

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 12th November, 2013

The House met at 2.30 p.m.

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

PRAYERS

PAPER LAID

The Report of the Departmental Committee on Labour and Social Welfare on the National Social Security Fund Bill, 2013.

(By Hon. Sitati)

NOTICE OF MOTION

FORMULATION OF HARAMBEE FUNDS POLICY

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

THAT, aware that the *Harambee* spirit championed by the founding president of this nation as a tool of collective development initiatives and prosperity has been abused over the years; noting that some *Harambees* nowadays are nothing more than avenues for unscrupulous individuals to obtain money from public officials and the general citizenry, greatly burdening the taxpayer and in particular elected leaders; further concerned that such abuse has led to misappropriation of *Harambee* monies meant for projects such as schools, boreholes, hospitals and even fees for needy students as well as encouraging corruption; this House resolves that the Government comes up with a clear policy governing the collection of *Harambee* funds, accounting of the monies collected and taking appropriate sanctions against errant *Harambee* collectors.

I thank you, hon. Deputy Speaker.

REQUESTS FOR STATEMENTS

Hon. Deputy Speaker: I have a long list of requests for Statements. Hon. Leshoomo, you may start.

MEASURES TO CURB CATTLE RUSTLING IN SAMBURU

Hon. (Ms.) Leshoomo: Bi. Naibu wa Spika, kwa idhini ya Kipengele 44(2)(c) cha Kanuni za Bunge, ningependa kuomba taarifa kutoka kwa Mwenyekiti wa Kamati ya Usalama kuhusu kuzorota kwa usalama katika eneo la Samburu.

Wizi wa mifugo umezidi huko Samburu. Watu wameuawa kwa njia isiyoieleweka. Hali ya usalama imezorota huko Samburu kwa sababu ya wizi wa ng'ombe na hii imechangiwa na biashara haramu ya hao mifugo. Kwa mfano tarehe 26 Oktoba, 2013 ng'ombe 23 walipatikana wakiwa wamebebwa kwenye lori. Mifugo hao walikuwa wakienda kuuzwa. Suala hili lilihusisha maafisa wa usalama.

Katika taarifa hiyo ningependa nielezwe yafuatayo:-

- (i) mpango gani Serikali iko nao ili kumaliza huu wizi wa mifugo;
- (ii) ni lini mifugo hao watarudishwa kwa wenyewe;
- (iii) ni hatua gani itachukuliwa kwa wale wanaofanya biashara hiyo haramu;
- (iv) uchunguzi wa mauaji ya kijana na afisa wa usalama utafanywa lini; na,
- (v) afisa mkuu wa Idara ya Polisi katika eneo hilo na kamanda wa stesheni husika wataondolewa lini katika sehemu hizo, ama watachukuliwa hatua gani.

Hon. Deputy Speaker: Okay, that is a Statement request for the Chairperson of the Committee on Administration and National Security. Can we get an indication as to when you can respond to the request, and especially when the said officers can be removed from that place? Do we have the Chairperson of the Committee in the House?

Hon. Abongotum: Niko hapa, mhe. Naibu wa Spika. Kwanza, ningependa kukubaliana na mhe. Leshoomo kwamba hali ya usalama katika Wilaya ya Samburu imezorota, na haswa katika Wilaya ya Baragoi Kaskazini. Ninafahamu kwamba kuna operesheni inayoendelea katika wilaya hiyo, ya kuwanyanganya bunduki watu wanaozimiliki kwa njia haramu. Kuna askari karibu 700 ambao wanafanya kazi hiyo. Kwa hivyo, ningependa kumhakikishia mheshimiwa kwamba operesheni hiyo inawalenga wakora. Tunajua kwamba kule Baragoi kuna bunduki zaidi ya 46 zilizoibwa na majambazi askari wetu walipouawa kwenye tukio la hapo awali. Tungependa wale askari wanaofanya operesheni hiyo waokoe bunduki hizo kwanza.

Pili, kuna operesheni inayowalenga walinzi kutoka kitengo cha KPR. Si jambo la busara kukifutulia mbali kitengo hicho cha walinzi bila ya kuwahakikishia wananchi usalama wa kutosha. Kwa hivyo, operesheni ya kwanza inalenga kuziokoa bunduki za serikali zilizoibwa na majambazi. Kuhusu masuala yaliyosalia, nitaongea na Katibu anayesimamia masuala ya usalama ili tuweze kupata habari kamili kuhusu OCPD na OCS kwa sababu tunajua kwamba kulikuwa na shida iliyotokea kati ya maafisa hao wawili na wanafunzi. Kuhusu suala la ngo'mbe 26 walioibiwa, nitaleta taarifa Bungeni baada ya wiki moja.

Ahsante, Bi. Naibu wa Spika.

Hon. Deputy Speaker: Thank you, Committee Chairperson.

Next is hon. Tonui.

DECREASE IN TEA BONUS

Hon. Tonui: Thank you, hon. Speaker. On 26th September, I sought a Statement from the Departmental Committee on Agriculture, Livestock and Cooperatives regarding the Kenya Tea Development Authority (KTDA). I attended the Committee's meeting that deliberated the matter but they are yet to table their report.

Hon. Deputy Speaker: Chairperson of the Committee on Agriculture, Livestock and Cooperatives, can we have an indication as to what happened?

Hon. Tonui: I beg your pardon, hon. Deputy Speaker. I have two issues to sort out.

Hon. Deputy Speaker: On the same Committee?

Hon. Tonui: No, on different Committees, hon. Deputy Speaker.

Hon. Deputy Speaker: Can we, first, get an indication from the first one? Chairperson of Committee on Agriculture, Livestock and Cooperatives, can you say something on the matter of the KTDA?

Hon. Nuh: Hon. Deputy Speaker, it is true that the hon. Member had sought the Statement. We sat down with him in the presence of the Cabinet Secretary in charge of Agriculture and Livestock. We are going to give the answer tomorrow morning.

Hon. Deputy Speaker: Hon. Tonui, tomorrow morning it shall be. Can you raise the second matter?

Hon. Tonui: Hon. Deputy Speaker, on 16th October, 2013, I sought a Statement from the Committee on Education, Research and Technology. The Committee has been very unfair to me. The Statement was about the Kenya National Examinations Council (KNEC). Even though I gave my personal contacts to the clerk of the Committee and Chairperson, they did not bother to invite me to their meeting when they invited the Chief Executive Officer (CEO) of KNEC, so that I could interrogate the matter. On Thursday, they went further to lay a report in the House even though this was not part of the scheduled business indicated on the Order Paper of Thursday. Furthermore, the report is very shallow and I was not accorded an opportunity to interrogate it. I feel that this was so much unfair to me. Later on, I contacted the Chairperson of the Committee, who gave me a copy. I feel that this matter was treated casually. Therefore, I request that some directions be given because I would have wished to be present when the CEO appeared before the Committee.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. That matter has been brought to my attention. You have now raised more questions. I was going to rule that I give you a few minutes tomorrow in order for you to interrogate the report because I am told that you were not given prior warning that the matter would come up in the Order Paper of that day. However, you have said that you have seen the Statement, and that it is shallow. So, you have now raised a further problem, which had not been brought to our attention. I do not know what the Chairperson of the Committee would like to say. We do not want her to read out what she had already done in this House but I was going to give him an opportunity to ask supplementary questions on the same. However, he is not satisfied with the Statement that you read in the House on Thursday. He has indicated that you were to call him. We have severally asked in this House that hon. Members who seek Statements should be invited when the matter is being prosecuted in a Committee. In this case, that was not done.

Committee Chairperson, could you share some light on this matter?

Hon. (Ms.) S. W. Chege: Thank you, hon. Deputy Speaker. The work of inviting hon. Members to the Committee is done by the clerk of the Committee. Unfortunately, my clerk has travelled. So, I cannot confirm whether the hon. Member was invited or not.

The hon. Member has raised the point that the response was shallow. The CEO of the KNEC will be appearing before the Committee again on Thursday to respond to several questions that have come up regarding examinations and the age of examinable pupils, among other issues. Therefore, I request that the hon. Member attends the Committee meeting on Thursday, at 11.00 p.m., so that he can ask further questions since he is not satisfied with the answer.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Tonui, you are fortunate that the same CEO is coming back to Parliament. So, instead of giving you a chance to ask supplementary questions tomorrow, please, prosecute the same in the Committee meeting of Thursday.

Hon. Susan Musyoka, you have a request to make.

NON-DEPLOYMENT OF YOUTH TRAINING OFFICERS IN UKAMBANI

Hon. (Ms.) Musyoka: Pursuant to Standing Order No. 44(2)(c), I wish to request a Statement from the Chairperson, Departmental Committee on Education, Research and Technology regarding deployment of District Youth Training Officers across the country. The Directorate of Youth Training under the Ministry of Education, Science and Technology is charged with the responsibility of posting District Youth Training Officers across the country. However, since May this year, some districts in Machakos, Makueni, Kitui and Mwingi have been without the officers. The officers are in charge of crucial functions such as coordinating youth training programmes, equipping, funding and construction of hostels and workshops in youth polytechnics. Therefore, their absence has greatly affected effective co-ordination of the local youth training programmes with the national Government policies in the said districts.

In the Statement, the Chairperson should inquire into and report on one, when the District Youth Training Officers will be posted to the districts currently lacking the officers, and also the interim measures the Government has put in place to ensure there is no interruption of the crucial functions executed by the officers.

Hon. Deputy Speaker: that is directed to the Committee on Education, Research and Education.

Yes hon. (Ms) Chege.

Hon. (Ms.) S.W. Chege: Thank you hon. Deputy Speaker. Bearing in mind that the said officers are very important, I will ask the hon. Member to give me one week, because I do not think we really need to summon the Cabinet Secretary on that; he can just give us a direct answer on when the officers will be posted. I think in one week, we will be ready with an answer.

Hon. Deputy Speaker: Thank you Chair.

Hon. Protus, a request?

STATUS OF RELIEF FOOD DISTRIBUTION IN THE COUNTRY

Hon. Akujah: Thank you hon. Deputy Speaker. Pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson, Departmental Committee on Labour and Social Welfare regarding distribution of Government relief food, carried out as a special programme through the former office of the District Commissioner, currently the Deputy County Commissioner. Due to drought and other humanitarian crises all over the country, many Kenyans continue to be vulnerable to starvation, thus requiring relief food. The most vulnerable are children, the very poor, orphans, the elderly and Internally Displaced Persons (IDPs). In the Statement, the Chairperson should inquire and report on the status of the distribution of relief food from the Government to the vulnerable persons in the country.

Thank you, Deputy Speaker.

Hon. Deputy Speaker: Thank you. The Chair of Labour and Social Welfare Committee or the Vice-Chair, hon. Kombe.

Hon. Kombe: Thank you, hon. Deputy Speaker. Some months ago I requested a Statement

Hon. Deputy Speaker: Hon. Kombe, I thought you were a Vice-Chair, or you are responding on behalf of Labour and Social Welfare?

Hon. Kombe: No.

Hon. Deputy Speaker: You were making your own request?

Hon. Kombe: Yes.

Hon. Deputy Speaker: Can I first of all get Labour and Social Welfare to say when they will respond to this Statement? Do we have the Chair? Do we have the Vice-Chair? Do we have a Member of that Committee?

Chairpersons, as you can see, we have a new practice of Chairpersons sitting on the Front Bench, so, you will become very vulnerable when the bench remains empty for too long.

Hon. Muchai: Yes, hon. Deputy Speaker. I have listened to the question as put. Both the Chair and Vice-Chair of the Committee are out of the country. I am a member of that Committee, and I will request the indulgence of the Member for two weeks, so that we can give room to both the Chair and the Vice-Chair to come back and a response will be given.

MONOPOLY IN MACADAMIA NUTS TRADE

Hon. Deputy Speaker: Thank you.

Yes, hon. Mwiru

Hon. Mwiru: Thank you hon. Deputy Speaker. Pursuant to Standing Order 44(2)(c), I wish to request a Statement from the Chairperson of the Committee on Finance, Planning and Trade, regarding the importation and exportation of macadamia nuts in Kenya. Only one company in Kenya, that is the Kenya Nuts Company, is licensed to trade internationally and locally in processing, supplying, distribution, importation and exportation of macadamia nuts. It is claimed that irregular monopoly has made the company to fix prices at which they buy macadamia nuts from farmers, yet after minimal value addition, the company sells the product at more than five times of the perceived prices. Further, the monopoly has discouraged other companies from investing in the business, yet there is no law in Kenya that allows monopoly in the trade of nuts.

In his Statement, the Chairperson should inquire into and report on one, the reason why this Kenya Nuts Company is allowed to monopolize the trade in macadamia nuts contrary to the law and two, what the Government is doing to rectify this situation and allow market competition to enable other companies to enter into this market.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: The Chair or the Vice-Chair of Finance, Planning and Trade. Hon. Amina, are you responding on their behalf?

Hon. (Ms.) Abdalla: No, hon. Deputy Speaker. I wanted to add something to the Statement.

Hon. Deputy Speaker: Yes.

Hon. (Ms) Abdalla: In the Statement, we would want the Chair to explore the possibility of lifting the ban that is currently on raw macadamia nuts because the small-sized nuts that the Kenya Nuts Company does not buy have a market but because of that ban, farmers have to wait for the market from Kenya Nuts Company.

