

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 14th July, 2016

*The House met at the Senate Chamber,
Parliament Buildings, at 9.30 a.m.*

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

PRAYERS

The Speaker (Hon. Ethuro): Hon. Members, with regard to the Committee of the Whole on the Forest Conservation and Management Bill, we will leave it pending for now. Let us move on to the next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Sang) took the Chair]

THE HEALTH BILL (NATIONAL ASSEMBLY BILL NO.14 OF 2015)

The Temporary Chairperson (Sen. Sang): Hon. Senators, we will proceed to the Committee of the Whole on the Health Bill (National Assembly Bill No.14 of 2015).

Clauses 3 and 4

(Question, that Clauses 3 and 4 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): The Division will come at the end.

Clause 5

The Temporary Chairperson (Sen. Sang): Hon. Senators, we have an amendment by Sen. Mutula Kilonzo Jnr. to be moved by the Chairperson of the Committee.

Proceed, Sen. (Dr.) Machage!

Sen. (Dr.) Machage: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended by inserting new subsections immediately after Subsection (2)-

3) The national and county governments shall ensure the provision of free and compulsory-

a) Vaccination for children under five years of age; and

b) Maternity care.

4) For the purposes of implementing subsections (3), the national government shall in consultation with the respective county government provide conditional grants to county governments.

This amendment seeks to anchor into legislation provision of free maternity care and ensure provision of funds through conditional grants to cater for these services.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Sen. (Dr.) Machage, we have two amendments under Clause 5; one by Sen. Mutula Kilonzo Jnr. and the one by you. Did we drop the amendment by Sen. Mutula Kilonzo Jnr. or is it the same amendment?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, the amendment is the same. We have agreed with my senior, Sen. (Dr.) Machage, that he will move the amendments on Clause 5 and any other that are similar to the ones that are proposed in the Order Paper.

The Temporary Chairperson (Sen. Sang): Excellent! The Hansard should capture that.

Clause 6

(Question, that Clause 6 be part of the Bill, proposed)

Clause 7

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I move beg to move:-

THAT, Clause 7 of the Bill be amended by deleting sub-clause 3.

This amendment seeks to put the burden of providing emergency treatment on the health facility and not on the health provider.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 8 - 11

*(Question, that Clauses 8, 9, 10 and
11 be part of the Bill, proposed)*

Clause 12

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 12(1) of the Bill be amended in paragraph (a) by deleting the words “their health status” appearing immediately after the words “on account of” and substituting therefor the words “any of the grounds set out in Article 27(4) of the Constitution”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 13 and 14

*(Question, that Clauses 13 and 14
be part of the Bill, proposed)*

Clause 15

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 15 of the Bill be amended in sub-clause (1) by —

(a) inserting the words “including reproductive health care and the right to emergency treatment “ at the end of paragraph (a);

(b) deleting paragraph (c);

(c) deleting the words “and implement” appearing after the word “develop” and substituting therefor the word “policy” in paragraph (f); and

(3) Inserting the word “policy” immediately after the words “put in place” in paragraph (i).

These amendments will ensure that the role of the national Government is more of policy as health is a devolved function.

The Temporary Chairperson (Sen. Sang): Very well. Is that the same amendment by Sen. Mutula Kilonzo Jnr.?

(Question of the amendment proposed)

Clause 16

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 16 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

(2) The Director-General for health shall be recruited by the Public Service Commission through a competitive process and appointed by the Cabinet Secretary.

The reason is that the position of the Director-General is not equivalent to that of a Cabinet Secretary (CS) or Principal Secretary (PS). Therefore, there will be no need to have the Director-General vetted by Parliament and appointed by the President. The amendment will make the Director-General's position to be appointed by the CS in a competent recruitment exercise carried out by the Public Service Commission.

The Temporary Chairperson (Sen. Sang): Sen. Mutula Kilonzo Jnr., do you have a different amendment?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, there is an additional amendment to Clause 16.

*(The Temporary Chairperson (Sen. Sang)
consulted with the Clerk-at-the-Table)*

The Temporary Chairperson (Sen. Sang): Part (a) of that amendment is the same but (b) is new. To make it easier, let us have Sen. Mutula Kilonzo Jnr. move amendment to Clause 16 in its entirety so that it is (a) and (b) instead of having two amendments at the same time. Is that okay, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Yes.

The Temporary Chairperson (Sen. Sang): So, let us drop Sen. (Dr.) Sen. (Dr.) Machage's amendment so that you move for both.

(Sen. (Dr.) Machage's amendment dropped)

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 16 of the Bill be amended —

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

(2) The Director-General for health shall be recruited by the Public Service Commission through a competitive process and appointed by the Cabinet Secretary.

(b) in subsection (3) by deleting paragraph (a) and substituting therefor the following new paragraph —

(a) be a health practitioner registered by the respective regulatory body;

The Temporary Chairperson (Sen. Sang): Very well.

(Question of the amendment proposed)

Clause 17

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-
THAT Clause 17 of the Bill be amended by —

- (a) deleting paragraph (i); and
- (b) deleting paragraph (j).

(Question of the amendment proposed)

Clause 18

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 18 of the Bill be deleted and substituted with the following new clause-

18. For purposes of section 15(1)(b), the Cabinet Secretary shall-

- (a) form directorates to deal with the following matters –
 - (i) medical services;
 - (ii) nursing and allied workers;
 - (iii) pharmaceutical services;
 - (iv) public health; and
 - (v) administrative services;
- (a) notwithstanding paragraph (a), form directorates based on policy priority areas in consultation with the Director-General.

The reason for this amendment is to compel the Cabinet Secretary to create directorates that deal with key areas of the health sector for better coordination.

The Temporary Chairperson (Sen. Sang): Very well.

(Question of the amendment proposed)

Clause 19

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 19 of the Bill be amended in sub-clause (4) by deleting paragraph

(a) and substituting therefor the following new paragraph —

- (a) be a health practitioner registered by the respective regulatory body;
- This is straightforward.

(Question of the amendment proposed)

Clause 20

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 20 of the Bill be amended by-

(a) deleting the introductory phrase and substituting therefor the following new phrase-

the county government in furtherance of the functions assigned to it under the Fourth Schedule of the Constitution shall be responsible for-

(b) deleting the marginal note and inserting therefor the following new marginal note-

duties of county government.

The reason is that Part II of the Fourth Schedule to the Constitution assigns functions to the county governments and not departments as such. Therefore, the amendment seeks to realign the Clause to the Constitution.

(Question of the amendment proposed)

Clauses 21, 22 and 23

(Question that Clauses 21, 22 and 23 be part of the Bill, proposed)

Clause 24

The Temporary Chairperson (Sen. Sang): We have two amendments by Sen. (Dr.) Machage and Sen. Mutula Kilonzo Jnr. Are they the same?

Sen. (Dr.) Machage: Mine is different, Mr. Temporary Chairman, Sir.

The Temporary Chairperson (Sen. Sang): Okay. We will start with yours.

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 24 of the Bill be amended by deleting paragraph (a).

This amendment is a clean-up necessary after the deletion of “classifications of health facilities”.

(Question of the amendment proposed)

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 24 of the Bill be amended by deleting paragraph (c).

This is a clean-up necessary as stated by the Chairman.

(Question of the further amendment proposed)

Clause 25

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 25 of the Bill be deleted.

This amendment deletes the classification of health facilities as highlighted in the First Schedule of the Bill. County governments need to be given the freedom to develop health facilities to the highest standards, without the fear that these facilities will later be taken up by the national Government.

(Question of the amendment proposed)

Clause 26

(Question, that Clause 26 be part of the Bill, proposed)

Clause 27

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 27(1) of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)-

(a) be a platform for mutual consultation, coordination and collaboration between the national and county governments on all matters related to health.

This is one function that is concurrent under the Constitution and a platform of this nature is warranted and healthy.

(Question of the amendment proposed)

Clause 28

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 28 of the Bill be amended by deleting sub-clause (2).

The reason for the amendment is to correct the repetition of Clauses 28 (2) and 29 that deal with the same matter.

(Question of the amendment proposed)

Clause 29

(Question, that Clause 29 be part of the Bill, proposed)

Clause 30 - 44

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clauses 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of Bill be deleted.

This is the deletion of Clauses 30 to 44 or the entire Part IV of the Bill that deals with the establishment of the Kenya Human Resource Advisory Council in order to give the county governments the independence to deal with the health workforce.

The Temporary Chairperson (Sen. Sang): Sen. (Dr.) Machage, you are an experienced Senator and practitioner. I am told that you are supposed to move those amendments with deletion.

Sen. Elachi.

Sen. Elachi: Mr. Temporary Chairman, Sir, while I appreciate the Chair and the good work they have done, I am worried that we are going to end up with a different product. The Bill will change completely. Why would we delete Clauses 30 to 44 when we are facing so many challenges at the moment with regard to nurses and doctors? We have the example of Busia where the county assembly has told the governor that he has to deal with the children that became disabled. I thought that this institution would have come and harmonized some of these things. I am worried that this Bill will turn out to be a different one.

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, my worry is not that the Bill will have a different appearance or purpose. It is that there is interference of the county governments by the national Government on matters of employment. There is no clear definition and boundary of who is supposed to take responsibility on employment and remuneration of workers at the county level, hence the cause of the crisis that we are seeing. Sometimes the county governments say they do not have any responsibility over nurses because they never employed them. That is the purpose of this deletion.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, the stakeholders are clear that this council will not help the health sector and contradicts the function of the Public Service Commission (PSC). There is no value addition by the proposed council, in Part 4, where the deletions occur up to Clause 44. Furthermore, there appears to be a contradiction on the functions of the PSC in setting the norms and standards for public service, hence the reason we have proposed the deletion.

Sen. Elachi: Mr. Temporary Chairman, Sir, we are dealing with issues of our children and health matters. I saw an amendment where we have decided that vaccination can be done. We have brought great confusion in the whole process. As a mother, I think that the county governments should not decide when my child, for example, will be vaccinated. If we allow that we will be killing our children and encouraging other complications. The Senate should be serious about health matters. We, Members, have insurance cover and that is why we run to Nairobi Hospital and other hospitals. At the grassroots level, we have quacks who have taken advantage and we are giving them more advantage by what we are now doing. Even if we proceed with the amendments, this Bill will have to go to mediation.

