

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 4th March, 2015

The House met at 9.30 a.m.

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

PRAYERS

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, we do not seem to have attained the requisite quorum. Therefore, I order the Division Bell to be rung for ten minutes.

(The Division Bell was rung)

Order, Members! Order, hon. Kaluma and hon. Ng'eno! We are now ready to start business. We have the requisite quorum now.

PAPERS LAID

The Temporary Deputy Speaker (Hon. Cheboi): On Papers, is the Chairman of the Budget and Appropriations Committee, hon. Musyimi, present? Is the Vice-Chairman in? We can do it in the afternoon.

NOTICES OF MOTIONS

The Temporary Deputy Speaker (Hon. Cheboi): On that, I see, again, the Chairman of Budget and Appropriations Committee would have given a notice of Motion. That one will also go to afternoon. Let us see if hon. (Dr.) Munyaka is in. He is absent. So, proceed to the next Order. What is your point of order, hon. Member for Ugunja?

Hon. Wandaï: Hon. Temporary Deputy Speaker, in the last Session, I moved a notice of Motion and then I was unable to proceed to the next stage because of the fact that the Session ended. When this new Session started, I approached the Clerk's Office to reinstate that Motion. Eventually, I signed off in terms of reviving it.

To my surprise, I later got communication from the Clerk's Office that my Motion---

Hon. Temporary Deputy Speaker, I seek your indulgence; if the Clerk could allow you to listen to me, I would appreciate.

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The Temporary Deputy Speaker (Hon. Cheboi): I have two ears hon. Wandayi.

Hon. Wandayi: Thank you, hon. Temporary Deputy Speaker, for listening to me. I was later made to understand that the House Business Committee somewhat established that this Motion will incur some money. Therefore, they decided to refer it to the Committee on Budget and Appropriations. I find it curious in the sense that this same Motion went through the House Business Committee in the last Session, which duly approved it. I went ahead and moved a notice of Motion on the Floor of this House. How come in this new Session, that same Motion is now deemed not to qualify to come through this House unless it is approved by the Budget and Appropriations Committee?

The Temporary Deputy Speaker (Hon. Cheboi): Order hon. Wandayi! I want the Leader of the Majority Party to be keen on this one because he might be the one to respond to it. Maybe, you need to start afresh hon. Wandayi.

Hon. Wandayi: I will hon. Temporary Deputy Speaker. The Leader of the Majority Party is not listening. What is happening, hon. Temporary Deputy Speaker?

The Temporary Deputy Speaker (Hon. Cheboi): Do not worry. Do not police the entire House, hon. Wandayi. Just proceed.

Hon. Wandayi: I moved a notice of Motion; a very important Motion that was going to benefit Kenyans in general in the last Session. The last Session ended before the Motion could come up for debate on the Floor of the House. I came back in this new Session to revive the Motion. When it went to the House Business Committee this time round, the Committee decreed that it had to go through the Committee on Budget and Appropriations because it touched on money issues.

What has changed between the last Session and this Session that the same House Business Committee could have different opinions on the same matter? That Motion did not change, not even a comma has changed. Now, it is required to go through the Committee on Budget and Appropriations before it can come to this House and yet, in the last Session, I was given approval and went ahead and gave a notice of Motion. There is a total contradiction on this matter. Therefore, I need guidance and clarification.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Well said, hon. Wandayi!

Hon. Wandayi: Otherwise, I will be having a feeling that, perhaps, I am being oppressed on account of my position on very weighty issues touching on Kenyans who have no voice.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Wandayi, you have said it and the Leader of the Majority Party is listening.

Hon. Wandayi: My position on issues that touch on Kenyans who have no voice!

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Wandayi! Ordinarily, I would have simply asked you to go to the Table Office in Room No.8 and start the process again. You know that after the Session lapsed, so did your Motion. Of course, there are two new issues which you have brought in, which I believe the Leader of the Majority Party will respond to. The Leader of the Majority Party, let us hear from you.

Hon. A.B. Duale: Thank you, hon. Temporary Deputy Speaker. First, I want to confirm that this House will be the last House to oppress hon. Wandayi. He should be worried about other forces outside this Chamber; other forces in his constituency,

political parties and many others. I can confirm that it is not a mandate of the House Business Committee to oppress Members. It is the business, mandate and function of the House Business Committee to give priority to certain business. This is in the Standing Orders. I am not the one saying it. It is the prerogative of the House Business Committee to shelve a Motion or a Bill based on certain fundamental reasons that are given.

Secondly, if the Motion of the Member is touching on Article 114 of the Constitution, then it is not up to the House Business Committee, but it is the Constitution that provides that, that matter must be referred to the Budget and Appropriations Committee. The Budget and Appropriations Committee will listen to the Member and the Cabinet Secretary for the National Treasury. The moment it touches on extra funding, that must be done as far as that Article is concerned.

More fundamentally, when a Motion is touching on certain policies of the Executive, we must also keep in mind the principle of the separation of powers with regard to the functions of the Judiciary, Executive and Parliament. If it touches on that, then the Member will appear before the Committee. This is about due diligence. I want to confirm to hon. Wandayi that if a Member's Motion has been referred to the Budget and Appropriations Committee, the Committee must do it within the shortest time possible for it to come back to the House Business Committee and we give it priority. Members bring Motions and Bills on behalf of the people they represent. It is not a talk show. The House Business Committee, the Budget and Appropriations Committee and all our respective Committees should work in synergy, so that we can expedite the process for the Members of Parliament. I am sure we will follow the same on hon. Wandayi's Motion.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Duale, even as I agree with you, because you have quoted basically what is in the law and in the Standing Orders, there is something which hon. Wandayi has asked, and which you did not address properly. The Motion was previously approved, allowed to proceed and he moved it. It is the same thing. Article 114 still existed in the last Session. What was the reasoning in allowing it in the first place and, thereafter, saying that it is a money Bill and has to go to the Budget and Appropriations Committee? This is the right thing. It should have happened even in the previous Session. That is what I heard hon. Wandayi trying to grapple with.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, it is like hon. Wandayi knew what happened in the House Business Committee last night. Hon. Jakoyo will agree with me. We have agreed that even before a Motion comes for the Speaker to sign, serious due diligence must be done, which was not being done before. We have very competent departments of Legal and Legislative and Procedural Services, which need to do serious diligence so that, by the time it is coming to the Speaker and the House Business Committee for approval, the Speaker knows that the Bill will go to the Budget and Appropriations Committee.

Last night we directed that the Clerk's Office, through the Director of Committees, should write to the relevant Committees and inform them that the matter is coming before them and they should note it. But because hon. Wandayi has raised the issue, I will follow the track and bring an answer to the House on behalf of the House Business Committee tomorrow afternoon, when I am doing the normal communication. I

will tell hon. Wandayi the status of his Bill and why it is hanging somewhere. I am sure the Chairman of the Budget and Appropriations Committee is aware that there are many Bills and Motions of money nature, which are hanging somewhere. They also need to do their bit.

The Temporary Deputy Speaker (Hon. Cheboi): I can see hon. Wandayi is nodding his head in agreement. I can also see the Vice-Chairperson of the Budget and Appropriations Committee is present. That is something that the Budget and Appropriations Committee should know. They should help the Members fast-track their Motions especially those which have financial implications. That settles it, hon. Wandayi.

BILLS

First Reading

THE POLITICAL PARTIES (AMENDMENT) BILL

(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Departmental Committee)

The Temporary Deputy Speaker (Hon. Cheboi): Let us hear hon. Wamalwa.

Hon. Wakhungu: Thank you, hon. Temporary Deputy Speaker. The Bill is at the First Reading stage. I intervene because I had raised an issue with my Motion on the ranking of schools on the basis of their performance in national examination. The Motion is supposed to have been on the Order Paper of today, but I have been advised otherwise. I have discussed the matter with hon. Midiwo, and I have been told that it will be the first one next Wednesday.

The Temporary Deputy Speaker (hon. Cheboi): Thank you. You have answered yourself.

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

The Temporary Deputy Speaker (Hon. Cheboi): What is your point of order Leader of the Majority Party?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, the way hon. Jakoyo is being quoted by hon. Wamalwa, it seems like he is running away from what transpired in the House Business Committee (HBC) meeting of last night. Let me be bold enough to tell hon. Wamalwa what happened to his Motion. His Motion is about ranking and there are seven commissions, including the last one we discussed. He will appear before the Committee---

The Temporary Deputy Speaker (Hon. Cheboi): Order, Leader of the Majority Party! That matter is settled. Hon. Wamalwa is satisfied. We do not have to go that direction.

Hon. Midiwo: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): What is your point of order hon. Midiwo? Is it on the same one? We have not even started debating this Motion.

Hon. Midiwo: Hon. Temporary Deputy Speaker, I just needed your guidance because I wanted to raise an issue on a matter which is on the Order Paper. I had consulted with you on the same.

The Temporary Deputy Speaker (Hon. Cheboi): Which one is it?

Hon. Midiwo: Hon. Temporary Deputy Speaker, it is Order No.11. I had requested you to, through Standing Order No.1, give direction on the same because we have Members here who sit in the Members' Welfare Committee, and the meeting is going on. Therefore, I seek your indulgence.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Midiwo, your request is very reasonable. The only unfortunate bit is that the Mover of the Motion is not in the House. As you know, he had started moving the Motion. In his absence, it becomes extremely difficult for me to intervene. We would have been happier with him pronouncing himself, in terms of what you stated. Let us hear from you. What is it?

Hon. Midiwo: Hon. Temporary Deputy Speaker, I urge you to indulge me. I also notice that the Mover of the said Motion is not in the House. If the Mover was to be here now, because he appeared before the HBC last night and requested to be allowed to withdraw the Motion, we advised him to appear here and do it procedurally. However, he is not here. As a Member of the family of one of the said victims, I was going to raise this issue anyway. What we want you to guide us on – it is true that hon. T. J. Kajwang' is the brother of the late hon. Sen. Otieno Kajwang,' – is our feeling that the issues surrounding this Motion be discussed with the families of the victims before it is debated here.

You realize that the Member who brought the Motion is not a representative of any of the dead people. He has not also done it at the request of any of the family members. I am under instructions from my party and from my family to say that they do not wish this Motion to be before this House at this particular moment. All I am requesting you to do is to stand down the Motion until such a time the Mover comes and we agree, so that he can ably represent our wish. That is all I am requesting.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Midiwo, hon. Ken Obura moved the Motion on the 25th February, 2015. The Motion was seconded and the Question proposed. That is an issue which has already taken off. I totally agree with you in terms of the fact that you consulted with him and arrived at some specific agreement. I trust that this is the true position. However, my hands are tied in terms of doing much on the matter. I am sure that at the point when hon. Obura will be here to pursue this matter, we will be able to solve it. It is a bit difficult at this point in time for me to do what you are requesting. You talked about having instructions from the party and the families of the deceased persons. I am very sympathetic, especially to the families. Unfortunately, this is something that has already taken off. I wish we had started discussing it at the beginning. Even at this point in time, we should be able to sort it out. But let us have the Mover around. I would have done it very easily in his presence, because he needs to pronounce himself on the matter. Once a Motion has been moved and seconded, obviously, it becomes the property of the House. Being a seasoned Member of this House, I am sure that you see the sense in what I have said.

Hon. A.B. Duale: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Leader of the Majority Party, I will give you a chance to raise your point of order but, first, let us hear hon. T.J. Kajwang’.

Hon. Kajwang’: Thank you, hon. Temporary Deputy Speaker. This is a subject that is personal to me. I am unable to give much information, except to follow-up what hon. Jakoyo Midiwo has said. The information that is before us this morning is that the Mover Member was requested to appear before the Assembly this morning to pronounce himself on the matter.

Secondly, I have had the advantage of speaking to the hon. Member, who pledged to be in this House to make the pronouncement. The problem is that it is within every Member’s right to attend a National Assembly Sitting or not to. Whatever motivated him not to attend is up to him.

Hon. Temporary Deputy Speaker, I want to refer you to Standing Order No.58, which says that after a Question of a Motion has been proposed, the Motion shall be deemed to be in the possession of the House, and that such Motion shall not be withdrawn without leave of the House. This, therefore, tells me that the Motion is the property of the House. It is the plenary of this House which can make a decision by a resolution which way a Motion is to be treated, except that it cannot be withdrawn without leave of the House. Once properly put before the House, a Motion becomes something we can pronounce ourselves on. It does not become an issue of the Mover himself deciding how the Motion goes. This is different from a Private Member’s Bill. A Private Member’s Bill is usually sponsored by a Member, and it would require his consent to withdraw it or do otherwise. A Motion that has been moved and seconded becomes a property of the House and cannot be withdrawn without the leave of the House.

Therefore, arising from hon. Midiwo’s request that you invoke Standing Order No.1, I heard the Member to be asking that this Motion be deferred. We are asking the plenary of this House to decide that this matter be deferred until such a time that there is enough consultations on the subject.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): That is a better way of handling the matter. Hon. Members, what we are going to do is that we will proceed with Order No. 9. We will skip, for the time being, Order No.10 and go to Order No.11. I believe that the hon. Members will have thought through this particular issue. Of course, any Member who would want to request that the matter be deferred, we will deal with it at that point in time. Maybe, you should look at it in the meantime, so that you are not ambushed. Allow us to proceed to Order No.9. After this particular Order, we will come back to Order No.11. Before we do that, let us have the Leader of the Majority Party to shed some light on what transpired in the HBC yesterday.

The last will be the hon. Leader of the Majority Party. But we will come back to it and, at that point, you will be able to make decisions, Members. Proceed.

Hon. A.B. Duale: Hon Temporary Deputy Speaker, hon. Ken Obura walked to the House Business Committee (HBC) under no duress and security guards. He said that he will come this morning to withdraw his Motion. I am sure when we reach that place--- Hon. Ken Obura lives very far in Karen unlike some of us who live around here. It could

be he is on his way here but because of the traffic jam. This is a classical example. It is like the famous case of Linturi- Waiguru impeachment.

(Laughter)

People carry hot potatoes on their hands and when they become too hot, they come to the (HBC). Hon. Ken Obura and every Member here, before you carry something very hot, you need to weigh before you even draft the Motion. It is only last week when hon. Obura realized that what he is carrying could cost him his seat. That is because you cannot play around with the lives of other families. The family of the late hon. Kajwang', the late hon. Mutula Kilonzo and the late Fidel Castro Odinga never sent him to go and investigate. They are not from his constituency. So, I am sure the families know in their own way the cause of the deaths of their family members. This is a piece of advice to all my colleagues. Save us time and energy. Do not carry hot potatoes that you cannot take to the finishing line. But if he does not come today, we will adjourn that Motion until the day he will come and withdraw it. We will not discuss it.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. I can see the mood. Let us leave the issue of potatoes and ketchup for the time being until that particular time comes.

(Laughter)

So, let us proceed. We are at the point of putting the Question on the Motion by hon. Wangamati.

MOTIONS

COMPENSATION OF *MAU MAU* VICTIMS BY THE BRITISH GOVERNMENT

THAT, aware that in 2013 the British Government agreed to pay Kenyans who were abused, tortured, maimed and detained by British colonial forces during the *Mau Mau* uprising in 1952 and onwards compensation of Kshs2.5 billion as an out of court settlement; further aware that the compensation was only paid to a section of *Mau Mau* victims from Kiambu and Nyeri counties, leaving out victims from Meru, Kirinyaga, Murang'a, Embu, Kajiado and other parts of Kenya; cognisant of the fact that leaders from the two counties initiated a court process claim for compensation to the victims who were eventually compensated; noting that the struggle for Independence in this country involved various communities and individuals like the followers of *Dini ya Musambwa* movement, who took part in the uprising against the colonial government, and were also killed, tortured and detained and, therefore, also deserve equal compensation from the British Government; also, aware that the British Government has accepted to release further compensation money, on condition that only the victims who are still alive and can prove that

they were tortured, will be compensated from these money, this House resolves that the Government ensures that compensation from the British Government goes to all affected homes and families of victims who are still alive all over the country.