Hon. Deputy Speaker: Yes, hon. Dawood.

Hon. Dawood: Hon. Deputy Speaker, on behalf of the Chairman, we intend to give an answer in the next three weeks; we will call the Member to our Committee meeting.

Thank you.

Hon. Deputy Speaker: You will undertake that when you call the Cabinet Secretary, you will invite the Member.

Hon. Mwiru, What is happening? Please press only once.

Hon. Mwiru: Hon. Deputy Speaker, on the ground people are suffering; I would like to give only two weeks, if it is possible.

Hon. Deputy Speaker: Now you see, he is speaking on behalf of the Chair. That is why he is asking for some leeway; he is not in a position to give a firm answer. I think you can see the concerns of the hon. Member. You can do it earlier, but latest three weeks.

ENVIRONMENTAL DAMAGE CAUSED BY CRYSTALLINE SALT COMPANY

Hon. Kombe: Thank you, hon. Deputy Speaker. Some months ago, I sought a Statement from the Chair of the Departmental Committee on Environment and Natural Resources. To date, I have not received that Statement. I was promised that they were going to visit the salt firm that was cutting down trees and using---

(Loud consultations)

Hon. Deputy Speaker: Order, Members! The level of consultations is too high.

Hon. Kombe: To date, I have not been given the date when the Committee is going to visit that company. Please, let me have the date when the Committee will visit the company.

Hon. Deputy Speaker: Chair of Committee on Environment and Natural Resources, proceed.

Hon. (Ms.) Abdalla: Hon. Deputy Speaker, we did agree with the hon. Member that we were going to visit the site where trees are being cut but as a result of budgetary constraints in the Committee, we opted to defer the trip until when the Committee will be going for other business near his constituency. We are planning to go there between 5th and 7th December, 2013.

Hon. Deputy Speaker: Okay. Hon. Member, your matter is still in the Committee's calendar. So, between 5th and 7th December, 2013, they will visit the area. Please, ensure that you get in touch with the hon. Member, so that he is fully briefed.

Hon. (Ms.) Florence Kajuju, are you answering?

Hon. (Ms.) Kajuju: Thank you, hon. Deputy Speaker. On 30th October, I requested the Chair of the Departmental Committee on Education, Research and Technology to give us a Statement or a response on a student at Antuanduru Secondary School who was barred from taking examinations just because she had given birth two weeks before the examinations. I was promised that the answer was to come on Wednesday last week, but I have not received any answer up to today.

Hon. Deputy Speaker, this was an urgent matter that needed a quick response. I am requesting direction on when I am going to get the answer and a solution to that problem, which was created by the school.

Thank you, hon. Deputy Speaker.

Hon. (Ms.) S.W. Chege: Thank you, hon. Deputy Speaker, Sir. The hon. Member who is also a Chair of a Departmental Committee is aware that nowadays responses are captured on the

Order Paper. The answer is ready and we were ready from last week. I made a follow up today and I was informed that it might be there tomorrow morning. So, I am sure that once it is put on the Order Paper, the hon. Member will be notified.

Hon. Deputy Speaker: Yes. I think Wednesday is a designated time for responses to Statements. Therefore, hon. Kajuju, expect it on the Order Paper tomorrow.

APPOINTMENT OF *IMARISHA* LAKE NAIVASHA MANAGEMENT BOARD

Hon. Kihagi: Hon. Deputy Speaker, on 17th October, 2013, I asked the Chair of the Departmental Committee on Environment and Natural Resources to bring a Statement on the appointment and gazette of Members of *Imarisha* Lake Naivasha Board and I was promised an answer in two weeks' time. It is more than three weeks and I am still expecting the answer.

Hon. Deputy Speaker: Okay. Let us have hon. Amina Abdalla, Chair, Departmental Committee on Environment and Natural Resources.

Hon. (Ms.) Abdalla: Thank you, hon. Deputy Speaker. I beg your indulgence because the Ministry officials have been out of the country and we have been unable to receive a response. We are pushing them to get one next week.

Hon. Bowen: Thank you, hon. Deputy Speaker. Two weeks ago, I requested a Statement from the Chairperson of the Committee on Administration and National Security, hon. Abongotum Kamama. He read a Statement but there were some clarifications he was to give and he requested to be allowed to bring an answer which had to do with work permits issued at the Ministry of Interior and Coordination of National Government.

Hon. Abongotum: Thank you, hon. Deputy Speaker. Indeed, I had promised the House that I would avail this document to the hon. Member. But so far we have not been given any information from the Immigration Department. I want to promise that we will respond sometime next week. But at the Committee level, we will invite the hon. Member to our Committee once we get the report and then we can interrogate and scrutinize it together to get the full details.

Therefore, we will do that in a week's time.

Hon. Kombe: Thank you hon. Deputy Speaker, Sir. Some months ago, I requested a Statement from the Chairperson of the Departmental Committee on Lands as to when the land that is not productive could be reverted to the indigenous owners. To date, I have not received any reply. Of course, I do appreciate the Committee came to the area, but their mission was not completed because they did not visit some of the salt firms. Could the Chairperson give us the date when they will re-visit the area and be able to give us a Statement?

Thank you.

Hon. Mwiru: Thank you, hon. Deputy Speaker. Indeed, the hon. Member has said that the Committee visited the area. Most of the work is already done. The only aspect left on the same is that the Cabinet Secretary was supposed to send her technical team to the ground to survey the particular land that is purported to have been encroached on, and that which is not productive of salt.

Therefore, it is just a matter of tracking the matter. I want to promise the hon. Member that we are tracking the matter. Of course, having realized what was there in the last two weeks, I would not have pushed on that direction. But I am happy that the hon. Member appreciates our work. In two week's time, I can afford to give a response to him once the job on the ground is done.

Thank you.

Hon. ole Ntutu: Thank you, hon. Deputy Speaker. I also requested a Statement from the Chairperson of Administration and National Security on the issue of gazetting of the new constituencies as created by the new Constitution. It is now over two months and the Chairman of that Committee has not said anything. I would like to hear from the Chairman when these new constituencies are going to be gazetted.

Hon. Abongotum: Hon. Deputy Speaker, I want to admit that this Ministry is really getting a lot of questions. I have tried to fast-track this. The issue raised by the hon. Member is extremely urgent and I have tried to fast-track it. I want to promise that I will keep on pushing, especially the officers under the Cabinet Secretary for Interior and Coordination of National Government, so that we have this Statement without fail next week.

Thank you.

Hon. Deputy Speaker: Well. That is an assurance, hon. Ntutu.

Hon. Ogallo: Thank you, hon. Deputy Speaker, Sir. In May, this year, I asked for a Statement from the Joint Committee on National Cohesion and Equal Opportunity and the Leader of Majority Party assured me that the Statement was going to come.

(Hon. (Maj-Gen.) Nkaissey consulted with hon. A.B. Duale)

Hon. Deputy Speaker: Hon. Nkaissey, the Leader of Majority Party is being addressed.

Hon. Ogallo: Hon. Leader of Majority Party promised me that the Joint Committee on National Cohesion and Equal Opportunity was going to be set up. We are nearing the end of the year and in a few weeks, Parliament will be on recess. I do not know when this Committee will be formed and when the answer will be brought to this House. We are going to recruit police officers again and my question was on the ethnic composition of the National Police Service. If this House does not come early, I do not know how it is going to control how that recruitment is going to take place. Could the Leader of Majority Party tell this House when this question is going to be answered?

Thank you.

Hon. A. B. Duale: I do not know whether this question was referred to me, but I will discuss with the Chairman, Committee on Administration and National Security, hopefully, by Thursday. On the issue of the Joint Committee on National Cohesion and Equal Opportunity, whose membership is drawn from both the Senate and the National Assembly, from where I sit both coalitions have submitted names and this House has approved the Members to that joint committee.

The Office of the Clerk will help us through the Director of Committee Services as to when the Senate and the National Assembly Members will sit and elect their leadership. The same case applies to the membership of the Joint Committee on Parliamentary Broadcasting and Library of the two Houses. I agree with Members that it has taken long; it is now eight months. I will also follow up with the Office of the Clerk to see if that can be fast tracked. As regards the response, I will liaise with the Chairman of the Committee on Administration and National Security and bring it latest Tuesday next week.

Hon. Deputy Speaker: Okay, hon. Regina Muia.

Hon. (Ms.) Muia: Thank you, hon. Deputy Speaker. I have just come in and thought I was late; that is why I put my card on. I did not want to give any contribution. I am just on the line.

Hon. Deputy Speaker: That is okay, but it has been on for a long time.

Hon. Dawood, I thought you had already prosecuted your matter, or is it a different one?

Hon. Regina your microphone is still on. Please hon. Members, switch off your microphones, unless you want to contribute.

Hon. Dawood: Thank you, hon. Deputy Speaker. More than six weeks back, I asked a question that was directed to the Chairman of the Committee on Lands, the Member of Parliament for Tharaka, and I was promised it would be ready in three weeks by the Chairman of the Budget and Appropriations Committee, who is a Member of that Committee, but up to now nothing is happening. I do not know whether it is because of good neighbourliness that he is not getting me or what I should do. Please advise, hon. Deputy Speaker.

Thank you.

Hon. Deputy Speaker: Hon. neighbour, hon. Mwiru, can you prosecute matters of the House outside neighbourliness?

Hon. Mwiru: Indeed, he is my good neighbour, and I was trying to see whether I can conclude his matter today with my Committee, but we were unable and he is appearing before the Committee on Thursday morning. I had already communicated that to him; I think it is the notice that has not yet reached him. This can serve as a notice, so that we can, at least start to interrogate the matter.

Thank you.

Hon. Deputy Speaker: The good thing is that you are good neighbours. Hon. Protus Akujah, you are the last one on requests for Statements.

Hon. Akujah: Thank you, hon. Deputy Speaker. It is now three weeks and four days since I sought a Statement from the Chairperson of the Departmental Committee on Administration and National Security. The Vice-Chair promised to deliver the report in three weeks and I have not heard or seen anything to that effect, neither have I been invited for any session where they were holding discussions.

Thank you.

Hon. Deputy Speaker: Hon. Akujah, which Committee? Was it Administration and National Security? Hon. Kamama, yet another one for you.

Hon. Abongotum: Thank you, hon. Deputy Speaker. I have actually given instructions to the officers who are handling these questions in the Cabinet Secretary's office to fast track it. These are issues of police and their several departments; I think there is a lot of bureaucracy, but I will try to improve on this. I will also inform the Cabinet Secretary in charge of that docket to pull up his socks. So, we promise to do that in a week's time.

Hon. Deputy Speaker: Okay.

Yes, hon. Moroto.

Hon. Chumel: Thank you, hon. Deputy Speaker. Mid last month, I requested a Statement from the Chairperson of the Committee on Education, Research and Technology about Kapenguria Boys High School, and up to now, I have not received any answer or reaction.

Hon. Deputy Speaker: Chairs of Committees, you can see all these last 10 or so requests have been for Statements which have taken too long. This was to the Chairperson of the Committee on Education, Research and Technology. Hon. Sabina, it is on Kapenguria Boys School.

Hon. (Ms.) S. W. Chege: Thank you, hon. Deputy Speaker. I would like to have a look at some of the answers which we have already forwarded to the Clerk's Office. If it is not amongst them, then I will follow up and make sure that by next week we have an answer.

Thank you.

Hon. Deputy Speaker: As we have said, Wednesday has been designated as the day for responding to Statements. Let us ask about those ones that have not been responded to after Wednesday and once we have known, we move to the ones which have already been answered.

Yes, hon. Yusuf Chanzu.

Hon. Chanzu: Thank you, hon. Deputy Speaker. At the end of July, I requested for two Statements, one from the Departmental Committee on Environment and Natural Resources regarding the steps that were to be taken to curb the use of fake certificates during recruitment of Kenya Forest Service officers, and also the steps that were being taken to regularize the recruitment process at the Kenya Forest Service. Secondly, there was also---

Hon. Deputy Speaker: No; you do not ask the question again. You want to know when it will be responded to.

Hon. Chanzu: So, I do it afresh?

Hon. Deputy Speaker: No, I am asking was it to the Committee on Defence and Foreign Relations?

Hon. Chanzu: No; it was to the Committee on Environment and Natural Resources.

Hon. Deputy Speaker: The Chairperson or Vice-Chair, Committee on Environment and Natural Resources. You do not have to ask the question again, since you had already asked it. You are just waiting for a response.

Hon. Chanzu: There were two of them; there was also another one to the Committee on Transport, Public Works and Housing.

Hon. Deputy Speaker: A different one also to the Committee on Transport, Public Works and Housing?

Hon. Chanzu: The one to the Committee on Transport, Public Works and Housing was on the measures Kenya Airways has put in place to improve their services for both local and international flights and the measures the Government was taking to encourage healthy competition on local routes and enhance efficiency.

(Loud consultations)

Hon. Deputy Speaker: Order! Order, Members! The consultations are too high.

Hon. Chanzu, the two Chairs have heard your questions. Hon. Amina, and then the Chairperson, Committee on Transport, Public Works and Housing.

Hon. (Ms.) Abdalla: Thank you, hon. Deputy Speaker. The hon. Member asked a question about some illegal recruitment at Kenya Forest Service. The delay is because there has not been any recruitment in the Kenya Forest Service. They promised to give us whatever human resource activity that has been taking place at Kenya Forest Service. That is why we have had delays; they are claiming they have not had any recruitment since the new laws came into place.