Sen. (Dr.) Machage: Mr. Temporary Chairperson, Sir, the Fourth Schedule of the Constitution is very explicit on the functions of the national and county governments. If the suggestion by Sen. Elachi has to hold any water, then she should be fighting for the amendment of the Constitution but not an amendment of clauses of legislation. We are legislating to put the law in line with the Constitution and it can only be done that way.

Sen. Obure: Mr. Temporary Chairperson, Sir, Sen. Elachi seems to have very strong reservations regarding the deletion of these specific clauses. I just want to know if she has any strong grounds for raising the objections to these deletions.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, it is dangerous when a Senator says that our work is in an attempt to kill children or mothers. Let me highlight something. There is no contradiction when the Government is offering free maternal healthcare to children who are not born and offering free compulsory access to vaccination when those children are born. What is the contradiction? You are simply saying that the theory and the spirit of taking care of a child when it is in the mother's womb continues when the child is born.

That is what we are talking about. In fact, we are suggesting that the national Government goes a step further and sets up a conditional grant for vaccinations. It is just going a little step further from maternal healthcare. We are actually assisting the Jubilee Government in enhancing health facilities. So, Sen. Elachi must look at it from that perspective and future generations. There is no contradiction.

Sen. Elachi: Mr. Temporary Chairperson, Sir, the problem is not how we do things but why we refuse to realise that in the implementation of all this, the national Government gets its ego with the money and the county government does the same. At that time, they forget that we are dealing with human beings and it becomes a conflict of resources between the two. My Senator and the Chairperson of the Committee on Health are both in the Committee of Finance, Commerce and Budget. They know very well that when it comes to allocation of funds, you will see how governors will forget that we are dealing with health and will be looking at the resources that cut across.

When I look at the establishment as a person, this was to establish the Kenya Health Human Resource Advisory Council (KHHRAC). If we feel that it is anchored so much at the national Government whilst health is devolved, then I thought that there would be a way of coming up with the same but for the counties. However, in a way, they should also have an advisory different from that of the national Government. If we feel that the Council is so anchored at the national Government, let us create it but anchor it more in the counties, so that we have equal health services. Whether I am in Bungoma or Kakamega, I should get the same health services so that we remain the same. If we have a patient, we come to the Kenyatta National Hospital (KNH). If the patient goes back to Kakamega Level 5 Hospital, she can still get the same health services.

Sen. (Prof.) Lesan: Mr. Temporary Chairperson, Sir, indeed, we addressed this issue at the Committee Stage and discussed it at great length. Some of the powers that have been given by this Bill are taking away a lot of responsibility from the county and taking them back to the national Government. It was important that we align this Bill to the Constitution by letting the powers be where they are.

There was an element of the arrangement of this thing to look like the Teachers Service Commission (TSC), for example, where there is an overall body that takes care of the country's personnel. This Bill, as it is was before we looked at it in the Committee, was going that direction. We were trying to remove it from that direction and make sure that counties have some powers and yet retain the national standards which are prescribed. This is because the personnel in the counties have the capacity to do what they are required to do even if they are employed by the national Government.

We discussed this Bill at length and thought that we should really align it to what the Constitution says. That is why we deleted a big section. We are open to mediation.

There are certainly other issues that would cut across like the way we classified our hospitals. We will say the same thing here again. However, I am sure that the quality of service is not what my colleague Senator said; that, it would be different at counties than at the national level. They are the same personnel who will be delivering these services at the counties. They have the same qualifications and training but the management is what this Bill tried to take away and that is what we are returning. I thought the Committee was doing that. We agreed with all the Members of the Committee that we do as we have done in this Bill, unless my colleague there has changed his mind.

The Temporary Chairperson (Sen. Sang): Before I give Sen. Wetangula, let us hear Sen. Nabwala and then come to you.

Sen. Nabwala: Mr. Temporary Chairperson, Sir, Article 187(1) of the Constitution says:-

“A function or power of Government at one level may be transferred to a Government at the other level by agreement between the two levels of governments.”

We are trying to pass this Bill. There was public participation and the Council of Governors (CoG) objected. We also looked at it at the Committee level. The national Government has bought a lot of medical equipment on lease /hire which has been distributed to the hospitals. Now, they want to re-classify these hospitals so that they take back the power from county governments, yet we know that health has been devolved. Why can we not hear the Council of Governors (CoG) out? We have their comments on record in the Committee on Health.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairperson, Sir, I thank you for the opportunity. As I was driving here, I listened very carefully to the most unconvincing arguments by the Senate Majority Chief Whip about the amendments. I have had the opportunity to listen to the distinguished Senator for Bomet, a medical doctor himself; Sen. (Dr.) Machage, a distinguished medical doctor and the distinguished nominated Senator from Kilifi, who in her earlier background, was a distinguished nurse.

We must be careful. We should not acquiesce to clawing back the benefits and gains of devolution; we should be strengthening devolution. Where there are challenges, we must tackle them. Pulling back is not solving a problem. In the Fourth Schedule of the Constitution health is devolved to the extent that the national Government is only left with national referral hospitals, which are only five in the country. We have the Kenyatta National Hospital (KNH), the Moi Teaching and Referral Hospital, Eldoret, Mathare Mental Hospital, Spinal Injury, Port Ritz. Those are the only national referral facilities left for the national Government. The national Government can, if it wishes, create more referral hospitals at the national level out there in the counties and regions. But to try and claw back, in the manner that the Bill is drafted, is wrong and does not help in strengthening devolution.

We need to support the Committee. The reason we go to Committees is to give them an opportunity for an in-depth and incisive look at the Bill and assist the House. The Committee has brought convincing amendments, which I fully support. Under Article 96 of the Constitution, we are the defenders and protectors of counties and county

governments, and to the extent, their interests and the foundations of the Constitution on devolution. We should be the last people to do the opposite.

Mr. Temporary Chairman, Sir, I support the amendment.

Sen. Ong'era: Mr. Temporary Chairman, Sir, I also rise to support the Committee's proposals and amendments. We should not lose the gains that we have made in devolution. We have come a long way, particularly to devolve health services, so that we bring them closer to the people. I know that my sister, Sen. Elachi, is very passionate on the rights of mothers and young ones, but I want to plead with her to look at this amendment from a holistic perspective. Under the Constitution, as our able Senate Minority Leader has stated, we are the guardians of devolution. We should not at any one time try to return back to the national Government the gains that we have already achieved from devolution at the county level.

Mr. Temporary Chairman, Sir, I support the Committee's amendment.

(Sen. Obure spoke off record)

The Temporary Chairperson (Sen. Sang): Sen. Obure, you are out of order. We have to bring this matter to a close, so that we can make progress.

Sen. Elachi.

Sen. Elachi: Mr. Temporary Chairman, Sir, I appreciate what my colleagues have said, but I gave my opinion as a woman of this country. I was not doing it on behalf of the Government. I imagined myself as a doctor working in a county. If my husband asks that I get a transfer to another county, what procedure will I use to be released from that county? I was looking at this amendment from a gender perspective, because mostly women are the ones who move from one county to another.

The Temporary Chairperson (Sen. Sang): Hon. Senators, both sides have made their arguments, but in terms of procedure, ordinarily, when moving amendments to delete the clauses of a Bill, we do it separately. This amendment is an entire part on the establishment of the Kenya Health Human Resource Advisory Council. Therefore, it does not make sense to move an amendment to delete Clause 30 and retain Clauses 31 and 32. Therefore, I direct---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairman, Sir. The Clerk should help us to re-number the Clauses. There should not be any contradiction. They will re-number the clauses, so that they are in sync with the numerical order.

The Temporary Chairperson (Sen. Sang): The Senate Minority Leader did not pick what I was saying. I am directing that whereas the practice has always been that if you want to delete clauses in a Bill, you move the amendments clause by clause; on this particular one, we have a set of clauses from Clause 30 to 44 that relate to the same matter on the council.

I direct that the Chairperson moves the amendments from Clause 30 to Clause 44.

Clauses 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clauses 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of the Bill be deleted.

Mr. Temporary Chairman, Sir, the reason for the deletion of Clauses 30 to 44 is to delete the entire Part 4 of the Bill which deals with the establishment of the Human Resource Advisory Council in order to give the county governments the independence to deal with the health workforce.

(Question of the amendment proposed)

Clause 45

(Question, that Clause 45 be part of the Bill, proposed)

Clause 46

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 46 the Bill be amended by-

(a) deleting sub-clause (1f); and

(b) deleting sub-clause (4)

After deleting the Council at Clause 30, the amendment is necessary as reference had been made to the Council to nominate members to the Health Professionals Oversight Authority. With regard to deletion of sub-clause 4, since the powers and authorities are vested in the board the business and the affairs of the board as contained in the Second Schedule are sufficient. Therefore, the amendment deletes the repetition.

(Question of the amendment proposed)

Clauses 47 and 48

(Question, that Clauses 47 and 48 be part of the Bill, proposed)

Clause 49

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 49 be amended in subsection (2) by deleting paragraph (a) and substituting therefor the following paragraph-

(a) is a health practitioner registered by the respective regulatory body.

Mr. Temporary Chairman, Sir, this is consistent with the amendments that we have made so that it is neat. It is just cleaning up.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 50 - 61

(Question, that Clauses 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 61 be part of the Bill, proposed)

Clauses 62-67

The Temporary Chairperson (Sen. Sang): Sen. Mutula Kilonzo Jnr., do you have an amendment?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, if you look at Clauses 62, 63, 64, 65, 66, 67 and 73, this is on setting up of regulations of health products and health technology. Therefore, I propose the deletion of Clauses 62, 63, 64, 65, 66 and 67.

The justification is that the Bill proposes the establishment of a single authority to deal with health products and technologies contrary to policy and legislative standards.

Mr. Temporary Chairman, Sir, the Bill appears to be elevating itself to an Act of Parliament which is superior to other Acts of Parliament already in existence, including the Kenya Medical Suppliers Authority Act and the Pharmacy and Poisons Act among others.

I propose that the part which includes Clauses up to 73 of the Bill be deleted.

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I support the amendments as proposed by Sen. Mutula Kilonzo Jnr.

