

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 22<sup>nd</sup> July, 2014

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Deputy Speaker:** Hon. Leader of Majority Party, you have a number of Papers to lay.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today Tuesday, 22<sup>nd</sup> July, 2014:-

The Cabinet Memoranda on the Protocol for the Establishment of the East African Monetary Union.

The Commission for the Implementation of the Constitution Report on the implementation of the constitution.

The Report of the Auditor General on the Financial Statements of Coffee Board of Kenya for the year ended 30<sup>th</sup> June, 2013 and the certificate of the Auditor General therein.

The Report of the Auditor General on the Financial Statements of the Independent Electoral and Boundaries Commission (IEBC) for the year ended 30<sup>th</sup> June, 2013 and the certificate of the Auditor General therein.

The Report of the Auditor General on the Financial Statements of Kenya Industrial Estates Limited for the year ended 30<sup>th</sup> June, 2013 and the certificate of the Auditor General therein.

The Report of the Auditor General on the Financial Statements of the National Biosafety Authority for the year ended 30<sup>th</sup> June, 2013 and the certificate of the Auditor General therein.

The Report of the Auditor General on the Financial Statements of Kenya Sisal Board for the year ended 30<sup>th</sup> June, 2013 and the certificate of the Auditor General therein.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Thank you, Leader of Majority Party. Hon. Wario, I did not see your request to present a petition. You may do it now.

### PETITION

**Hon. Wario:** Thank you, hon. Deputy Speaker. I am presenting a public petition by the residents of Bura Constituency for the degazettement of Legal Notice Nos.39 and 40 of 2013 on the declaration of Bangali and Mbalambala as Forest Areas, Forest Act, No.7 of 2005. We, the undersigned, on behalf of the residents of Bura Constituency in Tana River County draw the attention of the House to the following: That, aware that Legal Notice Nos. 39 and 40 of 2013 carved out more than 123,000 hectares of land to create Bangali and Mbalambala Forest Reserves; noting that Bura is largely a pastoralists region, and that the majority of the residents have no other income-generating activities; that, the gazettement of the forest areas was done without the local community's participation; that, the area declared as a forest area encloses local villages, including Tula, Bangali, Bulto-Banta, Madogo, Bisan Hargessa, Mbalambala and Areri, thereby infringing on the movement of the residents; that efforts to have the matter addressed has borne no fruit, yet competition for the limited farming and grazing resources continues to bring tension among families; that, the matter in respect of which this petition is made is not pending before any court of law or tribunal,

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Environment and National Resources, intervenes to have Bangali and Mbalambala Forest areas degazetted and the land reverted to the community; and,

- (a) Finally the Cabinet Secretary be barred from further gazetting any forest area in Bura Constituency without due participation of the public as is required by the Constitution.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Harrison Kombe, is it anything to do with the petition that has just been presented? Is it on the same? You are not even in the House!

We still have more Papers to be laid. The Chair of the Committee on Mediation, hon. Mutava.

Just a minute; we need to refer the petition to the Departmental Committee on Environment and Natural Resources.

Hon. Mutava, you have the Floor.

**Hon. Musyimi:** Much obliged hon. Deputy Speaker.

### PAPERS LAID

I beg to lay the following Paper on the Table of the House, today, Tuesday, 22<sup>nd</sup> July, 2014:-

Report of the Mediation Committee on the Division of Revenue Bill, 2014, pursuant to Article 113 of the Constitution.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Yet, another Paper to be laid by hon. Amina Abdalla, the Chair of Committee on Environment and Natural Resources.

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

I beg to lay the following Paper on the Table of the House, today, Tuesday, 22<sup>nd</sup> July, 2014:-

Report on the Departmental Committee on---

**Hon. Deputy Speaker:** Please can we increase the volume? We can hardly hear the Member's contributions.

**Hon. (Ms.) Abdalla:** Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House, today, Tuesday, 22<sup>nd</sup> July, 2014:-

Report of the Departmental Committee on Environment and Natural Resource on the Consideration of the Climate Bill, 2014.

**Hon. Deputy Speaker:** Okay, Thank you. Still we have another Paper by hon. Samuel Chepkong'a.

**Hon. Chepkong'a:** Thank you, hon. Deputy Speaker.

I beg to lay the following Paper on the table of the House, today, Tuesday, 22<sup>nd</sup> July, 2014:-

Report of the Departmental Committee on Justice and Legal Affairs on the nomination of Commissioners to the National Cohesion and Integration Commission.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay; that ends that Order.

