobiko: Hon. Speaker, I would also like to thank Hon. Asman Kamama for donating part of his time to me. This is an important Policy Paper. Therefore, I support it.

Many Kenyans in various parts of the country have been fighting over resources. I agree with Hon. Midiwo that we have very pertinent border issues. I belong to the Joint Committee on National Cohesion and Equal Opportunity. We have travelled around the country, from Lamu to Samburu and Baringo, trying to bring Kenyan communities together.

Hon. Speaker, my constituency borders Makueni and Machakos counties, and we have pertinent border issues. As we speak, women in my constituency are up in arms because they want leaders to address border issues. They have given us less than three months. We believe that the border between Machakos and Kajiado counties is the railway line, but the IEBC seems to have a different opinion. The title deeds read “Kajiado County” but our people are told that they belong to Makueni and Machakos counties.

There is a place where our people have been moved. A different community and the Kenya Wildlife Service (KWS) have moved in but, historically, we believe that the land is ours. We must address these issues as a House. We must have this Policy Paper developed into law to address such issues, so that Kenyans can co-exist peacefully. We need to bring Kenyans together; we must also address historical injustices.

Hon. Speaker: Your time is up!

Hon. (Ms.) Nyokabi, you have the Floor.

Hon. (Ms.) Kanyua: Thank you, Hon. Speaker. I would also like to thank the Mover for the one minute that he has donated to me to quickly support this Policy Paper.

I hail the Departmental Committee on Administration and National Security for bringing this Policy Paper to the House. I want to challenge the Mover and the Committee to bring to this House a policy paper on cattle rustling. There are many issues affecting peace in our country. I want to support the Policy Paper because it creates an infrastructure of peace. I had an occasion to work on this Policy Paper before I joined Parliament. The law does not answer questions of peace and cohesion. Therefore, we have concentrated for far too long just on the law. The policies that we are discussing today will be helpful. The Chairperson should guide the country on a good policy on cattle rustling, as cattle rustling has affected our peace. Many of these issues need to be

resolved. Issues of sharing of resources and tribalism, among others, should be guided by policy.

Hon. Abongotum: Thank you, Hon. Speaker. I want to thank all the Members who contributed to this Motion. I want to promise that we will take on board all the good suggestions that have been brought forward. I just want to confirm to the House and the nation that this is a very important Sessional Paper. It will address many issues like the one that was raised about boundaries. The issue of boundaries is emotive. I remember when I was in primary school somewhere in Kapedo, one time we lost 60 people because of some boundary dispute. These issues are in the entire North Rift, Upper Eastern, the former North Eastern Province, some parts of Tana River, Makueni, Kajiado and Taita Taveta. These issues are real.

Cross border, agro-pastoralist conflicts, and land conflicts are lethal and can cause a lot of problems. We also have electoral conflicts. We all know what we went through after the 2007 general election. We also have human-wildlife conflicts, institutional conflicts, religious conflicts and the intolerance that we sometimes see in some of these places, and people burning places of worship. This promotes anarchy, chaos and despondency.

We also have class conflicts and labour-related disputes. We have so many of these and I am sure this policy will address some of them.

I beg to move.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PROHIBITION OF ANTI-PERSONNEL MINES BILL

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! We are now on the Prohibition of Anti-Personnel Mines Bill, National Assembly Bill No.7 of 2014 in the Committee of the whole House.

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

Hon. Gethenji: Hon. Temporary Deputy Chairman, I think there may even be amendments to Clauses 1, 2 and 3(a).

The Temporary Deputy Chairman (Hon. Cheboi): Not any that we can see from here. Allow us a minute to see if there are any. Unless you are indicating that you want us to

look at Clauses 1 and 2, which we will come back to eventually, Clauses 3, 4, 5 and 6, do not seem to have any amendment.

So, proceed to Clause 7.

Hon. Gethenji: Hon. Temporary Deputy Chairman, can I introduce New Clause 3A?

The Temporary Deputy Chairman (Hon. Cheboi): It may not be possible now, Hon. Gethenji. Proceed to Clause 7.

Clause 7

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

THAT, the Bill be amended in Clause 7 by deleting the words “the purposes permitted by this subsection are” appearing in subclause (8) and substituting therefor the words “the possession of a prohibited object is permitted for”.

This seeks to create clarity between rephrasing and redrafting subclause (8), which reads “The purposes permitted by this subsection are” to read “The possession of a prohibited object is permitted for”

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gethenji, justify a little bit so that Hon. Members can understand. To me, it looks very fairly straightforward. If you justify, then the Members will not need to contribute too much on it.

Hon. Gethenji: Hon. Temporary Deputy Chairman, it relates to the offences relating to the anti-personnel mines. So, it is just a clarification on the offences for contravention of the Act. It is just a clarification in nomenclature.

The Temporary Deputy Chairman (Hon. Cheboi): I think the Members are now on board.

(Question of the amendment proposed)

I see an indication by the Member for Nyeri, Hon. Nyokabi. Do you want to speak specifically to this one, or you are waiting for another one? Your name has been here for some time. Hon. Nyokabi, I am not sure I got what you said, but from your gestures, I can see that you are saying that you are waiting for the other one.

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

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

(Clause 7 as amended agreed to)

Clause 8

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

THAT, the Bill be amended in Clause 8 by deleting subclause (7).

The amendment seeks to delete subclause (7) as it defines terms which, according to the structure of a Bill, should be in the definition section of a Bill. Essentially, that is a deletion of one of terms in there.

The Temporary Deputy Chairman (Hon. Cheboi): Fairly, straightforward.

(Question of the amendment proposed)

Hon. Kaluma: Hon. Temporary Deputy Chairman, it will do a lot of justice to us if the Mover tells us more about the term being deleted, so that we can get the real substance of the proposed amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Just briefly, Hon. Gethenji. What Hon. Kaluma is saying is valid. Though you had done it; maybe Hon. Kaluma did not get it well.

Hon. Gethenji: Hon. Temporary Deputy Chairman, I think Hon. Kaluma was not paying attention because it is quite straightforward. It is just a deletion of a term. As I said, the amendment seeks to delete subclause (7) as it defines terms which according to the structure of the Bill, should be in the definitions section of the Bill. We are moving it from the Bill to the definitions section, where terms are defined.

The Temporary Deputy Chairman (Hon. Cheboi): That is okay. I can see Hon. Kaluma nodding his head.

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

(Clause 8 as amended agreed to)

Clause 9

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

THAT, the Bill be amended by deleting Clause 9.

Whereas Clause 5 of the Bill prohibits certain conduct as regards anti-personnel mines, Clause 9 provides for defences to the prohibited conduct.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see the hon. Member for Ndhiwa. Do you want to contribute to this one?

Hon. Oyugi: Thank you, Hon. Temporary Deputy Chairman. I would like to support that the deletion takes effect. If you see what Clause 9 was doing, it was putting all manner of defence which in essence, would have negated the whole content of the Bill. Ignorance would have then been used to deny the prosecution under this particular Bill.

I support. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): I see no other interest in this particular one.

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

(Clause 9 deleted)

(Clause 10 agreed to)

Clause 11

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

THAT, Clause 11 of the Bill be amended —

(a) in sub-clause (1) by—

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

“(a) that there is a prohibited object in any premises; and,

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

“(b) that the persons in possession of the object are not authorized under Section 7;

(b) in Sub-clause (2) by —

(i) deleting the words “or magistrate” appearing immediately after the word “judge”;

(ii) deleting the word “by” appearing immediately after the word “necessary” and substituting therefor the words “using reasonable”.

This amendment seeks to create clarity by rephrasing and redrafting Sub-clause (1)(a) and (b). The further amendment to Sub-clause (2) seeks to delete the words “judge” so that magistrate courts can have original jurisdiction in these matters. Further, it seeks to delete the word “by” as this may justify use of excessive force hence replace this with using necessary reasonable force. In Sub-clause (i) we seek to delete the words “judge or” appearing immediately after the words “or magistrate”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see no interest here and so Members, make your decision.

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

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

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

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

THAT, Clause 13 of the Bill be amended in Sub-clause (5) —

(a) by deleting the words “or magistrate” appearing immediately after the word “judge”;

(b) by deleting the words “by” appearing immediately after the word “necessary” and substituting therefor the words “using reasonable”.

This amendment is similar to the one in Clause 11. It seeks to delete the words “judge” so that magistrates’ court can have original jurisdiction in these matters. Further, it seeks to delete the word “by” as it may justify the use of excessive force hence replaces with the words “using reasonable force”.

We are also deleting the words “judge or” appearing immediately before the word “magistrate”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Again, I see the Member for Ndhiwa.

Hon. Oyugi: Hon. Temporary Deputy Chairman, whereas I would like to support this particular amendment, I do not think Hon. Gethenji gets it right because the word that is being deleted is not “Judge” but “magistrate” so that you are ousting the jurisdiction of the magistrate but leaving that of the judge. That is what he ought to understand. If that is the spirit, I support but if it is not, then I might then reconsider.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): I see no indication that there is any other Member who wants to speak unless, of course, Hon. Gethenji would want to clarify that bit and then we will make a decision on it.

Hon. Gethenji: Hon. Temporary Deputy Chairman, there was a mix up in the original amendment and this amendment originating now on the Floor seeks to do what we did in Clause 11 - to give original jurisdiction to the magistrate courts so that we can have progression throughout the judicial process. That clarifies what you are asking.

The Temporary Deputy Chairman (Hon. Cheboi): This has to be very clear so that Members can have an opportunity to make a decision in one way or the other. Are you satisfied Member for Ndhiwa?