Sen. (Prof.) Lesan: Mr. Temporary Chairman, Sir, I also support these amendments because we have other bodies in Government with specialised abilities to evaluate and indicate the quality of the products that are provided. I do not think these regulations will have the capacity to do what it is stated here.

I support.

The Temporary Chairperson (Sen. Sang): Sen. Mutula Kilonzo Jnr., your proposal is to delete Clauses 62, 63, 64, 65, 66 and 67?

Sen. Mutula Kilonzo Jnr.: Yes, Mr. Temporary Chairman, Sir. The Clauses run from Clause 62 to Clause 67, then there is also Clauses 68, 73, 89 and 91. I also propose to delete them.

The Temporary Chairperson (Sen. Sang): Sen. Mutula Kilonzo Jnr., just for guidance, I propose that we deal with Clauses 62, 63, 64, 65, 66 and 67 first.

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, I beg to move:-

THAT, Clauses 62, 63, 64, 65, 66 and 67 be deleted.

(Question of the amendments proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clauses 68 - 72

(Question that Clauses 68, 69, 70, 71 and 72 be part of the Bill proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clause 73

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-
THAT Clause 73 be deleted.

This Clause proposes an Act of Parliament to legislate on mental health based on the arguments that I had raised. There is already an existing legislation on it and there is no reason to put it in this Bill.

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, indeed I am currently working on some amendments of the Mental Health Act which is completely separate and should be kept out of this Bill.

Sen. (Prof.) Lesan: I support.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clauses 74 - 88

(Question that Clauses 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87 and 88 be part of the Bill, proposed)

The Temporary Speaker (Sen. Sang): We shall have Division at the end.

Clause 89

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, the Bill be amended by deleting Clause 89.

As we have proposed, private entities shall be permitted to operate hospitals, health clinics, laboratories and other institutions in the health sector subject to licensing by the appropriate regulatory bodies.

The justification is that a separate legislation should provide a framework for the regulation of health facilities, including public and private health facilities.

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I support Sen. Mutula Kilonzo Jnr. because we currently have a Bill on the amendments of the Medical Practitioners and Dentists Board which is bestowed with the duty of licensing. Therefore, the existence of this clause in the Bill is a duplication of matters of another Act.

Sen. Bule: Temporary Chairman, Sir, I concur with Sen. Mutula Kilonzo Jnr. because it is such duplication that creates a lot of f war. Let us deal with them separately. Let us avoid duplication.

The Temporary Speaker (Sen. Sang): Thank you, Sen. Bule, for speaking to that amendment.

(Question of the amendment proposed)

We shall have a Division at the end.

Clause 90

(Question, that Clause 90 be part of the Bill, proposed)

Clause 91

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 91.

I gave justification that Clause 91 is tied to Clause 89.

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I support the proposed amendment by Sen. Mutula Kilonzo Jnr.

(Question of the amendment proposed)

The Temporary Speaker (Sen. Sang): We shall have Division at the end.

Clauses 92 - 112

(Question, that Clauses 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111 and 112 be part of the Bill, proposed)

First Schedule

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the First Schedule be amended —

(a) in the row titled Level 1: Community Health Services, by deleting the Note appearing immediately after paragraph (d) and substituting therefor the following new Note —

Note: The In-charge is a qualified health practitioner registered by the respective regulatory body.

(b) in the row titled Level 3: Health Centre, by deleting the Note appearing immediately after paragraph (f) and substituting therefor the following new Note —

Note: The In-charge is a nurse, a clinical officer or a medical officer. The in charge shall have at least two years work experience in a management position.

(c) in the row titled Level 4: Primary Hospital by—

(i) deleting the title “Level 4: “Primary Hospital” and substituting therefor the title “Level 4: County Referral Hospital”;

(ii) deleting the Note appearing immediately after paragraph (l) and substituting therefor the following new Note –

Note: The In-charge is a qualified health practitioner registered by the respective regulatory body”;

(d) in the row titled Level 5: Secondary Hospital by—

(iii) deleting the title “Level 5: Secondary Hospital” and substituting therefor the title “Level 5: Regional Referral Hospital”;

(iv) deleting the Note appearing immediately after paragraph (c) and substituting therefor the following new Note –

Note: The In-charge shall be qualified for appointment if that person—

(a) is a qualified health practitioner registered by the respective regulatory body;

(b) holds a Masters degree in a health related field from a university recognized in Kenya;

(c) has a post graduate qualification in management; and

(d) has at least five years work experience in a management position.

(e) in the row titled Level 6: Tertiary Hospital by—

(v) deleting the title “Level 6: Tertiary Hospital” and substituting therefor the title “Level 6: National Referral Hospital”;

(vi) deleting the Note appearing immediately after paragraph (b) and substituting therefor the following new Note –

Note: The In-charge shall be qualified for appointment if that person—

(a) is a qualified health practitioner registered by the respective regulatory body;

(b) holds a Masters degree in a health related field from a university recognized in Kenya;

(c) has a post graduate qualification in management; and

(d) has knowledge and at least ten years work experience in a senior management position.

The purpose of this amendment is to align the Bill with the terms that are currently being used. Therefore, the Bill should align itself with what is currently in practice. The amendment is for the purpose of making it clear on how to treat those hospitals. The qualifications of the persons in charge are clearly stated there and the justification is that any qualified nurse has the capacity to manage a health facility. (Dr.) Machage can confirm that. In addition, the upgrading or downgrading of county health facilities should not be a decision of the director general.

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I support the proposed amendment by Sen. Mutula Kilonzo Jnr. What he has done is to clean up the classifications and personnel of the health sector.

(Question of the amendment proposed)

The Temporary Speaker (Sen. Sang): We shall have Division at the end.

Second Schedule, Third Schedule and Fourth Schedule

(Question, that the Second Schedule, Third Schedule and Fourth Schedule be part of the Bill, proposed)

Clause 2

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, Clause 2 of the Bill be amended by-

- (a) deleting the interpretation of the word “abortion”; and
- (b) inserting the following new definition in the proper alphabetical sequence-
“death” means the permanent loss of capacity for consciousness and the loss of all brainstem functions;

The purpose of the amendment is because the term “abortion” has not been referred to anywhere in the Bill. Therefore, it needs no definition. That is why it has to be deleted. Clause 2(b) has also been amended because we have to define the term death as per the World Health Organization (WHO) which has not been defined in this Bill.

The Temporary Speaker (Sen. Sang): This is essentially an amendment to the amendments that you made.

(Question of the amendment proposed)

Title and Clause 1

(Question, that the Title and Clause 1 be part of the Bill, proposed)

We shall have Division at the end.

Hon Senators, we have finished with all the clauses. We shall now proceed to report progress.

Mover, Please, proceed.

Sen. (Dr.) Machage: Mr. Temporary Chairperson, Sir, pursuant to Standing Order No.139, I beg to move that the Committee of the Whole report progress on its consideration of The Health Bill (National Assembly Bill No.14 of 2015) of 2014) and seeks leave to sit again tomorrow.

The Temporary Chairperson (Sen. Sang): Vey well, I will put the question. Hon. Senators, the tomorrow is actually in the afternoon. So, stand guided.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. (Dr.) Machage in the Chair)]

PROGRESS REPORTED

THE HEALTH BILL (NATIONAL ASSEMBLY
BILL NO.14 OF 2015)

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to report that a Committee of the Whole has considered The Health Bill (National Assembly Bill No.14 of 2015) and seeks leave to sit again tomorrow.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the said Report.

Sen. Obure seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. (Dr.) Machage): Let us move on to the next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Sang) took the Chair]

THE ENERGY BILL (NATIONAL ASSEMBLY
BILL NO.50 OF 2015)

The Temporary Chairperson (Sen. Sang): Hon. Senators, we are now on Order No.10, Committee of the Whole to consider The Energy Bill (National Assembly Bill No.50 of 2015).

Clauses 3 - 10

*(Question that Clauses 3, 4, 5, 6, 7, 8, 9 and
10 be part of the Bill, proposed).*

Clauses 11 - 20

*(Question, that Clauses 11, 12, 13, 14, 15, 16, 17, 18,
19 and 20 be part of the Bill, proposed)*

Clauses 21 - 30

(Question, that Clauses 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 be part of the Bill, proposed)

Clauses 31 - 40

(Question, that Clauses 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 be part of the Bill, proposed)

Clauses 41 - 52)

(Question, that Clauses 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): There are no amendments to these clauses. Therefore, we will vote on them at the end.

Clause 53

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 53 of the Bill be amended in sub-clause (1) by deleting the words “Energy and Petroleum” appearing immediately after the words “Nuclear Power” and substituting therefor the words “and Energy”.

This amendment is intended to align the name of the agency to its role. This is given the fact that the objects and functions of the agency are restricted to matters relating to nuclear power and energy. Hence the amendment is intended to correct this anomaly.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Hon Senators, Division on this Clause will be at the end.

Clauses 54 - 56

(Question, that Clauses 54, 55 and 56 be part of the Bill, proposed)

Clause 57

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 57 of the Bill be amended by deleting paragraph (e) and substituting therefor the following new paragraph –

(e) not more than four other members nominated as follows and appointed by the Cabinet Secretary –

(i) two persons nominated by the organisation representing the largest number of persons carrying out operations in the energy sector;

(ii) one person nominated by the Kenya Private Sector Alliance; and

(iii) one person from an institution of higher education.

The Committee proposes to amend paragraph (e) of Clause 57 of the Bill to provide the categories of persons to be appointed by the Cabinet Secretary from the private sector. It seeks to ensure the persons appointed by the Cabinet Secretary represents as widely as possible the interests of persons dealing in the energy sector; and that they are fit and competent to serve in the agency.

(Question of the amendment proposed)

Clauses 58 - 60

(Question, that Clauses 58, 59 and 60 be part of the Bill, proposed)

Clauses 61 - 248

Question, that Clauses 61-248 be part of the Bill, proposed)

Division will be done at the end.

Clause 249

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 249 of the Bill be amended by deleting the words “not exceeding” appearing immediately after the words “liable to a fine” and substituting therefor the words “not less than”.