(Question put and agreed to)

(Applause)

The Temporary Deputy Speaker (Hon. Cheboi): Let us have the next Order.

ESTABLISHMENT OF SELECT COMMITTEE TO
INVESTIGATE RECENT DEATHS

THAT, aware that Article 26 of the Constitution guarantees the right of every person to life, and that no person shall be deprived of life intentionally; further aware that Article 35 provides for the right of access to all important information by all; cognizant of the fact that national leaders and their families form an integral part of national being that builds and helps in forging unity; concerned that several national leaders and/or prominent personalities including the late Hon. Sen. Mutula Kilonzo, the late Hon. Sen. Otieno Kajwang' and the late Fidel Castro Odinga have lost their lives in unclear circumstances in the last two years; further concerned that the causes of death of those prominent national leaders have been shrouded in mystery creating unnecessary anxiety among different groups of people; this House resolves to establish a Select Committee to comprehensively investigate and inquire into the causes of death of the three personalities, consider and review all related findings on the deaths and table its report within ninety (90) days, and approves the following Members to constitute the Committee:-

- (i) Hon. Ken Obura, MP – Chairperson
- (ii) Hon. Soipan Tuya, MP – Vice-Chairperson
- (iii) Hon. Ababu Namwamba, EGH, MP;
- (iv) Hon. Adan Keynan, CBS, MP;
- (v) Hon. Aisha Juma, MP;
- (vi) Hon. Bare Shill, MP;
- (vii) Hon. Charles Mongare Geni, MP;
- (viii) Hon. Florence Kajuju, MP;
- (ix) Hon. Jared Opiyo, MP;
- (x) Hon. Dennis Waweru, MP;
- (xi) Hon. Mary Emaase, MP;
- (xii) Hon. Michael Kisoi, MP;
- (xiii) Hon. Sabina Chege, MP;
- (xiv) Hon. Samuel Chepkong'a, MP; and,
- (xv) Hon. (Dr.) Robert Pukose, MP.

(Hon. Mirenga on 25.2.2015)

(Resumption of Debate interrupted on 25.2.2015)

The Temporary Deputy Speaker (Hon. Cheboi): Very well. I hope hon. Midiwo, hon. Kajwang' and the rest have organized themselves. So, we can proceed. Let us hear from hon. Jakoyo Midiwo.

Hon. Midiwo: Thank you. We have canvassed this. I rise under Standing Order No. 96 (1) which says:

“A Member who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move “That, the debate be now adjourned”, or, in Committee of the whole House “That, the Chairperson do report progress”.

Hon. Temporary Deputy Speaker, I do so and I ask hon. Eseli to second.

Hon. (Dr.) Simiyu seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): I will give two Members who want to speak to this and then I will put the Question. I heard the hon. Leader of the Majority Party make some very strong sentiments. Probably to even help you further, I will increase to two per side. I can see the hon. Member from Suba on my left side.

Hon. Ng'ongo: Thank you. I want to support the Motion moved by hon. Jakoyo that we adjourn the debate on this Motion. I know that all of us are Members of the National Assembly and we represent national interests. We have interests in every constituency. It is important that as Members, before we bring Motions that touch on families and by extension emotions, we need to be very careful. I am not so sure about the “hot potato” and the possibility of hon. Ken Obura losing his seat or otherwise. I do not know what research hon. A.B. Duale has done to find that out. Maybe, he carried out an opinion poll or he used the intelligence branch being the Leader of the Majority Party. He probably shares intelligence briefs. I do not know how much he has done in Kisumu Central. It is important that this Motion be adjourned for further consultations. But I also want to put it this way: I understand and appreciate hon. Ken Obura's concerns. He is one of my party members whom we recently made to pay for some of his decisions, including this one. This is a very clear indication that ---

The Temporary Deputy Speaker (Hon. Cheboi): That cannot be true---

(Laughter)

Hon. Ng'ongo: Hon. Temporary Deputy Speaker. I wanted to say ---

The Temporary Deputy Speaker (Hon. Cheboi): That is actually not true at all, hon. Mbadi. At the point at which you did whatever you did, hon. Ken Obura's Motion was not in the possession of the House, unless we are talking about other Motions but not this one.

Hon. Ng'ongo: I did not say in the House. I said some of the decisions he makes-- You know hon. Ken Obura has no committee. I would understand that he is really struggling to get a committee to sit in and possibly Chair---

The Temporary Deputy Speaker (Hon. Cheboi): Now you can see the difficulties that Members get into when they are de-whipped from particular committees.

Hon. Ng'ongo: Yes. The solution is one.

The Temporary Deputy Speaker (Hon. Cheboi): I hope the leaders of various parties are looking at this with concern, but proceed.

Hon. Ng'ongo: I want to offer a solution. Just be disciplined. If you belong to a party, just champion and support the interests of the party. The day you get tired of the party, you simply resign from that party and seek re-election. That is what hon. Raila Odinga did in December 1996---

Hon. (Ms.) Gathogo: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Order, Member for Suba. Let us hear from the precious lady from Kiambu.

Hon. Ng'ongo: I doubt whether she can detect whether I am out of order but, anyway---

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Member! Order! You do not have the microphone. I am trying to---. Yes, you have it now.

Hon. (Ms.) Gathogo: Ahsante, Mheshimiwa Naibu Spika wa Muda. Sijui ni kwa nini Mheshimiwa Mbadi anaona ni kama sina Hoja ya Nidhamu.

(Laughter)

Lakini nakuomba kwa heshima Mheshimiwa Mwenyekiti Mbadi ya kwamba sisi hatutaki kujua zaidi vile uenyekiti wako unaendelea. Tunataka kujua yale tunaongea siku ya leo. Tafadhali mambo yako na Mheshimiwa Ken Obura na chama yasijadiliwe hapa bali kwa chama. Ahsante.

The Temporary Deputy Speaker (Hon. Cheboi): Let me commend the hon. Member. You can see hon. Mbadi, this is a new Member here. She seems to have gone through the Standing Orders with a tooth-comb. I probably need to remind you this hon. Member for Suba - and this is not for hon. Mbadi alone. It is for the entire membership of the House.

If you look at Article 96 (2) and the relevant Standing Orders, I am sure you must have come across it a few times. Hon. Member for Suba, this is a debate on dilatory Motion and it shall be confined to the matter of the said Motion. We are now confined to that particular bit that the matter be adjourned. Hon. Members, as for the rest of the stories, we will leave it for another day. We will have an opportunity to do it. We can also probably leave it to Members who have never spoken in the House who will be making their maiden speeches and they will be protected. However, for you, hon. Member for Suba, you will not be protected at all. Therefore, as you finalize, you have to

be specific to the substance of that particular Motion. Do not tell us anything else, the merits and whether you are supporting this Motion or not.

Hon. Ng'ongo: I will stop there because I was offering wise counsel as a senior Member of this House and also as a Chairman of a serious party, CORD.

The Temporary Deputy Speaker (Hon. Cheboi): Those accolades can be left for another time or said out of this House. You support it and that is fine. Before I come to the Leader of the Majority Party because I know he will have to speak on this one, let me give the hon. Member for Emurua Dikirr.

Hon. (Ms.) Abdalla: Where is Emurua Dikirr?

The Temporary Deputy Speaker (Hon. Cheboi): Probably, you should be telling that hon. Member where that particular area is for Members like hon. Amina to geographically place you somewhere.

Hon. Kipyegon: It is really funny when a Member of this House does not even know where Emurua Dikirr is or what Emurua Dikirr is. That is because it is very famous and one of the greatest constituencies in this Republic.

The Temporary Deputy Speaker (Hon. Cheboi): Let us go back to Article 96(2).

Hon. Kipyegon: She is asking where Emurua Dikirr is located. It is in the southern part of Rift Valley, Narok County.

The Temporary Deputy Speaker (Hon. Cheboi): We will do that when---

Hon. Kipyegon: I wish to reluctantly support the sentiments. We must understand that the Members who are mentioned in this particular Motion are not just private Members. I will only support the Motion because of one private person who died in unclear circumstances; the son of the former Prime Minister. He is also included here. As for Sen. Mutula Kilonzo and Sen. Kajwang', those were public figures, great men who were serving this Republic and held elective positions. They were no longer considered private citizens but public properties. Therefore, I would like to say that we have had several deaths of that magnitude. People have died under mysterious circumstances. Therefore, it should not be the business of this House to leave them die like that. We need to know the circumstances behind their deaths, whether they were assassinated or they died natural deaths. The great men who died were friends of everybody. I would, therefore, just support reluctantly and say: Let us give it time so that we can come and do a very thorough investigation into their deaths. We also need to look at those other assassinations that we have always talked about and yet, they have never been unraveled. I wish to support the Motion.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Maanzo, the Floor is yours.

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

I also want to support what is before the Floor that, this matter be consulted further before the Motion is debated. The reason is that my former Senator, the late. Mutula Kilonzo, is mentioned here. I have information that this was not in consultations with the family. I want to believe that although those people were public figures, they also came from homes and families. It is important that they get the first priority of being consulted before a matter of this nature is brought to the Floor of the House.

I support the Motion. Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): I do not know whether the man on top of the list, Member for Marakwet West, is interested in speaking to this Motion. That is because your card has been here for eternity. Is it for this specific Motion or you are just being strategic?

Hon. Kisang: Thank you, hon. Temporary Deputy Speaker. I rise to oppose the adjournment of this Motion. I believe that when hon. Ken Obura came with the Motion, there was a reason to it. There have been some allegations outside there that the causes of the deaths of prominent people might have been caused by some people or other means. I suggest that we continue so that we can know the truth on what killed them.

The Temporary Deputy Speaker (Hon. Cheboi): I know there is a lot of interest in this particular one and also my eyes tell me that probably, hon. Obura is not too far from the premises of this House. Well, not that it is particularly important because----- Leader of the Majority Party, the Floor is yours.

Hon. A.B. Duale: I am sure even if he is not very far, he must be following the proceedings of Parliament in his car. However, I support the adjournment of this debate as provided for in Standing Order No. 96. Standing Order No. 96 (3) can even give you more powers as the Speaker to even decline it based on the reasons given by Members. I want to take this House down the memory lane. In the 9th Parliament which I did not serve but hon. Amina Abdalla and many others had the privilege to serve, there was a man called Gor Sungu. He brought a similar Motion - a select committee to investigate the death of the former Foreign Minister, hon. (Dr.) Robert Ouko. It was also a very hot business to deal with. Hon. Paul Muite and many others were Members.

The Temporary Deputy Speaker (Hon. Cheboi): Are you implying that hon. Gor Sungu who also came from the Constituency of hon---

Hon. A.B. Duale: No! I have not come to that. Today, you are really debating with us. Hon. Gor Sungu went on with that issue but later, and I want to confirm this, a Senior Counsel whom I think was Mr. Oraro, took him to court for defamation. That is because it was done within the precincts of the last Parliament. The Parliamentary Service Commission in the then 10th Parliament had to pay the damage cost on behalf of Gor Sungu. I remember the joke was: When he would land in Kisumu Airport, people would ask "Is it hon. Sungu or hon. Tuju?" because hon. Tuju also had his own issues in the then Parliament.

I totally agree with the Standing Order which says if the Speaker is of the opinion that the dilatory Motion is an abuse of the proceedings of the House, the Speaker may forthwith put the Question which we are going to do. I want to further ask you, please, decline in your own wisdom. Decline to even propose it because, in my opinion, it is an abuse of the proceedings of the House. This is a family matter. Whether I die through an accident or many other things is none of your business. However, the decision is yours. You can either propose the Question or not. Hon. Ken Obura should do what he promised the House Business Committee last night. He should be honest to himself, walk to the Chamber and when we reach Order No. 11, he be given the microphone to withdraw. Why should he take us through all these matters?

I support the Motion.

The Temporary Deputy Speaker (Hon. Cheboi): Even as you support the Motion, this is something we need to be clear on. The dilatory Motion which we are debating is not the Motion by hon. Obura. The Leader of the Majority Party should be looking at part (4) and maybe that would even be more relevant to this particular one and not the other one you have stated. I am tempted to give the last person and then put the Question. I am sure hon. Kajwang' is particularly interested in this one, though he had spoken. Probably, you will have it for just a minute and then we can sort it out.

Hon. Kajwang': Thank you, hon. Speaker. I spoke before this Motion came to the National Assembly. Now it is here. I just want to express myself for the HANSARD. Looking at this Motion, there are a lot of things. However, the second part reads as follows:-

“---; cognizant of the fact that national leaders and their families form an integral part of national-being that builds and helps in forging unity;”

It means that this Motion is predicated upon the acceptance and appreciation of the family. The family is an integral part of the reasons that will be advanced either in the Motion or in the subsequent resolution of the House. I have said that, as a family, the Member did not consult any of us to let us know that this Motion will be coming. It is the right of every Member to bring any Motion that he or she feels is of national importance. However, when you have an issue which arises out of a personal matter such as this--- Now, we are not dealing with the substance of the issues around the Motion. We are particularly discussing the procedure by which a Member can, therefore, place a Motion before the House. To neglect the views of the family is very provocative and insensitive. It is actually very insulting to the family to think that someone may have the wherewithal or the best opinion on how to deal with a matter that can be dealt with elsewhere.

Without putting a lot of emotions into this issue, although we have the right to bring any Motion as Members of Parliament, we cannot use the Floor of this House to be popular. You cannot take a subject which you think will make headlines and bring it on the Floor of the House just because you want to be popular with your people, or you want to change the colour and character of what people think about you. What concerns me more is that I am not only a member of this family, but I am also an elected Member and part of this National Assembly. Even if this Member would have avoided everybody else, it would be courteous to come and talk to me as the Member for Ruaraka and say: “This issue is coming up in the House. As a colleague, I want to tell you that I have interest to raise it.” The fact that the Member has not talked to me means that I mean nothing to him. It is very provocative to me as the Member for Ruaraka. So, if we proceed with this issue the way it is going, it may not augur well with the mutual respect and coordination that we should have as Members of the National Assembly.

I, therefore, support the Motion by hon. Jakoyo Midiwo.

The Temporary Deputy Speaker (Hon. Cheboi): I think that will be it, hon. Members. I will, therefore, put the Question.

(Question, that the Motion be adjourned, put and agreed to)

(Debate on the Motion was adjourned)

COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)**[The Temporary Deputy Speaker
(Hon. Cheboi) left the Chair]*

IN THE COMMITTEE

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

THE CHILDREN (AMENDMENT) BILL

(Loud consultations)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, this is the Committee of the whole House to consider the Children (Amendment) Bill, (National Assembly Bill No. 18 of 2014). We will be considering two Bills in the Session. We will also be considering the Climate Change Bill, (National Assembly Bill No. 1 of 2014). However, we will begin with the Children (Amendment) Bill.

Put a little attention to this because it is important. There are two Members who have proposed amendments. The first one is the Chairperson of the Departmental Committee on Labour and Social Welfare and the second one is the Member for Matungulu. I would like to start with the proposed amendments by the Member for Matungulu because he proposes to delete the clauses of that Bill. The effect of those proposals would be to completely delete the entire Bill. If the entire Bill is deleted there will, therefore, be nothing to add a new clause to. So, that is why we want to start with the ones which intend to delete the whole Bill before we go to the one which seeks to insert a new clause. So, that is the reason why we begin with the amendments proposed by the Member for Matungulu.

All right. We shall now begin.

Clause 2

Member for Matungulu, I can see you have an amendment to this clause.

Hon. Mule: Thank you very much, hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 2 of the Bill be deleted.