Hon. Oyugi: Thank you, Hon. Temporary Deputy Chairman, unless the Order Paper I have is wrong, even Clause 11 speaks to the ousting of the powers of the magistrate while reinstating those of the judge. The same is carried in Clause 13. Let me read what my Order Paper says: “by deleting the words “or magistrate” appearing after the word “judge”. So if you are deleting the words “or magistrates” simply means you are leaving the word “judge”.

The Temporary Deputy Chairman (Hon. Cheboi): I will give Hon. Kaluma then come back to Hon. Gethenji. There is something which I wanted to clarify from Hon. Kaluma. If it was taken in Clause 11, what is the specific problem with this particular one? Probably, Member for Ndhiwa, you should answer because you are the one who said that. You want to speak to it Hon. Kaluma? Hon. Kaluma, will you speak to this? Let us first have Hon. Neto.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Chairman. If you look at Clause 11, it reads in part in 11(b) we are seeking to delete the words “or magistrate” appearing immediately after the word “judge”. My understanding of that English is that the word that is being deleted is “or magistrate” and the same is carried to Clause 13. I just think that Hon. Gethenji in his explanation seeks to do the reverse. He is explaining to us that we are deleting “judge” and leaving “magistrate”. So, if he wants to ouster the jurisdiction of magistrates that is clear. But if at all what he intends to do is to ouster the jurisdiction of the judges that is another story all together.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Kaluma then we will come to Hon. Gethenji. I really hope you are looking at that. If you are retaining the judge in one part, then a magistrate is on the other, then there might be some contradiction. But I do not want to--- Let us have Hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Chairman, Hon. Neto is spot on in terms of what the proposed amendment seeks to do. It is the explanation by the Chair of the Committee which is confusing. What Clause 11 and 13 amendments speak to is that the jurisdiction of the magistrates in this matter is being removed, but the one for the judge is being left. What the Chair is saying is the reverse. He wants to take this thing to the magistrate. We need clarity from him because if it is as per the Order Paper, we will support.

The Temporary Deputy Chairman (Hon. Cheboi): Look at it more critically Members, together with the Chair. I really want you to look at the proposed removal and see if what the Chair is saying is the position. That is because looking at Clause 13 which we are in now, you would be able to see that the deletion is actually magistrate, which means that it is the judge who remains.

Hon. Gethenji: Hon. Temporary Deputy Chairman, I do not wish to suggest that it is easy to confuse Hon. Kaluma; with a light touch. Maybe, we have different takes or documents we are looking at because what I have here - and which is what I am moving now on the Floor--- The original amendment that was published is what I am amending now by saying that we delete the words “judge or” appearing immediately after the word “magistrate”. So, the word magistrate is remaining so that in terms of the jurisdiction of the court, we start with the magistrate court and then it can be elevated upwards. We are talking about the starting point.

The Temporary Deputy Chairman (Hon. Cheboi): While the Floor is still yours and Members if you look at the deletion in Clause 11 though we have finalised that, the deletion is the magistrate. So, the judge remains. You go to Clause 13 the deletion again is the magistrate and the judge remains. So, what is the source of confusion? I really do not see it myself. I do not want you to listen to what he is saying. I want you to look at the proposals. The proposals are to delete the word “magistrate” in both Clauses 11 and 13.

Hon. Gethenji: Hon. Temporary Deputy Chairman, no. The proposal that I am moving is amending Clause 11 of the Bill by deleting the words “judge or” appearing immediately after the word “magistrate”. It is the same thing in Clause 13. We are deleting the word “judge”.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gethenji, look at your Order Paper well. I believe we are all reading from the same page.

Hon. Gethenji: Can I approach and share with you?

The Temporary Deputy Chairman (Hon. Cheboi): Yes.

Hon. Members, there is something on which we must be very clear. There is a new proposal. We were going as per the Order Paper, but we are being informed that for the HANSARD, the proposal by the Chairperson of the Committee is to delete the word “judge” and retain the word “magistrate” in both clauses.

I would want to open the Floor to Members, especially those who have contributed on this. The proposal which was made by Hon. Gethenji was the deletion of the word “judge” in Clause 11. He is proposing the deletion of the same word in Clause 13. The only challenge we have been having, Hon. Gethenji, is that you have not been very clear. Sometimes, the Members do not move along with you. It is something on which I want to give opportunity to Members to ventilate. The proposal is to delete the word “judge” in both Clauses 11 and 13. Members can react to that.

Let us hear Hon. Midiwo. I will come back to Hon. Neto.

Hon. Midiwo: Hon. Temporary Deputy Chairman, mine is simple. Before I can properly react, I need a proper explanation. Could the Chairperson of the Committee explain to us the import of that deletion? I seem to be a bit lost.

Hon. Gethenji: Hon. Temporary Deputy Chairman, in our consideration of the proposed Bill in the Committee, we deliberated the jurisdiction for the prosecution of an offence. There was some debate on whether the jurisdiction should be the High Court or the Magistrate’s Court. It was felt that in the first instance, because of the threshold of the Magistrate’s Court, the court should have primary jurisdiction. Therefore, the reference to a judge of the High Court was removed. It was felt that the Magistrate’s Court is faster to approach in such instances than the High Court. That was the logic of the deliberations which informed the amendment that is being proposed.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gethenji, we were moving very well until you indicated that you have some fresh amendments which are not in the Order Paper. If you have fresh amendments which are not in the Order paper, you have a right as the Mover of the Bill to propose a further amendment. However, that will be subject to the approval of your proposed further amendments by the Speaker.

That brings in some confusion. You have proposed further amendments which seem to be new to us, which is perfectly in order.

Hon. Gethenji: Hon. Temporary Deputy Chairman, it is not a new amendment. This is what was deliberated and approved by the Committee. There was a mix-up in the Secretariat when they were preparing these amendments. In fact, we had a discussion with our Senior Principal Clerk and the Legal Counsel to the Committee. They explained to me that what was in the record of the Committee is what I am presenting here. What was printed in the Order Paper was a typographical error.

The Temporary Deputy Chairman (Hon. Cheboi): That still does not solve the problem. If you are talking about the agreements that you made within the Committee, it is perfect. As I have said, you have the right as the Mover of this Bill to move amendments, including further amendments. The only problem is that it becomes difficult for Members to follow you when they are strictly using what is in the Order Paper. You have fresh amendments which have not been circulated and I am yet to confirm whether they have been seen by the Speaker. That is the only issue. It is not that it creates a lot of major issues. You have a right to proceed one way or the other. The issue is for us to do some neat proposals.

Hon. Gethenji: Hon. Temporary Deputy Chairman, our Legal Counsel is in the House. Can I confirm the correct position?

The Temporary Deputy Chairman (Hon. Cheboi): No! Maybe you could approach the Chair so that we can deal with it in the Chamber.

Hon. Gethenji: I will be lost to think that I would be given amendments which have typographical errors and which have not been approved by the Speaker.

The Temporary Deputy Chairman (Hon. Cheboi): I would want us to use the Order Paper. If there are any further amendments, you give us the draft, which you have already done. We would allow you to proceed. You will achieve the same results if the Members approve the further amendments.

In the meantime, Hon. Neto, do you still want to speak on this as we consult with the Chairperson of the Committee?

Hon. Oyugi: Hon. Temporary Deputy Chairman, if indeed what Hon. Gethenji is saying is what the Committee was thinking to do, that is, removing the jurisdiction from judges and instead giving it to magistrates, I will be opposing that amendment.

I would be opposing it because the authority that has been sought is asking people to enter premises by force, which is a violation of peoples' right to property. We do not want that jurisdiction to be given to magistrates. That would be too huge a role. Given that this Bill is supposed to give effect to the Ottawa Convention on Anti-Personnel Mines, that would be too huge a task. I will be opposing that amendment.

I thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Chairman, It appears Hon. Neto is speaking my mind before I do. Let me speak his mind. This is the power being given to a court to issue warrants for forcible entry into a premise and for destruction of prohibited objects in the premises. It is an abrogation of the right to property and right to privacy. This is the reason I initially indicated that if we are removing the magistrates and taking these powers to the High Court judge because it is a violation of human rights, well and good. If for any reason we will make preferences for magistrates, then it cannot be left to any magistrate. Let us cap the level of a magistrate who can make this decision independently. It cannot be a district or a resident magistrate. If it has to be a magistrate, let it be a magistrate of some level of seniority, maybe a Senior Principal Magistrate and going up so that you do not have anybody admitted as a magistrate even yesterday making a determination on aggression into entry into my property, detonation or the destruction of objects there and the abrogation of my right to property over that issue. I am saying that if we have to move this very serious matter--- It allows forcible entry into

a property and infringement of the right to privacy. If we are going to allow magistrates to do it and not judges of the High Court or superior courts, then let us have the level of that magistrate defined in the amendments so that we have a Principal Magistrate going forward, not somebody like a district magistrate appointed today and somebody goes before him/her tomorrow to allow entry and abrogation of rights.

The Temporary Deputy Chairman (Hon. Cheboi): We will need to really look at this further. I can see Hon. Gethenji is consulting. I am sure he wants to--- Let us have the Committee Chair indicate to us what he considers to be the way forward on this. This is because to us, this looks like it is a Floor amendment.

Hon. Gethenji: Hon. Temporary Deputy Chairman, it appears as if we had a slight mix-up in the secretariat. In fact, the point Hon. Kaluma is making as to the level of magistrate was actually canvassed within the sessions of the Committee. I recall clearly that we had said it would be a Senior Principal Magistrate. For clarity and for the sake of making progress, we seek to withdraw this amendment and we will move it at a later date.

(The proposed amendment by hon. Gethenji withdrawn)

The Temporary Deputy Chairman (Hon. Cheboi): That, therefore, is fine. If you are withdrawing that, we will of course see how to eventually deal with Clause 11 because that is already passed. We want to do it in the right manner. So, that is considered withdrawn.