This Bill provides for a minimum general penalty of a fine not exceeding Kshs100,000 for the commission of the offence for which no penalty is expressed as stated. The Committee proposes to retain this as a minimum penalty and leave the courts to determine whether to impose a higher penalty depending on the nature of the offences.

(Question of the amendment proposed)

Clauses 250-253

(Question, that Clauses 250-253 be part of the Bill, proposed)

Clause 2

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended by-

(a) deleting the definition of the term “customer”;

(b) deleting the definition of the word “local community” and substituting therefor the following new definition-

“local community” means a people living in a sub-county within which an energy resource under this Act is situated and are affected by the exploitation of that energy resource.

Mr. Temporary Chairman, Sir, the Committee proposed to amend the definition of the term “local community” as set out under Clause 2 of the Bill to confine the definition to persons found in a sub-county within which an energy resource is located and who are affected by the exploitation of that energy resource.

(Question of the amendment proposed)

First Schedule – Fifth Schedule

(Question, that the First Schedule, Second Schedule, Third Schedule, Fourth Schedule and Fifth Schedule be part of the Bill, proposed)

Title and Clause 1

(Question, that the Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Hon Senators, we are done with the consideration of the various clauses. Let us now proceed to report progress.

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, pursuant to Standing Order No.139, I beg to move that the Committee do report progress on its consideration of the Energy Bill (National Assembly Bill No.50 of 2015) and seek leave to sit again today in the afternoon.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. (Dr.) Machage) in the Chair]

PROGRESS REPORTED**THE ENERGY BILL (NATIONAL ASSEMBLY BILL
NO.50 OF 2015)**

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Energy Bill (National Assembly Bill No.50 of 2015) and seeks leave to sit again tomorrow.

Sen. Mwakulegwa: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

The Temporary Speaker (Sen. (Dr.) Machage): Who is seconding?

Sen. Obure: I second.

(Question proposed)

(Question put and agreed)

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, I will reorganize the Order Paper. We will first go to Order No.13 for reasons that are important, then continue with the Order Paper as it is written.

We do not have the amendments on Order No.13. I order that the amendments be circulated now so that we can execute the same. I hope it will take the minimum time. I will give you one minute. You should be in the process of handing the Members the amendments by the time the Chair leaves.

Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Sang) took the Chair]

**THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL
EXPRESSIONS BILL (NATIONAL ASSEMBLY BILL NO.48 OF 2015)**

The Temporary Chairperson (Sen. Sang): The amendments are not in the Order Paper, but they have just been circulated. We can proceed.

Clause 3

(Question, that Clause 3 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end. Next Clause 4, there is an amendment proposed by the Chairperson of the Committee.

Clause 4

Sen. Madzayo: Mr. Temporary Chairperson, I beg to move:

THAT, Clause 4 of the Bill be amended by-

- a) inserting the following new sub-clause immediately after paragraph (d)-
- (e) The allocation of financial resources for the promotion of cultural activities; and
- (f) Subject to this Act or any other law, the establishment of mechanisms for using culture as a tool for conflict resolution and promotion of cohesion.

The purpose of this amendment is to impose a duty on the county governments to ensure that financial resources are allocated for the purpose of promotion of cultural activities. The cultural activities are devolved functions and are capable of stimulating economic growth in the counties. They also provide a forum for unifying the community thus promoting peace and stability of the residents of the counties.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 5 - 21

(Question that Clauses 5-21 be part of the Bill, proposed)

Division will be at the end.

Clause 22

Sen. Madzayo: Mr. Temporary Chairperson, I beg to move:

THAT, Clause 22 of the Bill be amended in sub-clause (3) by inserting the words “and the respective county executive committee member in charge of matters relating to traditional knowledge and culture” immediately after the words “Cabinet Secretary.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 23 - 24

(Question that Clauses 23 and 24 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 25

Sen. Madzayo: Mr. Temporary Chairperson, I beg to move:

THAT, Clause 25 of the be amended in sub-clause (3)(d) by inserting the words “after consultations with the person in charge of matters relating to traditional knowledge and culture in the relevant county” immediately after the words “relevant community”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 26-33

(Question, that Clauses 26-33 be part of the Bill, proposed)

Division will be at the end.

Clause 34

Sen. Madzayo: Mr. Temporary Chairperson, I beg to move:

THAT Clause 34 of the Bill be amended by deleting paragraph (h).

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 35 - 41

(Question that Clauses 35 - 42 be part of the Bill, proposed)

Clause 43

Sen. Madzayo: Mr. Temporary Chairperson, I beg to move:

THAT, Clause 43 be amended by inserting the following new sub-clause immediately after sub-clause (2)-

- (2) Whenever the Cabinet Secretary is required to make regulations or rules under this Act, the Cabinet Secretary shall make the regulations in consultation with the Council of County Governors.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 44

(Question that Clause 44 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 2, Title and Clause 1

*(Question, that Clause 2, Title and Clause 1 be
part of the Bill, proposed)*

Temporary Chairperson (Sen. Sang): Division will be at the end.

Hon. Senators, we are done. Let us now move on to report progress.

Sen. Madzayo: Mr. Temporary Speaker, Sir, pursuant to Standing Order No.139, I beg to move that the Committee of the Whole report progress on its consideration of the Protection of Traditional Knowledge and Cultural Expressions Bill (National Assembly Bill No.48 of 2015) and seek leave to sit again today.

(Question proposed)

(Question put and agreed to)

[The House resumed]

[The Temporary Speaker (Sen. (Dr.) Machage) in the Chair]

PROGRESS REPORTED

THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS BILL (NATIONAL ASSEMBLY BILL NO.48 OF 2015)

The Temporary Speaker (Sen. (Dr.) Machage): Let the Chairperson of the Committee of the Whole report progress.

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Protection of Traditional Knowledge and Cultural Expressions Bill (National Assembly Bill No.48 of 2015) and seeks leave to sit again tomorrow.

Sen. Mwakulegwa seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. (Dr.) Machage): Next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Sang) took the Chair]

**THE PETROLEUM (EXPLORATION, DEVELOPMENT, AND
PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO.44 OF 2015)**

The Temporary Chairperson (Sen. Sang): Hon. Senators, we are now at the Committee of the Whole to consider The Petroleum (Exploration, Development, and Production) Bill (National Assembly Bill No.44 of 2015). Let us proceed.

Clauses 3 - 4

(Question, that Clauses 3 and 4 be part of the Bill, proposed)

Clause 5

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 5 of the Bill be amended in –

(a) sub-clause (1) by inserting the words “once in” immediately after the words “at least”;

(b) sub-clause (3) by inserting the words “on its website and in at least two newspapers of national circulation” immediately after the words “and publish”.

The Committee proposes that sub-clause (1) of Clause 5 of the Bill be amended in order to clarify that the CS should reveal the national policy on upstream petroleum operations at least once in every five years.

(Question of the amendment proposed)

Clause 6

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 6 of the Bill be amended in sub-clause (1) by inserting the words “a national” immediately after the words “and review”.

The Committee proposes to amend sub-clause (1) of Clause 6 of the Bill to align the provision of the sub-clause with the marginal note which refers to national upstream petroleum strategic plan.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 7 - 9

(Question, that Clauses 7, 8 and 9 be part of the Bill, proposed)

Clause 10

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 10 of the Bill be amended in sub-clause (1) by

(a) inserting the following new paragraph immediately after paragraph (k)–

(ka) may, by order in writing and upon the recommendation by the Authority, order the cessation of any upstream petroleum operations where there has been a breach of any provision of this Act;

(b) inserting the words “on the recommendation of the Authority” immediately after the word “may” in the opening clause of paragraph (l);

The Committee proposes to amend sub-clause (1) of Clause 10 to confer to the CS powers to order cessation of operation by a contractor where there has been a breach of the provision of the Act. This will be an addition to the powers conferred under paragraph (1) which confers on the CS powers to order the withdrawal of persons from premises and cessation of operation where the safety of persons in the area of operation is affected. These powers are also to be exercised in consultation with the authority in order to limit the discretion that will be exercised by the CS in such a situation, given the impact of such a decision, and to ensure that the decision that is made is an informed decision.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 11

(Question that Clause 11 be part of the Bill, proposed)

Clause 12

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 12 of the Bill be amended –

(a) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (i) –

(j) one person nominated by the Kenya Private Sector Alliance from their member organizations who has demonstrated competence and capacity in matters related to the petroleum sector.

(b) in sub-clause (3) by inserting the words “of the Authority” immediately after the words “the Director-General”;

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

–

(5) The Advisory Committee shall, in co-opting members to sit in the Committee, ensure that the persons co-opted have the necessary knowledge and experience in the matters under consideration by the Committee.

The Committee proposes to amend sub-clause (2) of Clause 12 of the Bill to include in the composition of the Advisory Committee, a person nominated by the Kenya Private Sector Alliance (KPSA) and who is competent and has capacity to deal with matters related to the petroleum sector. This is in view of the fact that matters within the purview of the Advisory Committee affect both the public and the private sectors. Hence, it will be important to have a representative from the private sector to advise and give perspective on the impact of any recommendation that may be made with respect to the petroleum sector.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 13-14

*(Question, that Clauses 13 and 14
be part of the Bill, proposed)*

Clause 15

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 15 of the Bill be amended in paragraph (o) by inserting the words “in consultation with the Competition Authority established under the Competition Act” immediately after the word “monitor”.

This amendment is to provide for a consultative process between the authority and the Competition Authority in the monitoring of the operations of the contractors in order to ensure that competition and fair practice is maintained. This is owing to the fact that the principal oversight body in matters relating to competition in Kenya is the Competition Authority. While the authority is expected to oversee the operations of the contractors in the petroleum sector, monitoring of the operations to ensure adherence to the Competition Act should be carried out in consultation with the Competition Authority, which is the principal regulatory body.

(Question of the amendment proposed)

Clause 16

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT clause 16 of the Bill be amended in sub-clause (1) by inserting the words “the environment” immediately after the words “and to protect” appearing in paragraph (g).

The Committee proposes to amend sub-clause (1) of Clause 16 of the Bill to provide powers to take such action as is necessary to ensure protection of the environment. The provision as set out in the Bill restricts the powers of the authority to the enforcement of action necessary for the protection of health and safety of workers and the public. The environment is a critical element that is likely to be affected by the operations of a contract. It would, therefore, be important to ensure that measures are put in place to safeguard it. The amendment proposed is intended to ensure that this is done.