First and foremost, we need to know the genesis of why we need to amend the Children Act. My concerns are very specific. The simple reason is how the rights of a child need to be respected as enshrined in our Constitution. Article 53(1)(e) clearly says that:-

“Every child has the right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not.”

It goes on---

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Matungulu, are you referring to Article 53 of the Constitution or Section 53 of the Act?

Hon. Mule: I am referring to the Constitution.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay. Just allow me to be with you on the Constitution. Yes, Article 53. Thank you. You may proceed.

Hon. Mule: These are fundamental rights which have been given to the voiceless child through our Constitution. Where the children cannot speak for themselves, the Constitution speaks for them. The Constitution goes further and guides us on how to deal with this issue of the child. Article 53(2) clearly says that:-

“A child’s best interests are of paramount importance in every matter concerning the child.”

The drafters of the Constitution had very clear minds when they included the interests of the child in Article 53(2). That is because of where Kenya belongs and the international treaties Kenya has signed. The UN Convention on the Rights of the Child is very clear that in case of any issues, the best interest of the child will be determined by the proceedings through a due judicial process.

The UN Charter is very clear that the best interest of the child remains with the mother until the child is over 18 years. That makes us think why we have to deal with issues which the courts are mandated to deal with. For instance, where there is abuse of the child by the mother, then the father can go to court. Where there is abuse of the child by the father, the mother can go to court and secure the best interest of the child. The Member is trying to get the best interest of the child from where it has been placed internationally, and put it into the Act to make sure that the child is protected.

I am coming from a human rights perspective whereby the child is voiceless and has no defender. The defender of the child is the Constitution and the United Nations Charter. Despite anything else, let us do justice to the voiceless; and the voiceless in this case is the child. So, I propose that we delete Clauses 2, 3, 4---

The Temporary Deputy Chairman (Hon. Kajwang’): Order! I allowed you to talk a little elaborately because I saw you were proposing to delete all these clauses. You should have concerned yourself with Clause 2 because that is what we are considering at the moment. That, notwithstanding, you have given good information.

(Question of the amendment proposed)

So that I can know how we are going on here or, maybe, this is how you have chosen to go, I have requests and interventions here. I take it that the requests are the order that you are requesting to speak about this amendment. The Leader of the Majority Party, I will give you a chance, definitely. You are on a point of order. Yes, the Leader of the Majority Party on a point of order.

Hon. A.B. Duale: On a point of order, hon. Temporary Deputy Chairman. I need you to give direction based on what hon. Mule has said. Going by Article 53(e) of the Constitution, this Bill in Clauses 2 and 3 is trying to amend the Constitution.

Hon. Members: No! No!

Hon. A.B. Duale: If you could protect me, hon. Temporary Deputy Chairman. Hon. Kang'ata is behind me. I want to go on record that, first and foremost, let us declare our interest. We must declare our interest. We are not in the House to make laws to fix our domestic problems.

The Temporary Deputy Chairman (Hon. Kajwang'): Well spoken, I hear you.

Hon. A.B. Duale: In view of Article 53(e) and Clauses 2 and 3, we need you to give direction before we even move further. Being a Member of the Justice and Legal Affairs Committee, you can give us direction. You should ask us whether we are trying to amend Article 53(e) of the Constitution by repealing Clauses 2 and 3.

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

Hon. A.B. Duale: Let me finish. The powers of the child are protected in that Sub-article (e), whether there was marriage or no marriage. I want hon. Kaluma to hear.

The Temporary Deputy Chairman (Hon. Kajwang'): That is okay, the Leader of the Majority Party. Just a minute! Can we go by some order? That is a valid point of order. Let us process that point of order and dispose of it. I have heard representation from the Leader of the Majority Party on the issue of whether the Chair can give directions as to whether Clause 2(3) is in conflict with Article 53(1)(e). I will take one representation from this side and another one from the other side. Then I will give direction on the clause. Member for Ugenya, you have the Floor.

Hon. Ochieng': Thank you, hon. Temporary Deputy Chairman. This is not a small matter and we need to avoid anything to do with going personal on this. Article 53 is very clear. If you read it in totality, all the things that hon. Mule has talked about are there in black and white. If you look at that same Article 53(2), it is very clear on what the courts will do. The courts will be required to ensure that a child's best interests are of paramount importance in every matter concerning the child. So, you cannot purport to say that if you do what hon. Kaluma is trying to do, you will not take care of the child's best interest. It is already in black and white. The import of hon. Kaluma's proposal is that---

The Temporary Deputy Chairman (Hon. Kajwang'): No! No! Order! Order! I just want you to respond directly to what the Leader of the Majority Party has said as to whether Article 53 is unconstitutional or not. That is if we go back to what the Member for Matungulu is saying.

Hon. Ochieng': It cannot be unconstitutional because in that particular amendment, we are trying to take care of a child who has, for a long time in Kenya, been forgotten. This is the child that is born out of wedlock before the parents get married.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Member for Kiharu, you want to speak to the Motion on deletion. So, I will ask you to speak. I want to recognise the Member for Kipipiri on the constitutionality or otherwise of the clauses. I have seen your request, but it is on the main Motion, which I will come to.

Member for Kipipiri.

Hon. Gichigi: Hon. Temporary Deputy Chairman, on this one, I wish to take a different position from the Leader of the Majority Party. I probably may not be very happy with what hon. Kaluma is doing, but he is trying to align the Act with the Constitution. The Act is creating two levels of responsibility. It is removing the initial responsibility from the father and giving it to the mother. Section 24 of the Act that Clause 2 seeks to delete and replace is actually the one that is unconstitutional. What the Leader of the Majority Party has said is completely opposite of the situation.

The Temporary Deputy Chairman (Hon. Kajwang’): That is very helpful. Member for Nairobi County.

Hon. (Ms.) Shebesh: Thank you, hon. Temporary Deputy Chairman. The issue of unconstitutionality is a very sensitive discussion. I would request that we understand the import of what hon. Mule wants to do *vis-a-vis* what hon. Kaluma wants to do. You need to guide the House because, as I speak, apart from the lawyers who can, maybe, quickly catch what is at stake here, we need to honestly understand. So, once you have listened to both sides, I would urge you to give your position on the import of the amendment. For example, what would the deletion mean to hon. Kaluma’s amendment?

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. This is very easy.

Hon. Oyugi: On a point of order, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ndhiwa, you cannot have a point of order on a point of order. There is already a point of order that we are dealing with. Can we dispose of this one first?

This is an issue that we can easily dispose of. First of all, we are in Committee of the whole House. It means that this Bill has been processed through the normal conveyor belt in the House. It has gone through pre-publication and scrutiny. Therefore, questions of constitutionality, or otherwise, have been carefully and meticulously handled. It then came to this House for First Reading and Second Reading and was debated extensively. Hon. Members made their views on pros and cons known. We are now in the Committee of the whole House to simply clean up the language and the text of the Bill.

However, as to whether it is unconstitutional, I agree with the Member for Kipipiri that what the Bill seeks to do should conform to the Constitution. Article 53 (1) (e) of the Constitution states:-

“53(1)(e) Every child has a right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not.”

You also consider Clause 2 (3) of the Bill, which says:

“2(3) Where a child’s father and mother were not married to each other at the time of the child’s birth and have not subsequently married each other, they shall have parental responsibility of the child and neither the father nor the mother of the child shall have a superior right to claim against the other in exercise of such responsibility”.

Therefore, the phrase “and neither the father nor the mother” is a clarification of the position at law. The position of the Constitution is clear and unambiguous. You remember that the parent Act does not come out as clearly as in the proposed clause.

On the issue that the Leader of Majority Party rose to request direction on, I hereby order that the Bill is not unconstitutional.

Going back to the debate of the Bill, the Member for Nairobi has asked a very practical question. Let us not be clever on this one. Let us just be clear, so that the nation understands what we are doing.

I want to give the opportunity to hon. Kaluma, not to prosecute the Bill, because this is a deletion proposed by your colleague. In a few sentences, put this thing very clearly to hon. Members. Do not do it in legal terms. Just use English that is understood by everybody. We have fathers and mothers here. They want to understand what your Bill would do if it were to succeed. Could you please go to your seat? I will be able to give you the microphone easily. Take any seat. I should be able to give you the mike. You do not have a card, do you?

Hon. Kaluma: I have a card but it is not working.

The Temporary Deputy Chairman (Hon. Kajwang’): I will give you the microphone. Talk in very few words. We are not debating this Bill at all. You remember that we have gone through the debate on this Bill.

Hon. Kaluma: Thank you, hon. Temporary Deputy Chairman. It is unfortunate that hon. Mule did not consult me before the proposed deletion of my amendments.

Hon. Temporary Deputy Chairman, you have spoken to the matter I needed to clarify to the nation which, indeed, I did through the previous stages. Article 50(1)(e) of the Constitution speaks to how a child should be taken care of. The most important thing is that it matters not whether the parents of that child are married. It matters not and they should be treated equally. The good thing about this Bill is that in our practice, the proposed amendments to a Bill are published.

I would like to refer hon. Members to page 2237 of the Bill, in terms of how the Children Act seeks to treat those constitutional provisions. I would like hon. Members to look at the current Section 24 (2), so that we can have a quick concession on this important matter. The provisions relating to children born within a marriage are there. If you go to Section 24(3), those are the provisions relating to children born out of marriage. Do you see any difference? What I have done is to pick word for word the provisions for children born within marriage and given them to children born out of marriage. It is word for word, in the manner the Constitution prescribes.

I am saying that you have the duty to provide for your children in the same manner. Children are vulnerable persons, whether or not their parents are married. That is what the Bill is seeking to provide for.

The Temporary Deputy Chairman (Hon. Kajwang’): All right, that is very clear. Can we now have the Member for Kiharu? You do not have to raise your hands, hon. Members. Once you have pressed the request button, I am able to see you.

Hon. Kang’ata: Hon. Temporary Deputy Chairman, I am going to express the effect of hon. Kaluma’s proposal, which I support 100 per cent, in very plain language.

Before the enactment of the new Constitution, people used to rely on the Children Act to vindicate the rights of children. If a child was born out of wedlock, that child tended to be disadvantaged. The person who was escaping liability was somehow favoured. Why? The first thing the court would ask you was, “Were you two people married or had you cohabitated for more than one year?” If a child was born and there

was no marriage or cohabitation for one year, then it was easy for the person who had fathered that child to escape liability on the basis of provisions which exist in the Children Act.

With the enactment of the new Constitution, that changed. Article 53 says that whether the child is born in a marriage, cohabitation or not, they have equal rights. However, the Children Act has not changed. Once we effect these provisions, what will be the practical effect? It will mean that children who are born out of marriage will get equal recognition in law as those children born in a marriage. It will mean that as a man or woman, you are going to be obligated to support your child in an equal manner. The ultimate beneficiary of the amendment is the child who is sired outside marriage. As people with good heart for our children, we should want such kind of a situation.

The final aspect, which is very crucial, is that there were provisions in the Children Act under which, for instance, as a man, you had a child outside marriage, but you felt you had the financial capability to maintain that child better than the mother. We have situations where a woman gets a child and does not have financial resources to take care of that child, but the man has that capability. They would hide under the law to ensure that you do not access that child. This is going to change and we will have equal access to such child.

I support.

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

Member for Ndhiwa, do you still think that something is out of order? You should begin by quoting the relevant Standing Order. I want to treat you very strictly on this one.

Hon. Oyugi: Hon. Temporary Deputy Chairman, I just wanted to rise---

The Temporary Deputy Chairman (Hon. Kajwang’): First of all, quote the Standing Order on the basis of which you are raising the point of order.

Hon. Oyugi: Hon. Temporary Deputy Speaker, I am rising on the issues that the Member for Kiharu talked about, which, for me, have constitutional implications.

The Temporary Deputy Chairman (Hon. Kajwang’): Order, Member for Ndhiwa! Chairpersons have been criticised for not enforcing the Standing Orders. We came out from the retreat with one resolve – enforcing the Standing Orders. We begin by asking you to quote the Standing Order, which is the premise on which you raise a point of order. Start there.

Hon. Oyugi: Thank you very much, hon. Temporary Deputy Chairman. I am still trying to find the relevant Standing Order on which I have risen. I am requesting you to understand.

I am trying to find the relevant Standing Order. It is with regard to the issues that the hon. Member for Kiharu has raised, and which I believe have a constitutional implication.

Hon. Temporary Deputy Chairman, I will appreciate if you guide me on that.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay. Kindly proceed but after you are through, let me know which Standing Order you are standing on.

Hon. Oyugi: Thank you for your indulgence, hon. Temporary Deputy Chairman.

I am rising with regard to what the hon. Member for Kiharu says in his agreement with hon. Kaluma. My understanding of Article 53 of the Constitution is that it ought to

be read *ejusdem generis*; Article 53 (1) and (2) should be read together. You cannot read one section and then not---

The Temporary Deputy Chairman (Hon. Kajwang): Order. I respect your train of logic in your argument, but you are on a point of order. You should begin by saying what is out of order in the Assembly.

Hon. Oyugi: Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang): You seem to be contributing to the debate. If you are contributing to the debate, just hold your guns. I am going to give you the chance. But on the point of order, you should just tell us: "Hon. Temporary Deputy Chairman Sir, I rise on a point of order and I think so and so is consulting in loud tones."

Hon. Oyugi: On a point order, hon. Temporary Deputy Chairman. Is the Member for Kiharu in order to tell the House that Section 24 of the Children Act, as it is now, is not in tandem with Article 53 (1) and (2) of the Constitution?

The Temporary Deputy Chairman (Hon. Kajwang): Well, I want to rule you out of order. I will come back to you and give you time to contribute. Your logic is substance for a contribution. I do not think the hon. Member is misleading the House by reading a section of a law. Your point of order is: Is the hon. Member misleading the House? I do not think so. I think he is interpreting the law and the Constitution in his own way. That cannot be misleading the House and I, therefore, rule you out of order for the time being.

Who had the microphone? They had just finished and I was on my right hand side? I will have only two people and I put the Question. It is not an issue that should take us much time.

Member for Narok, I want to listen to the female voice in the debate. It is a request on this issue of the amendment by Member for Matungulu.

Member for Ndhiwa, prepare yourself because I am coming to you after hon. Tuya.

Hon. (Ms.) Tuya: Thank you, hon. Temporary Deputy Chairman. I believe we are still trying to clarify the issue.

The Temporary Deputy Chairman (Hon. Kajwang): You are contributing as to whether you support the deletion as proposed by Member for Matungulu or you oppose it.

Hon. (Ms.) Tuya: Hon. Temporary Deputy Chairman, I stand to oppose the proposal to delete clauses 2, 3, 4 and 5 of the Bill as proposed by hon. Kaluma. You will realise that what we are speaking to is a constitutional issue and the Constitution is very clear. I wish to allay fears. We might be having a mix-up, and thinking when we talk about parental responsibility we are talking about custody of the child. These are two different things.

When it comes to custody of the child, the law is very clear. It has to go through a legal process where the best interests of the child are given primacy. What hon. Kaluma's amendments intend to do is to align the Children Act with the Constitution, and also make sure that the prevalence of irresponsibility - I do not want to say that irresponsibility is with any one parent - when it comes to care of children is a thing of the past.

On that basis, I oppose the amendments proposed by hon. Mule. Maybe the challenge we are having here is the Mover of the amendment. We should forget what we know about hon. Kaluma and the very serious issue of parental responsibility, which we want to align with our Constitution.

Thank you, hon. Temporary Deputy Chairman.

(Laughter)

Hon. Member: Kalumaa!

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Kaluma, take that with a pinch of salt.

(Hon. Kaluma stood up in his place)

I am sure that the venerable lady is not imputing improper motive on hon. Kaluma.

Member for Ndhiwa, can you prosecute your presentation to support or oppose the amendment.