Hon. Deputy Speaker: No recruitment has been done but wait for any other information. Hon. Washington Jakoyo Midiwo.

Hon. Midiwo: Thank you, hon. Deputy Speaker. I am Jakoyo Midiwo.

Hon. Deputy Speaker: Well, your card shows Washington. Go ahead.

(Laughter)

POINT OF ORDER

CONDOLENCE TO HON. MEMBER FOR NYAKACH

Hon. Midiwo: Hon. Deputy Speaker, money has been poured to spoil my good name.

Anyway, I just wanted to take a minute. I know you have said we are pressed for time. I want to raise a matter which I have heard on the corridors for the last couple of days. It concerns the deaths in Nyakach. As a House, I think we need to express our togetherness and send one or two words of condolences to our colleague.

(Applause)

Hon. Deputy Speaker, this is something that can happen to any of us. So, I think we need to show some solidarity. I want to sincerely send my condolences to the Member of Parliament (MP) for Nyakach. As you know, the MP had a premonition about this; I am sure if the killers of his parents had found him in that home he would also have been murdered. So, even as we discuss security issues, I think it is in order to send our condolences to the bereaved hon. Member, and even to hon. Olago, who is a relative of that family by virtue of marriage.

Hon. Deputy Speaker, lastly, let me also send my condolences to the families of the people who perished in the Easy Coach bus in Sachang'wan. I thank you.

Hon. Deputy Speaker: Thank you, hon. Jakoyo. I think that matter will be discussed tomorrow. So, Members, please, if that is the matter you wanted to talk about, we will have time tomorrow to be able to condole our colleague over the loss of his mother and father. Let us leave it at that and continue with it tomorrow.

Hon. Kamama, I hope you are not on the same issue because you are the one in the security docket.

Hon. Abongotum: Hon. Deputy Speaker, first of all, I want to join my colleague, hon. Washington Jakoyo Midiwo, in passing my condolences to my friend, hon. Aduma. I wish to say that he had a premonition about this issue and he raised it in this House. I want to confirm that as the Chairman of the relevant Committee I am very hurt. I had promised about twice to deliver a Statement to the MP, but I have not received any response.

In order to fast track it and in honour of the people we have lost, I want to suggest that, because we need this answer in 24 hours, the Statement requested by hon. Aduma be handled by my able Leader of the Majority Party, so that it is brought to this House within 24 hours. This is because I have tried. I have even informed hon. Aduma that this matter was being addressed but nothing has actually been done. So, Leader of the Majority Party--- I want him to take over this matter because it is very urgent. It is being treated very casually by police officers.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Leader of Majority Party, the Chair of the Departmental Committee on Administration and National Security has shown his frustration. You are our link to the Executive. Can you give us some assurance on when we can get this Statement?

Hon. A.B. Duale: Hon. Deputy Speaker, we will deliver the Statement on Thursday afternoon.

Hon. Deputy Speaker: Okay, Thursday afternoon. Hon. Members, we need to move on now.

Yes, hon. Joseph Kiuna.

Hon. Ng'ang'a: Thank you, hon. Deputy Speaker. About two months ago, I requested for a Statement from the Chairperson of the Departmental Committee on Administration and

National Security, hon. Kamama, regarding the number of illegal firearms issued between last year November and early February this year. He requested two weeks, yet I have not received an answer.

Hon. Deputy Speaker: Hon. Kamama, you can see that you have to issue so many Statements on a daily basis. You have to get concurrence and support of the Executive to be able to handle all of them.

Hon. Abongotum: So, I promise I will issue it in a week's time, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, I am informed that we now have a Statement tracker and that all Chairs have been given copies to be able to track Statements of Members. So, if each Chair has a tracker, then you will know which Statements are expected from you. I hope they are arranged in the order in which they arrived, so that we can deal first with the ones that came first rather than the ones that came later.

Hon. Kiuna, have you been given an answer?

Hon. Ng'ang'a: Hon. Speaker, would I be in order to seek your indulgence because there are so many Statements which many Members have been seeking in this honourable House, yet we do not get them promptly. By the time they are issued, the damage has already been caused. So, I would like your indulgence to request the Chairs of all departmental committees to be consistent and, at least, make sure that they deliver these Statements at the right time.

Hon. Deputy Speaker: I am sure, hon. Kiuna, it is not like last time when we had Ministers with us in the House. We understand the new situation we find ourselves in. They have to first go to the Executive and then get the answers; when you ask supplementary questions they again go back to the Executive. So, please, understand that we are in a situation where we cannot get instant answers. We want to urge the Chairs to try as much as possible to get answers as quickly as they can.

Hon. Members, we want to move to the next Order; let us begin to prosecute some business in the House.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE MATRIMONIAL PROPERTY BILL

(Clause 2 agreed to)

Clause 3

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): There is a proposed amendment by the Chair of the Departmental Committee on Justice and Legal Affairs, hon. Chepkong'a.

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

THAT, Clause 3 be amended by deleting the word "shall" appearing immediately after the word "faith" and substituting therefor the word "may".

We are proposing that amendment to ensure that it is not mandatory for the person who professes the Islamic faith to automatically be governed by the Islamic law, and so that the person may be governed by Islamic law on matters of matrimonial property.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The hon. Majority Leader, are you rising on that amendment?

Hon. A.B. Duale: Not on that amendment, hon. Temporary Deputy Chairlady. This is a very serious matter.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Majority Leader, I have already given you your space.

Yes, hon. Dennitah.

Hon. (Ms.) Ghati: Thank you, hon. Temporary Deputy Chairlady. I think the Majority Leader just needs to relax a bit, so that we concentrate on this matter which is weighty. He has begun to incite the House.

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

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

(Clause 3 as amended agreed to)

(Clause 4 agreed to)

Clause 5

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, again we are running some of the amendments so that the Bill reflects the cultures of our people. This is because some of the provisions are foreign.

I beg to move:-

THAT, Clause 5 be amended by inserting the words "or inherited" immediately after the word "acquired".

We are proposing that amendment because property is not necessarily acquired, and may be inherited. So, if I write in my will that my daughter or son be given certain property, it should be clear that it is an inherited property that should not be subjected to division in the unlikely event of a divorce.

Thank you, hon. Temporary Deputy Chairlady.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairlady. Originally, I had wanted to oppose this amendment, but given the clarification that the Chairman has given, which is just adding emphasis, I do not have a problem. From a legal perspective, acquiring and inheriting are one and the same thing, but for clarity and avoidance of doubt, I support this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you, hon. Millie. That is why we have the Chair giving explanation as to why they are moving these amendments.

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

(Clause 5 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chepkong'a, I understand that you also have another amendment to Clause 6, which is not on the Order Paper.

Hon. Chepkong'a: Yes, hon. Temporary Deputy Chairlady. There is an amendment that is contained in the report which was tabled, unfortunately it appears not to have been captured under amendments.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You can move the one on the Order Paper first and then the one that is not on the Order Paper.

Clause 6

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

THAT, Clause 6 be amended by deleting subclause (4).

This is the clause that states that a party to an agreement made under subsection (3) may apply to court to set aside the agreement, and the court may set aside the agreement, if it determines that the agreement was influenced by fraud, coercion or unjust influence.

We are asking for this deletion because this is a repetition of automatic law that allows any party that is disgruntled under Clause 17 to apply to the High Court. We are saying that this is superfluous. We are requesting that this be deleted.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You can, therefore, move the other amendment that is on the same clause.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move a further amendment to Clause 6(1)(c) by deleting the word---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Millie. Chair, just hold on.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairlady. In terms of order, I was just wondering because they probably relate to two different things. I do not know what the Chairman is talking about in terms of the amendment. However, I wanted to contribute to the first amendment to Clause 6.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Millie.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairlady. I wish to oppose the amendment for the same reason that I withdrew my initially proposed opposition to his earlier amendment to Clause 5. If the Chair were to be consistent, or if he is saying that this is superfluous, we are coming with prenuptial agreements which are not new to Kenya. For avoidance of doubt, the same reason that he used for emphasis, we need to be sure that if somebody was coerced--- If I get into a union and I am coerced, I must be sure that I have recourse in the law courts. Unless we are trying to hide behind something, people should really have the liberty to go to court and say that before they got married, this guy, because he thought that I was very pretty, coerced me into writing this agreement but afterwards, he changed his mind. People must get into unions very soberly, with a very clear mind as to what they are getting into. So, I oppose this amendment. We need clarity.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I can see two other interventions. One is by hon. Jakoyo Midiwo and the other one is by the Leader of Majority Party. Let us have the Leader of Majority Party first and then hon. Jakoyo Midiwo.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I rise to oppose this amendment. First, I want to put it on record that the Matrimonial Property Bill will not affect me and my colleagues in the Islamic faith, but because I am a leader of a huge group, there are two reasons why I oppose this deletion. Whatever agreement was reached before marriage--- Maybe, coercion, fraud and unjust means were used but there must be a fall-back position or redress for the two couples. By deleting that, you are closing the door. In all the laws that we are making in this House--- We have the tax tribunal in the law that we passed, so that the Kenya Revenue Authority (KRA) and businessmen can have a fall-back position when they have a dispute. There is a lot of coercion of late in marriages from either gender. I oppose this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): It is the same reason that hon. Millie has given. If it is the same reasoning, let us save time. Yes, hon. Jakoyo.

Hon. Midiwo: Hon. Temporary Deputy Speaker, Sir, mine is the same.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You are opposing it for the same reasons, hon. Midiwo?

Hon. Midiwo: Yes, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Could I ask the Chair to respond to that because many could be on the same issue.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, it does not affect the Bill in any way. As far as we are concerned, from a drafting point of view, it does not make sense. Those rights are still protected under Clause 17, but we can leave it as it is.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Are you withdrawing the amendment?

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I withdraw the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us be clear to the House that the Chair of the Committee has withdrawn the first amendment to Clause 6.

(Proposed amendment by hon. Chepkong'a withdrawn)

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

THAT, Clause 6 be amended in sub-section (1)(c) by removing the words "or either".

This was in the minutes, but unfortunately, it was left out. It is the amendment to Clause 6(1)(c), which reads as follows:- "---any other immovable and movable property owned by both

spouses or either spouse and acquired during the subsistence of the marriage” I am proposing to remove the words “or either” in line with two and maintain the rest of 6(1).

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, the Chair is proposing an amendment, which is not on the Order Paper to Clause 6(1) (c), on page 383, if you have the Bill which is in a photocopy form. For those who are interested, he is suggesting removal of the words “or either”, so that (c) would read, “---any other immovable and moveable property owned by both spouses and acquired during the subsistence of the marriage”.

Hon. Chepkong’a: Hon. Temporary Deputy Chairlady, the reason why we are proposing the amendment is so that matrimonial property does not include that which was owned by the person before marriage. If you remember, we moved an amendment that property that is inherited is not part of the matrimonial property that is acquired during the subsistence of the marriage. Therefore, we want to make it very clear that that property which you have willed to your son or daughter, will not be subject to division during divorce proceedings.

(Question of the amendment proposed)

Hon. Gichigi: Hon. Temporary Deputy Chairlady, on my part, I may be wrong, but my reading of that sub-clause is that matrimonial property means anything that is acquired by a spouse during marriage without reference to any participation or contribution by the other party. It is matrimonial property and can be shared equally. That is my reading of this clause. The amendment the Chairman has brought does not relate to property that was acquired before marriage. It is just perfecting the grammar, so that anything that you acquire after marriage, you share equally even if one of the spouses sleeps throughout the marriage.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, are you supporting or opposing the amendment?

Hon. Gichigi: I am opposing the amendment and I will be opposing the entire clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ochieng, are you on this amendment?

Hon. Ochieng: Hon. Temporary Deputy Chairlady, I am. I wish to seek your guidance because as my colleague has said, the amendment proposed by the Chair just perfects the grammar; more fundamentally is that I sit in the Committee on Justice and Legal Affairs and I was part of the deliberations that took place on this. However, I am perturbed by what I see appearing on the Order Paper today.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, consult quietly. Hon. Nyokabi, I wish you could listen because you are the Vice-Chair of this Committee.

Hon. Ochieng: Hon. Temporary Deputy Chairlady, on the particular clause that we are talking about, we had many amendments, but I have not seen them on the Order Paper. On Clause 6, we had very key amendments that touch on what we are talking about now. The key amendments were there. The amendment that was clearing all the doubts in that clause was the one that we proposed in deliberations that were about deleting Clause 6(1)(d). This amendment would handle everything else that we are talking about now. I would seek your guidance because

I have not seen it on the Order Paper, and I have not heard my Chair say that he wants to move that amendment. I want to know where it is.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, just for your information, these amendments have been on the Order Paper for the last four days. The House has been clear that these are the amendments to be brought by the Committee on Justice and Legal Affairs. I do not think these amendments are an ambush but I will allow your Chair to respond, knowing very well that they have been on the Order Paper for the last four days. Chair of the Committee, would you like to respond to your Member?

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, with a lot of respect to my colleague, who is a Member of our Committee, the amendments that we are proposing are those amendments that were agreed upon by the Committee and are contained in the minutes. These were, therefore, lifted by the Clerk and forwarded to the Legal Department for purposes of being included. If he wishes to propose that as an individual Member, that can be done and he can seek your guidance.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, if you have an amendment, you can approach the Chair to bring the amendment for you. That is the only way in which we can now include a new amendment. You can approach your Chair, so that he can bring that amendment for you. At the stage where we are, it is only the Chair of the Committee who is allowed to bring amendments. I assume that you are opposing this particular amendment.