The Temporary Chairperson (Sen. Sang): Chairperson, I hope that you are using the corrected version of the amendments which have been circulated.

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, it has just been brought to my attention.

The Temporary Chairperson (Sen. Sang): The content does not change, but there is some contradictions that---

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, Clause 16 is being amended in sub-clause (1) by inserting the words “the environment” immediately after the words “and to protect” appearing in paragraph (g).

(Question of the amendment proposed)

Clause 17

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 17 of the Bill be amended in sub-clause (1) by deleting paragraph (e) and substituting therefor the following new paragraphs –

- (e) five other members appointed by the Cabinet Secretary out of whom –
 - (i) one person shall be nominated by the Kenya Private Sector Alliance;
 - (ii) one person with knowledge and experience in matters relating to the petroleum from an institution of higher education.

The Committee proposes to amend sub-clause (1) of Clause 17 of the Bill to provide for the categories of persons to be appointed by the Cabinet Secretary from the private sector. It seeks to ensure that out of the persons to be appointed by the Cabinet Secretary as members of the board of directors of the authority, at least two members are nominated from the Kenya Private Sector Association (KEPSA) and an institution of higher education, in order to ensure that the body is as representative as possible of persons in the public and the private sector. This is also likely to enhance the performance of the board, given that it would widely represent stakeholders across the board.

(Question of the amendment proposed)

Clauses 18 - 44

(Question, that Clauses 18 - 44 be part of the Bill, proposed)

Clause 45

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, clause 45 of the Bill be amended –

(a) in sub-clause (4) by inserting the words “on the website of the Ministry,” immediately after the words “of thirty days”;

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

(4A) The Cabinet Secretary shall, in the notice published under subsection

(4) –

(a) set out a statement of the details of the contractor with whom the Cabinet Secretary intends to enter into direct negotiations;

(b) invite any objections that a person may have with respect to the intended negotiations; and

(c) invite any interested party who may have an interest in the block to submit a bid with respect to that block.

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

(5A) The Cabinet Secretary shall inform all the bidders of the bidder to whom a block has been awarded.

(5B) The Cabinet Secretary shall, upon concluding negotiations under this section, publish a notice on the website of the Ministry, in the *Gazette* and in at least two newspapers of national circulation, information with respect to the contractor to whom the Cabinet Secretary has awarded a block and the outcome of such negotiations.

The committee proposes to amend sub-clause (4) of Clause 45 of the Bill to provide for publication of the notice of intended direct negotiations with a contractor on the Ministry’s website in addition to the requirement for publication in the gazette notice and in two newspapers of national circulation. This is intended to ensure that as many persons as possible are informed of the decisions to enter into direct negotiations, particularly in view of the fact that bidders and members of the public outside the country may be interested in the information to be published. This will, therefore, ensure that as many people as possible are informed of the decision of the Cabinet Secretary.

(Question of the amendment proposed)

Clauses 46 - 47

(Question, that Clauses 46 and 47 be part of the Bill, proposed)

Clause 48

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 48 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “with the approval of the cabinet Secretary” immediately after the words “contractor shall appoint”;
- (b) in sub-clause (2) by deleting the words “with the approval of the Cabinet Secretary” immediately after the words “another operator”;
- (c) by deleting sub-clause (3).

Mr. Temporary Chairman, Sir, the Committee proposes to amend sub-clause (1) and (2) by removing the requirement “with the approval of the Cabinet Secretary” immediately after the words “another operator”. The contractor should have a free hand in determining the operators to appoint and their relationship should be governed by the agreement they entered into without the interference by the Cabinet Secretary. This amendment seeks to ensure that a contractor has a free hand in determining the operators, given that the contractor is ultimately responsible for the performance of the contract.

(Question of the amendment proposed)

Clause 49

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 49 of the Bill be amended in sub-clause (6) by deleting the word “ten” appearing immediately after the words “not less than” and substituting therefor the word “two”.

(Question of the amendment proposed)

Clause 50

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 50 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause –

(2) The Authority shall give access to information relating to non-exclusive exploration permits that have been issued under this Act to an applicant for such information and shall, for this purpose, avail such information–

- (a) for inspection by a person applying to inspect such information free of charge;
- (b) by supplying a copy to an applicant or, where such information is held by the Authority in electronic form, by submitting such information through electronic means upon payment of a reasonable fee to cover the costs of supplying the information; and
- (c) by publishing the information on its website and in such other manner as it may consider appropriate.

Mr. Temporary Chairman, Sir, the Committee proposes to amend sub-clause (2) of Clause 50 by replacing the existing provision, providing for access to information in order to expand the requirement for access, by making provision for the supply of information and inspection free of charge; supply of copies of information through electronic means upon payment of a reasonable fee and the publication of such

information on the website of the authority and through such other means as it considers appropriate. This clause seeks to ensure access to information with respect to information relating to non-exclusive exploration permits and hence, facilitate the awareness and involvement of members of the public in the process of issuance of permits and information relating to persons to whom such permits have been awarded.

(Question of the amendment proposed)

Clause 51

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 51 of the Bill be amended –

(a) by inserting the following new sub-clause immediately after sub-clause (1) -

(1A) The provisions of section 50(2) shall apply with respect to operational permits under subsection (1).

(b) by inserting the following new sub-clause immediately after sub-clause (7) –

(7A) The Authority shall, in carrying out public participation under subsection (7)–

(a) be guided by the principles of citizen participation in counties set out under section 87 of the County Governments Act; and

(b) conduct the public participation through such means as may be necessary to ensure that the citizens within the respective county and the relevant stakeholders –

(i) are informed of any decision to be undertaken under this Act which affects them;

(ii) have sufficient notice of any decisions to be made or permits to be issued which may affect them; and

(ii) have an opportunity to obtain information with respect to any permit issued or decision made under sub-paragraph (i) or to submit their concerns or any information that they may have with respect to the issue under consideration;

(c) conduct the public participation through such fora as may be necessary for effective public participation under paragraph (b) including the structures for citizen participation established by a county government pursuant to section 91 of the County Governments Act;

(d) publish any notices required for the purpose of informing the public through such forums including at least one newspaper of local circulation within the local community which is to be affected by the issue under consideration.

The essence of this amendment is to enhance the manner in which public participation is carried out and ensure that citizens within the respective counties get the information for inspection for free of charge. The supply of copies of information through electronic means upon payment of a reasonable fee ---

Mr. Temporary Chairperson, Sir, I am sorry. I am a bit mixed up. Is this Clause 51?

The Temporary Chairperson (Sen. Sang): Yes, the amendment is to Clause 51.

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, the essence of this amendment is to enhance the manner in which public participation is carried out. It is also to ensure that citizens within the respective counties are informed and involved in the process of issuance of operational permits, given the fact that the activities to be carried out with respect to the permits are likely to have a major impact on their livelihood.

(Question of the amendment proposed)

Clause 52

(Question, that Clause 52 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Hon. Members, there is an amendment to Clause 53.

Clause 53

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 53 of the Bill be amended –

(a) in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c) –

(d) the taxes payable with respect to the transaction have been assessed.

(b) in sub-clause (9) by deleting the words “an exploration” appearing immediately after the words “or control of” and substituting therefor the word “a”;

(c) by inserting the following new sub-clause immediately after sub-clause (11) –

(12) A person who contravenes the provisions of this section commits an offence and on conviction, shall be liable to a fine of not less than ten million shillings or to imprisonment for a term of two years or to both.

The Committee proposes to amend Sub-clause 2 of Clause 53 by imposing a requirement for assessment of tax prior to the transfer of an interest in a petroleum agreement. This would help to avoid litigation as has been the case in some jurisdictions and would help to protect the interests of the Cabinet Secretary (CS) in ensuring that all the requirements and obligations are adhered to, prior to the transfer of the interest.

In Sub-clause (9), the Committee proposes to amend it in order to clarify that provisions should apply to any company with an interest in a petroleum agreement and not just to an exploration company or joint venture. Confining this requirement to the two entities is likely to leave out other entities with an interest in a petroleum agreement.

Under the same on sub-clause 12, we propose to amend Clause 53 by introducing a new sub-clause (12), which imposes a penalty for breach of the provision of the clause. This will ensure compliance and deter persons intending to contravene the provisions.

(Question of the amendment proposed)

Clauses 54 – 57

(Question that, Clauses 54-57 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Hon. Members, there is an amendment to Clause 58. Yes, Mover.

Clause 58

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 58 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)-

(2A) Parliament shall, in carrying out its obligation under sub-section (2), undertake public participation.

The Committee proposes to amend Clause 58 by introducing a new sub-clause (2)(a), to impose a requirement on Parliament to carry out public participation on the ratification of the production sharing contract pursuant to Article 71 of the Constitution. This is important given the likely impact the implementation of such agreement or contract is likely to have on local communities.

(Question of the amendment proposed)

Clause 59

(Question that, Clause 59 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Mr. Chairperson, there is a proposed amendment to Clause 60.

Clause 60

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 60 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) -

(3) A person who contravenes the provisions of this section commits an offence and on conviction, shall be liable to a penalty of not less than ten million shillings or to imprisonment for a term of two years or to both.

We propose to amend Clause 60 of the Bill in order to provide a fine of not less than Kshs10 million or imprisonment for a term of two years or both where a person alters or verifies a development plan without informing the authority. This is intended to serve as a deterrent measure to prevent breaches of this contract.

(Question of the amendment proposed)

Clauses 61 – 76

(Question, that Clauses 61 - 76 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): There is an amendment to Clause 77. Yes, Chairperson.

Clause 77

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 77 of the Bill be amended in sub-clause (1) by deleting the words “not be higher than at any other place” appearing immediately after the words “local content shall” in the proviso and substituting therefor the words “be at the prevailing market rate”.

We propose to amend the proviso to sub-clause 1 of Clause 77 in order to provide for the adherence of local content where the cost of meeting such local content is at the prevailing market rate. The provision, as set out in the bill would give leeway to contractors to avoid implementing local content given the fact that some of the goods and services to be sourced or services delivered in other countries may be available at such lower costs owing to factors such as subsidies and advancements in technology, that make the production or the delivery of goods and services much cheaper. This would, therefore, mean that the local communities are likely to lose out and not benefit, if the requirement, as set out in the provision, remains as is.