Hon. Oyugi: Thank you, hon. Temporary Deputy Chairman. I regret that the last time you caught me flat-footed. I would like to support hon. Mule’s amendments. I have agonised over this issue for a long time due to several reasons.

I respect what the hon. Member for Narok has said on this particular Bill. But as I stated before, Article 53 of the Constitution speaks to two parts. My understanding of the Constitution is that you cannot read it in isolation. There are two parts; the first part highlights what is said in Article 53(e), that parental care and protection is from either mother or father. Article 53(2) is the most important, it speaks to the best interests principle of the child. This is what Section 25 of the Children Act also speaks to, the best interests principle. Whatever you do in Article 53 (1) of the Constitution is okay but Article 53 (2) requests you to be doing it in the best interests of the child.

What is the best interest principle? The best interest principle is simply saying three things: If you have a child out of wedlock, what is the best interests principle? There could be instances where the father and mother are not in agreement. Who then is best placed to determine that best interests principle?

*(The Temporary Deputy Speaker
held his microphone)*

Hon. Temporary Deputy Speaker, are you hoping to intervene?

The Temporary Deputy Chairman (Hon. Kajwang’): No. Just finish your contribution.

Hon. Oyugi: I saw you hold the microphone and wondered whether I was going to be interrupted.

The Temporary Deputy Chairman (hon. Kajwang): Just finish your contribution.

Hon. Oyugi: Hon. Temporary Deputy Chairman, there are two things I want to distinguish: Article 53(1) of the Constitution is very clear. It sets the parameters under

which any person, for example, has parental protection and care, and that is in order. That is in order in terms of what hon. Kaluma is seeking to achieve, but Article 53 (2) is the rider. It tries to give clarification on how then you execute Article 53 (1). That is on the basis of the best interests principle. That is the effect Section 24 of the Children Act, which he proposes to amend or delete, will have. It is simply saying---

The Temporary Deputy Chairman (Hon. Kajwang'): All right. I think we are having too many lawyers in this Chamber. Can I listen to an independent mind? Hon. Member for Cherangany?

Hon. Korir: You are now listening to the mind of a runner and not a lawyer.

(Laughter)

I really oppose what *mheshimiwa* is trying to do by deleting Clause 2 and support what hon. Kaluma is doing. What Kaluma is doing, as we have said, is to align the Act to the new Constitution. When you look at the old Constitution, it gives one parent superiority over the child. It says that the mother has a more superior chance of taking care of the child than the father. That is what the earlier law says, but it contradicts the new Constitution, which gives equal responsibility to both parents, whether they are married or not.

The Temporary Deputy Chairman (Hon. Kajwang'): Well spoken; thank you. Member for Rarieda, you are the last on this.

Hon. Ochieng: You either oppose or---

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, protect me from the Member for Ugenya.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Kajwang'): Just a minute. That children caucus, just slow down!

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, with all due respect, I also rise to oppose the proposed amendments by the hon. Member for Matungulu.

The amendment by hon. Kaluma is a very good amendment, because those of us who do not have a legal background, what it simply means is that we are sharing parental responsibility. It could not have been said better than what the hon. Member for Narok said, that we are not talking about custody here. We are talking about responsibility and he has done it well. Maybe what we should do as we debate this matter is to be dispassionate about what we know about some people. It is like some of us are guilty as charged; so, what you bring, even if the intention is good, it tends to be clouded in what people perceive your background to be.

I oppose.

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

(Clause 2 agreed to)

Clause 3

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Mule, you realise that you have prosecuted the entire thing; so you should not take too long on this now. Let us go on.

Hon. Members: Withdraw!

Hon. Mule: Hon. Temporary Deputy Chairman, I beg to move:-
THAT Clause 3 of the Bill be deleted.

Basically what hon. Kaluma is not alluding to in this House - we might not have had enough consultation on this issue--- We need to separate two issues, the best interests of the child and the issue of the custody of the child. What it alludes to is very clear. It is that we are looking at the entire issue of the custody of the child. I will still---

The Temporary Deputy Chairman (hon. Kajwang'): Are you relevant to Clause 3?

Hon. Mule: Clause 3 is about where the principal Act is amended to repeal Section 25 of No. 8 of 2001. It is very clear that where a child's father and mother were not married to each other at the time of the child's birth, and have not subsequently married each other—

(a) the mother shall have parental responsibility at the first instance;

(b) the father shall subsequently acquire parental responsibility for the child in accordance with the provisions of section 25. That is Section 3. That is how the Act is. So if we repeal that, what are we trying to say?

Hon. Members: Equal!

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

(Question of amendment proposed)

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

(Clause 3 agreed to)

Clause 4

The Temporary Deputy Chairman (Hon. Kajwang'): Mover, we are on Clause 4.

Hon. Members: Withdraw!

Hon. Mule: Hon. Temporary Deputy Chairman, I beg to move:-
That Clause 4 of the Bill be deleted.
Due to the scenarios in the House---

(Laughter)

As much as I would wish to prosecute this issue, there is something we are doing and I believe that we are legislators. We will have an opportunity to revisit these issues after six months. We will definitely have to come here and revisit it, so that we can be very clear on what will be happening. I still insist---

The Temporary Deputy Chairman (hon. Kajwang'): Hon. Member for Matungulu, I am sorry. Hon. Member for Seme took my ear on this. Just say it again.

Hon. Mule: Hon. Temporary Deputy Chairman, what I am trying to say is this: It is a bit unfortunate that we, as a House, are doing something which is fundamentally wrong internationally and locally. What we need to do--- I have said very clearly that we are legislators and we will have the opportunity to revisit this issue---

The Temporary Deputy Chairman (Hon. Kajwang'): You remember you are moving your amendment.

Hon. Mule: Hon. Temporary Deputy Chairman, that is why I am saying that if you look at Section 4 of the Act it, it says that more than one person may have parental responsibility for the same child at the same time.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Member for Matungulu, you are on Clause 4. Hon. Kaluma had proposed that the principal Act be amended by repealing Section 26. If you go to Section 26 it says that there is an agreement which will have affect on the form prescribed by the Chief Justice and so on.

Hon. Mule: Hon. Temporary Deputy Chairman, why I did not want to repeal this Section is very clear. We are trying to take powers away from the courts to determine the responsibilities and placing them within the Act. What it means is that the best interests principle of the child - I still stand by that - is very clear. It is at the time of conflict that hon. Kang'ata and any other lawyer will go and represent that voiceless child before a court.

(Question of amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Member for Seme is on a point of order. Remember to quote your Standing Order that you rise on and in one sentence say what is out of order.

Hon. (Prof.) Nyikal: On a point of order, hon. Temporary Deputy Chairman. I seek guidance and I do not know which Standing Order this is under.

(Laughter)

But I do not think that will stop me from seeking guidance, because a major thing is happening in this House today for children, and there is something that, to me, is not clear. The Hon. Member for Narok tried to bring it out; none of these lawyers has brought to my understanding, and to the understanding of many other non-lawyers here, the difference between "custody: and "responsibility". Let me say why I am saying that. I have been reluctant to say it. They had said you go to Clause 25. I tried to go through Clause 25 with my non-lawyer knowledge, and I did not see where custody is talked

about. My fear is this, and that is why I want explanations. Every hon. Member has a right to seek guidance. My fear is this---

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

Hon. (Prof.) Nyikal: You have not heard me. You have not heard my fear.

The Temporary Deputy Chairman (Hon. Kajwang’): I have heard your point of order.

Hon. (Prof.) Nyikal: My fear is this---

The Temporary Deputy Chairman (Hon. Kajwang’): Is your fear part of a point of order?

Hon. (Prof.) Nyikal: If the two are the same, then we see a situation where a father is going to insist that he has equal responsibility; he will then take a one or two-day old baby in his custody. What I know as a paediatrician is that if you separate a child from the mother, they will have the highest chance of dying regardless of what is around them. That is why it is important that, as you are passing this law---

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much; will you resume your seat?

Hon. (Prof.) Nyikal: Let me tell you---

The Temporary Deputy Chairman (Hon. Kajwang’): No! Resume your seat now. We have understood you, paediatrician. Hon. Member for Oljorok, will you rise and explain the difference between custody and responsibility in clear terms and which are not legalistic?

Hon. Waiganjo: Hon. Temporary Deputy Chairman, custody is the actual possession and control of the child. Responsibility is giving parental care like clothes and monetary support to the child. Custody is the actual control and ownership of the child---

The Temporary Deputy Chairman (Hon. Kajwang’): It cannot get clearer than that. Thank you very much hon. Member for Oljorok. It is very clear now in the paediatrician’s mind, I hope.

Hon. Member for Nyamira, you are now rising to contribute on whether you support the amendment proposed by hon. Member for Matungulu or you oppose it. That is where you are now.

Hon. (Ms.) Chae: I support the amendment that has been proposed by hon. Mule. Marriage is an institution that I and my partner agree to get into. Once we have entered that institution then we cannot delegate responsibilities thereof. It is automatic and moral. It is a moral right that the child has to be taken care of by both of us. I want us, as a House, to think of a situation where--- You know marriage is not a bed of roses.

The Temporary Deputy Chairman (Hon. Kajwang’): I am having a problem, Member for Nyamira. There is something out of order. You are being irrelevant, I think. Now, let me help you. Resume your seat. I am going to help you and give you the microphone again. This is also a learning process.

We are considering the amendment proposed. The Member for Matungulu is proposing to amend Clause 4 which simply talks about--- Please, see the parent Act, which is Section 2 (3) (8). There is something called “parent responsibility agreement”. That is where we are. Should there be an agreement, or not, according to the rules proposed by the Chief Justice? Do not now go outside and discuss things which we have

already finished; talk about this parental responsibility agreement. That is where we are. I want you to be very relevant. I will give you one more minute just to be where we are.

Hon. (Ms.) Chae: Hon. Temporary Deputy Chairman, if you allow me, I am going to confine myself to that. However, remember I really wanted to stand up before, but you did not see me.

The Temporary Deputy Chairman (Hon. Kajwang’): That is how the eyes of the Chair work, anyway.

Hon. (Ms.) Chae: If you listen to me as a mother, you will see where I am coming from and where we are going. They are following each other from Clauses 2, 3 and 4 going down. After all these have been passed and then you tell me to confine myself to Clause 4, and then I will not be relevant. I have to state what I was saying.

With regard to parental responsibility, why are we opening a way for people to separate or divorce, and then be signing agreements? When I accept to marry you and then we have kids, it is automatic that we need to take care of the interests of our child.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. Member for Matungu.

Hon. Were: Hon. Temporary Deputy Chairman, I oppose the amendment brought by hon. Mule. As a Committee, we did our report and agreed with the amendments brought by hon. Kaluma. If you look at Clause 26, it talks of agreements. Also, the Constitution is very clear. It already states very clearly that the responsibility is equally shared. So, I do not know what agreements we are going to enter into. The Constitution, renders this Section 26 null and void. So, I oppose what hon. Mule is proposing.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Magarini.

Hon. Kombe: Asante, Bw. Naibu Mwenyekiti wa Muda. Nasimama kupinga hayo mabadiliko kwa sababu Katiba imetupatia uwezo sawa kumsimamia mtoto. Tukimzaa mtoto halafu tuhitilafiane, au tuzae mtoto nje ya ndoa, kisha tuhitilafiane, mimi naona hayo ni masuala ya kuandikishiana tena upya kiasi cha kwamba yule bwana ndiye atakayelemewa na mzigo, kwa sababu tayari mama yuko na mtoto. Ni lazima sasa baba amhakikishie mtoto elimu, chakula, nguo na mahali pa kulala. Katiba, ingawa hivyo, imetupatia uwezo sawa, kwamba sote tumsimamie mtoto maanake ni sisi tuliofanya bidii mpaka tukamleta duniani. Asante.

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

(Clause 4 agreed to)

Clause 5

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

THAT, Clause 5 of the Bill be deleted.

This last one is for amending Section 27 of the same Act, where hon. Kaluma is proposing to delete the following words: “---if he has acquired parental responsibility upon the provision of this Act appearing in (a)---”

If you look at it keenly, Section 27 of the main Act amounts to changing the entire Act and it is the same thing he is trying to do at (b). So, my proposal is that we leave the Act the way it was originally to make sure that we have, at least, a clear guidance on how to deal with this issue. As I said, Members of Parliament are people who have at heart the welfare of children. We will re-visit this issue after six months, and will definitely come up with very clear guidelines to make sure that what is being done here is annulled.

(Question of the amendment proposed)

Hon. Gichigi: Thank you, hon. Temporary Deputy Chairman. It is important that my colleague here understands that the moment we reject his amendment, the one that was going to give a chance to people to sit down together and contract out of a constitutional responsibility--- The particular section that hon. Kaluma is trying to amend must be amended. The one we have rejected was giving the two a chance to contract or agree.

The clause we are now dealing with is talking about that agreement. If we remove the chance to agree, then, we must, in the subsequent clauses also remove that particular clause. I want Members here to read Section 83 of the Children Act, which deals with issues of custody. It says that the court will look at the interests of the child before it can give custody to either parent. Do not worry about that. I may not like hon. Kaluma's Bill, but it actually aligns the law with the Constitution. We must reject your proposed amendment, hon. Mule.

The Temporary Deputy Chairman (Hon. Kajwang'): That is All right.

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

(Clause 5 agreed to)

New Clause 5A

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 5-

Amendment of section 81 of

No.8 of 2001

5A. The principal Act is amended in section 83(1) by—

(a) inserting the following new paragraph immediately after paragraph (j)—

“(j) the age of the child.”

Hon. (Prof.) Nyikal had fears as a paediatrician. Looking at the custody and maintenance of a child, the age of the child should be taken into consideration. That is the import of this amendment.

(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. Kajwang'): Is the Member of Parliament for Seme Constituency in the Chamber? Can you just get to that microphone and speak from there? You will have the first intervention. This must be very agonising. It is like a lady who is in the operation room, as far as hon. (Prof.) Nyikal is concerned.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I have sought a lot of information and education in the meantime and I find that my fears have been allayed by about 50 per cent. What has come out is that there is a gap that we need to fill in the law. In the case law under the section dealing with child custody, there is nothing that specifically says that at a certain age, the child should preferably be with the mother, unless the mother is unable to take care of the child. My fear is that there could be a possibility that somebody will argue that since we have equal responsibility, I want the child of one day of age. However, I have been assured that in case law, it will not happen and it will be done under the custody law. With that, I am happy until I get more information, in which case I may come back with an amendment. This is something that I am going to do research on.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. (Prof.) Nyikal, while you are still at the microphone, the Constitution itself is very clear. Do not even go to legislation. The Constitution is self-executionary in respect of this. It says that every child has a right over all those things you have said. In sub-section (2) it says that a child's best interests are of paramount importance in every matter concerning the child. In questions of custody or responsibility, where the court of law has to rule on who has custody, the court of law will be guided and cannot go away from the best interests of the child. The Constitution says so. Hon. (Prof.) Nyikal, I know that as a paediatrician you may think that mothers, when they have custody, will invariably look after the best interests of the child, which is true in many cases. However, you can also have a mother, who, for some very good reasons, may not undertake that custody and a guardian, not even the father of the child, like you as a paediatrician, may have the custody of a child in line with the best interests of the child.

Hon. (Prof.) Nyikal: That has happened to me. A court has brought a child, who is less than six months old to my house. I have been persuaded by that part of the Constitution, but I know that the Constitution is man-made. I still think that we need a statute to address this. I do not think it is what we are discussing now. Let us leave it at that.

The Temporary Deputy Chairman (Hon. Kajwang'): The law cannot be stronger than the Constitution. It is the other way round. The Constitution is stronger than the law.

Hon. (Prof.) Nyikal: We may need to amend it. Let us leave that for now.

The Temporary Deputy Chairman (Hon. Kajwang'): And take it to a referendum.