Hon. Gethenji: Hon. Temporary Deputy Chairman, can I just ask if Hon. Kaluma is satisfied with amending it on the Floor to Senior Principal Magistrate---

The Temporary Deputy Chairman (Hon. Cheboi): That would be a bit of difficulty because you have already gone on record indicating that you have withdrawn.

Hon. Kaluma: Withdrawing the amendment would still leave us with judge or magistrate, the level of whom is not defined. So, this is something which the Committee Chair can have liberty because judges may be few and you have an urgent thing in some location in the country to deal with. If we are going to specify the magistrate as Senior Principal Magistrate and above, I think it is something that can be moved if you commit.

The Temporary Deputy Chairman (Hon. Cheboi): If the Committee Chair has withdrawn, whether it is going to make sense or not, it is already withdrawn and that is a matter that is gone. So, we will proceed. If you are happy with it then, you can actually quietly be happy with it. We will proceed but we will have to see a way of dealing with Clause 11. That, we will do for sure.

Since Clause 13 has not been amended, I will proceed to put the Question.

(Clause 13 agreed to)

Clause 14

The Temporary Deputy Chairman (Hon. Cheboi): Proceed, Hon. Gethenji. I see this is a proposed deletion.

Hon. Gethenji: Yes, hon. Temporary Deputy Chairman. We were suggesting in the Committee that this amendment be withdrawn and an amendment should be proposed

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to paragraph (c) by deleting the words in brackets: “whether or not one was served on any other person.” The words are not necessary. I do not know if you have this one.

The Temporary Deputy Chairman (Hon. Cheboi): Are you are proposing a deletion on this one?

Hon. Gethenji: Yes, we are proposing a deletion. We delete the words in brackets which read: “whether or not one was served on any other person.”

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gethenji, I really sympathise with your position.

Hon. Gethenji: I know, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): We are finding it very difficult. We seem to have two Order Papers.

Hon. Gethenji: Again, for clarity and to make progress, I withdraw that one as well and we will recommit it at a later date.

(The proposed amendment by Hon. Gethenji withdrawn)

The Temporary Deputy Chairman (Hon. Cheboi): You have withdrawn it but in the meantime; we want to avail to you the Order Paper that we have so that as we proceed, we are together.

Hon. Gethenji: I have that Order Paper but I want the secretariat to take note so that they can follow the requisite procedure. This is because it appears that the procedure was not followed, particularly on the new amendments.

The Temporary Deputy Chairman (Hon. Cheboi): So, have you withdrawn that particular amendment?

Hon. Gethenji: I have.

The Temporary Deputy Chairman (Hon. Cheboi): You should do it on record so that we are okay.

(Clauses 14 and 15 agreed to)

Clause 16

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gethenji, you have an amendment to this one.

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

THAT, the Bill be amended in Clause 16 by deleting sub-clause (1) and substituting therefor the following new sub-clause-
“(1) Where a request for a fact-finding mission is authorized under Article 8 of the Convention and where such request is granted, the Cabinet Secretary may issue an authorization under this section in respect of that mission”.

This amendment is basically seeking that the fact-finding missions are based on requests and should be authorised under Article 8 of the Convention. So, basically, the Convention provides for fact-finding missions to establish whether those anti-personnel mines and similar devices are present. This is just creating a framework for how those

fact-finding missions will be undertaken, the requests, authorisation and the Article under the Convention which gives force to those missions.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see quite a few Members who want to speak to this particular one. Let us start with Hon. Gumbo.

Hon. (Eng.) Gumbo: Thank you, hon. Temporary Deputy Chairman. *Per se*, I do not have any problem with the amendment and I support it. The only problem that I have is with the amendments that I have seen in Bills that have been coming here. We are giving too much power to Cabinet Secretaries (CSs). I do not know whether this is really the way we want to go as a country. To me, it opens too much latitude. I saw it yesterday when we were doing the Business Registration Service Bill. I also saw it when we were doing the Special Economic Zones Bill. It is a worry. As a House, we really need to express ourselves. These are powers which can be misused. In a way, they are also powers that are taking us back to where we have come from.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Member for Rongai, Hon. Moi.

Hon. Moi: Hon. Temporary Deputy Chairman, I would like to reiterate what Hon. Gumbo has said. Clause 16 (6) says: “Any validity of any authorisation purporting to be issued cannot be challenged in any court of law in Kenya.”

Knowing Kenya, if my property or goods are destroyed, I have no recourse because those people enjoy the same immunities as diplomats. So, why those vast amounts of power?

Thank you, Hon. Temporary Deputy Chairman.

Hon. Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Kaluma, probably the last one on this one.

Hon. Kaluma: Hon. Temporary Deputy Chairman, I find myself in the unfortunate situation of speaking after Hon. Moi. But this provision in totality has some very dangerous provisions. The idea that the Cabinet Secretary has to authorize a fact-finding mission when the membership and who are engaged in this fact-finding mission are not being defined, could be dangerous in my view. I do not know whether this would include, for instance, the Departmental Committee on Defence and Foreign Relations that is seeking to deal with any other matter. If it were to be so, I would be worried that a Cabinet Secretary has to authorize you as a Committee of Parliament or anybody legitimately proceeding under the Constitution to do so. I hope that is not it.

Even the idea that you cannot challenge an action of the Executive before a court of law is unimaginable. I do not know whether I will be requesting the Chair to withdraw the deletion but to think of doing something about this provision in the Bill itself.

Hon. Temporary Deputy Chairman (Hon. Cheboi): I do not think there is any need for the Chair to make any decision as to withdraw or otherwise because you have the ultimate decision, unless the Chair specifically wants to say something to it. It is something which the Membership can make a decision in one way or the other.

Hon. Gethenji, you want to speak? Let us hear you.

Hon. Gethenji: Hon. Temporary Deputy Chairman, I thought it would be wise to respond to some of the concerns raised, particularly by Hon. Moi, Hon. Kaluma and Hon.

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Gumbo. What is proposed here is not giving powers to the Cabinet Secretaries. In subsequent Clauses, we are talking about delegation of authority of Cabinet Secretaries but here, Hon. Kaluma, your specific concern was about members of the fact-finding mission. It is specifically provided for in Clause 16(2)(a) and (b) which says an authorization under this section shall contain a description of the area of Kenya in which the fact-finding mission is to carry out its functions and (b), state the names of the members of the mission. So, before the fact-finding mission takes place, the Cabinet Secretary has to state where it is going to take place and who is going to participate in that mission.

In addition, it says the Cabinet Secretary may issue an authorization under this Section. The operative word is “may”. It is not “shall”. So the issue of immense powers of the Cabinet Secretaries does not necessarily arise.

On the issue of the challenging of---

Hon. (Eng.) Gumbo: On a point of order, Hon. Temporary Deputy Chairman.

Hon. Temporary Deputy Chairman (Hon. Cheboi): What is your point of order, Hon. Gumbo?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, while I have no intention to interrupt the Chair, would I be in order to suggest that this requirement would even apply to Members of Parliament?

Hon. Gethenji: Hon. Temporary Deputy Chairman, there is nothing in the law or the Act that is preventable. It says “shall name the members of the mission”. So, if it is an international mission or a local one---

(Hon. (Eng.) Gumbo stood up in his place)

Hon. Temporary Deputy Chairman (Hon. Cheboi): Order, Members! You cannot be both standing at the same time. Have you finished Hon. Gethenji?

Hon. Gethenji: Hon. Temporary Deputy Chairman, I was going to say that if it is an international mission or a local mission, I think the Cabinet Secretary may determine. What Hon. Gumbo is alluding to is, if it is an issue affecting the area of defence, then such missions should contain and include the Chair and Members of his Committee. That is going. I agree with you.

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

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

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

(Clause 16 agreed to)

Clause 17

Hon. Gethenji: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended in Clause 17 by deleting Sub-clause (5).

This amendment seeks to delete Sub-clause (5) as it defines a term which, according to the structure of the Bill, should actually be in the definition section of the Bill. It is just a question of rearrangement and it is not material. In the definition section of the Bill, you will find that definition of that title.

(Question of the amendment proposed)

Hon. Temporary Deputy Chairman (Hon. Cheboi): Now I will give two Members here. I have seen Hon. Gumbo and Hon. Kaluma

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I will just be keen for the Chair of the Committee to tell us. I am trying to look at Clause 2, interpretation, and I do not see where that is defined. If it is to be defined, then it has to be defined. He has said that he is withdrawing it because---

Hon. Temporary Deputy Chairman (Hon. Cheboi): He has not said that he is withdrawing it.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, he has said that he is proposing a deletion because it is included in interpretation under Sub-clause 2. But I do not see it unless he is disposing it as an amendment.

Hon. Temporary Deputy Chairman (Hon. Cheboi): Okay, let us have Hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Chairman, the Chair of the Committee appears to believe that having a definition of the usage of a term or a phrase within a section is illegal in terms of drafting. It is not so. The definition is being given here for authorized fact-finding mission in the manner it is used in Clause 17. It is possible and let me persuade the Chair of the Departmental Committee on Defence and Foreign Affairs that if you have a phrase that is appearing only in a section and it is not used severally, it can be defined only in respect of that section. So, there being no definition of this phrase in Clause 2 which is the definition section, I think the proposed deletion would not serve well.

Hon. Temporary Deputy Chairman (Hon. Cheboi): I see Hon. Neto.

Hon. Oyugi: Hon. Temporary Deputy Chairman, whereas we have been opposing proposals by the Chair, I do think we can let him have this. This is because Clause 16 that we have spoken to already alludes to where you get authorization of the fact-finding mission. Whereas there is an attempt to define its various sections, the fact that it is referred to the apparent convention, you can easily make a cross reference. If you let him have Clause 16, then you can let him have this particular deletion at Clause 17(5). I support him on this one.