(Question of the amendment proposed)

Clauses 78 - 85

(Question that, Clauses 78 - 85 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Hon. Chairperson, could you move the proposed amendment to Clause 86?

Clause 86

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 86 of the Bill be amended in sub-clause (2) by inserting the words “sea, forest, wildlife and marine” immediately after the words “salt water” appearing in paragraph (h).

We propose to amend Clause 86 of the Bill in order to expand the eco-system in Clause 86(2)(h) to include the sea, forest and sub-marine. This is to expand the need for the protection of such resources through the prevention of pollution.

The Temporary Chairperson (Sen. Sang): Sen. Mwazo, that particular clause has a small amendment that was circulated to you.

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I have just seen it. Let me repeat it.

I beg to move:-

THAT, Clause 86 of the Bill be amended in sub-clause (2) by inserting the words “sea, forest, wildlife and marine” immediately after the words “lake, reservoir” appearing in paragraph (h).

(Question of the amendment proposed)

Clauses 87 - 88

(Question, that Clauses 87 and 88 be part of the Bill, proposed)

Clause 89

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 89 of the Bill be amended –

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

(1) A contractor shall not vent or flare natural gas in the course of the conduct of upstream petroleum operations except with the prior authorization of the Authority in consultation with the National Government agency responsible for environment and safety and any other National Government entity.

(1A) A contractor under sub-section (1) shall carry out the venting or flaring in accordance with the terms and conditions of the consent, existing laws and best petroleum industry practices.

(1B) Notwithstanding sub-section (1), the prior consent of the Authority shall not be required in the case of an emergency and where such venting or flaring is necessary to avert a disaster.

(1C) Where a contractor vents or flares under this section, such contractor shall –

(a) ensure that the gas venting or flaring is kept at the lowest possible level;

(b) inform the Authority of the carrying out of such venting or flaring and the circumstances requiring such action; and

(c) submit to the Authority such information as the Authority may require with respect to such venting or flaring.

(b) in sub-clause (4) by deleting the word “five” appearing immediately after the words “not less than” and substituting therefor the word “ten”;

Mr. Temporary Chairman, Sir, we propose to amend Clause 89 of the Bill in order to allow for flaring and venting in the case of emergency, without having to seek consent. This is owing to the fact that the period required to seek consent may result in a disaster,

given the fact that in an emergency situation, action may be required to flare or vent urgently

(Question of the amendment proposed)

Clauses 90 - 99

(Question, that Clauses 90 - 99 be part of the Bill, proposed)

Clause 100

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 100 of the Bill be amended in the proviso appearing immediately after subclause (2)(b) by –

(a) deleting the word “fifteen” appearing immediately after the words “applicant shall give” in the proviso and substituting therefor the word “thirty”;

(b) inserting the words “and through such other appropriate forum so as to ensure that the information is widely publicized within the local community in which the land exists” immediately after the words “nationwide circulation”.

Mr. Temporary Chairman, Sir, the Committee proposes to amend Clause 100 of the Bill in order to increase the days set out in the notice required under sub-clause 2 from 15 days to 30 days for the purpose of tracing the owner of the land in which exploration activities are likely to take place. Further to that, the amendment imposes a requirement to track the owner of such land through other mechanisms that would allow for the publication of such information, for the purposes of identifying the owner of such land to the entire local community, particularly where the community has limited access to newspapers.

(Question of the amendment proposed)

Clause 101

(Question, that Clause 101 be part of the Bill, proposed)

Clause 102

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 102 of the Bill be amended –

(a) in sub-clause (1) by deleting the word “may” appearing immediately after the words “under section 100” in the introductory phrase and substituting therefor the word “shall”;

(b) in sub-clause (2) by inserting the following new paragraph immediately after paragraph (b)–

(c) that any compensation payable under paragraph (a) or (b) shall be paid within a period of four months from the date of issuance of the consent and in full to the person entitled to such compensation.

(Question of the amendment proposed)

Clauses 103 - 106

(Question, that Clauses 103 - 106 be part of the Bill, proposed)

Clause 107

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 107 of the Bill be amended in sub-clause (1) by deleting the words “forests, national parks, reserves and heritage sites” appearing immediately after the words “National Government Property”.

(Question of the amendment proposed)

Clauses 108 - 120

(Question, that Clauses 108 - 120 be part of the Bill, proposed)

First Schedule

(Question that the First Schedule be part of the Bill, proposed)

Second Schedule

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Model Production Sharing Contract set out in the Second Schedule to the Bill be amended in –

(a) Clause 2 in the definition of the term “best petroleum industry practices” by deleting the word “maximizing” appearing immediately after the words “environment by” in paragraph (c) and substituting therefor the word “minimizing”;

(b) Clause 16 by –

(i) deleting the word “material” appearing immediately after the words “any adverse” in paragraph (6);

(ii) deleting the words “forty eight (48)” appearing immediately after the words “Authority within” in paragraph (8) and substituting therefor the words “twenty four”;

(c) Clause 20 by inserting the following new paragraph immediately after paragraph (3) –

(4) The contractor shall, in employing and providing training for Kenyans under this Clause take into account the need to employ and train marginalized groups.

(d) clause 26 by –

(i) deleting paragraph (3);

(ii) in paragraph (4) by inserting the words “in accordance with the Land Act” immediately after the words “the Government shall”;

Mr. Temporary Chairman, Sir, the Committee proposes to rectify the anomaly in paragraph (c) in the definition of the term “best petroleum practices” by substituting the word “maximizing” with the word “minimizing” as the activities from the protection of the environment are meant to be aimed at reducing the impact of upstream petroleum operations and not maximizing the impact.

The amendment in Clause 16 is to delete the word “material” so as to impose an obligation on the contractor to take measures to minimize any adverse impact, however small, on national parks and reserves and hence, not confine this requirement to material impact. The term “material” is also subjective and interventions to minimize the impact may be taken when it is already too late.

Under (ii) the amendment proposes to reduce the time required for notification by a contractor to the authority of action taken to control pollution in case of an emergency or major accident from 48 hours to 24 hours so as to enable the authority to take action where necessary to mitigate against any damage as soon as possible.

The amendment under (c) is to compel a contractor to take into account marginalized groups when implementing local contents.

The Temporary Chairperson (Sen. Sang): Have you finished?

Sen. Mwakulegwa: No, Mr. Temporary Chairman, Sir.

There is (d) which deletes paragraph 3 owing to the fact that it implies that a contractor can proceed to occupy community land prior to its setting part and subsequently requesting for its setting apart.

The other amendment under Clause 26 makes provision that any way-leaves easements or permits are to be granted in accordance with the Land Act.

(Question of the amendment proposed)

Clause 2

Sen. Mwakulegwa: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended by deleting the definition of the word “local community” and substituting therefor the following new definition –

“local community” means a people living in a sub-county within which a petroleum resource under this Act is situated and are affected by the exploitation of that petroleum resource;

Mr. Temporary Chairman, Sir, we are proposing to amend the definition of the local community as set out under Clause 2 of the Bill to confine the definition to persons found in the sub-county within which an energy resource is located and who are affected by the exploitation of the natural resource. This will also align it to the definition proposed in the Energy Bill (National Assembly Bill No. 50 of 2015).

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

The Title and Clause 1

*(Question, that the Title and Clause 1 be part of the
Bill proposed)*

The Temporary Chairperson (Sen. Sang): Hon. Senators, we are done with the consideration of the Energy Bill (National Assembly Bill No. 50 of 2015). We now proceed to report progress.

Sen. Mwakulegwa: Mr. Chairman, Sir, pursuant to the Standing Order 139, I beg to move that the Committee of the Whole report progress on its consideration of The Petroleum (Exploration, Development, and Production) Bill (National Assembly Bill No. 44 of 2015) and seek leave to sit again today in the afternoon.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Speaker (Sen. (Dr.)
Machage) in the Chair]*

PROGRESS REPORTED

THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2015)

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) and seeks leave to sit again tomorrow.

Sen. Mwakulegwa: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee of the Whole on the said report.

Sen. Obure seconded.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Sang) took the Chair]

THE FOREST CONSERVATION AND MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2015)

(Resumption of Debate interrupted on 13.7.2016)

The Temporary Chairperson (Sen. Sang): Hon. Senators, we are now in the Committee of the Whole to consider Order No. 8 on the Forest Conservation and Management Bill (National Assembly Bill No. 49 of 2015).

You will recall that yesterday we considered all the Clauses up to Clause 20. We now proceed from where we left yesterday.

Clauses 21 - 24

*(Question, that Clauses 21 – 24 be part of the
Bill proposed)*

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clause 25

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 25(2) of the Bill be amended in paragraph (c) by deleting the word “national” appearing immediately after the words “tourism in” and substituting therefor the word “public”.

Mr. Temporary Chairman, Sir, I want to say that many of the amendments that I will move are related to the fact that we decided to use the word “public forests” instead of “national forests” because there are no national forests. Therefore, a lot of the subsequent amendments will be as a result of that change.

The Temporary Chairperson (Sen. Sang): That is to align the Bill with the Constitution.

Sen. Obure: Yes.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 26

Sen. Obure: Mr. Temporary Chairman, I beg to move:-

THAT clause 26 of the Bill be amended at subsection (2) by deleting the words “controller and” appearing immediately after the words “Board shall submit to the”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 27 - 35

*(Question, that Clauses 27, 28, 29, 30, 31, 32, 33,
34 and 35 be part of the Bill proposed)*

Clause 36

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT clause 36 of the Bill be amended at sub-clause (2) by deleting the word “national” appearing immediately after the words “declared a” and substituting therefor the word “public”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 37 and 38

*(Question, that Clauses 37 and 38 be part of the
Bill proposed)*

Clause 39

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 39 of the Bill be amended at sub-clause (7) by deleting the word “Director-General” appearing immediately after the words “reserve, the” and substituting therefor the words “Chief Conservator of Forests”.