Next Order!

## NOTICES OF MOTIONS

### APPROVAL OF MEDIATION COMMITTEE

#### REPORT ON DIVISION OF REVENUE BILL

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

THAT, pursuant to Article 113 of the Constitution and Standing Order No. 153, this House approves the Report of the Mediation Committee on the Division of Revenue Bill, 2014, laid on the Table of the House, today, Tuesday 22<sup>nd</sup> July, 2014.

**Hon. Deputy Speaker:** Thank you. Let us hear from hon. Chepkong'a.

### ADOPTION OF REPORT OF THE COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**Ho. Chepkong'a:** I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs in accordance with Section 18 of the National Cohesion and Integration Commission (NCIC) Act, and Standing Order 230 and approves the nomination of the following persons as Commissioners to the National Cohesion and Integration Commission:-

1. Ms. Alice Wairimu Nderitu
2. Mr. Morris Dzoro
3. Ms. Rose Macharia Mghoi
4. Dr. Roba D. Sharamo
5. Ms. Anne Munyiva Kyalo
6. Ms. Millie Lwanga Odongo
7. Ms. Irene Njeri Wanyoike
8. Mr. Aden Abdi Mohammed

9. Mr. Alasa Osman Hirsi
10. Mr. Eric Oluoch Ogwang'
11. Ms. Belinda Akoth Ochiel
12. Mr. Francis X. Ole Kaparo
13. Ms. Irene C. Masit
14. Dr. Joseph Wamocha Nasongo
15. Prof. Gitile J. Natuli

laid on the Table of the House today, Tuesday, 22<sup>nd</sup> July, 2014.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Thank you. That brings us to the end of that Order.

Hon. Members, before we go into the Statements, I want to recognize the presence of Chesiriot Girls Secondary School, a school from my very own constituency in Bomet County. You are welcome to the National Assembly.

Also, we are welcoming Volunteers from St. John's Brigade, Galole Constituency, who are on the Speaker's Gallery. You are also welcome to the National Assembly.

Next Order! We will follow the list of orders as they appear on Order Paper.

Yes, hon. Member for Isiolo County.

### REQUESTS FOR STATEMENTS

**An hon. Member:** She seems not to be here.

**Hon. Deputy Speaker:** We will give it one more chance. Next Statement by the Member for Malindi Constituency; hon. Dan Kazungu? Can you give him the microphone, please?

#### STATE OF VASCO DA GAMA PILLAR IN MALINDI

**Hon. Kazungu:** Thank you, hon. Deputy Speaker, for giving me this opportunity.

Pursuant to Standing Order 44 (2) (c), I wish to request a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare, regarding the state of Vasco Da Gama Pillar in Malindi.

Vasco Da Gama Pillar was built by the great Portuguese explorer, Vasco Da Gama in the 15<sup>th</sup> Century.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order! Order, hon. Members! Consultations are far too loud.

**Hon. Muzee:** Hon. Deputy Speaker it is a reknown global monument and attracts tourists and other visitors to Malindi from across the world; it has become synonymous with the town. However, there are fears that the Pillar may fall off the cliff.

**Hon. Deputy Speaker:** Order, hon. Kazungu! I think I said just what is on the Order Paper.

**Hon. Muzee:** Thank you and much obliged.

**Hon. Deputy Speaker:** Can we have the Chair of the Departmental Committee on Labour and Social Welfare, hon. David Were.

**Hon. Were:** Thank you, hon. Deputy Speaker. I undertake to bring a response in two weeks' time.

**Hon. Deputy Speaker:** Okay. In two weeks' time it shall be, hon. Kazungu. Next Statement; hon. Members, we want to make progress. We are on the next request from hon. Patrick Makau.

Hon. Members, please observe your own Standing Orders on standing between the Chair and the hon. Member on the Floor.

#### INFRINGEMENT ON PRIVACY OF CITIZENS VIA CCTV IN MACHAKOS

**Hon. King'ola:** Thank you, hon. Deputy Speaker. Pursuant to Standing Order 44 (2) (c), I wish to request a Statement from the Chairperson of the Department Committee on Administration and National Security regarding the infringement of privacy of citizens through CCTVs in Machakos County.