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

(The new clause was read a Second Time)

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

(Clause 1 agreed to)

(Title agreed to)

That is the end of the Children (Amendment) Bill, National Assembly Bill No.18 of 2014. Let us step onto the next one. Hon. Kaluma, you know that you have a role to discharge in this House. So, do not expect you to leave the Chamber until we are done.

THE CLIMATE CHANGE BILL

Clause 3

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

THAT, the Bill be amended by deleting clause (3) and substituting therefor the following new clause-

3. (1) This Act shall be applied for the development, management, implementation and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development of Kenya.

(2) Without prejudice to the sub-clause (1), this Act shall be applied in all sectors of the economy by the national and county government to-

- (a) mainstream climate change responses into development planning, decision making and implementation;
- (b) build resilience and enhance adaptive capacity to the impacts of climate change;
- (c) formulate programmes and plans to enhance the resilience and adaptive capacity of human and ecological systems to the impacts of climate change;
- (d) mainstream and reinforce climate change disaster risk reduction into strategies and actions of public and private entities;
- (e) mainstream intergenerational gender equity in all aspects of climate change responses;
- (f) provide incentives and obligations for private sector contribution in achieving low carbon climate resilient development;

- (g) promote low carbon technologies, improve efficiency and reduce emissions intensity by facilitating approaches and uptake of technologies that support low carbon, and climate resilient development;
 - (h) facilitate capacity development for public participation in climate change responses through awareness creation, consultation, representation and access to information;
 - (i) mobilize and transparently manage public and other financial resources for climate change response;
 - (j) provide mechanisms for, and facilitate climate change research and development, training and capacity building;
 - (k) mainstream the principle of sustainable development into the planning for and decision making on climate change response; and
 - (l) integrate climate change into the exercise of powers and functions of all levels of governance, and to enhance cooperative climate change governance between the national government and county governments;
- (3) The rights and duties conferred under this Act are in addition to those conferred by any other law.

The import of this is to give further details on the specific objectives of the Bill and to be in line with the National Climate Change Policy. It is also to recognise that climate change is a cross-cutting issue to be implemented at national and county levels.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda Constituency, are you on a point of order or you want to contribute? Yes, Member for Rarieda

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, much as I agree with the amendment proposed by the Chair of the Departmental Committee, I would have been happier if some of these proposals came out in the regulations. Looking at some of them, like the proposal that says “mobilize and transparently manage public and other financials”; with all due respect to the Committee, a lot of what has been proposed here ought to be a regulation, because in a sense, they cover operational issues – the essence of subsidiary legislation. The primary legislation should normally deal with issues of policy, while subsidiary legislation deals with issues to do with implementation and operationalisation. A lot of this, in my humble view, concern operationalising the Act, which makes the law unnecessarily voluminous, yet some of the issues would be dealt with well if we put them in a subsidiary legislation. Otherwise, they do not do any harm; it is only that I thought it would have been a neater way of making the law, if we approached the matter in that manner.

The Temporary Deputy Chairman (hon. Kajwang’): Thank you. Let us hear the Member for Kitui South.

Hon. (Ms.) R. K. Nyamai: Thank you, hon. Temporary Deputy Chairman. I rise to support the amendment as presented by the Chair of the Departmental Committee.

The purpose of this amendment is mainly to align the existing Act with the Constitution, and be alive to the fact that matters of climate change should be taken care of within the national Government as well as within our counties. The amendment also seeks to align the law with the policy that is already in place.

I beg to 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 3 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Departmental Committee Chair, before we go to Clause 4, you have an amendment to Part II. Are you on page 6 of the Bill?

Hon. (Ms.) Abdalla: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Do I hear that you want to propose an amendment to the title to Part II?

Hon. (Ms.) Abdalla: Yes, hon. Temporary Deputy Chairman.

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

Part II

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

THAT, the Bill be amended in the heading of Part II by deleting the words “ESTABLISHMENT, POWERS AND FUNCTIONS OF THE NATIONAL CLIMATE CHANGE COUNCIL” and substituting therefor the words “POLICY, COORDINATION AND OVERSIGHT”

Hon. Temporary Deputy Chairman, with the amendment to Clause 3, that establishes the council, we want to amend the title of PART II to read “Policy Coordination and Oversight”, so that it is clearer because the functions and powers have already been dealt with under PART III.

(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)*

(Part II as amended agreed to)

Clause 4

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

THAT, Clause 4 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “a” and substituting therefore the words “an unincorporated”;

(b) by deleting sub-clauses (2) and (3) and substituting therefor the following new sub-clauses—

“(2) The Council shall be chaired by the President.

(3) The Cabinet Secretary for the time being responsible for environment and climate change affairs shall be the secretary to the Council.

(4) The directorate established under this Act shall serve as the secretariat to the Council.”

Hon. Temporary Deputy Chairman, this is intended to appreciate the high level support that climate change requires. We are seeking to amend this clause to reflect the same and secure a definition.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for North Horr!

Hon. Chachu: Hon. Temporary Deputy Chairman, I strongly support the amendment. Climate change issues are cross-cutting. They cannot be left to one sector or Ministry. The fact that the President will be chairing the Climate Council is very good for this country. That is the practice in many jurisdictions, where they have climate change law.

*(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 4 as amended agreed to)

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

The Temporary Deputy Chairman (Hon. Kajwang’): What is your point of order, Member for Rarieda?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, with all due respect, I have no intention of taking you back but some of us had a different opinion on the amendment proposed to Clause 4 of the Bill.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Gumbo, we have passed that clause. It is now water under the bridge.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I had pressed my intervention button.

The Temporary Deputy Chairman (Hon. Kajwang’): I saw it as an intervention. I wish I saw it as a request. I thought you were rising on a point of order.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, be it as it may, I wish I could discuss it because I had started something which could help to enrich the Bill but, as you have rightly said, it is water under the bridge.

The Temporary Deputy Chairman (Hon. Kajwang’): Mover, you were about to finish?

Clause 5

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

THAT, the Bill be amended by deleting Clause 5 and substituting therefor the following new clause—

“(5) The Council shall provide an overarching national climate change coordination mechanism and shall—

(a) ensure the mainstreaming of the climate change function by the national and county governments;

(b) approve and oversee implementation of the National Climate Change Action Plan;

(c) advise the national and county governments on legislative, policy and other measures necessary for climate change response and attaining low carbon climate resilient development;

(d) approve a national gender and intergenerational responsive public education and awareness strategy and implementation programme;

(e) provide policy direction on research and training on climate change, including on the collation and dissemination of information relating to climate change to the national and county governments, the public and other stakeholders;

(f) provide guidance on review, amendment and harmonization of sectoral laws and policies in order to achieve the objectives of this Act;

(g) administer the Climate Change Fund established under this Act; and,

(h) set the targets for the regulation of greenhouse gas emissions.

Hon. Temporary Deputy Chairman, the amendment is intended to streamline the functions of the climate change policy to be a policy coordination and oversight.

That is the import of the amendment to Clause 5.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, hon. Mwaura!

Hon. Mwaura: Hon. Temporary Deputy Chairman, I rise to support the amendment because it seeks to ensure that issues of climate change are properly mainstreamed in the functions of both the national Government and the county

governments. Further, it is meant to ensure that such issues do not lie under either the national Government or the county governments. That clarification in law is very critical at this stage.

(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 5 as amended agreed to)

Clause 6

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:- THAT, the Bill be amended by deleting clause 6.

Hon. Temporary Deputy Chairman, with the amendment to Clause 4 that changes the institution from a 'board' to a 'council', it means that the Council is not a body corporate. Therefore, Clause 6 is no longer necessary.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, remember that the amendment is about a deletion.

Yes, Member for Kipipiri! Is he not here? Proceed, hon. Isaac Mwaura.

Hon. Mwaura: Hon. Temporary Deputy Chairman, I rise to oppose the deletion of Clause 6. Even though the Council is going to be chaired by the President, with Cabinet Secretary becoming the Secretary of the Council, it does not mean that Council will not be able to function as an independent entity, even for coordinating purposes.

We have similar bodies existing within our Government structure. They also have Votes, so that they run their operations. where will such a Council be domiciled? Even if the Council is going to be under the Cabinet Office, it has to be fairly independent.

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

Yes, Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, let me say from the outset that, like hon. Mwaura, I stand to oppose the amendment. My sense of the whole thing is that the amendment tends to make the Council rather whimsical by not giving it any functions or powers.

I would have been happier if you had indulged the Chair of the Departmental Committee to tell us the actual import of the deletion. What does it mean to the operation of the Council? It has to operate in some way. If it has to operate in some way, it has to discharge some functions. How is she going to wriggle her way around the domestication of those functions when she deletes these clear provisions?

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much. Let us have the nominated Member, hon. Amina Abdalla, Chair of the relevant Committee.

Hon. (Ms.) Abdalla: Thank you, hon Temporary Deputy Chairman. To give clarification, the initial thought of the Mover was to set up a body corporate with a Chief Executive Officer (CEO) who would run the Council. We felt after long consultations with all the stakeholders that the Council needs to be a body that gives policy direction. The secretariat of that Council must be domiciled in the Ministry responsible for climate change. Therefore, we are forming a secretariat with a director employed under the public service, who is going to be the person responsible for the day to day issues. That means that the Council will not be a body corporate. Because of the restructuring of the entire process there was no need for this Council to remain a body corporate. The issue was, if we made it a body corporate we would have established another parastatal, yet the Jubilee Government has been working towards reducing them by amalgamating the existing ones. To deal with that, we made it part of a secretariat of a Ministry, rather than having a new parastatal set up.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you. Let us have the hon. Member for Kitui South.

Hon. (Ms.) R.K. Nyamai: After the explanation given by the Chair of the relevant Committee, hon. Amina Abdalla, I feel that the best way---. I support the amendment that she has presented. We do not need to have parallel institutions drawing funds from the Exchequer. The best way is to have an institution which is under the Public Service Commission instead of having a Council parallel to the PSC.

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

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

(Clause 6 deleted)

The Temporary Deputy Chairman (Hon. Kajwang): Mover. This is another deletion.

Clause 7

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by deleting Clause 7.

It follows from the deleted Clause 6 that the guiding principles of a board are no longer necessary. It is a Council. Our new Clause 3A will be providing for the principles of the Council.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang): Let us have hon. Isaac Mwaura.

Hon. Mwaura: Thank you. If you look at Section 7 of the Principal Act, you will realise that these are just guiding principles. For example, it speaks about issues of public participation and also speaks to issues of promotion of sustainable development. In my

opinion, the deletion of Clause 6 was very well explained, I find this provision not really in keeping with the establishment of a statutory body. So, it is very important for it to remain so as to guide the operations of the Council in terms of principles of the Constitution.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Let us have the hon. Member of North Horr.

Hon. Ganya: I support the amendment. Unlike many laws that we pass in this House, we have a climate change policy already approved by the Cabinet. This amendment is aligned to the policy that we have as a country; it also appreciates the cross-cutting nature of climate change. For those reasons, I support the amendment as proposed.

*(Question, that the words to be left out
be left out, put and agreed to)
(Clause 7 deleted)*

Clause 8

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

THAT, the Bill be amended by deleting Clause 8 and substituting therefor the following new clause—

8 (1) The Council shall comprise not more than nine members who shall be appointed by the President.

(2) The Council shall be constituted as follows—

(a) the Cabinet Secretary responsible for Environment and Climate Change Affairs;

(b) the Cabinet Secretary responsible for the National Treasury;

(c) the Cabinet Secretary responsible for economic Planning;

(d) the Cabinet Secretary responsible for Energy;

(e) the chairperson of the Council of Governors;

(f) a representative of the private sector;

(g) a representative of the civil society;

(h) a representative of the marginalised community within the meaning on Article 260 of the Constitution; and

(i) a representative of the academia nominated by the Commission for University Education.

(3) A person shall be appointed under subsection (2) (f) (g) and (h), if the person has expertise and experience in matters of climate change, economy, finance, law, environment and public administration.

(4) The names of persons nominated for appointment under subsection (2) (f), (g), (h) and (i) shall be submitted to the National Assembly for approval.

(5) Except for members appointed under clause (1) (a), (b), (c), (d) and (e) each person shall be qualified for appointment as a member of the Council if such person—

(a) is a citizen of Kenya;

(b) fulfils the requirements of Chapter 6 of the Constitution; and

(c) has at least ten years' experience in the relevant field.

(6) The president shall in the appointment of members ensure compliance with the two thirds gender principle.

(7) The Council shall, at its first sitting, ballot to determine which of the members appointed under subsection (1) (f) to (i) shall serve for a two year term to ensure pro rata succession of membership.

(8) The Council may co-opt members with relevant expertise when needed to advise on specific matters.

(9) The Council may from time to time establish committees for the better carrying out of its functions.

(10) The members of the Council shall be paid such allowances as the Salaries and Remuneration Commission may determine.

(11) The Council shall meet at least four times in a year.

(12) Except as provided in sub-clause (7) the membership of the Council shall be for a term of three years and renewable once.

This is because the board has been deleted and instead the provision provides for membership to the Council. This amendment also deals with the nature of the representation from the different levels of Government and other interest groups.

Thank you.

(Question of the amendment proposed)

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

Hon. (Eng.) Gumbo: I have no problem but I just--- Maybe it is my little understanding of the English, but when I look at sub-clause (3) it says that: "A person shall be appointed under subsection (2) (f) (g) and (h), if the person has expertise and experience in matters of climate change, economy, finance, law, environment and public administration" first, I do not know what the Chair thinks, but my impression is that the Council as will be constituted will be top heavy with civil servants and bureaucracy. But that is neither here and no there. , I look at (8) (3) where you are talking of experience in matters of climate change and I wonder if it is just semantics. I thought this was something that---

The Temporary Deputy Chairman (Hon. Kajwang): The profession of climate change---

Hon. (Eng.) Gumbo: Yes. Is there a profession called climate change? I am just wondering what it means. Maybe she could guide us. She is, probably, brighter than I am.

The Temporary Deputy Chairman (Hon. Kajwang): Okay. Let us have hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, when you first allowed hon. (Eng.) Gumbo you said he was as old as I am in this House, but now the truth has come out. He is serving his second term while I am serving my third term.

Having said that, the words are two; “expertise” and “experience.” Most of what is out there could be either expertise or experience. So, it is either of the two. It is not that it is confining to expertise. I do not believe there are many masters degrees in climate change. It would be the same as what President Museveni spoke about when he was talking about masters in peace building. He said that you have to wait for war for you to use your expertise.

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

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

(Clause 8 as amended agreed to)

Clause 9

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 9 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 9 deleted)

Clause 10

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 10 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 10 deleted)

Clause 11

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 11 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 11 deleted)

Clause 12

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 12 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 12 deleted)

Clause 13

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 13 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 13 deleted)

Clause 14

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

THAT, the Bill be amended by deleting Clause 14 and substituting
therefor the following new clause—

Climate

Change

Directorate.

14 (1) There is established the Climate Change Directorate, as a
Directorate in the State Department for the time being responsible for
Climate Change.

(2) The Directorate shall be the lead agency of the government on national climate change plans and actions to deliver operational coordination and shall report to the Cabinet Secretary.

(3) The Directorate shall be headed by a Director of Climate Change who shall be recruited competitively and appointed by the Public Service Commission.

(4) A person shall be qualified for appointment as a Director of Climate Change if the person—

(a) is a citizen of Kenya;
(b) has a post graduate degree, knowledge and experience in any of the following fields—

(i) environmental studies;
(ii) engineering;
(iii) meteorology;
(iv) climatology;
(v) law;
(vi) economics; or
(vii) such other relevant field as may be determined by the Cabinet Secretary in consultation with the Public Service Commission.

(c) has at least ten years' experience at senior management level in the relevant field; and

(d) meets the requirements of Chapter 6 of the Constitution.

(5) The Director appointed under clause (4) shall be responsible for the performance of specific duties and functions of the Directorate as set out in this Act.