Hon. Temporary Deputy Chairman (Hon. Cheboi): Okay. So, hon. Members, seeing no major interest on this, I am going to put the Question.

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

(Clause 17 as amended agreed to)

(Clauses 18, 19 and 20 agreed to)

Clause 21

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

THAT, Clause 21 of the Bill be amended —

(a) in Sub-clause (1) by deleting the words “served on any person require him” and substituting therefor the words “require a person”;

(b) in Sub-clause (3) by deleting the words “served on any person require him” and substituting therefor the words “require a person”;

(c) in Sub-clause (4) by deleting the words “without reasonable excuse neglects or fails to comply with a notice served on him” and substituting therefor the words “does not comply with a notice given”; and,

(d) in Sub-clause (5) by deleting the word “knowingly”.

The amendment seeks to create clarity by rephrasing and redrafting Sub-clauses 1, 3, 4 and 5.

Hon. Temporary Deputy Chairman, this is about re-ordering and rephrasing which is just cleaning up the Bill so that it reads with better flow and not substantively changing the meaning.

(Question of the amendment proposed)

Hon. Temporary Deputy Chairman (Hon. Cheboi): I will give Hon. Makenga, Member for Kaiti, the first shot.

Hon. Makenga: Thank you, Hon. Temporary Deputy Chairman. I have no objection in this particular clause being amended as per the Chairman’s proposal if it is just a matter of rearranging and putting the clauses in a meaningful manner.

I support.

Hon. Temporary Deputy Chairman (Hon. Cheboi): Let us Hon. Ghati, Member for Migori.

Hon. (Ms.) Ghati: Thank you, Hon. Temporary Deputy Chairman. When an amendment to a clause is just a matter of grammar, semantics or clarity as the Chairman of the Committee has explained, I do not wish to debate much on this.

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

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

(Clause 21 as amended agreed to)

Clause 22

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

THAT, Clause 22 of the Bill be amended in sub-clause (1) —

(a) by deleting the words “or magistrate” appearing immediately after the word “judge”;

(b) by deleting the word “by” appearing immediately after the word “necessary” and substituting therefore the words “using reasonable”.

This is one of those other amendments that we have a challenge with.

(Question of the amendment proposed)

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

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

(Clause 22 as amended agreed to)

(Clause 23 agreed to)

Clause 24

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

THAT, Clause 24 of the Bill be amended in sub-clause(1) by deleting the words “Attorney-General” and substituting therefor the words “Director of Public Prosecutions”.

This proposed amendment is in line with Article 157(6) of the Constitution which confers prosecutorial powers upon the Director of Public Prosecutions (DPP) and not the Attorney-General. In the original draft, it appeared that the Attorney-General would be responsible for prosecutions whereas it is clear in the Constitution that the DPP is in charge of prosecution and has the prosecutorial powers.

(Question of the amendment proposed)

Hon. Temporary Deputy Chairman (Hon. Cheboi): I see Hon. Gumbo, Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I agree with the Chairman of the Committee on this one. The drafting was done with the old Constitution in mind, where the Office of the Attorney-General also included the office of DPP. I support.

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

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

(Clause 24 as amended agreed to)

Clause 25

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

THAT, Clause 25 of the Bill be amended in sub-clause (1) by deleting the words “by or before which a person is convicted of an offence under this Act may by order declare” and substituting therefor the words “may order”.

Again, this is one of those rephrasing, redrafting semantic amendments. All it does is to seek clarity by redrafting sub-clause 1, for better flow of the Bill, not really changing the content.

(Question of the amendment proposed)

Hon. Temporary Deputy Chairman (Hon. Cheboi): We will start with Hon. Nyokabi, Member for Nyeri.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman. I just want to support the editorial and the cleaning up of the Bill and to support the Committee for this law.

Hon. Temporary Deputy Chairman (Hon. Cheboi): Let us have Member for Kathiani, Hon. Mbui.

Hon. Mbui: Thank you, Hon. Temporary Deputy Chairman. I am just looking at the amendment and I am shocked because we are moving from almost 15 words to two. I just want to support by telling all Chairmen that in all Bills, we need to be careful on the amount of wording because the longer the phrases, the more likely people are to get confused. This is an excellent amendment.

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

Hon. Kaluma: Thank you, Hon. Temporary Deputy Chairman. This amendment achieves a contrary purpose. The words which are deleted are to specify the court to deal with the matter. What the words are saying is that it is the court by or before which the matter was, to make those additional orders. If you delete those words, you open it to a person to go before any court than the court which was dealing with the matter for an order.

I, therefore, oppose this amendment.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I also want to agree with Hon. Kaluma. The amendment, in my view, which should have been included was, “the court by, or before, which a person is convicted of an offence under this Act may by order”. If you delete that word, it changes the meaning completely. I will plead with the Chairman to look at introducing a comma after the word “by” and a comma after the word “before” and you will have a grammatical inclusion into the Bill. But, by deleting

what the chairman has proposed, you are completely changing the meaning of that clause and I oppose. Unless he amends it as per the Gumbo proposal---

Hon. Gethenji: Can you repeat the Gumbo proposal? I have not heard it. Through the Chair, please.

Hon. (Eng.) Gumbo: What I am saying, the Chairman of the Committee, is that grammatically, it should be the “the court by, or before, which a person”. So, if you include that, it becomes very grammatical but if you delete it, then you change the meaning and it does not make sense at all.

Hon. Temporary Deputy Chairman (Hon. Cheboi): We will have to hear from the Chairman but even then, we still want to have a look at the proposal that is being made. The exchange on the Floor has to be put into some test here. What do you have to say Hon. Gethenji? Otherwise, we will simply proceed and have the Members make a decision one way or the other.

Hon. Gethenji: Hon. Temporary Deputy Chairman, it was a result of a lot of consideration by the Committee that we arrived at this position. It would be loathe of me to change it on the Floor. We must stand by what the Committee passed.

Hon. Temporary Deputy Chairman (Hon. Cheboi): We will proceed. Hon. Members, make the decision.

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

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

(Clause 25 as amended agreed to)

I am very impressed by the newly found vigour by the House.

Hon. (Eng.) Gumbo: Point of order!

Hon. Temporary Deputy Chairman (Hon. Cheboi): No points of order now. That one is gone. We cannot open it now. You can read it in the HANSARD. Hon. Gumbo, please, let us follow order here.

(Clauses 26, 27 and 28 agreed to)

New Clause 3(A)

Hon. Gethenji: Hon. Temporary Deputy Chairman, give me the directions please.

The Temporary Deputy Chairman (Hon. Cheboi): Move the new clause 3A. We are now at Clause 3A.

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 3-

Purpose of the Act.	3A. The purpose of the Act is to implement Kenya's obligations under the Convention.
------------------------	--

In addition to the long title, most Acts of Parliament have this part which outlines the purpose of a law.

The Temporary Deputy Chairman (Hon. Cheboi): What you only need to say is that the new Clause 3A be now read a Second Time.

Hon. Gethenji: Hon. Temporary Deputy Chairman, I propose that the new Clause 3A be read a Second Time.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Cheboi): I see a few Members who want to speak to it. Let us have Hon. Neto.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Chairman. Whereas I respect Hon. Gethenji, ordinarily, what he is trying to attain with the new Clause 3A is what ought to have been in the short title of the Bill. He is trying to give effect to the convention of Anti- personnel mines but he is trying to do that in the body of the Bill. Whereas the short title speaks to what the Bill seeks to achieve, it also speaks to many other things which have nothing to do with giving effect to the conventions. So, to make it tidy, you ought to say the short title that this is a Bill that seeks to give effect to the convention on anti- personnel mines. That is the only way it can be tidy. What he is proposing is fairly very untidy and you cannot let him have it.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Chepkong'a.

Hon. Chepkong'a: Thank you very much, Hon. Temporary Deputy Chairman. I have listened to my very good friend, Hon. Agostinho Neto, but I totally agree with the Chair. There is nothing superfluous about it. It is re-stating what is contained in the convention. So, it is important that it is contained in the law. So, I hope the Chair is listening lest he loses the train of thought. So, I totally support this. It should be contained in the Bill. There is nothing wrong with it. If anything, we are not contradicting anything in any other law.

The Temporary Deputy Chairman (Hon. Cheboi): All right. Let us make the decision then.

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

(The new clause was read a Second Time)

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

New Clause 20 A

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 20-

Delegation
by Cabinet
Secretary.

20A. (1) The Cabinet Secretary may delegate to any senior officer under the control, direction and supervision of the Cabinet Secretary, by name or office, any of the functions and powers imposed or conferred on the Cabinet Secretary under this Act except for the power to make rules under Section 28.

(2) Any delegation under this Section shall not prevent the Cabinet Secretary from personally exercising or performing such delegated function or power.

(3) A delegation made under Sub-section (1) may—

(a) be made subject to such conditions, limitations or restrictions as may be specified in the instrument of delegation; and,

(b) be revoked or varied.

Hon. Temporary Deputy Chairman, I propose that Clause 20 A be read a second time.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nyokabi.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman. I want to support the proposal. Domestication of international treaties requires the sort of provisions we are including here.

The Temporary Deputy Chairman (Hon. Cheboi): I see all the other Members have withdrawn their cards. So, I therefore proceed to put the Question.

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

(The new clause was read a Second Time)

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

(Schedule agreed to)

Clause 2

The Temporary Deputy Chairman (Hon. Cheboi): We have Hon. Gethenji on that one. You have an amendment to Clause 2.