Hon. Deputy Speaker, the installation of CCTV surveillance systems in public areas such as roads---

**Hon. Deputy Speaker:** Hon. Patrick Makau, that is enough. You have already prosecuted your request for a Statement. I said, just what is on the Order Paper. Thank you; you have made your point.

Can we have the Chair of the Departmental Committee on Administration and National Security?

*(Loud consultation)*

Hon. Members, it was agreed that we just read what is on the Order Paper.

**Hon. Abongotum:** Thank you, hon. Deputy Speaker. While I laud or give credit to the governor for coming up with the project for CCTV surveillance, this must not be used to promote nefarious schemes. We will give this Statement in two weeks' time.

**Hon. Deputy Speaker:** Hon. Makau, in two weeks it shall be, hon. Patrick Makau.

**Hon. King'ola:** Hon. Deputy Speaker. I am a victim of circumstances. I have been captured by the same and it has been news in wrong ways. Since my life is under threat, I wish that the Chairperson gives it in, maybe, one week or even two days. This is because this matter is life-threatening. The Governor of Machakos is really on my case. I think we have lost Members of Parliament through threats. If a CCTV can capture me when I am addressing residents and I am warned, it is a matter of concern in this House.

**Hon. Deputy Speaker:** Hon. Member, even if it is urgent remember your colleague is a Member of Parliament and not a member of the Executive. The two days you are asking for are not possible because he needs to get back to the Executive and get a Response. So, give him that time.

Hon. Abongotum, are you able to do it in a week, as the hon. Member feels threatened? His own personal security is under threat!

**Hon. King'ola:** Yes, hon. Speaker. It is a matter of life and death. I do not want you to mourn me. I want you to act now.

*(Laughter)*

**Hon. Deputy Speaker:** Okay. I think your message is taken. Hon. Chairperson, can you expedite the response to his request?

**Hon. Abongotum:** Hon. Deputy Speaker, I will fast-track it and get a report in ten days; sometime back I worked in his place as an officer. Therefore, ten days will suffice.

**Hon. Deputy Speaker:** Okay. Thank you.

*(Loud consultation)*

Hon. Members, really the consultations are too loud. I know you are meeting after a weekend, but can we please find a suitable place to consult?

The next request for a Statement is by the hon. Member for Gilgil. Is Samuel Ndiritu in the House? Hon. Ndiritu, I do not see your request. Have you switched off your microphone? It is as if the microphone we have here is not yours?

**Hon. Ndiritu:** It is mine

**Hon. Deputy Speaker:** Okay.

**Hon. Ndiritu:** Thank you, hon. Deputy Speaker. Pursuant to Standing Order 44 (2) (c), I wish to request a Statement from the Chairperson of the Department Committee on Education, Research and Technology regarding the demotion of one Mr. Joel Wanyoike, TSC No. 304569, by the Teachers Service Commission from the rank of Assistant Deputy Director/Teacher Management to an Assistant Graduate Teacher.

Hon. Deputy Speaker, Mr. Wanyoike joined the TSC on 1<sup>st</sup> May, 1990 as a graduate teacher. He rose through the ranks to become a Principal----

**Hon. Deputy Speaker:** Okay, hon. Ndiritu, as for the other Members, only what is on the Order Paper. Chair, you will have enough time while responding to give us details. Hon. Chair of the Committee on Education, Research and Technology, or the Vice-Chair. hon. Melly, after how long can you get that response?

**Hon. Melly:** Hon. Deputy Speaker, we shall look into it as a Committee---

*(Loud consultations)*

**Hon. Deputy Speaker:** Order! Consultations are very loud again. Members who are exiting the Chamber, please, do so quietly.

**Hon. Melly:** Hon. Deputy Speaker, we shall respond to that Statement in two weeks' time.

**Hon. Ndiritu:** Hon. Deputy Speaker, two weeks is not a long time; my only request is that before the Statement is brought, they should give us the opportunity to interrogate it at the committee stage, otherwise, it will be very frustrating for a Statement just to be brought to the House and is just read.

**Hon. Deputy Speaker:** Okay; that has been the practice. Please, when you call the Cabinet Secretary, make sure that the Member is invited to that meeting. Are you giving the undertaking that you will invite the Member before you bring the response to the House?