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

(Clause 6 as amended agreed to)

Clause 7

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Chair, we have the same issue here. You have an amendment on the Order Paper and one not on the Order Paper. So, you start with the one on the Order Paper.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 7 be amended---

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, the amendments must be circulated. If they are not on the Order Paper, they must be circulated. This is the second time we are hearing that there is another amendment which is not on the Order Paper. So, if it is there, then the Chair should circulate it.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Leader of Majority Party, you know the Chair is allowed to bring amendments and he has made it clear to the Table that there were two amendments that were not reflected. So, what the Chair could do, for the sake of the House, is to indicate how many amendments he has that are not appearing on the Order Paper, so that the Members are not taken by surprise by the amendments. Maybe you need to explain clearly why they are not appearing on the Order Paper.

Hon. Chepkong'a: If you look at the minutes in the Report that I tabled in the House on 10th October, 2013, specifically Minute 174 on the amendment to Clause 7, that was agreed in the Committee. There was---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Honourable Leader of Majority Party, the Chairman is trying to explain the reason why--- Member for Kiharu, please take your seat.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, this Report was circulated to Members and so, they are aware of the amendment as proposed in the minutes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I have already proposed the amendment to Clause 7 that is on the Order Paper. You have to explain the one that is not on the Order Paper for Members to understand.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I propose that Clause 7(2) be amended by deleting Sub-clause 2 of that particular clause as proposed by the Committee.

(Question of the amendment proposed)

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairlady, I stand to oppose that amendment. Basically, this amendment is in the same principle that we had in Clause 6. Whereas I agree that in a marriage people will share equally but, really, it is also important to note that every partner must make an effort to make a contribution. If it is taken for granted that just being in the marriage everything will be shared equally and there will be no question, I do not think that is fair.

Therefore, by removing Sub-clause 2 in Clause 7, I think we are denying people the chance to interrogate that. I also believe that if we were to remove that, then we cannot leave Clause 9 which raises the same issue.

I oppose this. I think the leeway should be left at the time of dissolution so that, if a partner wants to challenge the position that there was equal share, then they can do so. In this case, as one of the Members has said, you just get into a marriage, do nothing at all and know that the law is with you and nobody can question. I, therefore, oppose that.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, I wish to support the amendment for the following reason: Contrary to what hon. Dr. Nyikal has said, this principle is already a constitutional principle. So, what we are basically doing is to give guidance and direction on how it is done by law. Otherwise, we will be leaving it to the discretion of the courts and we will be leaving our responsibilities to the courts. The Constitution is very clear about equal rights before, during and after the dissolution of a marriage. So, really, it is not anything worth a choice; it is constitutional and that is an argument that would have done very well at the point of making the Constitution. At this point, unless he is really calling for the amendment of the Constitution, the principle is clear in the same Constitution.

I support this amendment.

Hon. Dido: Hon. Temporary Deputy Chairlady, I oppose this amendment because in our contributions, we have actually been talking about the clarity of the Bill. Clause 1 is about dissolution of marriage. In Clause 2, within the marriage, if it comes about that there is a dispute-- Clause 2 and Clause 1 are different, if I am to read the English that is written here.

I wish to agree with hon. Dr. Nyikal. It is about the clarity of the Bills that come here.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): So, you are opposing the deletion of Clause 7.

Hon. Nyamweya: Hon. Temporary Deputy Chairlady, I oppose the amendment. I agree with what *daktari* has said. What is happening here is this: In a matrimonial home, let the people contribute to the baking of the cake. If you allow only one person, somebody could come into

marriage for one purpose; which is to share the property with you. Once the person is married, they become husband or wife and then they will claim: “Let us split the wealth on a 50-50 basis.” So, the best way is that we allow people to share wealth, but depending on the contribution each person has made towards the baking of the cake.

I oppose. Property should not be distributed equally on a 50-50 basis.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, I know that the Chairman is going to move an amendment to Clause 7(1). Therefore, it is better for us to understand what Clause 7(1) says. This will have a bearing on Sub-clause 2 of that. This Sub-clause 2 talks of Sub-clause 1 of Clause 7. Unless we amend Clause 7 first---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I hear your point. Your point is valid. Hon. Chepkong’a, could you, please, move the amendment to Clause 7(1), if it will affect the deletion of Clause 7(2)?

Hon. Chepkong’a: Hon. Temporary Deputy Chairlady, I wish to move an amendment by removing the words “in equal shares irrespective” in lines two and three and replace thereof with the words “according to”.

Hon. Temporary Deputy Chairlady, this is so that if there is any property to be divided, then it must be in accordance with the share of each spouse’s contribution to the matrimonial property. This will ensure that no one person just sits and waits for the other person to acquire property and then claim half of it.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Could you, please, read it as it should be? Hon. Members who are consulting, please, do so quietly. There are those who are interested in the details of this matter.

Hon. Chepkong’a: Hon. Temporary Deputy Chairlady, the new clause which is now Clause 7 and not Clause 7(1) will read as follows:-

“Subject to Clause 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition and shall be divided equally between the spouses if they divorce or their marriage is otherwise dissolved.”

The reason we are proposing the deletion of Clause 7(2) is because it is inconsistent with the marriage itself. You know you are asking spouses that if we disagree in the house concerning ownership of a particular property that we got during the subsistence of that marriage, we can go to court and arbitrate over it and still come back and remain as married. The courts that we have are adversarial in nature and it is about “winner takes all”. It is not a fifty per cent thing; it is not a win-win situation.

So, we are saying that we delete this because it is inconsistent with marriage. You are asking people to---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Clearly, the two clauses are interfering with each other. So, I would like hon. Members to speak to the amendment to Clause 7(1) that the Chair has just spoken about, where he proposes the deletion of the words “in-equal shares irrespective” and replace them with the words “according to”. The amendment is not in the Order Paper. So, I hope that you have understood. I can see many requests by hon. Members. I hope that, that is what you are seeking to speak to.

Yes, hon. Chidzuga.

Hon. (Ms.) Chidzuga: Ahsante, Bi. Mwenyekiti wa Muda. Nimesimama kupinga pendekezo la Mwenyekiti la kukifanyia mabadiliko Kipengele hiki. Mwanamke anapoolewa, huenda ikawa hana ajira lakini inafaa ifahamike kwamba kufagia nyumbani kwake asubuhi na kumchemshia mumewe maji ya kuoga pia ni mchango kwenye ndoa. Mwanamke huyo pia huchangia mengi kwenye ndoa. Kwa hivyo, ana haki ya kupata ugavi sawia wa mali yatakayopatikana wakati wa ndoa.

Ahsante, Bi. Naibu Spika wa Muda.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. ole Kenta.

Hon. ole Kenta: Thank you, hon. Temporary Chairlady. Clause 7(1) is still contradictory. How can we say that ownership of matrimonial property vests in spouses according to the contribution of each spouse and then say that during divorce, such wealth shall be shared equally? Does it make sense?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Are you, therefore, opposing the amendment by the Chairperson?

Hon. ole Kenta: Hon. Temporary Deputy Chairlady, it does not make sense. So, it should be reviewed.

Yes, hon. Esther Murugi Mathenge.

Hon. (Ms.) Mathenge: Hon. Temporary Deputy Chairlady, I also rise to oppose the amendment and say that whether the woman has contributed or not, she has fed, cleaned the man and taken care of the family. Therefore, she is entitled to 50 per cent of matrimonial wealth.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Lomenen Ekomwa.

Hon. Ekomwa: Thank you, hon. Temporary Deputy Chairlady. I rise to support the amendment. In my culture, before you marry, you have to pay dowry to the family of the lady. You pay 100 camels and 1,000 cows. After paying dowry, should you share equally the little wealth that you remain with? It is unfair.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I want to hear more contribution on this clause because there is a mix up.

Yes, hon. Regina Ndambuki.

Hon. (Ms.) Muia: Thank you, hon. Temporary Deputy Chairlady. I stand to oppose the amendment that has been proposed by the Chair of the Departmental Committee. Division of any matrimonial property acquired before or after marriage should be done equally, regardless of whether the woman is working or was working before. Sometimes, women are marginalised. When man goes to work, you are left at home to take care of his children, wash his clothes and cook. When he comes back, you entertain him.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Kamama.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, I support the amendment. We are all Africans. We have not come from Venus. We all know that we marry when we are slightly older than our wives. Before marriage, a man would have made a few coins and bought some property here and there. So, the issue of sharing matrimonial property 50-50 is never applicable in the African context. So, when it comes to sharing of matrimonial property, we want it done on the basis of specific contribution by the lady. We would not want a lady to come into a marriage and just hang around and expect *manna* from Heaven.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we have over six interventions on this particular issue, giving the views of either side of the divide. So, it is only fair that I put the Question because there are many more amendments to go.

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

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

(Several hon. Members stood up in their places)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, the requisite number for a division is 30 Members. Serjeant-at-Arms, can you confirm the number to me?

(A count of the Members standing was taken)

Hon. Members, the number is enough for a division.

Hon. Members: No! No! It is not!

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, please, relax. There is nothing that is life-threatening here. The Members standing have been counted by the clerks-at-the-table. If you want a repeat of the count, we can ask hon. Members to stand again and repeat the counting. Can you, please, carry yourselves with decorum? What we are doing here is passing the law.

Could the taking of the count of the Members who are for a division be repeated for the sake of those who are doubting? Could hon. Members who want to take this issue to a division rise again?

(Several hon. Members stood up in their places)

The number is sufficient. Therefore, I order that the Division Bell be rung for 10 minutes.

(The Division Bell was rung)

Order, hon. Members! I now order that the Division Bell be stopped and the Bar be drawn. Serjeant-at-Arms, draw the Bar. Please, take your seats hon. Members. Hon. Midiwo and hon. Betty, please, be seated.

I am addressing the Serjeant-at-Arms. We are now going into voting. Please, listen. Please listen to the procedure. Thank you.

We are going to vote through electronic voting. Hon. Wekesa and hon. Alice, please, be seated. Hon. Members, you will log in to vote. I will give you 90 seconds to log in by inserting your card in the slot provided and then enter your password and press the “OK” button. Can we go ahead and log in? We want to do it clearly together so that we do not get confused. At the end of your logging in, your buttons will start blinking, which is an indication that you have logged in and you are ready to vote. So, hon. Members, I will first give you 90 second to slot in your card, put in your password and wait for the blinking button which you will press “OK”. I

will then give you another 60 seconds for voting. You will either press “Yes”, “No” or the abstain button. An hon. Member should press only once. Please, do not press more than once.

Hon. Members the question is:-

THAT Clause 7(1) be amended by deleting the words “in equal shares irrespective of,” and replacing therefor with the words “according to”.

You can now log in Members for 90 seconds. I do not need to take points of order right now. I want to see that the system of voting is working. I now give you 60 seconds to vote. I have already told you what the Question is, hon. Members.

Hon. Members: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, please be patient. I am told the system is still logging in. Can all Members be sure that they are logged in?

Hon. Members: Can you read out the Question again?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will read the Question again once you complete the process of logging in. Is everybody logged in? Hon. Members, if you look at your system, you will see that it is already counting the logging in. Can you see those seconds being counted?

(Loud consultations)

Hon. Members, please look at the screens. Let us not shout at the Chair and let us be patient with this electronic voting system so that we can get our voting right. Hon. Members, you can now see that you are all logged in. Please start voting now. You have 60 seconds.

(Hon. Members voted electronically)

DIVISION

(Question put and the House divided)

(Question carried by 87 votes to 28)

AYES: Messrs. Abass, Aden, Akujah, Ms. Amolo, Messrs. J. K. Bett, Bitok, Bosire, Busienei, Chea, Ms. Chebet, Mr. Chepkong’a, Ms. Chepkwony, Ms. Chidzuga, Messrs. Dido, Ekomwa, Gakuya, Gichigi, Eng. Gumbo, Messrs. Injendi, Iringo, Kangara, Karithi, Kiaraho, Kilonzo, Kimaru, Kipyegon, Langat, Lentoimanga, Limo, Losiakou, Makenga, Eng. Manga, Messrs. Manje, Manoti, Midiwo, Mirenga, Momanyi, Ms. Muia, Messrs. Mule, Mulu, Muluvi, Musimba, Muzee, Mwadime, Mwamkale, Nanok, Nderitu, Ngare, Njomo, H.K. Njuguna, Nyumu, J. M. Nyaga, Ng’ongo, Nyamweya, Dr. Nyikal, Messrs. Nuh, Ochieng, Ogalo, Okoth, Ole Kenta, Ole Lemein, Ole Ntutu, Ole Sakuda, G.W. Omondi, J.O. Omondi, Opiyo, Oroo, Otsiula, Ms. Otucho, Dr. Pukose, Messrs. Rai, Ramadhani, Eng. Rege, Messrs. Rotino, Sakaja, Sambu, Serut, Shinali, Simba, Sumra, Tiren, Tonui, Waiganjo, Wandayi, F. K. Wanyonyi, Washiali, Waweru

NOES: Mr. Andayi, Ms. Chae, Ms. S.W. Chege, Ms. Emanikor, Ms. Ghati, Ms. Gure, Ms. Kajuju, Ms. Kanyua, Ms. Kedogo, Ms. Khamisi, Ms. Korere, Ms. (Dr.) Laboso, Ms. Mathenge, Ms. Muhia, Ms. Musyoka, Ms. F. M. Mutua, Ms. A. W. Ng’ang’a, Ms. Ngetich, Ms.