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

THAT, Clause 2 of the Bill be amended in Sub-clause (1) by inserting the following new definitions in their proper alphabetical sequence-

“anti-handling device” means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine;

“anti-personnel mine” means a mine that is designed, altered or intended to be exploded by the presence, proximity or contact of a person and that is capable of incapacitating, injuring or killing one or more persons. Mines that are designed, altered or intended to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, and that are equipped with anti-handling devices are not considered to be anti-personnel mines as a result of being so equipped;

“Convention” means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, set out in the Schedule to this Act, as amended from time to time in accordance with Article 13 of the Convention therein;

“mine” means ammunition designed, altered or intended to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle;

“transfer”, in respect of anti-personnel mines, includes, in addition to the physical movement of anti-personnel mines, the transfer of title to and control over anti-personnel mines, but does not include the transfer of territory containing emplaced anti-personnel mines.

This amendment seeks to include the definition of anti-handling device, anti-personnel mine, convention, mine and the word transfer as the terms that have been used in the Bill without being defined. Anti-handling is---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gethenji you have done your bit. Do not exchange on the Floor.

(Question of the amendment proposed)

We will have Hon. Hon. M’uthari contributing to it.

Hon. M’uthari: It is important to have those definitions. They reduce the ambiguity and the clarity in the clause and Bill. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): I see Member for Migori again on this one. Do you want to speak to it?

Hon. Ghati: Hon. Temporary Deputy Chairman, allow me to support because it is more of bringing in new terminologies that probably were not there. Therefore, this brings in the issue of clarification. So, I fully support.

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

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

(Clause 2 as amended agreed to)

Clause 1

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

THAT, Clause 1 of the Bill be amended by —

(a) deleting the words “and shall come into operation on such day as the Cabinet Secretary may, by notice in the Gazette, appoint” appearing immediately after the expression “2014”;

(b) deleting the words “and commencement” appearing immediately after the word “title” in the margin note.

Clause I of the Bill provides that the Bill shall come into operation on such a day as the Cabinet secretary may by notice in the Gazette appointment. This is not in line with Article 116 (1) of the Constitution which provides that an Act of Parliament comes into force on the 14th day after its publication in the Gazette. Unless the Act stipulates a different date or a time at which it will come into force, in this regard, the marginal note should also read in (short title) or in quotes “short title” as opposed to “short title and commencement.”

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see Hon. Gumbo. Do you want to speak to that specific one?

Hon. (Eng.) Gumbo: Yes. Hon. Temporary Deputy Chairman, it introduces neatness in that clause. I support.

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

(Clause 1 as amended agreed to)

(Title agreed to)

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

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, it has taken two and half years for Chairmen of Committees to realise that I am the Mover. They should know the

owner of the Bill. I thank the Chairman of the Departmental Committee on Defence and Foreign Relations for doing a good work.

I beg to move that the Committee doth report to the House its consideration of the Prohibition of Anti-Personnel Mines Bill, National Assembly Bill No.7 of 2014 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

THE ANTI-PERSONNEL MINES BILL

Hon. Cheboi: Thank you, Hon. Temporary Deputy Speaker. I beg to report to the House that the Committee of the Whole House has considered the Prohibition of Anti-Personnel Mines Bill, National Assembly Bill No.7 of 2014 and has approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Mover to move the adoption of the Report.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to Move that the House doth agree with the Committee in the said Report.

Hon. Chepkong'a: Seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): At this point, I understand there is recomittal. I wish to ask Hon. Ndung'u Gethenji to move the re-committal.

Clause 11

Hon. Gethenji: Hon. Temporary Deputy Speaker, I wish to recommit Clause No.11 which was discussed during the Committee of the whole House. That the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words "subject to recommittal of Clause No. 11".

(Question, of the amendment proposed)

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

(Clause 11 recommitted)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PROHIBITION OF ANTI-PERSONNEL MINES BILL

Recommittal of Clause 11

The Temporary Deputy Chairman (Hon. Cheboi): Order Members, we are going to deal with Clause 11. Let us have Hon. Gethenji

Hon. Gethenji: Hon. Temporary Deputy Chairman, Clause 11 suffers the similar fate as Clauses 13 and 14, which had not passed through the appropriate procedure. Unless I move the amendment on the Floor, I will seek your guidance and direction before I move.

The Temporary Deputy Chairman (Hon. Cheboi): What you will be doing is just a withdrawal. Is it not?

Hon. Gethenji: Indeed. Hon. Temporary Deputy Chairman, I beg to withdraw Clause 11.

*(The proposed amendment by
Hon. Gethenji to Clause 11 withdrawn)*

The Temporary Deputy Chairman (Hon. Cheboi): Very well. So we will end it at that.

(Clause 11 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Therefore, that marks the end of that Bill. We will proceed to the next Bill, namely, the Fisheries Management and Development Bill, National Assembly Bill No.20 of 2014.

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Leader of the Majority Party, what is your point of order?

Hon. A.B. Duale: On a point of order, Hon. Temporary Deputy Chairman. Looking at the time, I beg to move a Motion of extension of time until the conclusion of this business as we progress.

The Temporary Deputy Chairman (Hon. Cheboi): Well, seeing a certain particular Member walking in majestically, Hon. Kajwang' comforts the Chair a little.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I have not finished. I am the Mover and it is my Bill. I can as well even withdraw it.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Duale, I am saying that seeing a certain Member for Ruaraka Constituency marching in comforts the Chairman a little. So, we will, therefore, proceed and transact what you are requesting. So, you will move your Motion once we do the necessary here.

Well, Hon. Duale, we will proceed with what we are doing until just about 6.00 O'clock and then the decision will be made.

Clause 3

The Temporary Deputy Chairman (Hon. Cheboi): Hon Adan Nooru has an amendment on this particular one.

Hon. Nooru: Thank you, Temporary Deputy Chairman. On Clause 3, I beg to move:-

THAT, Clause 3 of the Bill be amended by deleting Sub-clause

(2).

This Section has already been overtaken by events.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nooru, you need to be fairly louder. I also want to indicate to you that we will be having a proposal by Hon. Millie Odhiambo, and if your proposal goes through, the other one will be dropped. Hon. Millie Odhiambo, I hope you will take note of that. I have said that if the proposal by Hon. Nooru is carried, it will mean that yours will be dropped. We are at Clause 3 and Hon Nooru is moving an amendment to that particular clause. So, proceed Hon. Nooru.

Hon. Nooru: Hon. Temporary Deputy Chairman, we are dropping this because it has already been overtaken by events. The election has already taken place and the Cabinet Secretary is in place. It originally talks of the "Minister", but now it is the Cabinet Secretary. The Section has already been overtaken by events. It says that:-

"Notwithstanding the provision of the Act, the first election under the Constitution, the expression "Cabinet Secretary" shall be deemed to mean "Minister". So, it has been overtaken by events.

The Temporary Deputy Chairman (Hon. Cheboi): So, what are you saying? You are amending it because it has been overtaken by events or you are withdrawing it?

Hon. Nooru: Hon. Temporary Deputy Chairman, we are deleting it.

The Temporary Deputy Chairman (Hon. Cheboi): You are deleting it? Perfect.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to the Members, starting with Hon. Odhiambo because you have a specific interest in this particular one.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Chairman. I agree with the Committee's amendment. I am sorry we were consulting when you raised this but it is because the Bill has several amendments and I just noticed that because of the rush, since we have been at it for long, there are some proposed amendments that have not been carried. I suggest that if we complete the Bill now, we may not have time for recommitment. I would request that we do some amendments because they were agreed between us and the Committee.

The Temporary Deputy Chairman (Hon. Cheboi): Are you speaking on the previous one that we have handled? You are talking about recommitment.

Hon. (Ms.) Odhiambo-Mabona: On this one, I agree with the Committee, save that I notice that there are certain amendments that were agreed between us and the Committee, but which are absent. They are in the background documents but they are not on the Order Paper. I had requested the Leader of the Majority Party that if we complete the Bill now, we will not have an opportunity for recommitment and we have requested for a recommitment on a few things.

Otherwise, on this, I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Let us deal with this first, Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona: On this one, I support the amendment. It is a technical amendment because we are changing the word "Minister" to "Cabinet Secretary".

*(Proposed amendment by
Hon. (Ms.) Odhiambo-Mabona to Clause 3 withdrawn)*

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

(Clause 3 as amended agreed to)

(Clause 4 agreed to)

Clause 5

The Temporary Deputy Chairman (Hon. Cheboi): I see again that there are two amendments here - one by Hon. Nooru and the other one by Hon. Millie Odhiambo. The fate of Hon. Millie's amendment will be similar to the previous one. If Hon. Nooru's amendment is taken, Hon. Millie's will be dropped. Proceed, Hon. Nooru.

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 5 of the Bill be amended—

(a) in sub-clause (1) by inserting the words “to uplift the living standards of the fishing communities and to introduce fishing to traditionally non-fishing communities and to enhance food security” immediately after the words “sustainable development”;

(b) in sub-clause (2) by—

(i) inserting the word “and” immediately after the words “allocation of” in paragraph (b);

(ii) inserting the word “and” immediately after the word “biodiversity” in paragraph (e);

(iii) deleting the words “general the” appearing in paragraph (g) and substituting therefor the words “the general”

(iv) inserting the words “replenishing natural habitats through diversification from capture fisheries” immediately after the words “food security” in paragraph (m);

(v) deleting paragraph (p) and substituting therefor the following new paragraph—

“(p) effective implementation of international agreements and relevant international laws in conformity with the Treaty Making and Ratification Act, 2013”;

(vi) deleting the word “arrangements” appearing in paragraph (q);

(vii) inserting the following new paragraph immediately after paragraph (q)— “(r) ensuring that the livelihood of fishers is enhanced”.