(6) The Directorate shall advise the Cabinet Secretary on matters relating to legislation, policy, coordination, regulation and monitoring of climate change governance.

(7) The Directorate shall, on behalf of the Council, perform functions as may be specifically set out in this Act and in regulations.

(8) Without prejudice to the generality of the foregoing subsection, the Directorate shall perform the following duties and functions—

(a) provide analytical support on climate change to the various sector ministries, agencies and county governments;

(b) establish and manage a national registry for appropriate mitigation actions by public and private entities;

(c) serve as the national knowledge and information management centre for collating, verifying, refining and disseminating knowledge and information on climate change;

(d) in collaboration with other agencies at the national and county government levels—

(i) identify low carbon development strategies and coordinate related measurement, reporting and verification;

(ii) develop strategies and coordinate actions for building resilience to climate change and enhancing adaptive capacity;

(iii) optimize the county's opportunities to mobilize climate finance;

(e) coordinate adherence to the country's international obligations including associated reporting requirements;

(f) coordinate implementation of the gender and intergenerational climate change education, consultation and learning at the national and county governments levels;

(g) provide on instruction of the Cabinet Secretary, technical assistance based on needs identified by county governments.

(9) The Cabinet Secretary shall, in consultation with the Public Service Commission, determine the staff establishment required for the Directorate to effectively perform its functions under this Act, including mechanisms to transition staff from the Climate change Secretariat to the Directorate, based on performance evaluation.

Hon. Temporary Deputy Chairman, this amendment replaces the functions of the CEO with that of the Director of the Climate Change Directorate under the Ministry of Environment.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: I rise to support this amendment. As I had said earlier, I have a feeling that some of the provisions that have been proposed in this new clause could easily have been accommodated by regulations but being as it is, it probably only makes the Bill bigger. However, 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 14 as amended agreed to)

Clause 15

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:- THAT, Clause 15 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 15 deleted)

Clause 16

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 16 of the Bill be amended by—

(a) deleting the words “chief executive officer” wherever it appears and substituting therefor the words “Director of Climate Change”;

(b) deleting the word, “Board” and substituting therefor the words “Council” in sub-clause(1).

This is a consequential amendment.

(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 16 as amended agreed to)

Clause 17

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended in Clause 17 by deleting the word “Board” wherever it appears and substituting therefor the word “Council”.
It is a consequential amendment based on deletion of Clause 8.

(Question of the amendment proposed)

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

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

(Clause 17 as amended agreed to)

Clause 18

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended in Clause 18 by deleting the word “Board” wherever it appears and substituting therefor the word “Council”.
Hon. Temporary Deputy Chairman, it is a consequential amendment to replace “Board” with “Council”.

(Question of the amendment proposed)

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

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

(Clause 18 as amended be agreed to)

Clause 19

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by deleting Clause 19 and substituting therefor the following new clause—

Cabinet Secretary
to coordinate the
preparation of
climate change
action plans,
strategies and
policies.

19. (1) The Cabinet Secretary shall, in accordance with Article 10 of the Constitution and section 3 of this Act, and through public consultation formulate a National Climate Change Action Plan.

(2) The National Climate Change Action plan shall be presented for approval by the Council.

(3) The National Climate Change Action Plan shall prescribe measure and mechanisms—

- (a) to guide the country toward the achievement of low carbon climate resilient sustainable development;
- (b) to set out actions for mainstreaming climate change responses into sector functions;
- (c) for adaptation to climate change;
- (d) for mitigation against climate change;
- (e) to specifically identify all actions required as enablers to climate change response;
- (f) to mainstream climate change disaster risk reduction actions in development programmes;
- (g) to set out a structure for public awareness and engagement in climate change response and disaster reduction;
- (h) to identify strategic areas of national infrastructure requiring climate proofing;
- (i) to review and determine mechanisms for climate change knowledge management and access to information;

(j) to enhance energy conservation, efficiency and use of renewable energy in industrial, commercial, transport, domestic and other uses;

(k) to strengthen approaches to climate change research and development, training and technology transfer;

(l) to review and recommend duties of public and private bodies on climate change;

(m) to review levels and trends of Greenhouse Gas Emissions; and

(n) to identify outputs, overall budget estimates and timeframes to realize expected results.

(4) Without prejudice to the foregoing, the National Climate Change Action Plan shall address all sectors of the economy, and provide mechanisms for mainstreaming into those sectors.

(5) In formulating the National Climate Change Action Plan, the Cabinet Secretary shall be informed by—

(a) scientific knowledge about climate change;

(b) technology and technological innovations relevant to climate change;

(c) economic circumstances, in particular the likely impact of the action plan on the following—

(i) the economy;

(ii) the competitiveness of particular sectors of the economy;

(iii) small and medium-size enterprises;

(iv) employment opportunities; and

(v) the socio-economic well-being of any segment or part of the population;

(d) fiscal circumstances, in particular, the likely impact of the action plans, strategies and policies on the marginalised and disadvantaged communities;

(e) social circumstances in particular, the likely impact of the actions plans, strategies and policies on biodiversity and ecosystem services;

(h) international law and policy relating to climate change; and

(i) indigenous knowledge related to climate change adaptation and mitigation

(6) A notice shall be published in the Kenya Gazette and national newspapers to notify the public on approval of the National Climate Change Action Plan by the Council.

(7) The Directorate shall undertake a biennial review of the implementation of the National Climate Change Action Plan and report to the council.

(8) The Cabinet Secretary shall, in every five year period, review and update the National Climate Change Action Plan.

(9) The Cabinet Secretary, all public bodies and any person or entity engaged in climate change governance and administration, shall when exercising any power or discharging any statutory duty or function, be bound by the contents of the National Climate Change Action Plan.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Member for Rarieda, do you have a problem with this Clause?

Hon. (Eng.) Gumbo: It is not really a problem. I support the proposed amendment. The only thing that should be running through these proposed amendments, which I think should be brought at some point later, is that climate change issues are actually global issues. So, even if you take domestic interventions without tying it to global interventions, I am hoping that as we go a long we do what we want to do here in the country. However, if we do not have linkages and global partnerships it may not count much.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Isaac Mwaura.

Hon. Mwaura: I support these amendments, but I just have a point of concern. With the substantive removal of a Board which is very well explained and also the creation of a Directorate and a Cabinet Council, what we find in this Clause is that some of these things would actually be good if they were left to regulations. A case in point is how a notice can be given through the *Kenya Gazette* on the notification and approval of an action plan and things like those. I find that it is sometimes too deep to the point that it is over-legislating. Otherwise, it is a good proposal.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I really want to follow up on this issue of over-legislation. You know that the EMCA Act requires that this House passes the state of the environment report annually. However, this has never happened. So, we were looking for mechanisms to put in place a monitoring tool. That is why we seem to be over-legislating, but we are addressing some mischiefs that already exist in the environment sector. The reason why we are talking about details of gazettment---In fact, the details are even more. For example, the National Action Plan on Climate Change starts with the counties. We are giving them years on when they can report and produce a report then it fits in the national one for purposes of feeding into the international ones that he is mentioning. We may be appearing to over-legislate, but there are mischiefs that already exist in environmental governance in this country that we are trying to address.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, are you on a point of order?

Hon. (Eng.) Gumbo: On a point of order, yes. It is just good that the Chairperson of the Committee has brought up the issue.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, make it a point of order so that any other Member who is a first timer listening will be able to learn what is a point of order and what is not.

Hon. (Eng.) Gumbo: What I find out of order is the tacit ambition that we can do without subsidiary legislation which is required to enforce---

The Temporary Deputy Chairman (Hon. Kajwang’): So, the point is whether the Member is misleading the House or not with the facts.

Hon. (Eng.) Gumbo: To some extent, she is misleading the House because we have a Committee in this House which is supposed to track subsidiary legislation. That for me will really not be the reason for us to overload a statute. We are saying that we have not been able to bring the necessary changes. Is she really in order?

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. I will rule on this. I think the Member is in order to make an interpretation of the law and say that in her own estimation or opinion, this is a matter that should be taken over by

legislation rather than regulation knowing very well that there is the Delegated Legislation Committee that handles regulations. However, regulations are powers which are given to the regulation making authority which in most cases is the Cabinet Secretaries. The Member is saying that, because of the mischief in the environment sector, it is in the view of the Committee that a few things are cast into the legislation so that people out there who are making legislation are not able to change them from time to time. I therefore, find that she is in order.

*(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 19 as amended be agreed to)

(Clause 20 agreed to)

Clause 21

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, the Bill be amended by deleting Clause 21 and substituting therefor the following new clause—

Climate change duties
Of public sector.

21. (1) The Council may, on recommendation of the Cabinet Secretary and in consultation with relevant Cabinet Secretaries and County Government, impose duties relating to climate change on any public entity at all levels of government.

(2) Any public entity on which a climate change duty has been imposed shall, in exercising functions under this Act or any other law, act in a manner best suited to achieve the successful implementation of this Act, and the Climate Change Action Plan.

(3) The duties shall be imposed and may be varied or revoked through regulations made by the Council

(4) The impositions of climate change duties shall be preceded by public awareness and consultations.

(5) Each state Department and national government public entity shall have the following duties—

(a) integrate the climate change action plan into sectoral strategies, action plans and other implementation projections for the assigned legislative and policy functions;

- (b) report on sectoral Green House Gas Emissions for the national inventory;
 - (c) designate a unit with adequate staff and financial resources and appoint a senior officer as head of the unit to coordinate the mainstreaming of the climate change action plan and other climate change statutory functions and mandates into sectoral strategies or implementation;
 - (d) regularly monitor and review the performance of the integrated climate change functions through sectoral mandates;
 - (e) put in place and implement mechanisms for sustainability in performance of sectoral mandates; and
 - (f) report, annually to the Council on the status and progress of performance and implementation of all assigned climate change duties and functions.
- (6) Where an evaluation report from a statutory public body discloses unsatisfactory performance, the State Department shall undertake investigations and report the findings to the Council.
- (7) An investigation under this section shall be undertaken by the Head of the unit and be processed within thirty days after receipt by the State Department.
- (8) Upon receiving the reports from the State Department, the Council shall undertake an evaluation on performance of climate change duties and functions.
- (9) The Council shall within three months after the end of every financial year, publish publicly and submit the evaluation report on performance of climate change duties by public entities to the National Assembly for review, discussion and debate.
- (10) The National Assembly shall, within six months of receiving the evaluation report, provide recommendations and proposed actions to the Council, the Cabinet Secretary, the Directorate, a State department or statutory public entity.

Do I need to give the import of this?

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Igembe North.

Hon. M’uthari: Hon. Temporary Deputy Chairman, I support this amendment because it also clarifies the question of what can be done as far as the matter of climate change is concerned. Although I had an issue, we have already passed it. We have had strong legislations in the past like the Environmental Management and Coordination Act (EMCA). However, they have not been effectively implemented. So, the mechanism for making this work is important.

Thank you, hon. Temporary Deputy Chairman.

*(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

The Temporary Deputy Chairman (Hon. Kajwang’): Mover, this is a deletion.

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 22 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 22 deleted)

Clause 23

The Temporary Deputy Chairman (Hon. Kajwang’): Mover, this is another deletion.

Hon. (Ms.) Abdalla: Thank you. Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 23 of the Bill be deleted.

This is a consequential amendment.

(Question of the amendment proposed)

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

(Clause 23 deleted)

Clause 24

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, the Bill be amended by deleting Clause 24 and substituting therefor the following new Clause 24 —

(24) (1) The National Environmental Management Authority shall on behalf of the Council—

(a) monitor, investigate and report on whether public and private entities are in compliance with the assigned climate change duties;

(b) ascertain that private entities are in conformity with instructions given under clauses 21 and 21A of this Bill; and

(c) regulate, enforce and monitor compliance on levels of Green House Emissions as set by the Council under this Act.

(2) In performance of this function, the Authority shall—

(a) have all powers necessary for purposes of monitoring and investigation including the power to enter premises of any private entity and make an enquiry; and

(b) may at a reasonable hour, for the purposes of monitoring and investigation, enter any private land or premises to make an inspection or other task related to this function.

(3) A person commits an offence if the person—

(a) fails to give or refuses to give access to the Authority or its authorised staff who has requested access to any land;

(b) hinders the execution, by the Authority of the duties under this Act or any other law;

(c) fails or refuses to give information that the person may lawfully be required to give to the Authority; or

(d) gives false or misleading information to the Authority.

(4) A person who commits an offence under sub-clause (3) is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a period not exceeding five years, or to both.

(5) The Authority shall annually report to the Council on performance of the functions under this Act, and such report shall form part of the Report by the Council to the National Assembly.

The import of this amendment is that it gives NEMA performance, enforcement and compliance duties under this Act.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, while I have no problem with the proposed amendment *per se*, I wish the Chairperson of the Committee would gather courage and deal with the lethargy at the National Environment Management Authority (NEMA). We are giving NEMA additional functions and yet most Kenyans, including myself, believe that the environmental mess we have in our country is because of the extreme lethargy at NEMA. Now you are giving them additional functions to monitor, investigate and report private entities. Is this a wish list or are we just making laws which we cannot implement? NEMA is a problem the way it is. It is not functioning. For all intents and purposes, it is dysfunctional and yet we are giving it additional functions. So, I would love the Chairperson of the Committee to get

the leap of faith and courage to bring laws in this House that can make NEMA to be the body that it was intended to be for the people of Kenya.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for North Horr.

Hon. Ganya: Thank you, hon. Temporary Deputy Chairman. I agree with the Member for Rarieda. NEMA needs to be a body similar to what we have in the United States (US) or Canada as an environmental protection agency. It should have the teeth and necessary resources to perform its environmental functions. As a Committee, we are working so hard to ensure that NEMA is well resourced and it gets the necessary capacity that it requires. In most of the laws we are passing we are trying to do away with the ambiguities that have been there before. This Climate Change Bill will go a long way to enable NEMA to achieve some of those mandates. While I agree with him that there is a lot of laxity and weaknesses within NEMA, it is an Authority that we need. We have to work hard to ensure that it performs as expected.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Gichugu.

Hon. Barua: Thank you, hon. Temporary Deputy Chairman. I would like to support hon. Chachu. This law is not meant for NEMA as it is now. We anticipate a strong NEMA. What we should do as an institution is to ensure that the anomalies and weaknesses in NEMA are addressed. That is what we are doing as a Committee. I can assure this House that the Committee is looking at it.

Thank you, hon. Temporary Deputy Chairman.

*(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 agreed to)

Clause 26

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, the Bill be amended by deleting Clause 26 and substituting therefor the following new clause—

“(26) (1) There is hereby established the Climate Change Fund, which shall be a financing mechanism for priority climate change actions and interventions approved by the Council.

(2) The Fund shall be vested in the National Treasury.

(3) There shall be paid into the fund—

(a) monies appropriated from the Consolidated Fund by an Act of Parliament;

(b) monies received by the Fund in the form of donations, endowments, grants and gifts; and

(c) monies under an act payable to the fund.

(4) The Fund shall be administered by the Council and managed by the Principal Secretary for the time being responsible for Climate Change Affairs.

(5) In administering the Fund, the Council shall—

(a) determine the composition of the Fund;

(b) set strategic directions for applications of the fund;

(c) define eligibility criteria for the fund to finance climate change actions and enhance achievement of low carbon climate resilient development;

(d) set out procedures for disbursement, recovery and repayment of loans, including interest;

(e) set out procedures to ensure gender and intergenerational equity in access to monies from the Fund;

(f) set out procedures, criteria and eligibility for funding research institutions, private, public, civil society research, development and investment ventures that enhance low carbon climate resilient development; and

(g) set out other procedures and requirements for effective and transparent administration of the Fund, including tracking and accounting for climate finance and monitoring and evaluation procedures through regulations which shall be subjected to public participation and approved by the National Assembly.