**Hon. Melly:** Yes, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Thank you.

Next Statement request, which is by the Member for Tinderet.

EVICITION OF OGIEK COMMUNITY  
FROM KOSABEI FOREST IN TINDERET

**Hon. Melly:** Hon. Deputy Speaker, I wish to request Statement No.215/2014 from the Chairperson of the Departmental Committee on Lands regarding the eviction of the Ogiek Community from Kosabei Forest in Tinderet District.

**Hon. Deputy Speaker:** Chairman, Committee on Lands, how long do you need to respond?

**Hon. Mwiru:** Hon. Deputy Speaker. I am not very sure whether that particular Statement is within my Committee's purview. But because we are going to invite the Member to the Committee, he will shed some more light for us to see whether the Committee has the mandate to interrogate the issue.

**Hon. Deputy Speaker:** I did not get the length of time.

**Hon. Mwiru:** Hon. Deputy Speaker, we shall call the Member before the Committee and respond in two weeks' time.

**Hon. Deputy Speaker:** Two weeks' time it will be, but you said you will invite the Member to your interactions with the Cabinet Secretary?

**Hon. Mwiru:** Yes.

**Hon. Deputy Speaker:** Okay. Next Statement request by the Member for Molo, hon. Jacob Macharia. Is he in the House?

DRUGGING OF MOTORISTS IN PARKING AREAS IN THE COUNTRY

**Hon. Macharia:** Hon. Deputy Speaker, I rise to request Statement No.216 of 2014 from the Chairperson of the Departmental Committee on Administration and National Security regarding incidents of broad daylight drugging of motorists in parking areas in the country.

**Hon. Abongotum:** Hon. Deputy Speaker, we will require a detailed report on this issue. I request the Member for Molo to give us three weeks from today, so that we can come up with a comprehensive report that will satisfy the country.

**Hon. Deputy Speaker:** Will the Member for Molo allow the Committee at least three weeks to carry out their research and also consult with the Executive?

**Hon. Macharia:** Hon. Deputy Speaker, in my request I talked of broad daylight drugging of motorists. This is happening in broad daylight. It is not acceptable for the Chairman to request three weeks; it is too much time. I wish the Committee could take one week.

**Hon. Deputy Speaker:** Okay; the Statement request by the Member for Laikipia North, hon. Lempurkel. Is he in the House?

STRUCTURE OF ADMINISTRATION UNITS IN CONSTITUENCIES

**Hon. Lempurkel:** Hon. Deputy Speaker, pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the Structure of administration units in constituencies around the country.

**Hon. Deputy Speaker:** Can we get that from the Chairman of the Committee on Administration and National Security?

**Hon. Abongotum:** Hon. Deputy Speaker, this is also another detailed request. So, I want to request that we be given three weeks to come up with a comprehensive report on this subject. Three weeks will be okay.

**Hon. Deputy Speaker:** Three weeks, hon. Member.

**Hon. Lempurkel:** Hon. Deputy Speaker, I feel that three weeks are too much, since the last recruitment of the police service affected my constituency due to administration and constituency boundaries. Many young women were not recruited. One week should be sufficient.

**Hon. Deputy Speaker:** Hon. Member, your request is not on police recruitment. It is on the administration units. So, can we stick to the request? They may be related, but your request is really on the units. Chair, do you think you can do it in one week?

*(Loud consultations)*

Members, the level of consultations this afternoon is far too high. Members, can you, please, find a suitable place where you can carry on with your consultations?

**Hon. Abongotum:** Hon. Deputy Speaker, what the Member for Laikipia North is raising is quite valid. I know that some districts which have not been gazetted were affected and quite a number of constituencies are in dire need of that service. They need to have their sons and daughters recruited from their respective places. For that interest, we will do it in ten days.

**Hon. Deputy Speaker:** Okay, give him the ten days. There is another question on police recruitment and we are expecting the Statement from the Leader of the Majority Party. I do not know if it is within this week. So, can we wait? Some of your concerns may be covered in that Statement.

Hon. Members, the last one. I want to go back to Isiolo County. Hon. Tiya Galgalo. Is the Member for Isiolo County in the House?