(c) in sub-clause (2) by

(i) renumbering the existing sub-clause (2) as sub-clause (3); and

(ii) deleting the words “sub paragraph (1)(a)” and substituting therefor the words “ sub paragraph (2) (a)

The essence of this is just to enrich the principal Bill by inserting the words “uplifting the living standards of the fishing communities” whereas, it will only enrich the objectives and the guiding principles of the Bill.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will also give an opportunity to two Members. Let us start with Hon. Neto.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Chairman. I would like to support the proposal by the Chairperson of the Committee. I am also looking at the proposals on the same amendment by Hon. Millie, without anticipating debate. Unless she persuades me, I think that the two amendments read word for word. As I support this particular amendment...

The Temporary Deputy Chairman (Hon. Cheboi): Who is it that you want to convince you later on, Hon. Neto? We can convince each other here.

Hon. Oyugi: Hon. Millie needs to show me what aspects are different. I have read the various clauses on what she proposes to amend and what the Hon. Chair is proposing to amend, and I do not see any visible differences. I may not literally be a

fishmonger but she may persuade me and I may help her in defeating the Committee's amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Can we have the fishmonger then? I meant Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Chairman. I am very proud to be a fishmonger, given that I represent fisher-folk. You will notice, as we go forward, a lot of our amendments are very similar. It stems from the fact that we sat with the Committee. Originally, our amendments were varying but we sat together with the Committee and agreed. They are fairly similar. The only reason that we have stayed my amendments on the Order Paper is because of a ruling that was made by the Chair that allowed the Chairperson of a Committee, in another Committee not in ours, to drop amendments that were agreed on by a Committee. Because I am very passionate about fishing, I did not want to take any chances.

On this one, I agree with the amendment because the Bill was focusing very heavily on issues of conservation without looking at the end users, who are the people who consume fish. We also want to take into account the people who eat fish, not just conservation. It was very heavy on conservation with very little on livelihoods.

*(Proposed amendment by
Hon. (Ms.) Odhiambo-Mabona to Clause 4 withdrawn)*

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to Hon. Kaluma. However, looking at the list and raft of amendments and proposals, I see that in every proposal by Hon. Nooru, there is also another amendment by the Hon. Fishmonger, I mean Hon. Millie Odhiambo. I was considering giving an opportunity to Hon. Millie Odhiambo to speak to every amendment. However, I realise that you might be the one speaking to almost every other amendment. Probably, I will change that from now henceforth. Let us have Hon. Kaluma, and then we will dispose of it.

Hon. Kaluma: Hon. Temporary Deputy Chairman, we do not want fishy business with the Fisheries Management and Development Bill. It is a very serious matter. The Chair of the Committee is not explaining to us the effect of the amendments proposed under (b) down to (c). Most importantly, if you look at sub-clause (1) of Clause 5, the Clause is being amended from emphasis on ecologically sustainable development to promoting fish in traditionally non-fishing communities. We may take some of those phrases for granted but this is why we are in a situation where, in the community where I come from, where fishing is the mainstay of the people, the things which you call aquaculture and others are never seen there. People are being forced to engage in them instead of those communities that are known to deal with fish. We need proper explanations for those provisions, if it is not just surpluses as the Chair suggest, or we oppose it.

The Temporary Deputy Chairman (Hon. Cheboi): I can see many of the Members are on board. I also see the seriousness on the part of Hon. Kaluma. I understand his situation. We will proceed. Let us have the Hon. Member for Othaya.

Hon. (Ms.) Munene: Thank you, Hon. Temporary Deputy Chairman. I rise to support the Chair because even though there are people who do not know about fish,

these days fish is eaten by everybody. We are eating fish everywhere in this country because fish is white meat. It is not just in Nyanza where people are eating fish. People are now eating fish everywhere. That is why I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): I took notice of the Member for Othaya because I realised that in her home-coming, fish was the delicacy.

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

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

(Clause 5 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nooru, as you move Clause 6, take note of what Hon. Kaluma had said. You need to give some clarification.

Hon. Nooru: Hon. Temporary Deputy Chairman, there was no removal of ecosystem in that aspect; it is only an inclusion.

Clause 6

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

THAT, Clause 6 of the Bill be amended—

(a) in Sub-Clause (1) by—

(i) deleting the words “the Cabinet Secretaries responsible for” appearing immediately after the words “consist of”

(ii) deleting paragraphs “(a), (b), (c), (d), (e), (f) (g), (h), (i) ,(j), (k), (l), (m), (n) and (o) and substituting with the following new paragraphs-

- (a) the Cabinet Secretary responsible for fisheries;
- (b) the Cabinet Secretary responsible for interior and coordination of national government;
- (c) the Cabinet Secretary responsible for transport and infrastructure;
- (d) the Cabinet Secretary responsible for national treasury;
- (e) the Cabinet Secretary responsible for foreign affairs and international trade;
- (f) a representative from a university or a research institution with expertise in fisheries and who shall be nominated by the university Council;
- (g) a representative from the consumer federation nominated by the national consumer’s federation;
- (h) a designate from the Council of Governors with expertise in fisheries who shall be nominated by the Council of Governors; and,

- (i) a representative of fishers nominated by a national umbrella body of fishers.”
- (b) in Sub-Clause (2) by—
 - (i) inserting the word ‘national’ immediately after the word “government”.
 - (ii) deleting the word “of” appearing in paragraph (b) and substituting therefor the word “and”;
- (c) by inserting the following new Sub-Clauses immediately after Sub-clause (2)—
 - “(2A) The Chairperson of the Council shall be appointed by the President from persons nominated under Clause 6 (2) not being a Cabinet Secretary, upon recommendation by the Cabinet Secretary responsible for fisheries;”
 - “(2B) The Vice Chairperson of the Council shall be elected by members of the Council at their first sitting, provided that the Chair and the Vice Chairperson shall not be of the same gender;”
 - “(2C) in making appointments of the members to the Council, the Cabinet Secretary shall observe regional, gender, age, disability and ethnic balance;” and,
- (d) in Sub-Clause (3) by inserting the word “to” immediately after the words “relevant”

Hon. Temporary Deputy Chairman, this Clause deals with the council, which in the original Bill contained about 15 members. But as the Departmental Committee on Agriculture, Livestock and Cooperatives, we found it to be bloated. All of them were Cabinet Secretaries (CSs). Therefore, the essence of this amendment is to remove the irrelevant CSs and reduce the membership of the council. Secondly, we intend to include outsiders and other stakeholders, including the county governments or the council of governors in order to have a participatory process of governance.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the first shot to Hon. (Eng.) Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Chairman. I will support this amendment but plead with the Departmental Committee Chair that we propose a further amendment to Clause (g) to read “where a representative from the consumer federation with expertise in fisheries”. You do not want to nominate somebody merely because they are from consumer federation and yet, they do not have expertise in fisheries. I will plead with the Departmental Chair to include a further amendment in Clause (g) to include a representative from consumer federation with expertise in fisheries, nominated by the National Consumer Federation.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Eng. Gumbo, are you suggesting to the Chair to do a further amendment? Of course, you are not the one to do it. Now, it will be up to the Departmental Committee Chair to make that decision. I

would have expected that you quickly cross over to him and make that suggestion so that we can have a look at it quickly.

Let us hear Hon. Kaluma because he has not contributed on this one.

Hon. Kaluma: Thank you, Hon. Temporary Deputy Chairman. I would like to thank the Departmental Committee Chair for reducing the number of CSs in the council. In terms of paragraph (e), I imagine that this is coming in because we have exclusive economic zone running up to the 200 nautical miles away. I was thinking that, in line with your advice to Hon. (Eng.) Gumbo, the Departmental Committee Chair should consider mentioning the Cabinet Secretary for Defence and Foreign Affairs. Currently, in the Government structure, they are merged but the most important thing in terms of securing our fish stock in the exclusive economic zone, particularly from people invading those areas, is the Defence Ministry.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Chairman. I apologise that even though we have similar amendments, I would love to speak to them because the bulk of the amendments were originally mine. So, I am very passionate on these issues.

In response to what Hon. Kaluma has said, we did consider. Originally, we had the Ministry of Defence but because of how heavy the body was in terms of national Government representation, we decided to drop that Ministry. A theme that runs throughout the entire amendment is that the original Bill was not devolution-friendly. That is why we decided to include a person nominated by the Council of Governors. We have also included a representative of fishers nominated by a national umbrella body of fishers. This is to basically respond to the issue raised by Hon. Kaluma earlier – that it was not very strong on traditional fishing areas. So, we have strengthened the traditional fisheries.

The Temporary Deputy Chairman (Hon. Cheboi): I can see the Member for Nyeri. We have to consider specific non-fish mongering areas.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, I would like to correct you because Nyeri is one of the fishing counties. The Member for Othaya already spoke and we are doing a bit of fishing in Nyeri as well. This particular legislation is going to be of importance to us. Fishing is not just done in the lakes. We must also recognise fishing being done in ponds and other areas where fishing is happening in this country.

Hon. Kaluma: And, fishing in buckets!

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kaluma, you are out of order! You cannot say fishing in buckets. She definitely did not say so.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Speaker, he should withdraw. It would be important that when a law like this one is being passed, we get the concurrence of all the Members of the National Assembly, which comprises of all the hon. Members. It does not matter whether one is from the fishing areas or not.

More importantly, I am worried about the removal of the nine Ministries by this amendment and the inclusion of a body which is not particularly legal. I do not know whether the association of fisher persons exists in another law or whether this is the law that will establish it. If it is, other provisions that relate to it will need to be factored in

here. Otherwise, if it does not exist in law, there is going to be a problem in bringing it in law for the first time together with the other members of the Cabinet and Government representatives.

In essence, I give a qualified support to the amendments.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I see no indication that there is any proposal for a further amendment. Therefore, I will proceed and put the Question.