Mr. Temporary Chairman, Sir, again I want to say that the Committee decided that the use of the word “Chief Conservator of Forests” would be more appropriate than the description “Director-General”. A lot of the amendments that will follow will be as a result of that change.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 40 - 42

*(Question, that Clauses 40, 41 and 42 be
Part of the Bill proposed)*

Clause 43

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 43 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (5)-

“(6) The Service shall consider the interests of the local communities in the management of public forests.”

The amendment is for the purpose of allowing the interest of the local communities to be taken into account on the issue of management of forests.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 44

(Question that Clause 44 be part of the Bill, proposed)

Clause 45

Sen. Obure.: Mr. Temporary Chairman, Sir, I beg to move: - THAT,
Clause 45 of the Bill be amended-

(a) by deleting sub-clause (1) and substituting therefore the sub-clause-

(1) The Service may advertise, receive applications from any person, institution or organization and through a competitive process, approve and enter into an appropriate management agreement for all or part of a public forest.

(b) in sub-clause 2 by inserting the following new paragraph immediately after paragraph (e)-

(e) the benefits which the applicant shall extend to the local community.

The purpose of the amendment is as indicated on the Order Paper.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 46

(Question that Clause 46 be part of the Bill proposed)

Clause 47

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT sub-clause (6) of Clause 47 of the Bill be amended by deleting the word “Director-General” where it appears and substituting therefor the word “Chief Conservator of Forests”.

The purpose of the amendment is to make the Bill tidy.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 48

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 48(3) of the Bill be amended in paragraph (f) by deleting the words “Director-General” and substituting therefor the words “Chief Conservator of Forests”.

The amendment is for purposes of consistency.

(Question of the amendment proposed)

Clause 49

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 49(3) be amended in paragraph (b) by deleting the words “Director-General” and substituting therefor the words “Chief Conservator of Forests”.

The amendment is for purposes of consistency.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 50

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 50(2) of the Bill be amended by deleting the words “Director-General” appearing at the beginning of the sub-clause and substituting therefor the words “Chief Conservator of Forests”.

The amendment is for purposes of consistency.

(Question of the amendment proposed)

Clause 51

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 51 of the Bill be amended-

(a) in sub-clause (1) by-

(i) deleting the words “Director-General” appearing at the beginning of the sub-clause and substituting therefor the words “Chief Conservator of Forests”;

(ii) deleting the word “Director-General” appearing immediately after the words “ask the” in paragraph (c) and substituting therefor the word “Chief Conservator of Forests”;

(b) in sub-clause (2) by deleting the words “Director-General” wherever they appear and substituting therefor the words “Chief Conservator of Forests”;

(c) in sub-clause (3) by deleting the words “Director-General” wherever they appear and substituting therefor the words “Chief Conservator of Forests”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 52

(Question that Clause 52 be part of the Bill, proposed)

Clause 53

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 53 of the Bill be amended by inserting the word “employment” immediately after the word “education”.

(Question of the amendment proposed)

Clauses 54 - 61

(Question, that Clauses 54, 55, 56, 57, 58, 59, 60 and 61 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 62

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 62 of the Bill be amended in-

(a) sub-clause (1) by deleting the words “Director-General” at the beginning of the sub-clause and substituting therefor the words “Chief Conservator of Forests”;

(b) sub-clause (2) by deleting the word “Director-General” at the beginning of the sub-clause and substituting therefor the word “Chief Conservator of Forests”.

(Question of the amendment proposed)

Clause 63

Sen. Obure: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 63 of the Bill be amended in sub-clause (2) by deleting the words “Director-General” appearing at the beginning of the sub-clause and substituting therefor the words “Chief Conservator of Forests”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 64

Sen. Obure: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 64 of the Bill be amended in sub-section (3) by deleting the words “section 39(2)” appearing immediately before the words “provisions of” and substituting therefor the words “section 61”.

This is simply to quote the correct section of the law.

(Question of the amendment proposed)

Clauses 65 - 71

(Question, that Clauses 65, 66, 67, 68, 69, 70 and 71 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 72

Sen. Obure: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT clause 72 of the Bill be amended-

(a) in sub-clause (1) by-

(i) deleting the words “Director-General” appearing immediately after the word “the” and substituting therefor the words “Chief Conservator of Forests”;

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

(b) public forests;

(b) inserting the following new sub-clause immediately after sub-clause (1)-

(1A) The relevant counties will at all times be furnished with pertinent copies of all the relevant documents maintained in the Chief Conservator of Forests register.

(c) in sub-clause (2) by deleting the words “Director-General” appearing immediately after the words “office of the” and substituting therefor the word “Chief Conservator of Forests”.

(Question of the amendment proposed)

Clauses 73 and 74

(Question, that Clauses 73 and 74 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clauses 75

Sen. Obure: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, clause 75 be amended by deleting the words “Environmental Management and Co-ordination Act, 1999” appearing in sub-clause (1) immediately after the words “provisions of the” and substituting therefor the words “Environmental Management and Co-ordination Act, 2015”.

(Question of the amendment proposed)

Clause 76

(Question, that Clause 76 be part of the Bill, proposed)

Clauses 77

Sen. Obure: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 77 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a)-

(aa) The land in section (a) shall not include government settlement schemes already registered before the commencement of this Act;

(Question of the amendment proposed)

First Schedule and Second Schedule

*(Question, that the First and Second Schedule
be part of the Bill, proposed)*

Third Schedule

Sen. Obure: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, the Third Schedule to the Bill be amended by-

- (a) deleting item 5;
- (b) deleting item 9;
- (c) deleting item 131;
- (d) deleting item 106;
- (e) deleting item 107;
- (f) deleting item 115;
- (g) deleting item 119;
- (h) deleting item 200;
- (i) deleting item 236;
- (j) deleting item 292;
- (k) deleting item 278;
- (l) deleting item 282;
- (m) deleting item 286; and
- (n) deleting item 290

This is simply to avoid duplication because some of the items being proposed to be deleted have been indicated twice.

(Question of the amendment proposed)

Clause 2

Sen. Obure: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended by deleting the definition of the word “forest owner” and substituting therefore the new definition-

“forest owner” means-

- (a) in the case of a public forest, the government as defined in article 62(1)(g) of the Constitution;
- (b) in the case of a community forest, the community as defined in article 63 of the Constitution; and
- (c) in the case of a private forest, the registered owner of the land as defined in article 64 of the Constitution.

(Question of the amendment proposed)

Title, Clause 1

*(Question, that the Title and Clause 1
be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Sang): Hon. Senators, we are done considering this Bill. Therefore, we will move to report progress.
Proceed, Mover.

Sen. Obure: Mr. Temporary Chairperson, Sir, pursuant to Standing Order No.139, I beg to move that the Committee do report progress on its consideration of the Forest Conservation Management Bill (National Assembly No.49 of 2015) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. (Dr.) Machage) in the Chair]

PROCEDURAL MOTION**EXTENSION OF SITTING TIME**

Sen. Kagwe: Mr. Temporary Speaker, Sir, before we report on the Committee of the Whole, I rise in accordance with Standing Order No. 30 to seek an extension of the

sitting time for another half hour from 12:30 p.m., so that we are able to rest because it will take us about ten minutes for us to finish with the Access to Information Bill (National Assembly Bill No. 36 of 2015) because it is part of the constitutional requirements.

It would, therefore, be convenient if we were to do that so that in the afternoon we can go in an orderly fashion.

The Temporary Speaker (Sen. (Dr.) Machage): Who is seconding?

Sen. Karaba seconded.

The Temporary Speaker (Sen (Dr.) Machage): Although the provisions of Standing Order No. 30 require that this Notice of Motion is given 30 minutes before the expiry of the time, which should have been done by noon, I will use my discretion under Standing Order No.1 to permit the same to be done.

(Question put and agreed to)

We will continue until the next Committee of the Whole is finished. If possible Order Nos.11 and 12.

PROGRESS REPORTED

THE FOREST CONSERVATION AND MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2015)

Sen. Sang: Mr. Temporary Speaker Sir, I beg to report that the Committee of the Whole has considered the Forest Conservation and Management Bill (National Assembly Bill No. 49 of 2015) and seek leave to sit again tomorrow.

Sen. Kagwe: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said report.

Sen. Karaba seconded

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen (Dr.) Machage): What is it Sen. Karaba? You always rise on points of order at the wrong time.

Sen. Karaba: Mr. Temporary Speaker, Sir, I am sorry for that mix-up. My point of order is that tomorrow being a Friday, I want to bring it to your attention that it is not a sitting day unless it is ruled otherwise.

The Temporary Speaker (Sen (Dr.) Machage): If my memory serves me well, Sen. Karaba is one of the seasoned Members of the other side; and the term “sitting tomorrow” just means the next sitting in parliamentary language.

Order, Sen. Karaba! I have not allowed you to speak.

Next order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

*[The Temporary Speaker (Sen. (Dr.)
Machage) left the Chair]*

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Sang) took the Chair]

**THE ACCESS TO INFORMATION BILL
(NATIONAL ASSEMBLY BILL NO. 36 OF 2015)**

The Temporary Chairperson (Sen. Sang): Hon. Members, please, note that the amendments have been circulated.

Clause 3

Sen. Kagwe: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended –

- (a) in paragraph (b) by deleting the word “require” appearing at the beginning of the paragraph and substituting therefor the words “provide a framework for”;
- (b) in paragraph (c) by deleting the word “create” appearing at the beginning of the paragraph and substituting therefor the word “provide”;
- (c) in paragraph (d) by deleting the words “by public service and private service” appearing immediately after the words “information disclosure” and substituting therefor the words “by public entities and private bodies”; and
- (d) in paragraph (e) by deleting the word “release” appearing immediately after the words “persons who” and substituting therefor the word “disclose”.

Mr. Temporary Chairperson, Sir, most of the amendments that I will propose to this Bill have to do with creation of clarity and in keeping with the current Constitution.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clause 4

Sen. Kagwe: Mr. Temporary Chairperson, Sir, I beg to move :-

THAT, Clause 4 of the Bill be amended by deleting sub clause (3) and substituting therefor the following new sub clause –

(3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.