*(Statement dropped)*

**Hon. Kombe:** Jambo la nidhamu, mhe Naibu Spika. Niliuliza taarifa kutoka kwa Mwenyekiti wa Kamati ya Ardhi. Kwa muda mrefu, hajakuwepo. Hivi leo, nimemwona. Ni matumaini yangu kwamba nitapata taarifa hiyo mapema iwezakanavyo kesho. Hii ni kwa sababu najua huenda pengine akawa bado ana maruweruwe ya kule alikotoka.



**Hon. Deputy Speaker:** Hon. Kombe I may have been distracted; I did not hear which Chair you requested the Statement from.

**Hon. Kombe:** Mhe. Naibu Spika, niliuliza taarifa kutoka kwa Mwenyekiti anayesimamia Kamati kuhushu Ardhi. Hajakuwepo Bungeni kwa muda mrefu. Leo nimemuona. Ni matumaini yangu kwamba nitaweza kupata taarifa hiyo sasa hivi, maana alikuwa amenidokezea kwamba yuko tayari, na anangoja tu kuulizwa aitoe taarifa yake.

**Hon. Deputy Speaker:** Hon. Kombe Order! Since you are not the one who prepares the Order Paper, you cannot demand on the Floor of the House that you get your response now. That is the prerogative of the House Business Committee. Therefore we will wait for your Statement to be put on the Order Paper, and then it will be responded to.

**Hon. Member:** On a point of Order, hon. Deputy Speaker.

**Deputy Speaker:** Who is on a point of order?

**Hon. Member:** On a point of order, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Order Members! Can we get the response from the Chair first of all from the Chair of Committee on Lands?

**Hon. Mwiru:** Deputy Speaker, you have heard the hon. Member alleging that I have not been in the House, yet I have been around in the House; I do not want to believe that he wants to impute some bad motives on an hon. Member like me. In any case, he may not have been in the House since he has not been seeing me.

**Hon. Deputy Speaker:** I think I have talked about what is put on the Order Paper. So, can we leave this matter? Hon. Kombe, I think the point has been made. Order hon. Kombe! That matter shall be put to rest and we shall move on to the next business.

Hon. Wamalwa, what is your point of order?

**Hon. Wakhungu:** On a point of order, hon. Deputy Speaker. I rise to seek your guidance. Last week I requested a Statement regarding police recruitment, and the Leader of Majority Party, hon. A. B Duale, undertook to bring the answer by last week. On Thursday, the Chairman, hon. Abongotum, promised to bring that Statement today, because of the importance and urgency of the matter. I seek your direction on this matter.

**Hon. Deputy Speaker:** I have been guided that today is for requests for Statements. Tomorrow morning--- That Statement is already in the precincts of Parliament and shall be delivered by the Leader of Majority Party tomorrow when it is the time that is set aside for responses to Statements requests.

**Hon. (Eng.) Gumbo:** On a point of order, hon. Deputy Speaker.

**Hon. Deputy Speaker:** What is your point of order hon. (Eng) Gumbo?

**Hon. (Eng.) Gumbo:** Deputy Speaker, I thank you. I rise on a point of order to seek your guidance on a matter that I feel impacts on the role of this House and our Constitution. If you indulge me just for one minute, our Constitution at Article 24, says that any law, including customary law, that is inconsistent with this Constitution, is void to the extent of the inconsistency, and any Act that contravenes this Constitution is invalid.

If you go to Article 94(4), it says Parliament shall protect this Constitution and promote democratic governance of the Republic. Indeed our oath of allegiance or

affirmation by Members of Parliament of the Senate says, among other things, that we will bear true allegiance to the people of the Republic of Kenya, and that we will obey, respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya, and will faithfully and conscientiously discharge the duties of Members of Parliament; we then pray, "So, help me God". The import of this Constitution is that Parliament has a duty to defend and protect the Constitution of the Republic of Kenya. It means also that all Members of Parliament, without exception, have a duty to obey, respect, uphold, preserve, protect and defend the Constitution. The reason I am bringing up this matter is because I am aware that currently our country---

*(Loud Consultations)*

**Hon. Deputy Speaker:** Order Members! Can we hear the submission being made by our colleague?

**Hon. (Eng.) Gumbo:** Deputy Speaker, the reason I am bringing up this matter is that I am aware at the moment we on the thrones of insecurity, and every one of us, irrespective of which political party they belong to, has a duty to make a contribution. In my view, we no reason to disregard clear constitutional provisions. If you look at Article 241(3) (c ), it says the defense forces maybe deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly.