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

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

(Clause 6 as amended agreed to)

(Hon. Members stood in their places)

Hon. Members, resume your seats as we consult briefly. Hon. Duale, can you report the progress?

PROGRESS REPORTED

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report progress to the House on its consideration of the Fisheries Management and Development Bill (National Assembly Bill No. 20 of 2014) and seek leave to sit again another day.

(Question proposed)

(Question put and agreed)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order Members, can we have the Chairperson to report to the House.

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report to the House that the whole House has considered the Fisheries Management and Development Bill, National Assembly Bill No.20 of 2014 and approved the same with amendments and seek leave to sit again.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Mover to move the agreement of the report.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said report. I also request the Chairperson of the Committee on Agriculture, Livestock and Co-operatives to second the Motion for agreement with the report of the Committee of the whole House.

Hon. Nooru: Hon. Temporary Deputy Speaker, I second.

Question proposed)

(Question put and agreed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, you know the procedures of the House and you know at what point you express yourselves. Hon. Gumbo, you are a second term Member of this House. You know at what point you express yourself. This is a House of rules, debate and procedures. At this point, allow me to call the Leader of the Majority Party to move a Procedural Motion.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that pursuant to the provisions of the Standing Order 30(3)(a), this House resolves to extend its sitting until the conclusion of business appearing as Order No.11(iii) until 7.30 p.m.

I want Hon. Millie Odhiambo, my good friend, to look me in the eyes. I postponed this thing for two months. This is a Bill of January, 2014. I have suspended it for three months. I have looked at the agenda, consulted the Speaker and the Clerk's Office. Tomorrow, we have a very heavy agenda and this Bill is important for the people of Kenya who are in this business. Furthermore, my business is livestock and camel rearing. However, I am under moral obligation to stand with Kenyans who are in fish business and, of course, my friend, whom I served in the last Parliament. So, let us go until 7.30 p.m. and the balance that will remain, if we get some slot tomorrow after the Finance Bill, which we must conclude by law within the 90 days, then we can slot it. Let us continue until 7.30 p.m. and see how far we will reach.

With that, I beg to move.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Do you have a seconder?

Hon. Nooru: Hon. Temporary Deputy Speaker, I second the proposal to extend the House by the Leader of the Majority up to 7.30 p.m.

(Question proposed)

(Question put and negatived)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, this is a House of debate, rules and voting pending following the decision of the House. We, therefore, go back to the Committee of the whole House up to 6.30 p.m. It is so ordered.

COMMITTEE OF THE WHOLE HOUSE

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

IN THE COMMITTEE

(Order for the Committee read)

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

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL

(Resumption of consideration interrupted in Committee today)

The Temporary Deputy Chairman (Hon. Cheboi): Order Members, we were at Clause 7 and there is no amendment on Clause 7.

(Clauses 7 and 8 agreed to)

Clause 9

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

THAT, Clause 9 of the Bill be amended by—

- (a) inserting the words “development of standards on” immediately after the words “conservation” in paragraph (a);
- (b) deleting the word “implement” appearing in paragraph (b) and substituting therefor the words “monitor the implementation of”;
- (c) deleting the word “manage” appearing in paragraph (c) and substituting therefor the words “develop standards for the management of”;
- (d) deleting the words “prepare and implement” appearing in paragraph (d) and substituting therefor the words “develop guidelines for the preparation of”;
- (e) in paragraph (e)-
 - (i) by deleting the words “and extension services” appearing after the word “education”
 - (ii) by deleting the words “and relevant policies” appearing immediately after the words “sustainable use”.

- (f) deleting the words “collaborate in and,” appearing in paragraph (g) and substituting therefor the words “either alone or in collaboration with other institutions nationally or internationally”
- (g) deleting the words “for fisheries conservation, management, development and aquaculture production” appearing in paragraph (i);
- (h) inserting the words “subject to the Treaty Making and Ratification Act, 2013” immediately before the words “act on behalf” appearing in paragraph (k);
- (i) inserting the words “pursuant to the Treaty Making and Ratification Act, 2013” immediately after the words “Cabinet Secretary” appearing in paragraph (l);
- (j) inserting the words “and the Constitution” immediately after the words “this Act” appearing in paragraph (n);
- (k) inserting the words “that relates to its mandate under this Act and the Constitution” immediately after the words “infrastructure” appearing in paragraph (o);
- (l) inserting the words “and County governments” immediately after the word “departments” appearing in paragraph (p);
- (m) inserting the words “County governments” immediately after the words “agencies” appearing in paragraph (q);
- (n) inserting the words “in collaboration with County governments and the Fish Marketing Authority established under section 201” at the beginning of paragraph (s); and
- (o) inserting the word “aquaculture” immediately after the words “coastal fisheries” appearing in paragraph (u).

I wish to drop the proposal on (e) and (g). The rest are mostly dealing with devolution, so that the county governments and the stakeholders can take part. The others should be in tandem with the treaties and ratifications of international protocols that are in place.

For the proposal in (e) that I seek to drop, it states that “provide education and extension services to create public awareness and support for fisheries, conservation management and development and sustainable use”. Originally, we thought that extension service was the mandate of the county government. So, it has nothing to do with the national Government, but in terms of training, the mandate of training still remains with the national Government. There is no way the national Government can deal with the public to create awareness on what is going on. So, they have extension service officers who, in return, go to the public and create awareness on behalf of the relevant county governments. For that reason, there is need to retain extension service as originally proposed to be deleted.

The proposal in (g), which I am intending to drop, the issue of research is entirely with the national Government. There is no way that we can delegate that to the international community. The international researchers have to do what our researchers direct them. They should not impose research on our country. They have to research in accordance with what we suggest.

The Temporary Deputy Chairman (Hon. Cheboi): You have clarified it Hon. Nooru.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see a few Members want to speak to it. Hon. Mbui, Member for Kathiani.

Hon. Mbui: Thank you, Hon. Temporary Deputy Chairman. For the first time, I have got the Chair very clearly on this. I support him on the issue of devolved and national functions. They have to be clearly defined and also the respect for international treaties. So, I support him on that.

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

Hon. Maanzo: Thank you, Hon. Temporary Deputy Chairman. I am a Member of the Departmental Committee on Agriculture, Livestock and Fisheries. I want to say that even when we were preparing, there was quite a debate on this matter. I support the Chairman on this so that we make fisheries management better in Kenya. There has been a lot of confusion on how one is likely to manage fisheries profitably in the country. There have been beach units and the co-operatives. You have to come up with a plan so that you can amalgamate the two sides that manage fisheries in Kenya so that it can be beneficial to the country.

I support. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. Hon. Member for Kibwezi East.

Hon. (Ms.) Mbalu: Thank you, Hon. Temporary Deputy Chairman. I support the amendment to Clause 9 and, more specifically, on the deletion of “implement” and substituting with “monitor the implementation”. It is important that implementation is monitored. I support this clause from sub-clause (a) all the way to sub-clause (o).

The Temporary Deputy Chairman (Hon. Cheboi): Let us have, lastly on this, Hon. Member for Muhoroni.

Hon. Oyoo: Thank you very much, Hon. Temporary Deputy Chairman. I wish to support the amendment. I hope the Government will put a lot of seriousness in heightening research so that new breeds of fish and ways of making it more affordable to the locals.

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

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

(Clause 9 as amended agreed to)

Hon. (Ms.) Odhiambo-Mabona: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order now that it is gone Hon. Millie?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, it would be kind if you listen to me especially where the Chairman drops amendments. If you notice my amendments, that is why you see they are mirrored. If he drops and I do not agree, then, at least, it will be fair for my side to be heard also because it is an amendment in the Order Paper.

The Temporary Deputy Chairman (Hon. Cheboi): Of course, Hon. Millie Odhiambo, first, we are past that particular one but even then looking at what I had indicated earlier, if Hon. Nooru amendments go through, yours are automatically dropped. But the Chair has been kind enough to give you an opportunity in almost all the amendments that have been proposed other than this particular one. Probably, you have taken that for granted.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, if you do not mind, you could listen just to what I was saying.

The Temporary Deputy Chairman (Hon. Cheboi): I listen to you all the time.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, my amendments are in the Order Paper. I understand that if his amendments are carried, if they mirror mine, then mine automatically lapse.

The Temporary Deputy Chairman (Hon. Cheboi): That is not the position. The position is that if his do not mirror yours, the best option in your case would be to fight to have the amendment proposed by Hon. Nooru fails and, therefore, yours would be debated. That is the position. Anyway, we will consider giving you an opportunity henceforth. Do not have a problem. Let us proceed. You will have time Hon. Millie. You have had time before so will you in the next few clauses. That is gone. We will proceed.

Clause 10

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

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

THAT, Clause 10 of the Bill be amended—

(a) in sub-clause (1)—

(i) by inserting the word “standards” appearing in paragraph (b) immediately after the word “management”;

(ii) by deleting the words “to the Cabinet” appearing in paragraph (f) and substituting therefor the word “to Parliament”;

(iii) by deleting the words “approve a” appearing in paragraph (g) and substituting therefor the words “establish an open, competitive,”;

(iv) by inserting the words “open, competitive” immediately after the word “transparent” in paragraph (h);

(b) in sub-clause (3)—

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

“(b) comply with the provisions of this Act”;

(ii) paragraph (d) by inserting the words “and other government entities” immediately after the words “Director-General”;

Hon. Temporary Deputy Chairman, I am, however, dropping the proposed “(ii) by deleting the words “to the Cabinet” appearing in paragraph (f) and substituting therefor the word “to Parliament”;

In essence, there is no way the Fisheries Board can deal directly with Parliament without passing through the Executive or without reporting to the Cabinet Secretary. The essence of putting the Service should report to the Cabinet or the Cabinet Secretary and the Cabinet Secretary reports to Parliament. That has been the tradition for all the other parastatals. But with the rest, I propose as indicated in the Order Paper.