Nyamunga, Ms. Odhiambo-Mabona, Ms. Ombaka, Ms. Seneta, Ms. Teiya, Ms. Tobiko, Ms. Wahome, Ms. Wanyama, Ms. Wanyonyi, Mr. Wetangula.

I want the Chair of the Committee to read the new clause and order the Bar to be opened now. Please read the amendment now. Please listen to the Chair of the Committee on Justice and Legal Affairs.

Hon. Chepkong'a: Thank you, hon. (Ms.) Shebesh, Temporary Deputy Chairlady. The New Clause shall read as follows:-

Clause 7(1)

“Subject to Section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition and shall be divided equally between the spouses if they divorce or their marriage is otherwise dissolved.”

As a consequence of that amendment, it, therefore, means that I am proposing a further amendment to remove the word “equally” after “divided”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I, therefore, propose.

(Question of further amendment proposed)

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

Hon. Members, earlier hon. Kimaru had a suggestion about sub-clause 2. It is on the Order Paper. So, can we now also dispense with that amendment? Go ahead hon. Chepkong'a.

Hon. Chepkong'a: Thank you, hon. (Ms.) Shebesh, Temporary Deputy Chairlady. We are proposing a further amendment in accordance with the amendment that is contained in the Order Paper that Sub-clause (2) be deleted.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Milly and hon. Mbadi, please, take your seats.

Hon. Chepkong'a: This is inconsistent with marriage. This will just create wrangles and it will cause a breakdown in marriages leading to divorce. So, we are proposing that it be deleted accordingly.

(Question of further amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I hope it is on what the Chair has just amended right now by deletion of sub-clause 2; and it is what we are talking about.

Hon. (Ms.) Kanyua: Thank you, hon. (Ms.) Shebesh, Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mbadi, you honestly cannot ask such a question aloud when you have not been listening and you have the papers in front of you.

Hon. (Ms.) Kanyua: Thank you, hon. (Ms.) Shebesh, Temporary Deputy Chairlady. I think to the extent that Clause 7(1) has already been amended, and this matter did cause a lot of discussion in the Committee, I support the Chair that Clause 7(2) be deleted so that, as we move forward, really, this is an important Bill that is required for our families. It has been cleaned up

by the Committee and it allows all the parties in the marriage to contribute to the property. I do hope that now because the contentious clause has been dealt with, we can then proceed, having deleted Sub-section 7(2). I will also urge the women of Kenya to consider freezing conjugal rights for quite a number of days.

(Laughter)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. (Dr.) Robert Pukose.

Hon. (Dr.) Pukose: Thank you, hon. (Ms.) Shebesh, Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Order, hon. Members. What is your point of order, hon. Jakoyo. Please let us have order Members! Order!

Hon. Midiwo: Madam Chair, Please protect me.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Members, please, let us listen to the point of order by hon. Midiwo. I am strongly suggesting that we relax the temperature so that we can pass this Bill with quorum.

Hon. Midiwo: Thank you, hon. Temporary Deputy Chairlady. I am on a point of order. I was only going to request what you have said. Is the hon. Vice-Chair of the Committee in order, really, to urge our women to deny us our conjugal rights in a way that she is implying that we have been getting this so that our property may be taken away?

(Laughter)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Nyokabi, I am sure it was with a light touch. Please, make it clear that, that was on a light touch!

Hon. (Ms.) Kanyua: Yes, hon. Chairlady. It was on a light note but this is a fairly important matter. I think that Members of this House who are male have got to allow this debate on marriage to go on.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I think that is fair enough. Hon. Jakoyo, that was on a light touch. Let us go to hon. Alice Wahome.

Hon. (Ms.) Wahome: Hon. Temporary Deputy Chairlady, I just want your directions before we proceed because my reading of Article 45 tells me that, if we allow that Clause 7 to go the way it has been amended, I think we shall be infringing on the Constitution. With your permission, hon. Members, Article 45 is the one that relates to the family. The family is the natural and fundamental unit of the society. But then, if you go to Article 45(3), it reads: "Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage."

Hon. Temporary Deputy Chairlady, the words are: "equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage." Equal rights have not been defined to exclude property and, therefore, hon. Members, we need to be aware of that. I am sure there are lawyers and Members like Mbadi and Jakoyo Midiwo who will understand that. I think it is important that we work within the law and I think the provision should go the way it goes. Therefore, I would still want to propose that we come up with another amendment. It is outside the law, which is the Constitution.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, your argument is almost like the one hon. Millie had brought earlier. Unfortunately, because of the rules of this House, that amendment has already been passed. It has gone to Division and we

cannot return to that amendment. Hon. Members, I want to call two other Members. I had called hon. Robert Pukose. I did not see him. Is he not in the House?

Hon. (Dr.) Pukose: I am here.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I had actually called you. Proceed.

Hon. (Dr.) Pukose: Thank you, hon. Temporary Deputy Chairlady. I want to support the amendment by the Chair of deleting Sub-section 2 of Clause 7. If it remains the way it is, what it means is that you can go to court, seek for division of property and then come and continue with the marriage. That will not bring harmony within the house. Therefore, I think it is not part of the rights as *Mheshimiwa* was putting it. That is because if you are talking of equal rights and the family being provided for in the Constitution as a centre of society, then what it means is that we must be able to provide for a seamless society where there is harmony within the family. We cannot run the properties of each and every house. Therefore, we must have some element of uniformity.

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

Hon. Okoth: Thank you, hon. Temporary Deputy Chairlady. I just want to clarify quickly that hon. Alice Wahome has just pointed out something that is of constitutional concern. We know that the Constitution overrides any other law since it is the supreme law and yet, we are in the process of making this one. We are saying that our Standing Orders forbid us from thinking about this and addressing it even though she has raised something that is constitutional and is higher. Which is higher? Is it the Constitution or the Standing Orders?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, I have already ruled on that issue. I will, therefore, move on.

Hon. Okoth: Please, clarify it for me. I am not challenging you, but I just need a clarification.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Okoth, I have already ruled on that issue. I also clarified to the Member who spoke on it and so far, there is nothing unconstitutional that we are doing. Otherwise, it would have been raised and picked up by the Committee itself and the Speaker's office. Hon. Irungu.

Hon. Kang'ata: Thank you, Temporary Deputy Chairlady. The reason why I am supporting the deletion of Sub-clause 2 is because when you look at it, the first expression reads: "Despite Sub-section 1, a party may---". So, therefore, if we fail to amend this clause, it is going to fixate what we have done by amending Sub-section 1 because of the existence of the expression: "Despite Sub-section 1." So, therefore, for us to bring clarity and give effect to what we have done in amending Sub-section 1, we have, therefore, to do away with Sub-section 2.

Number two - and this one is to the ladies who have raised the issue to do with Clause 7 - my attention has been drawn to the definition of the term "contribution". The term "contribution" has been expanded to take into account non-monetary support of a husband; meaning for instance, society has been captured. It, therefore, means that contribution is no longer monetary. It does also include society and being together with a woman for instance. So, therefore, I would foresee when these matters are taken to court such other forms of support will not be taken into account and women are going to experience better and enhanced rights.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I, therefore, want to put the Question, Members. I think we have had enough ventilation on the issue.

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

(Clause 7 as amended agreed to)

Clause 8

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

THAT, Clause 8 of the Bill be amended in Sub-clause (1)(b) by deleting the word "other" appearing immediately before the word "wives".

The reason why we are making this proposal is because under the customary law, this presupposes that you are going to marry more than one wife and not other wives. So, this allows the husband to own property together with other wives and not only one wife. So, it is consequential upon the word "another". You cannot have both of them. Thank you.

(Question of the amendment proposed)

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

(Clause 8 as amended agreed to)

(Clause 9 agreed to)

Clause 10

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

THAT, Clause 10 of the Bill be amended in Sub-clause (3)(a) by inserting the words "for the benefit of the marriage" immediately after the word "marriage".

The consequence of this is that one spouse does not incur liability so that it can be shared equally by the other spouse that has not created it. We are saying this because we are aware of cases where not only women, but also men have incurred liability so that it can be shared at the time of divorce. That disadvantages the other party. That is as long as the liability is acquired for the benefit of the marriage.

(Question of the amendment proposed)

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

(Clause 10 as amended agreed to)

(Clauses 11, 12, 13, 14, 15, 16 and 17 agreed to)

Clause 18

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

THAT, Clause 18 of the Bill be amended in Sub-clause (1) by deleting the expression "Section 81 of" appearing immediately after the words "established under".

We are aware that the Civil Procedure Act is being amended. So, it is not necessarily going to be Section 81 of the Civil Procedure Act. It could be any other section. However, we are just leaving the Civil Procedure Act to make it clear and not to cause confusion.

Thank you, hon. Temporary Deputy Chairlady.

(Question of the amendment proposed)

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

(Clause 18 as amended agreed to)

(Clause 19 agreed to)

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, let the House know that we will be re-committing Clause 6. But before that, we have to report back to the House. Therefore, I call on the Mover.

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairlady. I beg to move that the Committee doth report to the House its consideration of the Matrimonial Property Bill, National Assembly Bill No.12 of 2013 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

(Hon. Deputy Speaker in the Chair]

REPORT

THE MATRIMONIAL PROPERTY BILL

Hon. (Ms.) Shebesh: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Matrimonial Property Bill, National Assembly, Bill No.12 of 2013, and approved the same with amendments.

Hon. Chepkong'a: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. (Ms.) Muia seconded.

(Question proposed)

Hon. Ochieng: Thank you very much hon. Deputy Speaker. I beg to move:-

THAT the Bill be amended by inserting the words “subject to re-committal of Clause 6.”

Hon. Deputy Speaker: That is okay. Would you like to elaborate a little on your amendment or why you are re-committing Clause 6?

Hon. Ochieng: Hon. Deputy Speaker, we are talking about all property or any property but this Bill talks about a very specific type of property. That is why we are calling it matrimonial property. That is property that would be owned within the family framework or property that could be owned by the man and the woman who would form a union that we call a family.

That is why the definition of “matrimonial property” will determine whether this Bill passes or not. If you look at Clause 6(d), you will find that we have tried to define this property by saying matrimonial home(s), household goods and any other property moveable. But we are also saying “any other property acquired during the marriage”. This means that we do not even need to have a definition. We should just say that as soon as you get married, you acquire matrimonial property and you do not define it. That is why I am requesting that this Clause be re-committed so that Members can consider it or we define what Members want to be referred to as matrimonial property.

Thank you.

(Applause)

Hon. Deputy Speaker: Hon. Ochieng, you need a seconder.

Hon. Ochieng: Hon. Deputy Speaker, I request hon. Gichigi to second me.

Hon. Gichigi: Thank you, hon. Deputy Speaker. I second the proposed re-committal by my colleague. It is true that the backbone of this Bill is Clause 6. That is the definition of “matrimonial property”; what has been acquired during the marriage and the fate of what was acquired before the marriage. So, it is important that this clause be re-done and we get clarity on the issue.

I second the re-committal of Clause 6.

(Question put and agreed to)

Hon. Deputy Speaker: Hon. Members, please, remember that we are only recommitting Clause 6. Everything else stays as it was.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Hon. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE MATRIMONIAL PROPERTY BILL

(Re-committal of Clause 6)

Clause 6

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, please, take your seats. We are back to the Committee of the whole House on the re-committal of Clause 6. Members at the Bar, could you resume your seats. We are back to Committee of the whole House for re-committal of Clause 6. Remember we had amended Clause 6(1)(c) by deleting the words “or either”. Remember the amendment also to withdraw Sub-clause 4 was withdrawn by the Chair. I am just making it clear what we did on Clause 6 because we are recommitting it. We had deleted the words “or either” in Sub-clause 1(c) and there had been a proposal to delete Sub-clause 4. But the Chair withdrew that proposal. Therefore, we are waiting for the Chair to move an amendment. We are now re-committing Clause 6.

Hon. Chepkong’a: Hon. Temporary Deputy Chairlady, as you know, hon. Ochieng is a very good Member of the Committee and has made very serious contributions towards this Bill.

I beg to move:-

THAT, Clause 6(1)(c) of the Bill be amended -

(i) by adding the words “jointly owned by both parties” in the second sentence.

(ii) by deleting Sub-clause 6(1)(d) in its entirety.

So that it reads as follows: - “any other immovable and movable property jointly owned by both spouses and acquired during the subsistence of the marriage”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Chairman, let us move in order. Let us start with the amendment on 1(c). Please, read that amendment again. Members, please, follow as much as you can.

Hon. Chepkong’a: Hon. Temporary Deputy Chairlady, I would like to read the proposed amendment.

THAT, Clause 6(1)(c) of the Bill be amended by deleting the words “by both or either spouse” and inserting the words “jointly---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair, you had already deleted “or either”. So, give us the new amendment without the word “either”.

Hon. Chepkong’a: Hon. Temporary Deputy Chairlady, the new amendment shall read as follows:- “That any other immovable and movable property jointly owned and acquired during the subsistence of the marriage” and deleting Sub-clause 1(d).