There is no exception.

I am aware that as we speak now, the Kenya Defence Forces are being deployed to provide security in Lamu. The function is noble, but noble as it is, are we saying that in view of the very clear provisions and the direness of the situation down there, Parliament can just abdicate the clear provisions on its roles? Is this action by the Kenya Defence Forces not tantamount to overthrowing our own Constitution? I seek your guidance and request if you could allow some Members to ventilate on this because it is truly a matter of national importance.

**Hon. Deputy Speaker:** You say that some Members can ventilate; but I can only allow this on request.

Hon. ole Metito, are you making a comment on the hon. Member's contribution?

**Hon. Katoo:** Thank you Deputy Speaker. Indeed, the issue my colleague, hon. Member for Rarieda has raised is very important. My only concern is that he has read the Constitution selectively; he should have gone further. Being an old Member of this House, he knows that this is not the first time the Kenya Defence forces are being deployed to assist the police in internal matters with regard to security as provided in the law. It was done during the previous Parliament to which he was a Member. It was again done; this is about the second time it is being done during this Eleventh Parliament.

The Constitution also gives the Executive authority that in case Parliament is not sitting, the Kenya Defence Forces can be deployed to assist the police and then report to Parliament within seven days after Parliament has resumed. This precedent has been set before. I think the matter that hon. (Eng) Gumbo has raised is an issue pertaining to what is happening in Lamu. We are all aware that it is a very important issue and Kenya Defence Forces were deployed to Lamu when this House was on a short recess of ten days. Therefore, I expect the Executive to follow the law and report to this House within

seven days of the resumption of this House. We resumed last Tuesday and this is our fourth sitting day. Therefore, before the expiry of the seven days required by the law, the Executive should inform or report to this House the circumstances in which the Kenya Defence Forces (KDF) were deployed to Lamu. As things are now, and in my own opinion, the Executive is strictly within the law.

**Hon. A.B. Duale:** Hon. Deputy Speaker, from the outset I want to thank hon. Gumbo for raising--- The scenarios in which the KDF can be deployed internally are two. One is if there is an emergency or a disaster. This is within Section 3 of the KDF Act and Article 241. In that situation, the KDF will engage in an emergency internally. The Executive will do a gazette on the entry of the forces. They will also do a gazette notice when they complete the operations. Finally, they will do a report to Parliament concerning the equipment, the resources and the personnel they used.

The other scenario where the KDF is allowed to restore peace is where it needs an approval of this House prior to the deployment. This happened in the last Parliament in the case of the Tana River massacre. The KDF have a base in Mokowe in Lamu. What they are doing in Lamu is under Article 241(3)(b). I am ready to bring a more comprehensive Statement on this matter as early as tomorrow morning or afternoon. Article 241(3)(b) says:-

“--- shall assist and cooperate with other authorities in situations of emergency or disaster, and report to the National Assembly whenever deployed in such circumstances.”

What they are doing now is assisting and cooperating with other security agencies, namely the General Service Unit (GSU), the Rapid Deployment Unit (RDU) and the police in the emergency that happened in Lamu, where over 70 Kenyans died. I am sure that the moment that assistance and cooperation is over, they will do a report to the House. I have a feeling that in this situation, they are acting within Article 241(3)(b) as read together with Section 3 of the KDF Act.

Hon. Deputy Speaker, for more information, with your direction, I am ready to issue a comprehensive Statement to the House any time this week.

**Hon. Ng'ongo:** Thank you, hon. Deputy Speaker. In addition to what my good friend, hon. Gumbo and my brother in-law has just mentioned, I wanted to remind the Chair and the Deputy Speaker that immediately we elected the Speaker, you had to swear. Hon. Deputy Speaker, you swore an oath to protect the Constitution and the dignity of Parliament.

I have two points which have not been mentioned, or which I want to present for your consideration when you make your ruling. First of all, what the Leader of Majority has said is misrepresentation of facts and a misapplying of the Constitution. If you strictly read Article 241, you will find that there is a clear distinction between what is referred to as emergency, or disaster, and what is unrest and instability.

Hon. Deputy Speaker, you do not require to be an English student or lecturer to understand that what is happening in Lamu is unrest and instability and it does not qualify to be classified as emergency or disaster. What is meant by emergency or disaster is when there are floods, earthquake and such other situations. What is happening in Lamu clearly falls under Article 241(3)(c) and there is no ambiguity.