That amendment will also create clarity.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clause 5

Sen. Kagwe: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 5(1) of the Bill be amended –

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

(b) facilitate access to information held by such entity and which information may include –

(c) in sub paragraph (vi) of paragraph (a) by deleting the words “any guidance used by it in relation to” appearing at the beginning of the sub paragraph and substituting therefor the words “guidelines used by the entity in”;

(d) in sub paragraph (vii) of paragraph (a) by deleting the word “consulted” appearing immediately after the words “indexes to be” and substituting therefor the word “inspected”;

(e) in paragraph (e) by deleting the word “means” appearing immediately after the words “other suitable” and substituting therefor the word “media”; and

(f) in sub paragraph (iii) of paragraph (e) by inserting the word “service” immediately after the words “name of the”.

That amendment will create grammatical clarity.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clause 6

Sen. Kagwe: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 6 of the Bill be amended –

(a) in paragraph (e) of sub clause (1) by deleting the words “infringe on the” appearing at the beginning of the paragraph and substituting therefor the words “substantially prejudice the”; and;

b) by inserting the following new paragraphs immediately after paragraph (g) of sub clause (2) —

h) information between the national and county governments deemed to be injurious to the conduct of affairs of the two levels of government;

i) cabinet deliberations and records;

j) information that should be provided to a State organ, independent office or a constitutional commission when conducting investigations, examinations, audits or reviews in the performance of its functions;

k) information that is referred to as classified information in the Kenya Defence Forces Act; and

l) any other information whose unauthorized disclosure would prejudice national security.

What we are doing with this amendment is inclusion of further grounds for limitation of the right to information, particularly with regard to national security.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

(Question, that the Clause 7 be part of the Bill, proposed)

Division will come at the end.

Clause 8

Sen. Kagwe: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 8 of the Bill be amended by deleting sub clause (2) and substituting therefor the following new sub clauses —

(2) Where an applicant is unable to make a written request for access to information in accordance with subsection (1) because of illiteracy or disability, the information officer shall take the necessary steps to ensure that the applicant makes a request in a manner that meets their needs.

(2A) The information officer shall reduce to writing, in a prescribed form the request under made subsection (2) and the information officer shall then furnish the applicant with a copy of the written request.

This amendment will create further clarity, particularly as set out in the African Union (AU) model law on access to information.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clause 9

Sen. Kagwe: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT clause 9 of the Bill be amended by deleting sub clause (2) and substituting therefor the following new sub clauses –

(2) Where the information sought concerns the life or liberty of a person, the information officer shall provide the information within forty-eight hours of the receipt of the application.

(2A) The information officer to whom a request is made under subsection (2) may

extend the period for response on a single occasion for a period of not more than fourteen days if –

(a) the request is for a large amount of information or requires a search through a large amount of information and meeting the stipulated time would unreasonably interfere with the activities of the information holder; or

(b) consultations are necessary so as to comply with the request and the consultations cannot be reasonably completed within the stipulated time.

This amendment is to redraft the terms of grammar and style for clarity as set out in the AU modal law on access to information.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clause 10

Sen. Kagwe: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 10 of the Bill be amended in sub-clause (3) by deleting the words “fifteen days” appearing immediately after the words “application within” and substituting therefor the words “twenty-one days”.

This amendment is to harmonise the timelines that are provided in Clause 9(1).

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clause 11

Sen. Kagwe: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT clause 11(1) of the Bill be amended in paragraph (e) by inserting the words “if any” immediately after the words “the payment”.

This amendment is basically grammatical.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clauses 12 and 13

(Question that Clauses 12 and 13 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Division will come at the end.

Clause 14

Sen. Kagwe: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 14 of the Bill be amended in sub clause (1) by deleting paragraph (f) and substituting therefor the following new paragraph –
(f) a decision relating to the remission of a prescribed application fee;
The purpose of the amendment is for clarity.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 15

(Question, that Clause 15 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 16

Sen. Kagwe: Mr. Temporary Chairman, Sir, I beg to move:-

THAT clause 16 of the Bill be amended –

(a) in sub clause (3) by deleting the words “the he or she” appearing immediately after the words “(1) or (2) where” and substituting therefor the words “such person”; and

(b) in sub clause (4) by deleting the words “the other” appearing immediately after the words “to injure” and substituting therefor the word “another”.

The amendment is for purposes of clarity

(Question of the amendment proposed)

Clauses 17 - 22

(Question that Clauses 17, 18, 19, 20, 21 and 22 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 23

Sen. Kagwe: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 23 of the Bill be amended in sub clause (8) by deleting the words “relevant private body or” appearing immediately after the words “public entity” and substituting therefor the words “or the relevant”.
The amendment is for purposes of clarity.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clauses 24 and 25

(Question, that Clauses 24 and 25 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 26

Sen. Kagwe: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 26 of the Bill be amended –

- (a) in sub clause (1) by deleting the words “to the National Assembly” appearing immediately after the words “annual report” and substituting therefor the words “to Parliament”; and
- (b) in sub clause (3) by deleting the words “the National Assembly” appearing immediately after the words “Commission before” and substituting therefor the word “Parliament”.

The purpose of the amendment is to reflect the fact that we are bicameral. Therefore, references to the National Assembly should read reference to Parliament.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 27

(Question, that Clause 27 be part of the Bill, proposed)

Clause 28

Sen. Kagwe: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 28 of the Bill be amended in sub clause (7) by deleting the words “under the Public Procurement and Disposal Act or any Act replacing that Act” appearing immediately after the words “with government” and substituting therefor the words “under the laws relating to matters of procurement and disposal.”.

The purpose of this amendment is to avoid reference to a specific statute so that there would be no need for an amendment to this Act in case the procurement law is amended in future.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 29

(Question that Clause 29 be part of the Bill, proposed)

Schedule

Sen. Kagwe: Mr. Temporary Chairman, Sir, I beg to move:-

THAT the Schedule be amended –

- (a) in paragraph 1(2) by deleting the words “Kenya Archives” appearing immediately after the words “the expression” and substituting therefor the words “Kenya National Archives”;
- (b) in paragraph 2(2) by deleting the words “of the Freedom of Information Act 2012” appearing immediately after the words “section 6”;
- (c) in paragraph 3(2) by deleting the words “of the Freedom of Information Act, 2012” appearing immediately after the words “section 6”.

This amendment is for the purpose of reflecting the correct name of the Kenya National Archive and documentation service established under the Public Archives and Documentation Service Act.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Clause 2

Sen. Kagwe.: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended —

- (a) in the interpretation of the word “information” by inserting the words “or a private body” immediately after the words “public entity”
- (b) in the interpretation of the expression “personal information” by inserting the following new paragraph immediately after paragraph (g) —

(h) Contact details of an individual.

- (c) in the interpretation of the expression “public record” by deleting the word “writing” appearing immediately after the words “includes any” and substituting therefor the words “record in written or any other form”.

The purpose of the amendment is to ensure that the private bodies defined are covered within the ambit of the Act especially in relation to the disclosure of information.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): We shall have Division at the end.

Title, Clause 1

(Question, that the Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Hon. Senators, we are through with the consideration of that Bill. I, therefore, request the Mover to report progress.

Sen. Kagwe: Mr. Temporary Chairman, Sir, pursuant to Standing Order No.139, I beg to move that the Committee of the Whole report progress on its consideration of the Access to Information Bill (National Assembly Bill 2015) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. (Dr.) Machage in the Chair)]

PROGRESS REPORTED**THE ACCESS TO INFORMATION BILL
(NATIONAL ASSEMBLY BILL NO.36 OF 2015)**

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to report that a Committee of the Whole has considered The Access to Information Bill (National Assembly Bill No.36 of 2015) and seeks leave to sit again tomorrow.

Sen. Kagwe: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said Report.

Sen. Obure seconded

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Sang) took the Chair]

**THE SEEDS AND PLANT VARIETIES (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 43 OF 2015)**

The Temporary Chairperson (Sen. Sang): Order, Hon. Senators. We have one final Committee of the Whole. This is a straight forward one. It is on Order No.12: The Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015)

Clauses 2 - 4

*(Question, that Clauses 2, 3 and 4 be part of the
Bill, proposed)*

Title, Clause 1

*(Question, that the Title and Clause 1
be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Sang): Hon. Senators, we are done considering the various Clauses to this Bill. We now proceed to report progress.

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Proceed, Mover.

Sen. Kagwe: The Temporary Chairman, Sir, pursuant to Standing Order No. 139, I beg to move that the Committee of the Whole report progress on its consideration of the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No.43 of 2015 and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. (Dr.) Machage) in the Chair]

Sen. Sang: On a point of order, Mr. Temporary Speaker Sir.

The Temporary Speaker (Sen. (Dr.) Machage): What is it?

Sen. Sang: Mr. Temporary Speaker Sir, while we have been conducting our business in committee and in plenary, we have visitors at the Public Gallery. You remember that yesterday we had a number of schools that sat and left before this House recognized them. The tradition of this House has always been to recognize those students and visitors to the Senate. I hope you will have time to recognize the team.

The Temporary Speaker (Sen. (Dr.) Machage): You know that the Chair is not able to see what happens in the Public Gallery unless so informed by the Serjeant-At-Arms. As far as I am concerned, I have now been made aware by the Hon. Senator that we have visitors in the Public Gallery whose identity I am yet to know. I order that the same is done and I recognize the same before I adjourn the House. We will proceed with the activities of the House as we wait for that Information.

PROGRESS REPORTED

THE SEEDS AND PLANT VARIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 43 OF 2015)

Sen. Sang: Mr. Temporary Speaker Sir, I beg to report that the Committee of the Whole has considered the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015 and seek leave to sit again tomorrow.

The Temporary Speaker (Sen. (Dr.) Machage): Mr. Temporary Speaker Sir, I beg to move that the House do agree with the Committee in the said report.

Sen. Karaba seconded

(Question proposed)

(Question put and agreed to)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF TEACHERS
AND PUPILS IN THE PUBLIC GALLERY

The Temporary Speaker (Sen. (Dr.) Machage): I have not been given information by the Serjeant-At-Arms but on behalf of the Senate, may I take the opportunity to welcome our visitors at the Public Gallery. I am told they are pupils from a primary school. You are welcome any time to observe what happens in the Senate.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Members, there being no other business, the Senate now stands adjourned until today, Thursday, 14th July, 2016 at 2:30 p.m.

The Senate rose at 12:45p.m.