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Just let us get the wording, which is even more important and then clarification.

Hon. Chepkong’a: Hon. Temporary Deputy Chairlady, let me read again. “Any other immovable and movable property jointly owned or acquired by---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Do you want me to give you some few minutes? I can give you a few minutes because this is the amendment that has brought us back to the Committee.

Hon. (Ms.) Kanyua: On a point of order, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I can see a point of order by hon. Nyokabi. Hon. Nyokabi, you are the Vice-Chair of the Committee and I hope you know that I have allowed for consultations on that amendment. Before you comment on it, I have allowed the Chair to consult on the amendment, so that we know what the amendment is so that I can take contributions.

(Loud consultations)

Members, I am calling the House to order. If you cannot agree, we will get the amendment and leave it to the Floor to decide. Hon. Chair, can you, please, move the amendment? Order! Hon. Chair, please, put the amendment and let the Floor decide what the final amendment will be. Members of Justice and Legal Committee, please, take your seats! Go ahead, hon. Chairman.

(Members crossed the Floor without bowing at the Bar)

Members, you cannot cross the Floor like that. Go back and cross accordingly. Please, let us give time to the Chairman to move the amendment.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, you know yesterday was the men's day and so they are motivated about this matter. Men and women have been accommodated. The proposal we are making is that we delete (c) and we replace it with the following: "any other immovable and movable property jointly owned and acquired during the subsistence of the marriage"

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, I thank the Chairman of the Committee for proposing that amendment. I think it should be clear. Let not our sisters think that this thing is meant to favor men. In some parts of this country, women toil from morning to evening while men sit doing nothing; theirs is a disgusting indolence and yet they want to lay claim on what their wives have acquired. So, this thing is cutting both ways my sisters. It is not really meant--- Let us appreciate enterprise. Let us appreciate that the effort that people put in acquiring property should count for something.

Hon. Temporary Deputy Chairlady, I support.

Hon. (Ms.) Kajuju: Thank you, hon. Temporary Deputy Chairlady. I am opposed to that amendment in the sense that when you put the words, "jointly owned" this property is not registered in the joint names of the parties and so it will not be able to form matrimonial property. What we are trying to protect is the family unit. We do not live in utopia. We know that in our society it is very rare for a woman to be registered jointly in a property that is owned by the family. We have had situations where it is the man only who is registered as the owner of the property. So, if we put the word "jointly" in this legislation then it means that any property

acquired in the course of the marriage will not form part of the property that will be divided in the event of a divorce.

I am opposed to the words “Jointly owned”. Actually I had agreed with the Mover of the amendment that it should not affect the amendment. Their committal in Clause 6 should not affect part (c). We had agreed on that, but now they have brought other amendments to clause (c).

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, we make laws for posterity. It is difficult to legislate in the African context. Unions are very complex in our African communities. I agree with this because at the end of the day we do not want to kill this Bill. We want to have a win-win situation. It is the first time in the history of this country that we have a Bill of this nature. We do not want to create law based on activism. What we are doing, for the first time in the history of this country is setting a law for what goes on in the bedroom. It has never happened. These are bedroom laws.

(Laughter)

Hon. Temporary Deputy Chairlady, we must be very careful because the laws are now being taken. We have a new Constitution. We have created all laws for the first time---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Duale, I am sure that you know that we are debating the Matrimonial Property Bill and not any bedroom Bill or law. I am sure you know the import of the words you are using.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, it is called Matrimonial Property Bill, 2013, but I want to speak to the laymen out there. My constituents do not know what Matrimonial Property Bill is. In essence, we are talking about the union between a man and woman. So, for me I am talking to the people of Garissa Town.

In conclusion, this is a good middle ground for all so that we move ahead and do the functions of this House which are to legislate and create laws.

Hon. (Ms.) Ombaka: Hon. Temporary Deputy Chairlady I was not meant to make any changes, but I realized that when you read through that Clause 6(c) it spills into (d) and then the (d) becomes irrelevant.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We will be coming to (d). If you do not have anything on (c), we will be coming to (d).

Hon. (Ms.) Ombaka: At (c) we need a full stop so that there is an end to it. We do not need to have the “or”. This is because with “or” then it goes into (d) immediately.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The new text that I read out does not have “or”. We deleted that.

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

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

(Several hon. Members stood in their places)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, you do not have the requisite number of 30 Members. Let us move on to (d).

Clause 6(1)(d)

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, as a consequence of the amendment to (c), (d) becomes superfluous. So, I am proposing an amendment:

THAT, (d) be deleted from the Bill.

(Question of the amendment proposed)

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairlady, we have severely amended Clause 6(1)(c) by including the words “jointly owned” even when we know that in our country a lot of properties are not registered in the joint names of the spouses. It then means that this law needs Clause (d). It is very sad that some Members of the Committee who had opportunity to canvass these matters in the Committee--- We spent a lot of time in the Committee on these matters. I am compelled to oppose the deletion of (d) and urge this House that we keep this clause because it is important.

We are trying to manage families. We are trying to manage sharing of matrimonial property in a civil way. We are trying to avoid violence as a way of managing. Kindly, let the Members allow us to keep Clause (d). Let us not delete it as has been proposed by the Chair. This is because Clause (c) has already taken care of the interests of both parties.

I oppose the deletion of (d) and urge that we keep that particular clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, please, make your contributions short to allow as many interventions as possible.

Yes, hon. Mbadi.

Hon. Ng'ongo: Hon. Temporary Deputy Chairlady, if it were the case of my wife, it would be very easy to deal with it because I would, as I always do, just register my property jointly with her. I am trying to protect my daughter, whose husband I do not know how he will behave. We allowed an amendment on Clause 6(c) which, in my view, is very dangerous. We are saying that the property must be jointly owned and acquired. So, those two conditions have to be met. If we do that, we have to retain paragraph (d).

I know that I am going to lose but I am going to support it because I am protecting my sister and my daughter. I do not have to protect my wife because that is very easy to deal with. I plead with hon. Members to support this amendment. We have daughters and sisters, whom we need to protect.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you, hon. Mbadi.

Yes, hon. Dennis Waweru.

Hon. Waweru: Hon. Temporary Deputy Chairlady, I support the idea of completely deleting paragraph (d). As Africans, we need to be able to separate love, marriage---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Just a minute, hon. Waweru. Hon. Priscilla Nyokabi is on a point of order. What is your point of order, hon. Nyokabi?

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Speaker, my point of order is on the reference to African matters by the Leader of Majority Party. Does it mean that Africans do not marry, and should not marry according to law? Africans also do marry.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Nyokabi, that is an argument.

Hon. Dennis Waweru, you have heard the sentiments of hon. Nyokabi. Please, go ahead.

Hon. Waweru: Hon. Temporary Deputy Chairlady, we are making law for Kenya, which is an African country. We must, therefore, separate property from love. If we want to kill the marriage institution, let us go this way. What I feel is that we should not be making laws for people to make money. I am thinking of a woman getting married today or a man getting married to Millie and then the next day, she or he gets married to somebody else. So, it is about time we separate the two things.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Dido.

Hon. Dido: Thank you, hon. Temporary Deputy Chairlady. Millie said she is not available.

The import of this Bill is that it challenges African marriages. If we proceed this way, we will be making marriage some sort of business enterprise. So, I support the idea that Sub-clause (d) should be deleted.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Baiya.

Hon. Baiya: Hon. Temporary Deputy Chairlady, I rise to oppose the deletion of Sub-clause (d), the reason being that it is good to know where the country is coming from as we do this legislation. What we are trying to do through this sub-clause is capturing the law as currently interpreted by the Court of Appeal. Rather than have the marriage law existing in case books, where judges have made unprecedented rulings, which only become accessible to the most sophisticated elite men and women in Nairobi, we want to make the marriage law statute law that will be readily available to ordinary Kenyans. So, the law on property acquired in the process of marriage already exists in case books. The contribution of each spouse does not matter. The contribution need not be merely material. It is recognised under existing law. So, this House will be making a mockery of the existing law if it resorts to dealing with such laws.

Therefore, I beg to support this Sub-clause very strongly.

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

Hon. Bunyasi: Thank you, hon. Temporary Deputy Chairlady. I rise to support Sub-clause (d). The words “equity” and “justice” are strewn all over our own Constitution. Whereas we talk about African marriages, we seem to invoke the African culture only when it suits our purposes. This law is futuristic. It is helpful. Therefore, we should retain this clause. Contribution in a marriage is not necessarily financial, as hon. Baiya said. Change spousal roles for one month and see if what the other roles that your spouse plays do not constitute a big contribution.

Thank you.

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

Hon. Members: Division! Division!

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, you do not have the requisite number. You are only 21. Please, resume your seats.

(Clause 6 as amended agreed to)

Hon. Members will report progress to the House. Therefore, I now call upon the Mover to move that the Committee do report progress to the House.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Matrimonial Property Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Hon. Deputy Speaker in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE MATRIMONIAL PROPERTY BILL

Hon. (Ms.) Shebesh: Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered the Matrimonial Property Bill and approved the same with amendments.

Hon. Chepkong'a: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. Langat seconded.

(Question proposed)

(Question put and agreed to)

Hon. Chepkong'a: Hon. Deputy Speaker, I beg to move that the Matrimonial Property Bill be now read a Third Time.

Hon. (Ms.) Shebesh: Hon. Deputy Speaker, I would like to second the Motion ably moved by the Chair of Committee. At the same time, I would like to congratulate this Committee on Justice on Legal Affairs and the House for doing what this country will consider as history. There has been no matrimonial property Bill, since 1895. What we have done here is really showing the country again what this House can do in terms of legislation. Therefore, I second and congratulate the House.

(Question proposed)

Hon. Kimaru: Hon. Deputy Speaker, with the amendments which have been done, I think the Bill will serve both parties. It is not just the woman; most of the time we ignore the man. Men in marriage, probably where we come from, Central Kenya have been on the receiving end and they also need protection.

I think this Bill is going to endangered men.

I support the Bill.

Hon. (Ms.) Muhia: Thank you, hon. Deputy Speaker. I am frustrated because I opposed everything but I was defeated. I want to say that there is no history I have made; the Bill is unconstitutional. It is obvious that in African context every property is registered in a man's name and so when we pass such a Bill and say that we are proud to have passed a Bill, we are lying to ourselves.

Hon. Chepkong'a: On a point of order, hon. Deputy Speaker. I totally disagree with hon. (Ms.) Muhia. Much as I have a lot of respect for her, this Bill is not unconstitutional. There is no part of the Constitution which has been breached. The Committee went through the Constitution and we are happy with the contents of the Bill.

Hon. Deputy Speaker, as you know, this Bill has been with the Committee for the last six weeks; over and above the 20 days that were allowed. So, we did a very thorough job. Therefore, this Bill is in accordance with Article 45 of the Constitution. There is nothing that contradicts it.

Hon. Deputy Speaker: Hon. Ms. Muhia, that was a point of order by the Chair of the Committee, I apologize to hon. Ms. Muhia.

Hon. (Ms.) Muhia: Thank you, hon. Deputy Speaker. It is unconstitutional according to Article 45 which states as follows:-

“The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the state.”

The Bill is unconstitutional but I respect his opinion.

Hon. (Eng.) Gumbo: Thank you, hon. Deputy Speaker. I want to thank the Chair of the Committee on Justice and Legal Affairs and the hon. Members of that Committee for bringing us this far so that we are able to pass this landmark law. I have said it before and I want to say it again that this law we have passed is not for men or women. It is for all of us.

In some parts of this country, men sit and do nothing while their women work and acquire property, but they want to lay claim to it. The same applies to some women. So, those of us who are saying that we are making laws for one particular group of people, I do not agree with them. Let us give this law time to mature. In the fullness of time, it will be found to be a good law that concerns and affects all of us.

I support.

Hon. Deputy Speaker: Hon. Members, in the interest of time, we have serious Bills that need to be passed. I think we have ventilated enough on the Matrimonial Property Bill.

(Question put and agreed to)

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

Second Reading

THE ELECTION CAMPAIGN FINANCING BILL

(Hon. (Ms.) Kanyua on 24.10.2013)

(Resumption of Debate interrupted on 7.11.2013)

Hon. Deputy Speaker: Hon. F.K. Wanyonyi was on the Floor. Hon. Wanyonyi, you had a balance of eight minutes. Hon. Members, we have ventilated on this quite a lot. But a few more hon. Members can contribute.

Hon. F.K. Wanyonyi: Hon. Deputy Speaker, I think while referring to this Bill, it seeks to provide regulation and the management of the elections.

(Loud consultations)

There is a lot of noise. I need protection from the Chair.

Hon. Deputy Speaker: Order! Order, hon. Members!

Hon. F.K. Wanyonyi: Hon. Deputy Speaker, I tend to oppose this Bill, because it seeks to provide regulation and management of the elections.

This Bill does not say anything on reinforcement of party nomination. I think most of the hon. Members in this House have gone through what I have gone through. This Bill does not say anything on party nomination. If it had anything to do with party nomination, it would be alright because in party nomination there are a lot of problems.

Hon. Deputy Speaker: Order, hon. Members! Those consulting can do so quietly.