(6) The Council shall approve requests for funding and make funding allocation decisions.

(7) The Principal Secretary in managing the Fund shall—

(a) provide mechanisms for daily operations of the Fund;

(b) process financing applications from eligible applicants for approval by the Council;

(c) ensure quality assurance in execution of the mandate of the Fund;

(d) undertake resource mobilisation for various sources;

(e) provide technical assistance to the private sector, civil society and public entities.

(8) The fund shall be applied to—

(a) provide grants for climate change research and innovation, in the following fields—

(i) industrial research;

(ii) technological research;

(iii) policy formulation;

(iv) scientific research; and

(v) academic research.

(b) provide grants and loans to business, industry, civil society, academia and other stakeholders for development of innovative actions that benefit climate change responses in Kenya;

(c) finance, through grants and loans the implementation of climate change adaptation and mitigation actions; and

(d) provide technical assistance to county governments.

(9) The Cabinet Secretary for the National Treasury shall, within one year of the Act coming into force, develop a strategy and make regulations setting out procedures and powers to identify sources of climate finance to monitor uses by various state, non-state and private sector actors, to enhance integrity and to eliminate corrupt practices.

(10) The functions of the Directorate shall be financed through a vote in the estimates of revenue and expenditure of the relevant State department, taking into account the functions vested in the Directorate in this Act

(11) The functions of the Council shall be financed through a vote in the estimates or revenue and expenditure of the relevant State Department.

This amendment establishes the Climate Change Fund consistent with the findings of the National Climate Change Action Plan.

(Question of the amendment proposed)

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

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

(Clause 26 as amended agreed to)

Clause 27

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, the Bill be amended in clause 27 by deleting the words “the Board of” appearing immediately after the words “financial year”.
This is a consequential amendment.

(Question of the amendment proposed)

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

(Clause 27 as amended agreed to)

(Clause 28 agreed to)

Clause 29

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, the Bill be amended in Clause 29—

(a) by deleting the words “ Board of the” appearing in sub-clause (1) ;

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The Council may apply to the Cabinet Secretary responsible for Finance for exemption from payment of duty payable under the Stamp Duty Act in respect of an instrument executed by or on behalf, or in favour of the Council which, but for this section, the Council would be liable to pay.”

(c) in sub clause (3) by deleting the word “Board” wherever it appears and substituting therefor the word “Council”;

(d) in sub clause (4) by deleting the words “Board of the”; and

(e) in sub clause (5) by deleting the words “Board of the”.

This is another consequential amendment.

(Question of the amendment proposed)

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

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

(Clause 29 as amended agreed to)

Clause 30

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 30 of the Bill be deleted.

This is another consequential amendment deleting “Chief Executive Officer” of the Board.

(Question of the amendment proposed)

(Hon. Mwaura stood up in his place)

The Temporary Deputy Chairman (Hon. Kajwang’): Nominated Member, was that by oversight or deliberate?

(Hon. Mwaura spoke off the record)

The Temporary Deputy Chairman (Hon. Kajwang’): Okay. Can the Member next to you resume his seat or the nearest seat?

Hon. Mwaura: Thank you, hon. Temporary Deputy Chairman. I am getting concerned about these deletions. It is not because they are not relevant, but they are very sweeping to the point that even if you were to remove the roles that had been given to a CEO or a Board, some of these provisions are very good even in the spirit of transparency and accountability. We have just passed a Fund which is supposed to be managed by a Principal Secretary (PS) without any committee. I did not see that Fund being domiciled within the Directorate of Climate Change. If you look at the provisions that we are just about to delete, yes, indeed, some of them would specifically be relevant to a statutory body. However, some of these provisions are also very good in terms of ensuring that this Council--- Despite the fact that it is having representation from the Presidency, Cabinet Secretary (CS) and civil society, it is also open to the public in terms of its operations. I fear it is a lofty body that is just up there but operating in an opaque manner and is not accessible. Some of these provisions help in terms of accessibility of information and interaction between the Council and the public.

Hon. (Ms.) Abdalla: Hon. Mwaura has raised those issues because of not having looked at the new clauses. We removed the issues pertaining to the CEOs, but issues to do with access to public information and public participation are in the New Clause 24. If he looks at the new clauses, he will see that his concerns have been addressed.

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

(Clause 30 deleted)

(Clause 31 agreed to)

Clause 32

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

THAT, the Bill be amended in Clause 32 by deleting the word

“Board” wherever it appears and substituting therefor the word “Council”.

This is a consequential amendment where the word “Board” is changed to “Council”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Bundalangi.

Hon. Ababu: Hon. Temporary Deputy Chairman, I might have missed this, but I was just wondering whether we had an explanation on record as to the change from “Board” to “Council”, just for the record.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, when I explained the hon. Member for Bundalangi was not there. Basically, there was formation of a new parastatal with a CEO and a Board. So, we have decided, in line with the need to reduce the number of public institutions, to form a Directorate of Climate Change under the Ministry of Environment, Water and Natural Resources that is going to be the Secretariat to the Council on Climate Change, that will be chaired by the President.

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

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

(Clause 32 as amended agreed to)

Clause 33

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

THAT, the Bill be amended in Clause 33 by deleting the word “Board” and substituting therefor the word “Council”

(Question of the amendment proposed)

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

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

(Clause 33 as amended agreed to)

Clause 34

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

THAT, the Bill be amended in Clause 34 by deleting the word “Board” wherever it appears and substituting therefor the word, “Council”.

(Question of the amendment proposed)

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

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

(Clause 34 as amended agreed to)

(Clause 35 agreed to)

Clause 36

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

THAT, the Bill be amended in Clause 36 by—

- (a) deleting the word “Board” wherever it appears and substituting therefor the word “Council”; and
- (b) deleting paragraphs (c), (d) and (e) of sub-clause (2)

(Question of the amendment proposed)

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

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

(Clause 36 as amended agreed to)

New Clause 3A

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

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

Guiding
principles and
values.

3.A(1) The guiding values and principles of low carbon climate resilient development in this section shall bind all level of government and all persons when—

(a) enacting, applying or interpreting any provisions of this Act;
and

(b) making or implementing public policy decisions on climate change

(2) In discharging their functions and duties under this Act the Council, the Cabinet Secretary, County government, any state officer, state organ shall be guided by the following—

(a) national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in Article 232 of the Constitution;

(b) be guided by the provisions of Article 42 and 69 of the Constitution;

(c) ensure promotion of sustainable development under changing climatic conditions;

(d) ensure equity and social inclusion in allocation of effort, costs and benefits to cater for special needs, vulnerabilities, capabilities, disparities and responsibilities;

(e) ensure integrity and transparency;

(f) ensure participation and consultation with stakeholders in accordance with the First Schedule.

This is intended to ensure that the Act is enforceable at all levels of the Government. It is also to provide guiding principles that apply to both the public and the private sectors.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 13A

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by inserting the following new clause immediately after clause 13—

Powers and duties of the
Cabinet Secretary.

13.A (1) Subject to the provisions of this Act, the Cabinet Secretary shall exercise control and provide guidance over climate change governance and implementation of this Act.

(2) The Cabinet Secretary shall—

(c) formulate and periodically review Climate Change Policy, Strategy and the National Climate Change Action Plan and submit to the Council for approval;

(d) coordinate negotiations on climate change related issues in consultation with the Cabinet Secretary responsible for Foreign Affairs;

(e) formulate a national gender and intergenerational responsive public education and awareness strategy on climate change and implementation programme;

(f) provide through the Directorate, technical assistance on climate change actions and responses to County governments, based on mutual agreement and needs cited by the county government; and

(g) report biannually to Parliament on the status of implementation of international and national obligations to respond to climate change, and progress towards attainment of low carbon climate resilient development.

(3) The cabinet Secretary in discharge of the duties and functions under this Act shall be assisted by the Climate Change Directorate established under this Act.

The import of this is to provide clear functions for the Cabinet Secretary as different from the Council. It confers clarity in authority of the Cabinet Secretary over the Directorate.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 21A

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 21—

Climate Change duties of Private
Entities.

No. 18 of 2013.

21A (1) The Council, may in consultation with the Cabinet Secretary and relevant State Departments, impose climate change obligations on private entities, including entities constituted under the Public Organizations Benefits Act 2013.

(2) The Council shall make regulations governing the nature and procedure for reporting on performance by the private entities, including the authority to monitor and evaluate the compliance.

(3) Notwithstanding other provisions in this Act, the Council may—

(a) by notice in the Gazette, require a private entity that is subject to climate change obligations to at any time, prepare reports on the status of its performance of the climate change duties and prescribe the period for reporting; and

(b) require any private entity that fails to comply with its climate change obligations to prepare a report, within a specified time, on the actions it has taken, is taking or intends to take to secure future performance with those duties.

The import of this is that the Council is responsible for mainstreaming climate change both in the private and public sectors. In the case of the public sector, it should be at all levels and departments of the Government. It should then report the same to the National Assembly.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clauses 24A, 24B, 24C, 24D and 24E

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

THAT, the Bill be amended by inserting the following new clauses immediately after clause 24—

Mainstreaming
climate change
actions into

strategic areas.

24A (1) The Council, on the recommendation of the Cabinet Secretary shall each year identify priority strategies and actions of disaster risk reduction related to climate change and;

(a) advise the President to require incorporation of this priority strategies and actions into functions and budgets of each State Department, state corporation and other national government entities;

(b) advise a county government on priority strategies and actions that should be integrated into functions and budgets of departments and entities of the County Governments; and

(c) develop a specific public safety component for disaster risk reduction for incorporation by all levels of government to prevent climate change induced disasters, and manage emergency responses.

Mainstreaming

Climate change

actions into County

Government functions

24B.(1) A County Government shall, in performance of its functions, integrate and mainstream climate change actions, interventions and duties set out in this Act, and the Action Plan into various sectors.

(2) A county Government shall in development, updating and approval of the County Integrated Development Plan, and the County Sectoral plans mainstream the implementation of the National Climate Change Action Plan, taking into account national and county priorities.

(3) The Governor of a County shall designate a County Executive Committee member to coordinate climate change affairs.

(4) Subject to this act and the Constitution, a county Government may enact legislation that further defines implementation of its obligations under this Act, or other climate change functions relevant to County or such other related purposes.

(5) A county government shall at the end of every financial year, through the designated County Executive Committee Member, submit a report on progress of implementation of climate change actions to the County Assembly for review and debate. A copy of this report shall be forwarded to the Directorate for information purposes.

Integration of

climate change

risk

24C The Authority shall integrate climate risk and vulnerability assessment into all forms of assessment, and for that purpose liaise with relevant lead agencies

Integration of

climate change

into curricular

24D (1) The Kenya Institute of Curriculum Development shall, on advice of the Council integrate climate change into various disciplines and subjects of the national education curricula at all levels.

(2) The Council shall advise the public agencies responsible for regulating universities and tertiary institutions curricular on integration of climate change into curricular.

Reporting on climate
change actions

24F The Cabinet Secretary shall make regulations to guide the reporting and verification of climate change actions.

The amendment is intended to mainstream climate change into strategic areas. It requires the Cabinet Secretary to prioritise the strategic areas such as disaster reduction relating to climate change each year. The amendment also seeks to integrate climate change actions in the county government through the CEC. So, whereas at the national level the Cabinet Secretary is responsible for policy direction and strategic thinking, the same is expected of the CEC at the county level. It also requires the Kenya Institute of Curriculum Development to advise the Council on integrating climate change into various disciplines and subjects in the national education curriculum.

(Question of the new clauses proposed)

(New clauses read the First Time)

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

The Temporary Deputy Chairman (Hon. Kajwang’): Nominated Member, hon. Isaac Mwaura.

Hon. Mwaura: Thank you, hon. Temporary Deputy Chairman. I rise to support these amendments, but I have one concern. Looking at the proposal, it is very good. Issues like disaster risk management have not been given adequate profile yet if, as a country we were to look at it from a climate change view but also generally at this high level, it would really help us to mitigate disaster.

Secondly, looking at the proposal for the assignment of county executives at the county level, the robust nature with which a lot of responsibilities and powers have been given to the Cabinet Secretary for environment may not suffice at the county level because the County Executive Committee (CEC) is supposed to be designated. Maybe the Mover would have proposed the county executive who is in charge of matters relating to environment. It would have been clearer.

Thank you.

(Question, that new clauses be read a

Second Time, put and agreed to)

(The new clauses were read a Second Time)

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

New PART IVA

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

THAT, the Bill be amended by inserting the following new Part immediately after Part IV—

Public Participation

25A (1) Public entities at each level of government shall, at all times when developing strategies, laws and policies relating to climate change, undertake public awareness and conduct public consultations.

(2) Public consultations shall be undertaken in a manner that ensures the public contribution makes an impact on the threshold of decision making.

(3) The Council shall, on recommendation of the Cabinet Secretary, publish Regulations on design and procedure to ensure efficacy of public consultations to ensure that they make an impact on the threshold of decision making on climate change at all levels of government.

(4) The Council and Directorate shall publish and publicize all important information within their mandate.

(5) Any person may request for information from the Council and the Directorate, and such request for information—

(a) shall be addressed to the Secretary of the Council or the Director or such other designated person;

(b) may be subject to the payment of the prescribed fee in instances where the Council or Directorate incurs an expense in providing information; and

(c) may be subject to confidentiality requirements of the Council or Directorate.

(6) Subject to Article 35 of the Constitution, the Council or the Directorate may decline to give information to an applicant where—

(a) the request is considered unreasonable in the circumstances;

(b) the information requested is at a deliberative stage within the Council or Directorate;

(c) the prescribed fee is not paid; or

(d) the applicant fails to satisfy any confidentiality requirements of the Council or Directorate.

(Question of the new part proposed)

(New part read the First Time)

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

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, hon. Mwaura!

Hon. Mwaura: Thank you, hon. Temporary Deputy Chairman. While this Clause seems to cure the concern I had before about the engagement of the Council, of course there is also the issue of limitation of such participation, especially when you provide in Sub-clause 25 (6) about if somebody requests to give information, the Council has the powers to decline such requests if that request is considered to be unreasonable. Maybe if at all somebody is requesting information, then you can give what you consider to be reasonable. In my opinion, to have such a clause may infringe on the right to information by the citizenry.

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

(The new part was read a Second Time)

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

The Temporary Deputy Chairman (Hon. Kajwang’): Chair of the relevant Departmental Committee, will you please look at page 18 going onwards? Go to page 18 of the Bill and flip the pages to pages 19, 20 and 21. Between that part and Part V, do I hear you making an amendment proposal consequent to the amendments you have brought?

Hon. (Ms.) Abdalla: Yes, hon. Temporary Deputy Chairman. I thought I had moved them together but I guess it is not allowed.

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

THAT, the Bill be amended by inserting the following new Part immediately after part IV—

PART IVA — PUBLIC PARTICIPATION AND ACCESS
TO INFORMATION

(Question of the new part proposed)

(New part read the First Time)

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

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

(The new part was read a Second Time)

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

New Clause 35(A)

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 35:-

Transitional Provision.

35A. The members of the Council shall be appointed within three months of the coming into force of this Act.

Hon. Temporary Deputy Chairman, this is a transitional provision on the appointment of the members of the Council.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

(First Schedule agreed to)

Second Schedule

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

THAT, the Bill be amended by deleting the second schedule.

Hon. Temporary Deputy Chairman, this is a consequential amendment to the amendment to clause 8.