(Proposed amendment by Hon. Nooru to Clause 10(a)(ii) dropped)

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I give the first shot to Hon. Odhiambo Millie.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I just wanted to request as a matter of procedure that where the Chairman is dropping a proposed amendment, since all the rest are fairly similar, could we then in that case go sub-clause by sub-clause so that where I oppose, I oppose his and where we agree, I support his.

The Temporary Deputy Chairman (Hon. Cheboi): I am not getting you, Hon. Millie Odhiambo because in this particular one, I am seeing him dropping (ii). That is why I am giving you the first opportunity is so that, for example, if you think there is something that is not substantially similar to yours, you can canvass it at that point in time.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I am just asking in terms of procedure. I am not disagreeing. I was actually disagreeing with the earlier one but I was saying, maybe, to make it is easier because I did not get an opportunity to talk in the other one, is it possible that where he is dropping, if he indicates he is dropping then we go sub-clause by sub-clause.

The Temporary Deputy Chairman (Hon. Cheboi): From the indication I have here, the next one that you will have a situation like the one you are suggesting will be Clause 18. So, definitely, at that point you will have an opportunity but on this one, you have agreed on this one.

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

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

(Clause 10 as amended agreed to)

Clause 11

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

THAT, Clause 11 of the Bill be amended—

(a) in sub-clause (1) by—

- (i) deleting sub paragraph(iv), the repeated paragraph (vi) and (v) of paragraph (b);
- (ii) deleting paragraph (c);
- (iii) deleting the words “competitively recruited” appearing in paragraph (d) and substituting with the words “openly appointed” ;
- (iv) deleting paragraph (e) .

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

“(3) The members of the Board shall, at their first meeting after appointment, elect a deputy Chairperson from amongst their number provided that the Chairperson and the deputy Chairperson shall not be of the same gender.”;

(c) in sub-clause (4) by

- (i) deleting the expression “or (e)” appearing immediately after the expression “(1) (d)”;
- (ii) inserting the words “age, regional and ethnic balance” immediately after the word “parity.”

(d) in sub-clause (5) by—

- (i) deleting the expression “or (e)” appearing immediately after the expression “(1) (d)”;
- (ii) deleting the word “oceanography” appearing in paragraph (e) and substituting therefor the words “aquatic science”.

We are only trying to amend because this is the Board. The Board can never be competitively recruited. We are saying it should be done on open appointments. On the other hand, there are some sections which are repetitive. So, that is why we have really amended to remove those repetitions as indicated in (i).

In (b), we are only trying to put the position of the chairperson to be gender sensitive in a way that the deputy comes from a different gender from that of the chairman. They should not be of the same gender.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let me give also an opportunity to Hon. Millie Odhiambo and then two other Members.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Chairman. I support this one especially because the zebra pouch of ensuring where the Chairperson is woman, the vice-chairman is a man and also for ensuring the issues of regional and ethnic balancing in composition. This is the second body we are putting that. I would also want to encourage the Leader of the Majority Party who has been very kind to us not to be too worried if Members are a little tired. We will still get time to move on with this.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Makenga, Member for Kaiti.

Hon. Makenga: Thank you, Hon. Temporary Deputy Chairman. I support the amendment by the Chairperson of the Committee, particularly paragraph (iii) where the appointment of the Board members must be open.

Secondly, I am in support of the requirement that the chairperson and the deputy chairperson shall not be of the same gender.

The Temporary Deputy Speaker (Hon. Cheboi): Before I put the Question, let me give an opportunity to the Member for Lugari.

Hon. Angatia: Thank you, Hon. Temporary Deputy Chairman. I want to add my voice in support of the amendment. I would only need to stress that the constitution of the Board should also meet the constitutional threshold of gender parity.

Thank you.

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

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

(Clause 11 as amended agreed to)

Clause 12

The Temporary Deputy Speaker (Hon. Cheboi): Let us have Hon. Nooru.

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

THAT, Clause 12 of the Bill be amended—

(a) in sub-clause (1)—

(i) by deleting paragraph (b);

(ii) by deleting the words “the permission of” appearing in paragraph (c)(i) and substituting thereof the words “notifying the”;

(iii) by deleting sub-paragraph (v) of paragraph (c), and substituting thereof the following new sub-paragraph—

“(v) is unable, by reason of mental or physical infirmity to discharge functions as a member of the Board”.

(b) in sub-clause (2) by deleting the word “Minister” appearing in paragraph (a) and substituting thereof the words “Cabinet Secretary”.

We are trying to deal with the absence of the Board members. Instead of having to seek permission from the chairperson of the Board like school children, a Board member could notify the chairperson in case he or she desires to be absent.

In paragraph (iv) we are trying to take care of people with disabilities. Paragraph (b) of the amendment seeks to amend Clause 2 by deleting the word “minister” and replacing it with “Cabinet Secretary” to be in tandem with the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Chairman, I can only stand to support Hon. Nooru in this proposal. Thank you.

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

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

(Clause 12 as amended agreed to)

Clause 13

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Nooru.

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

THAT, Clause 13 of the Bill be amended—

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

“(1) A member of the Board shall declare his or her interest in any matter falling within the functions of the Board in which the member of the Board knows or ought to have reasonably known that an interest exists, as described in subsection (5);

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

(c) in sub-clause 5 by deleting the word “or” appearing in sub-paragraph (iii) of paragraph (a);

(d) in sub-clause (6) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) “family member” shall mean a parent, brother, sister, spouse, cousin, aunt, uncle, nephew, niece or child, including a person who is adopted legally or for whom care was given by the member such that there exists a relationship in the nature of parent and child, and shall also mean a spouse of any person referred to in this definition and their children, and any other member of a person’s immediate family.”

We are trying to elaborate on the declaration of interest by a Board member. The Bill requires the declaration of interest to be done even before one is appointed. We are providing that one should only declare any interest after appointment.

On the other hand, the persons who constitute family members have been reduced. This is because in African culture, we have extended families. We are reducing it to only include the immediate families of members of the Board who cannot be said to be in conflict of interest.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Speaker (Hon. Cheboi): Let us start with Hon. Odhiambo. Please, be brief because we do not have time.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Chairman. I want to also support. The Bill says that even before you are appointed to the Board, you must declare your interest in any matter the Board is dealing with.

It is impossible to know what the Board would be dealing with. The way the issue of the family was defined, from the African setup, even the Temporary Deputy Chairman could be my relative. Following the book of Isaiah, we all came from Sudan.

The Temporary Deputy Chairman (Hon. Cheboi): I have a major problem following you Hon. Millie. I hear you quoting the Bible in the book of Isaiah and I really do not trust whether you have quoted the right verse.

(Laughter)

On the Sudan one, I think you are spot-on. I will put the Question because we have to finalise this one.

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

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

(Clause 13 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Because of time, we will have the Mover to report progress.

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, protect me from the former and current KANU stalwart.

(Laughter)

KANU is a dangerous party.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Duale, I thought I heard Hon. Midiwo saying that you should not mention that name in vain. Proceed, hon. Duale.

Hon. A.B. Duale: I want to reach home safely. When you are intimidated by a KANU stalwart, I am not sure whether I will go home.

Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the The Fisheries Management and Development Bill (National Assembly Bill No. 20 of 2014) and its approval thereof with amendments and seek leave to sit again.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us have the Chairperson to report to the House.

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Fisheries Management and Development Bill (National Assembly Bill No. 20 of 2014) and approved the same with amendments and seeks leave to sit again.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us have the Mover to report agreement to the Report.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request the Chair of the Departmental Committee on Agriculture, Livestock and Co-operatives to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Nooru: Hon. Temporary Deputy Speaker, I second the proposal by the Leader of the Majority Party that the House adjourns and sits again.

(Question proposed)

(Question put and agreed to)

THE PROHIBITION OF ANTI-PERSONNEL MINES BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, as you are aware, we had done the Prohibition of Anti-Personnel Mines Bill (National Assembly Bill No. 7 of 2014) in the Committee of the whole House. I, therefore, now call upon the Chairperson to report to the House.

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the Whole House has considered the Prohibition of Anti-Personal Mines Bill, National Assembly Bill, No.7 of 2014 and approved the same with amendments.

Hon. Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Mover to agree with the Report.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. Nooru: Seconded.

(Question proposed)

(Question put and agreed to)

Hon. Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I call upon the Mover to do the Third Reading.

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Prohibition of Anti-Personal Mines Bill, National Assembly Bill, No.7 of 2014 be now read a Third Time.

Hon. Nooru: Seconded.

Hon. Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, the Chair bowing is seconding and it is procedural.

(Question proposed)

Before I put the Question for the Third Reading, can I give a Member? I can see the Leader of the Majority Party. You want to comment? Hon. Peter Kaluma, just a comment. You know the procedure.

Hon. Kaluma: Hon. Temporary Deputy Speaker, I thank Members of the House present for pushing the Bill to where it is but there would be need for us to look at some provisions, particularly those ones stopping court interventions over some decisions of the Cabinet Secretary. I thank you.

Hon. Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, we are not in a position to put the Question to the Third Reading. I do order that the Question will be put in the most appropriate time, of course, after the decision from the House Business Committee (HBC) to appear in our Order Paper.

ADJOURNMENT

Hon. Temporary Deputy Speaker (Hon. (Ms.) Mbalu): As a House of rules and procedures, time being 6.37 p.m., this House stands adjourned till tomorrow Thursday, 27th August, 2015 at 9.30 a.m. I thank you all.

The House rose at 6.37 p.m.