Hon. F.K. Wanyonyi: Hon. Deputy Speaker, all I am saying for the benefit of those who are consulting loudly is; this Bill is actually providing for regulation and management of the elections. I want to say that this Bill does not say anything about party nomination. I know that most people in this country, I think half of this House, have gone through what is called party rigging. In this exercise, sometimes you find there is a lot of corruption in nomination of the candidates for particular parties, particularly the big parties. Therefore, you find that some people pay money and then they are nominated to represent the party and yet they may not be popular.

Hon. Deputy Speaker, there is also a lot of dishonesty and this Bill does not provide for that. All I am saying is that it should have a clause to deal with party nominations. During party nominations, you find officials particularly of big parties, shortchanging the right candidates. So, you will find that the wrong people are actually nominated. I have suffered because I have gone through nominations four times and I have never been nominated by that particular party. It is only recently that I went through.

So, you find that you spend so much time campaigning for your party and then what happens? People identify you with the party you campaign for but it is unfortunate that the party does not nominate you for elections. So, I am asking the Committee to bring amendments so that we have some clauses that deal with party nominations.

Hon. Deputy Speaker, secondly, like in the last elections, you find that you have not been nominated and there is no time to change and yet you are very popular on the ground. So, this particular Bill should be able to actually provide for the right candidates. Some people just come and pay money and you are shortchanged.

Hon. Deputy Speaker, the other thing that I want to say on this election Bill is that I know in a way it is trying to regulate expenses. Yes, it is good to regulate the expenses of the candidates. It is good to regulate the expenses of the party for the benefit of the candidates. You can see some Members of Parliament present here and elsewhere including Members of the County Assemblies (MCAs) are busy trying to develop their constituencies. If you are not regulated, you will find somebody giving money and he is nominated. We want elections in future to be based on the development agenda of the individual members of a given party. Two, they should be based on the manifesto of a given party. Three, of course, they should also be

based on the ideas and plans of candidates and not on money. So, I support that part of the Bill. There is need to introduce some element of party nomination so that the party can nominate the right people to be its flag bearers.

Thank you and I support the Motion.

Hon. Deputy Speaker: Hon. Gichigi.

Hon. Gichigi: Thank you, hon. Deputy Speaker. I rise to support this Bill. Some people know what I went through during campaigns. Like many of the people who were campaigning and seeking elective positions, some of us who did not have a lot of money were competing against people who had billions. There was no law limiting the amount of money that one would have used during the campaigns. Were it not for the fact that our constituents had made up their mind, it would have been very difficult for some of us to be in Parliament today. It is important that we limit the amount of money that is being used otherwise the youth and most of the women of this country will never be elected into Parliament and other political positions.

Hon. Deputy Speaker, I also support this Bill because of the proposed Clause 12 where candidates and the parties are compelled to disclose the sources of their funding. In this country, without mentioning names, we know of people who have acquired wealth that can only be called dirty money and they use that money to acquire leadership positions mainly to protect their illegally acquired wealth. It is important that we know where people have gotten the money that they are using to campaign.

I, therefore, support this particular Bill.

Hon. Deputy Speaker: The hon. Leader of Majority Party.

Hon. A.B. Duale: Hon. Deputy Speaker, hon. Gichigi was the 67th Member to have contributed to this Bill at the Second Reading. Am I in order to call for the closure of this Bill and ask the Mover to reply?

Hon. Deputy Speaker: Hon. Duale, I see Sakaja really wanting to say two words on it before closure of debate. Yes, as you have heard, really 67 contributions on one Bill is really enough ventilation but Sakaja since you seem like you are really want to say something you can proceed.

Hon. Sakaja: Thank you, hon. Deputy Speaker. I just want to make one or two comments on this Bill cognisant of the fact that it is one of the Bills that have a timeframe within which they must be passed. I would just like to appeal to the Committee, and I speak as the chairman of a political party and a big political party at that, to kindly involve political parties as key stakeholders in this matter. Political parties have not been consulted at all. Even written submissions from political parties, especially on practical elements of this Bill should be forwarded to the Committee.

As it is, and that is until amendments have been brought which I do not want to preempt, some of the provisions might not be very practical for political parties. For instance, the provision that during nomination certain committees on finances of candidates be set up is one of them. In the last election, for instance, in the National Alliance Party, we had almost 2,000 candidates at the nomination stage. In terms of the operational aspect of it, it might not be very practical. However, further from that I am sure that there are many other political parties that might have opinions because the Constitution has powers to include as much stakeholder participation as possible.

So, I would just like to appeal to the Committee led by the very able Member, Chepkong'a to proactively write to all the political parties or even the major political parties. He should take them through the Bill in a workshop so that we can get some insights on the practical

aspects of it. The aspiration to curb spending is a very noble aspiration. I remember in our campaigns and hon. Duale will attest to it, we said that we hope that we will not be creating political parties only for those who have millions in their accounts but for those with millions of ideas in their minds. Many young people may not make it to this House if people just spend as much as they have but let us also leave room for this Bill to be applied and implemented in the most practical manner.

So, I would like to appeal between the Second and Third Reading, kindly *Mheshimiwa Chepkong'a*, invite us as political parties and various other stakeholders in this process so that we can contribute fully and have this Bill take effect. Thank you.

Hon. Musimba: Thank you, hon. Deputy Speaker. I want to, first of all, support the Bill, its initiative and thinking. But more importantly, I want to echo the sentiments of the Chair of the Committee especially for independent candidates, that we have segregation when it comes to carrying out civic education and the actual expenses which have been put. This will ensure that this is not curbed because we still have to reach many people and educate them, especially on aspects of independent candidates and the role of political parties through their nomination processes. I think a lot has been ventilated on this as the Majority Leader has said. I just want to tell the Committee that between the Second and the Third Reading a lot of consultation and indeed, presentations should come to the Committee.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Could the Mover respond?

Hon. Chepkong'a: Hon. Deputy Speaker, first and foremost, I would like to take this opportunity, on behalf of the Departmental Committee on Justice and Legal Affairs, to thank all the Members who have contributed to this Bill. I can see that about 70 hon. Members have contributed to this very important Bill which is required under Article 88(4) of the Constitution. This is one of the laws which must be enacted to bring about discipline and a level playing field within the election campaigns.

Hon. Deputy Speaker, as you are aware, many women are not in this House because of the money element. The Independent Electoral and Boundaries Commission (IEBC) will be required to put the maximum amount of money that can be spent by a candidate or political party in any one election.

The sentiments expressed by hon. Sakaja who is the Chair of TNA are well founded. The only thing is that we sent out memoranda and we expected them to participate. I remember that as a Committee, we requested the Clerk to send a letter to the Centre for Multiparty Democracy (CMD) which brings together all the political parties but it is unfortunate that we never received any comments from that organization. We will make attempts to circulate the various amendments that the Committee has proposed so that we can align this Bill to the best practices of the Election Campaign Financing Bill that is found anywhere in the world.

We are grateful to SUNY for sponsoring about two meetings in a number of hotels in which a number of Members participated in coming up with this Bill. We would also like to thank the IEBC which provided very important input. We thank the secretarial services in assisting us draft the necessary amendments that we think are important in making this Bill operational and in a way that will assist political parties and all those candidates who are seeking to run for office, who are not endowed with money as any of us here.

Hon. Deputy Speaker, with those few remarks, I beg to move that this Bill be read a Second Time.

Hon. Deputy Speaker: Hon. Members, I will defer putting the Question. Let us move on to the next Order.

Second Reading

THE NATIONAL POLICE SERVICE COMMISSION (AMENDMENT) BILL

(Hon. A.B. Duale on 25.9.2013)

(Resumption of Debate interrupted on 25.9.2013)

Hon. Deputy Speaker: Hon. Members, this Bill has already been moved and seconded and the Question proposed.

Yes, hon. Alois Lentoimaga.

QUORUM

Hon. Okoth: On a point of order, hon. Deputy Speaker. Is there a quorum in the House?

Hon. Deputy Speaker: No, we do not have a quorum. Ring the Quorum Bell.

(The Quorum Bell was rung)

Order Members, you may now settle down. We now have a quorum. I order that the Quorum Bell be stopped. Hon. Lentoimaga, continue with your contribution.

Hon. Lentoimaga: Hon. Deputy Speaker, I want to support the Bill with amendments. When we were doing the amendments, we involved all the stakeholders. For example, the Commission on Implementation of the Constitution (CIC), the Independent Policing Oversight Authority, the National Police Service Commission, the Inspector-General's office, the Kenya National Commission on Human Rights, the Kenya Law Reform, the Attorney-General's office, the Ministry of Interior and Coordination of National Government, Kenya Private Sector Alliance, the Citizen Group comprising of Katiba Institute, Kenya Human Rights Commission, Usalama Forum and others. This Bill is meant to make the police friendlier.

As I speak, the police are seen not to be friendly at all. Sometimes they are accused of being trigger-happy. They are considered very rude. This is part of the reforms that will make them friendlier to the citizens and deliver services efficiently. During our interaction, we borrowed so much from reports that were written by Ransley Kriegler, Waki and many other reports that have been written in this country about the police. The Committee also received memorandum from private persons and in particular, we were also looking at the issue of the quarrels that were going on between the Police Commissioner and the Inspector-General of Police. The recent controversies between the Inspector-General and the National Police Service over the perceived duplication of roles were also ironed out. The Bill addresses the issue of overlap to ensure that mandates are very clear so that each office carries out its work without the interference of another office.

This particular Bill is meant for prosperity and not because of the two institutions of the police. We also went through the issue of the amendments that were made, about the involvement of the Cabinet Secretary. The Bill addresses the issue of avoiding the interference of

the Cabinet Secretary because it erodes the independent role the Commission has. The Cabinet Secretary should not get involved in the human resource aspect of the Commission.

On the issue of the quorum during meetings, the Bill also addresses the issue that, at least, the quorum should be six and the uniformed officers must be involved. Initially, there were times when meetings would be done, the quorum would be five and the officers would deliberate on issues without involving the uniformed officers. This has also been addressed and it is going to be well. The agenda that will be addressed will involve the uniformed officers.

The Bill also looks at the board, which comprises the Inspector General, deputies and one human resource officer. Before the agenda is taken to the main Commission meeting, the board prepares an agenda for that meeting, so that it is easy for it to be deliberated in the meeting.

With those remarks, I support.

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

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Eng. Nicolas Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I thank you for giving me the opportunity to oppose this amendment. Before I do that, allow me to send my deepest and heartfelt condolences on my own behalf and that of the people of Rarieda to my brother and friend, our colleague, the hon. Member for Nyakach, Aduma Owuor and the courageous and gallant people of Nyakach following the extremely evil and dastardly act of the cold blooded murder of his helpless elderly parents. May the Almighty God rest their souls in eternal peace.

Hon. Temporary Deputy Speaker, you will recall that since this 11th Assembly convened more than seven months ago nothing has captured the attention of the hon. Members more than the issue of insecurity in our country. Not less than two Motions for Adjournment have been moved in this House to try and address this national cancer. It has reached a time when we have to say that unless we do something, criminals are going to take over our country. If we continue to see a big spoon where clearly there is a giant spade, we are deluding ourselves as leaders and it amounts, in my view, to dereliction of duty.

Here I am not just speaking about cases that touch us personally like that of hon. Aduma Owuor or my good friend Francis Gathua, a very dedicated, hardworking Kenyan and a committed serious professional who was shot and killed in cold blood less than two weeks ago on Outering Road in broad daylight, I am speaking for the families of thousands of Kenyans who continue to suffer in the hands of criminals. I am speaking for thousands of Kenyans who get killed and maimed by cold blooded gun-toting gangsters on our roads almost on a weekly basis. I am speaking about the thousands others who continue to suffer excruciating trauma at the hands of carjackers almost on a daily basis on our roads.

Insecurity in Kenya has now become completely indiscriminate and does not care about tribe, social status, or race. Even as we debate this Bill whose import is to make us effectively tackle spiraling crime in this country, I think it is time the Government came out clearly and stated---The Government must come out clearly to state whether it is unable or unwilling to deal with runaway insecurity in Kenya. It is time to deal firmly and decisively with the hordes of criminals who seem to be roaming all over our country and at will.

Hon. Temporary Deputy Speaker, you know what is happening in Nairobi. Recently, you raised the matter that happened at the Dandora Dumpsite. What we see every time criminals strike are knee-jerk reactions like we saw the other day when the poor parents of our colleague were killed. The Provincial Administration rushed there. For me those are nothing, but knee-jerk reactions which are simply not working. If anything, criminals in Kenya now have realized that it amounts to nothing and they are getting bolder.

Hon. Temporary Deputy Speaker, I shudder to think what is going to happen next because it appears that criminals in Kenya now have the latitude to do anything and everything that they want anytime and everywhere. We have to ask as a House: What is this Government waiting for? This is because the rate at which this thing is going I will not be surprised if senior politicians in this country are carjacked and killed by criminals. I will not be surprised if senior religious leaders in this country are carjacked or killed by criminals. The rate at which crime is growing in Kenya I will not be surprised if senior members of the Executive are kidnapped or killed by criminals. God forbid, I will not even be surprised if senior members of the diplomatic community seconded to our country are kidnapped and killed by criminals. I do not wish it to happen that way. It has happened in other countries and so it can happen here.

I hope that it will not happen but I fear that it may happen that way. If we do not want to surrender this country to criminals, the time for forceful action is now. As we look at the amendments on the National Police Service Act, irrespective of whether some of us, like I do, feel that it may be contradicting some parts of the Constitution, I want to submit that, as a country, we tend to be too concerned with governance issues as opposed to issues of operation. For me, that is where the insecurity problem in Kenya is coming from.