(Question of the amendment proposed)

(Question, that the words to be left

out be left out, put and agreed to)

(Second Schedule deleted)

Clause 2

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

THAT, Clause 2 of the Bill be amended:-

(a) by inserting the following new definitions in the proper alphabetical sequence—

“all levels of government” means all departments and agencies of the national and county governments”;

“authority” means the National Environmental Management Authority established by the Environmental Management and Coordination Act, 1999 or its successor legislation;

“climate change duties” means the statutory obligations conferred on public and private entities to implement climate change actions consistent with the national goal of low carbon climate resilient development;

“climate change resilience” means the capability to maintain competent function and return to some normal range of function even when faced with adverse impact of climate change;

“climate change secretariat”, means the secretariat established by the Public Service Commission to coordinate climate change mitigation and adaptation actions and interventions;

“climate finance” means monies available for, or mobilized by government or nongovernment entities to finance climate change mitigation and adaptation actions and interventions;

“county executive committee member” means the County Executive for the time being responsible for matters relating to climate change;

“intergenerational” means with reference to equity among present and future generations and equity in the present generation;

“mainstreaming” means the integration of climate change actions into decision making and implementation of functions by the sector ministries, state corporations and county governments;

(b) in the definition of the words “private entity” by inserting the following words—

“and includes bodies registered under the Public Benefits Organization Act, 2013” immediately after the words “private nature”; and,

(c) by deleting the definitions of the following terms—

“board”

“coordinating Ministry”

“energy efficiency”

Hon. Temporary Deputy Chairman, this is intended to provide appropriate definition of a technical administration and operational nature.

(Question of the amendment proposed)

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

(Clause 2 as amended agreed to)

(Clause 1 agreed to)

Long Title

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

THAT, the Bill be amended by deleting the long title and substituting therefor the following new long title:-

AN ACT of Parliament to provide for a regulatory framework for enhanced response to climate change; to provide for mechanism and measures to achieve low carbon climate development, and for connected purpose.

Hon. Temporary Deputy Chairman, this is intended to align the short title with the definition and goals of climate change governance and especially to be in line with the National Action Plan on Climate Change.

(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)*

(Long Title as amended agreed to)

(Short Title agreed to)

The Temporary Deputy Chairman (Hon. Kajwang'): Mover of the Children (Amendment) Bill (National Assembly Bill No. 18 of 2014), do I have you on intervention?

Hon. Kaluma: I beg to move that the Committee doth report its considerations of the Children (Amendment) Bill (National Assembly Bill No. 18 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): The Chairperson of the Climate Change Bill (National Assembly Bill No. 1 of 2014), do I hear you on intervention?

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I think it is the Mover who should be reading this but I know he does not mind. Can I proceed?

The Temporary Deputy Chairman (Hon. Kajwang’): As far as I am concerned, I see your intervention. Proceed.

Hon. (Ms.) Abdalla: I beg to move that the Committee doth report to the House its consideration of the Climate Change Bill (National Assembly Bill No. 1 of 2014) and its approval thereof with amendments.

(Question put and agreed to)

(The House resumed)

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

REPORTS AND THIRD READINGS

THE CHILDREN (AMENDMENT) BILL

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

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Children (Amendment) Bill (National Assembly Bill No. 18 of 2014) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Mover of the Bill, hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report and also request hon. (Prof.) Nyikal to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. (Prof.) Nyikal, you second?

Hon. (Prof.) Nyikal seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, as you noticed we had two Bills that were in the Committee of the whole House. I, therefore, call the Chairperson to report to the House.

THE CLIMATE CHANGE BILL

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Climate Change Bill (National Assembly Bill No. 1 of 2014), and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Mover, please move agreement with the Report.

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Speaker.

I beg to move that the House doth agree with the Committee in the said Report and also request hon. (Dr.) Ottichilo to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. (Dr.) Ottichilo: Thank you, hon. Temporary Deputy Speaker. I second the Bill.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, we move to the Third Reading and we will start with the Children (Amendment) Bill (National Assembly Bill No. 18 of 2014). The Mover who is hon. Kaluma needs to move.

THE CHILDREN (AMENDMENT) BILL

Hon. Kaluma: I beg to move that the Children (Amendment) Bill (National Assembly Bill No. 18 of 2014), be now read a Third Time and also request hon. (Prof.) Nyikal to second.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Speaker, I second.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I propose the Question for the Third Reading.

(Question proposed)

I will get recommendations from a few. Let me start with hon. Isaack Mwaura.

Hon. Mwaura: Thank you, hon. Temporary Deputy Speaker. This Bill is very important because it sets clear the confusion that has been there in terms of the custody of children between the mother and father. We hope that it is going to ensure that there is equal parental responsibility on both parties.

I support this Bill for the Third Reading.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You support. Let me get an opinion from the Member for Kapenguria, hon. Samuel Moroto.

Hon. Chumel: Thank you, hon. Temporary Deputy Speaker. I also add my voice by congratulating the Mover of this Motion. It is going to help, especially now that there is a growing number of children on the streets because of the discouragement they get from their parents. This Bill is going to help these children to get to their future because they will be cared for unlike at the moment when there are so many other problems, especially when the population is growing. We even have children from *mpango wa kando* and others. I know this Bill is going to help and support the welfare of children.

Thank you, I support it.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, let us get other people. I see others also want to contribute. Hon. Member for Othaya, Mary Wambui.

Hon. (Ms.) Munene: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to support the Bill. We know our children used to get a lot of problems in this country because whenever parents disagreed with each other, they left the children to roam.

We also have children who are born outside marriage. We need to take care of all children in this country so that they can know the Government of Kenya is taking care of them. His Excellencies Uhuru and Ruto care about the family.

Thank you very much, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let me have the Organising Secretary of Wiper Democratic Movement, the hon. Member for Kathiani. Are you around?

(Laughter)

Hon. Mbui: Thank you very much, hon. Temporary Deputy Speaker for recognising my new position. I just want to thank my colleague and friend, hon. Kaluma for this kind of Bill. This is actually why we are in this House. I just want to thank him and say that this is timely and the rest of us should emulate and come up with such Bills.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. (Prof.) Nyikal seems to be so agitated and he wants to make a comment. I have the discretion to allow him.

Hon. (Prof.) Nyikal: Thank you, hon. Temporary Deputy Speaker. I put some opinion earlier but in all, I congratulate hon. Kaluma for bringing this. Infact, this Bill which is now going to be an Act has brought clarity in terms of parental responsibility. We will not have to indulge a lot in seeking negotiations and other ways before parents, particularly men take responsibility. That is a good way. However, as I indicated earlier, there is an area that even as we are going on with this debate still seems to be grey for other people. That is the difference between custody and parental responsibility.

In my mind, the two are closely related but I was advised that custody is taken care of in a different part of the law. Even in that part, you realise that it still left the decision in the hands of the presiding officers of the court and also what I was advised involves case law. We may look at it to be more exact particularly with regard to very young children who many times will, in my view, in the first instance, require to be with

their mothers unless there are conditions that make the mothers incapable of doing that. That will probably be taken up later. For this part, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Before we go to the other one, can I have Budalang'i Member of Parliament? This time we are not debating hon. Members. Just make your remarks Chairman of the Public Accounts Committee (PAC).

Hon. Ababu: Thank you, hon. Temporary Deputy Speaker. It is very gratifying and good to see this House engaging in our primary mandate which is legislation. It is good to see very good pieces of legislation passing through this House. This is a fantastic piece of legislation; fantastic in my mind for two reasons.

One, it is very much in line with the new constitutional spirit. Our new Constitution has now erased the social hierarchy between man and woman; between the two genders. We are saying that the social order in this country is that man and woman are equal. They have equal opportunity. They bear equal responsibility and it is good to see this kind of legislation that brings to life that reality. Therefore, I want to congratulate and commend hon. Member for Homa Bay Town, my learned friend, for bringing this Bill. It also spreads the risks in terms of parental responsibility that both mother and father will bear responsibility. Of course, we all know that it takes two to tango; you cannot tango alone and bring life into being. If it takes two to tango to create a life, it certainly should take two to tango in terms of the responsibility to raise the offspring. Therefore, I support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, you cannot tango alone. Hon. Members, because of obvious reasons that this House is aware of, I am not in a position to put the Question. So I do order that the Question be put in the next sitting at the appropriate time. Therefore, we now move to the Climate Change Bill (National Assembly) Bill No. 1 of 2014) for the Third Reading. I call the Mover of the Bill to move the Third Reading.

THE CLIMATE CHANGE BILL

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Speaker, I beg to move that the Climate Change Bill (National Assembly Bill No. 1 of 2014) be now read a Third Time. I request hon. Kinyua to second.

The Temporary Deputy Speaker (Hon. Ms. Mbalu): Who is to second?

Hon. (Ms.) Abdalla: Hon. Kinyua.

Hon. Kinyua: Thank you, hon. Temporary Deputy Speaker. First, I second this Bill. I wish to congratulate the Departmental Committee of Environment and Natural Resources led by hon. (Ms.) Abdalla for the work well done. This is one of the many Bills which have been churned through this House by this Departmental Committee which has proved to be the most effective in this Eleventh Parliament.

It is worth noting just three points, that this is a very progressive Bill. One that appreciates the fact that climate change cuts across all sectors of the economy and cannot be taken in isolation. This Bill has brought all the departments and all the Ministries that are affected by the climate change and that contribute towards low carbon discharge and mitigation of its effects together.

Secondly, it is a law that is very progressive in appreciating public participation and the fact that private and public institutions that are going to apply it have also been catered for. Again, it has made sure that there is no duplication in line with the Jubilee Manifesto of streamlining the Government operations of roles. Noting about the ineffectiveness of some of the existing institutions like National Environment Management Authority (NEMA), we wish and I believe that the Committee is going to take this step forward to ensure that we make NEMA become effective to discharge its current duties alongside the new duties given by this very progressive piece of legislation.

With those few remarks, I beg to second.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you for seconding.

(Question proposed)

Hon. Members, it time to make comments of the Third Reading of the Bill. I want to start with my request list, hon. (Ms.) Tobiko, hon. Member for Kajiado East.

Hon. (Ms.) Tobiko: Thank you, hon. Temporary Deputy Speaker.

(Hon. Ganya consulted loudly)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Ganya you are next.

Hon. (Ms.) Tobiko: Thank you, hon. Temporary Deputy Speaker. I rise to support the Climate Change Bill. I want to congratulate the Committee of hon. (Ms.) Abdalla for the good work that they have done considering the effects that we are all experiencing in our country and globally on the issues of climate change. It is just good that we plan ahead because it seems like times are going to be harder. Particularly right now, we are experiencing a very long drought and our people are going through hard times. For those communities that are particularly pastoralists, it is becoming very hard. So we need intervention measures from the Government and very coordinated efforts in order to help the society manage these difficult times.

I just needed to support the efforts of the Committee and seek that the Government will take this seriously because as we go towards 2022, particularly in terms of water resource management, we are told the next global wars will be fought around water resources. To avoid such wars and conflicts, we need to manage our resources well and address the effects of climate change. Among the interventions that I will be asking the Government to do is to consider cushioning the pastoral communities at such times. Right now we need interventions through the Kenya Meat Commission (KMC) for our animals to be bought otherwise it will be a loss not just to the pastoralists but to the country economically.

Hon. Temporary Deputy Speaker, our people are waiting and we are asking the relevant Ministries like the Ministry of Environment, Water and Natural Resources, to intervene because right now we are experiencing a lot of water shortage. There is also the wildlife-human conflict because of the drought. These are some of the measures we want the Government to undertake. We are happy that an agency is going to be established to address these issues. Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, you know what we generally do in the Third Reading. I just want to give one more hon. Member a chance because we had the time to debate.

Hon. Chachu Ganya

Hon. Ganya: Thank you, hon. Temporary Deputy Speaker. I want to commend my colleague, hon. Doctor Ottichilo for moving this Bill. This was a Private Members Bill and then it was brought to our Committee. I know it has been a long journey for him. In the Tenth Parliament this Bill was passed, but it was not assented to by the President for the reason that there was very little consultation that was done. Again, in the Eleventh Parliament, he has pushed it this far. I hope this time, given the consultations that the Committee has done, our President will assent to it.

Hon. Temporary Deputy Speaker, climate change is a major challenge of our time. Very few countries in the world have advanced climate change law. It is very controversial and very sensitive. It has a major impact on the economy of a country because it impacts on how industries operate in this country. Because of that, we have been a leader again not only in Africa, but in the world for having such a comprehensive climate change law. It will also enable this country to access climate financing. There are a lot of funds out there which now, with this law, we should be able to access and manage the crisis that we face here in Kenya.

Hon. Temporary Deputy Speaker, I hope the President will assent to this so that we have a comprehensive law to deal with the climate crisis in our country.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Well spoken. Hon. Members, I would be doing a mistake not to give a chance to the Mover of the Bill, Member for Emuhaya, hon. (Dr.) Ottichilo.

Hon. (Dr.) Ottichilo: Hon. Temporary Deputy Speaker, I am a very happy person.

(Applause)

It has been a long journey. This journey started in 2007 and I am happy that, at least, we are seeing light at the end of the tunnel. Climate change is the biggest challenge the globe is facing today. Unless mankind addresses the issue of climate change, the survival of this planet is at stake. I want to let this House know that Kenya now becomes among the first countries in the world to enact a climate change law, assuming that the President is going to assent to this law.

Hon. Temporary Deputy Speaker, I can assure you when the entire world meets in Paris in September, Kenya will rise and it will be viewed as a country that is moving ahead. This is because even developed countries have not been able to put up climate change law. So we are among the first countries in the world to do that. Having said that, I want to thank all the people who have been involved in this process. First, I want to thank our able Departmental Committee on Environment and Natural Resources under the leadership of our chairperson. This Committee, Hon. Temporary Deputy Speaker, has done a great job.

(Applause)

I want to thank them; they have done an excellent job. Secondly, I want to thank the Ministry of Environment, Water and Natural Resources which has been very supportive. They organized stakeholders meetings throughout the country to get input for this Bill. So, I want to thank the Ministry for the good work.

Thirdly, I want to thank the National Climate Change Task Force, which was also involved in collating and collecting information from the stakeholders on this Bill. Their input in this Bill has been very instrumental.

Fourthly, I want to thank the Council of Governors because it has also contributed largely to this Bill. That is why this Bill now incorporates the activities of the county governments. I want to thank the Council of Governors, through their Executive Officers, who put in a lot of efforts.

Finally, I want to thank the Civil Society, under the umbrella of Kenya Climate Change Working Group, which has worked with us all through to see that this Bill reaches where it is. I am a happy person and I hope that when this Bill goes to the Senate, it will have no problem because the Senate Committee and the Council of Governors have already participated. I believe it is going to be an easy sail-through.

With those few remarks, I am a very happy person this afternoon.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): A very happy Member of Parliament. Let me give the last chance to hon. Maweu Kyengo. You only have two minutes.

Hon. Maweu: Thank you, hon. Temporary Deputy Speaker. I support this Bill. When I was a young man, climates could be differentiated. As I speak, things have changed greatly that one cannot know which season it is. Like many of my colleagues have said, the Government has to plan for the change of climate. In future, this will affect not only one part of the country, but the entire country. In areas where there is not a lot of rain, it may be a little bit hard. Let us be conscious, as a country, to plan for this eventuality.

As I wind up my comments, I support the Bill.

Hon. Omagwa: Thank you, hon. Temporary Deputy Speaker. I take this opportunity to thank the Committee and the Mover of this Bill. It is good to see that this is progressive. Planning ahead is a good thing for this country.

I would probably use this minute to urge this Committee and particularly the Mover of this Bill that we probably should begin to address issues of planning in cities. We are having situations where apartments are being constructed next to each other and sitting in one apartment, you are looking at the bedroom of another person in another apartment. This should also concern us. I want to thank the Chair and the Committee that they have looked at a very progressive piece of legislation. We want to support them for this.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I am not in a position to put the Question. We do not have the requisite numbers as per our Standing Orders. I, therefore, order that the Question for adoption and decision-making will be put in the next sitting at the most appropriate time.

ADJOURNMENT

The time being 1.00 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.