Let us look at the police service, for example. We have the National Police Service Commission (NPSC), the National Police Service (NPS) and the Independent Policing Oversight Authority (IPOA). These are constitutional bodies. I do not know if any hon. Member of this House can account for what, for example, the IPOA has done in the three years it has been in existence, yet it is populated by overpaid and underworked people, who, in my view, do nothing. We probably do not even need the IPOA. What is worrying is that if you go to any police station in the countryside today, you will see that there are no housed officers. If a crime is committed, police officers cannot respond because they have been given fuel for Kshs3,000 which they have exhausted.

I do not know whether it is happening to me alone but many times, I have had to finance the police for them to fuel their cars to attend to crime scenes. Why are we concerned with governance issues that are not working when what we need to do is empowering our police officers? Some police officers do not even have cars. There are Officers Commanding Police Divisions (OCPDs) who do not even have offices. There are OCPDs who do not even have cars. How do we expect them to tackle crime? Not a single week passes without an hon. Member rising to talk about insecurity. Insecurity is all over the country, including the President's backyard in Gatundu and the Deputy President's backyard in Eldoret.

In the last two months, Murang'a County recorded over 11 unexplained kidnappings. Why are we even thinking of this amendment? Something is wrong with the structure of our policing institutions in this country. Unless we address the problem and avoid coating it with the name of governance--- Wanting to know who between Kavuludi and Kimaiyo is more powerful; in my view, is irrelevant. Kavuludi is a former teacher. He has no business running the police force. Similarly, Kimaiyo is a trained policeman but what has he done? We have to question these things. We are being affected. Do we want hon. Members of this House to be kidnapped

before we take action? Do we want members of the Executive to be kidnapped before we take action? Let us empower the police.

I believe that, compared to where we were before 2010 and the period between when we brought in the NPSC and the NPS and today, Kenya was better placed in the former period. As I said before, the existing structure, where we cannot hold Cabinet Secretaries to account directly is not tenable. We may have put it in our Constitution but for me, it is a fundamental error. We have to review the Constitution because laws are made for people, and not the other way round. We seem to have a Constitution that is wordy. It tries to take care of everything but in the end, it takes care of nothing. Is that the way we want to go? As a country, we owe it to the people we represent here to do something. We are trying to blame the police officers. What are they supposed to do? I did a course in management. It says that in management, before you assign a task to an employee, you should give him the right tools. Are we giving our police officers the right tools? Why are we blaming them? What about the clashes that have come up?

With respect to governance issues, again, look at policing in the counties. We have a County Commander in charge of the Administration Police (AP) and a County Commander in charge of the regular police. We then have another officer of the same rank as the County Commander. Who is supposed to give orders to whom? We need to do more than just pass these amendments, if we want to improve policing in this country. Otherwise, what we are doing through these amendments today is mere sugar-coating. It will take us nowhere. Kenyans will continue to die. Criminals are taking over the country.

Hon. Temporary Deputy Speaker, how does it feel when you read in the newspapers that a criminal casually walked to a car and shot an innocent Kenyan; like they did to my good friend, Francis Gathua? They shot an innocent man who was walking from work while policemen were there trying to control traffic. Policemen do not have the necessary tools that can see criminals who kill Kenyans. They are helpless. What are we making these amendments for, if it is not to improve policing? I am afraid we are not achieving anything. I ask my colleagues to re-look at the entire constitutional framework.

Some of the best governed countries in the world have constitutions which can fill only five pages on an A4 paper. This voluminous constitution we have is quickly proving to be meaningless and we have to re-look at it as leaders and see areas where we went wrong. It is human to err. We may have made mistakes, but we need to look at it globally not through piecemeal changes like what we are trying to do.

With those remarks, I strongly oppose because it is of no consequence as far as I am concerned. We need more comprehensive review of all the laws that affect security in this country.

Hon. (Ms.) Wahome: Thank you, hon. Temporary Deputy Speaker. I rise to support the proposed amendment to the National Police Service Commission (Amendment) Bill. While contributing to this Bill, an hon. Member alluded to Murang'a County where insecurity has risen to unacceptable rates.

In my constituency, within the last three months hijackings have been the order of the day. That does not become the end. After hijacking, the criminals go ahead and kill or rape. Indeed, insecurity has been a concern of everybody. The National Police Service Commission is a creature of the Constitution and it was intended to bring sanity in several areas. The National Police Service Commission, by this Bill has de-linked the conflicting areas between the National Police Service Commission and the Inspector-General's office.

Hon. Temporary Deputy Speaker, the Constitution is very clear. The mandates are very clear, but while interpreting, operating and implementing, it is important that the two offices are clearly mandated to do what they must do. This country will not go very far if security is not guaranteed. We have been waiting to clean up, vet and come up with regulations that will assist the vetting of senior police officers and all other cadres of police officers. But because of the current situation, we need to have the National Police Service Commission (Amendment) Bill streamlined.

Hon. Temporary Deputy Speaker, almost all institutions in the country have reformed and have actually started doing clear and open recruitments where people who are interested in positions apply and they are interviewed in public.

That is yet to happen for senior police officers except the Inspector General and his two deputies who have already gone through that process. What about the officers who are below that level who are so critical in maintaining security and ensuring that operations like the Baragoi operation do not go foul or the Westgate operation is taken care of properly without gaps?

Hon. Temporary Deputy Speaker, clearly the National Police Service Commission has had its challenges including a low budget. I sit in the Administration and National Security Committee and I know even issues of budget and technical support are a challenge. Motor vehicles are not available and when they are available, there is no fuel. In my own constituency, I have an OCPD, and that applies to every other constituency, who cannot run operations because he does not have vehicles. If these OCPDs have vehicles, they do not have enough personnel. If they have personnel, they do not have equipment and criminals are also enhancing their techniques and technologies.

Hon. Temporary Deputy Speaker, the National Police Service Commission must work hard and this Bill, in my view, will assist in clearly defining what they must do and do it now. It is a new commission. I believe because of the issues that have occurred between the office of the Commission and that of the Inspector General, we have seen people protecting their turf. When such offices do not have clear mandates, it is the role of this House to come up with relevant amendments.

Hon. Temporary Deputy Speaker, I am urging this House to allow this Bill to go through. If you look at the general spirit of the proposed amendments and the Memorandum of Objects, clearly it does not intend to infringe on any mandate of any officer. The objectives of this Bill are to clearly define the work of this Commission. To date, the regulations have not yet been published. The Commission has been hoping that the amendments will go through very quickly so that they can finalise issues of regulations which will then assist them in recruitment and in ensuring that discipline, promotions and transfers are dealt with.

Hon. Temporary Deputy Speaker, it is clear to the whole country that whenever people want their relatives or friends to be transferred, they make a call. Promotions are given right, left and centre without any basis. This has led to insecurity among the officers and dissatisfaction in terms of ranks. We know facilities are not even good. If officers work knowing that their career progression is assured, we shall not insist and say that our officers must remain disciplined and must avoid corruption. This Bill will provide the necessary framework that will assist the Commission do its job of streamlining the police. We think it is long overdue because everybody has issues in his or her constituency. There are issues of security and we want sufficient personnel. We are saying that every Kenyan is entitled to security but how will we provide that if we---

Hon. Wandayi: On a point of order, hon. Temporary Deputy Speaker. I need some direction from you. When these Bills were first tabled on the Floor of this House for the First Reading sometime in July this year a number of issues were raised touching on their constitutionality.

The substantive Deputy Speaker did make a considered ruling in September when the Second Reading commenced. In that ruling, the Deputy Speaker also gave direction that a Member of this House could as well raise similar issues at any stage during the Second Reading.

I accordingly have some issues to raise concerning the constitutionality of the National Police Service Commission (Amendment) Bill. However my worry is, should I go ahead and prosecute them in the absence of the substantive Deputy Speaker?

Hon. (Ms.) Wahome: Hon. Temporary Deputy Speaker, I thought that the point of order was in relation to what I had said.

Hon. Wandayi: Yes, it is, hon. Temporary Deputy Speaker. This is because the hon. Member is saying that this amendment Bill does not contravene any Article of the Constitution or does not in any way contravene the mandate of any other officer as established by the Constitution.

Hon. Temporary Deputy Speaker, my bone of contention is that there is still a serious contravention of the Constitution. The Committee has attempted to cure this contravention by removing the Cabinet Secretary from playing the role of human resource related matters but there is still a serious issue in so far as the exercise of disciplinary control is concerned.

Article 246 of the Constitution---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Wandayi, could you allow hon. Alice to complete her contribution and then I will give you a chance because what you seem to be talking about needs to be given adequate time. So, let hon. Alice complete her remarks and we will allow you to raise your issue.

Hon. Wandayi: Much obliged, hon. Temporary Deputy Speaker.

Hon. (Ms.) Wahome: Thank you, hon. Temporary Deputy Speaker. The Deputy Speaker of this House has already made a ruling in respect of those provisions.

However, I was saying that Articles 245 and 246 have been well considered by the Departmental Committee on Administration and National Security while arriving at these proposals. Clearly, the role of the Inspector-General and the role--- There are two Bills, as the hon. Member intimated. The roles of the two offices are very clear and they are defined by the Constitution. These Bills clearly intend to ensure that no conflict between those two critical offices arise as they deliver their mandate and implement what is expected of them under Articles 245 and 246.

It is very clear, for example, that the role of the National Police Service is still disciplinary control as envisaged under Article 246(3)(a). This Commission shall be doing development and prescription of disciplinary procedures and mechanisms. It will monitor and ensure compliance with due processes in disciplining members of the service.

They will be receiving regular reports from the Inspector General on disciplinary matters handled by the National Police Service. They will be involved in reviewing and ratification of disciplinary action. That is what the Commission is expected to do among other things.

I, therefore, support. We need to move forward. I am sure my friend there, the Member, will be persuaded that it is necessary, so that we can have security.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Midiwo, I was going to give you opportunity to speak because of your position in this House, but it would be fair if you

could allow the Member who has raised a point of order to execute it and then I will give you the Floor.

Hon. Wandayi: On a point of order, hon. Temporary Deputy Speaker. I rise under Standing Order No.47(3)(b) which I am sure most Members are conversant with and I do not need to belabor the point. The Constitution under Article 246 expressly gives the Police Service Commission the mandate to exercise disciplinary control, remove persons holding or acting in offices within the service, and perform any other functions prescribed by national legislation. The gist of my argument is that if you look at this amendment Bill, it purports to re-define the meaning of “disciplinary control”, which is totally against the provisions of Article 246 of the Constitution. Nowhere under this Constitution is that mandate vested on any other body, authority or person other than the National Police Service Commission. I could invite you to even look at Article 245, which gives the Inspector General the powers. There is nowhere under that article where the Inspector General of Police is given any power or mandate concerning the matter of disciplinary control. If you look at what is being proposed in this Bill, it is basically trying to water down the powers of the National Police Service Commission, in contravention of the provisions of Article 246 of the Constitution. I do not need to take you through the amendment because it is very clear. It talks of developing and prescribing fair and clear disciplinary procedures. It goes on talking about reviewing and ratifying disciplinary actions taken by the Inspector General.

The Constitution does not envisage a situation where the Commission shall only sit there and wait for the Inspector General to take action and then purport to review or ratify or rubber stamp, to use a better term. The mandate of the Commission in so far as exercising disciplinary control over the National Police Service is concerned is express. It is very clear under Article 246 of the Constitution. Therefore, any Bill that purports to redistribute these functions and mandate to other bodies and persons is unconstitutional and, therefore, null and void. If you look at the National Police Service (Amendment) Bill, which is not the subject matter for now, you will see very clearly what I am talking about. These powers have been transferred in totality to the Inspector General of the Police. A new Section 8A has been introduced in the National Police Service Bill that purports to give the Inspector General power to exercise command over the National Police Service and lawfully administer, control and manage. The upshot of all this is that instead of furthering the objective of police reforms, which is a matter that we have no choice over, it is redistributing the mandate.

If you look at the last report, one of the issues that we have had to contend with in this country is a rogue police force. Therefore, these Bills are supposed to further the objective of police reforms. For a long time, this country has suffered under a police force that was not responsive to the needs of the people. What we are seeing now is basically trying to roll back the gains we have made over the last few years. This Bill as currently drafted cannot be left to pass because by so doing, we shall be obviously sanctioning an aberration of the Constitution. We shall be sanctioning an abuse of the constitutional process.

It is my considered view that under Standing Order No.47(3)(b), the Speaker needs to take his time and look at this matter and give a considered ruling before we can proceed.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, you will have seven more minutes tomorrow to continue executing this issue. Let us just be clear, Members, that the Speaker is cognisant of your concerns because you mentioned that the Speaker had asked that anybody who has constitutional issues he can raise them. So, it is good for you to know that the Speaker would not allow this particular Amendment Bill to go to the Third Reading if there

were any concerns. So, after your seven minutes, if you will have convinced the Speaker, the Bill will not be allowed to go to the Third Reading. So, we will allow you the seven minutes to conclude tomorrow.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Members, we have come to the end of today's session. This House stands adjourned until tomorrow, Wednesday, 13th November, 2013 at 9.00 a.m.

The House rose at 6.30 p.m.