The drafters of the Constitution decided to separate emergency situations where we could deploy our troops first and inform Parliament later from events of unrest in the country. Instability as is being experienced currently in Lamu requires parliamentary approval before the KDF personnel can be deployed.

There was no reason why this Government, if it was convinced that it needed to deploy our troops, and no one is faulting that--- This is because we want to preserve lives. However, why could the Government not recall Parliament to give authority? This is because the people of Kenya did not want KDF to be involved in civilian activities. It is not right to involve our troops in civilian activities.

Finally, if the activities in Lamu were caused by external forces like Al-Shabaab, the Government, or the Executive, could deploy troops without asking Parliament for approval. The President was very candid. He said that the attacks were political. He also said that those were internal and not external attacks. Since the President said that, could they now take responsibility and accept that they made a mistake of rushing to play politics in something that was caused by Al-Shabaab, which they can only deal with through us? If it was not external aggression, why did they deploy our troops without Parliament's approval? Parliament has not approved this.

Hon. Deputy Speaker, the President, the Cabinet Secretary, the Leader of Majority Party and Cecily Mbarire should apologise to the people of Kenya. They should say that God was not responsible and that this attack was not internal or political and that it was caused by Al-Shabaab. If this is so, they should not even disturb Timamy. This is because you can---

**Hon. Deputy Speaker:** You have had your chance, hon. Mbadi. Could you allow others to also have their chance?

Yes, the hon. Chair, Departmental Committee on Administration and National Security.

**Hon. Abongotum:** Thank you, hon. Deputy Speaker. Let us not trivialize this matter because it is about lives. As we speak, this disease has spread all the way to Mombasa. The same threats are being extended there and we have lost a number of people in Likoni. So, let us not trivialize this matter.

The version that we have, and, of course, it has been confirmed that Al-Shabaab together with a elements of the MRC---

**An hon. Member:** And CORD!

**Hon. Abongotum:** Hon. Deputy Speaker, I am not talking about CORD.

*(Laughter)*

There is also sponsorship by certain individuals and I do not know whether they are from CORD or where. However, there are people who are sponsoring this genocide. So, the issue of saying that Al Shabaab is not involved and that the KDF is not justified to mount an operation in that place is neither here nor there. They are justified because we had Al Shaabab, local gangsters, the MRC and others coming in. So, the Executive was justified to do that.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Members! You heard the Leader of the Majority Party say that he can bring us a comprehensive Statement on this matter. He has even indicated that he could bring it as early as tomorrow and latest Thursday. It is then you will ask all the questions. We do not know what we are ventilating on right now. Let us wait for the Statement from the Leader of the Majority to explain why and how the KDF went to Lamu. We will then use that time to ventilate on this matter. We will continue with that debate when we have heard the Statement from the Government.

**Hon. A.B. Duale:** Hon. Deputy Speaker, we even do not know whether the KDF is in Lamu. I will bring a comprehensive Statement on Thursday.

**Hon. Deputy Speaker:** Members, we have said that on Thursday we will get the Statement and then you will seek all the clarifications.

## BILLS

### *Second Reading*

#### THE VICTIMS PROTECTION BILL

*(Hon. (Ms.) Odhiambo-Mabona on 30.4.2014)*

*(Resumption of Debate Interrupted on 17.7.2014)*

**Hon. Deputy Speaker:** Hon. Members, this had been sufficiently debated and moved. So, mine is to put the Question.

*(Question put and agreed to)*

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

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Hon. Deputy Speaker left the Chair]*

### IN THE COMMITTEE

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

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Members. What is before us is the Statute Law (Miscellaneous Amendments) Bill, Bill No.33 of 2013. This is a fairly straightforward one. It will be a quick one.

*(Loud consultations)*

Order, Members! Members who are withdrawing from the Chamber should do so quickly, so that we proceed. Remember this is now real business.

We will read the schedules one by one and we will start with the provisions relating to the Land Adjudication Act.

*Provisions relating to the Land Adjudication Act, Chapter 284*

*(Question of the amendment proposed)*

*(Provisions relating to Land  
Adjudication Act agreed to)*

*Provisions relating to Urban Areas and Cities Act, 2011*

*(Question of the amendment proposed)*

*(Provisions relating to Urban Areas  
and Cities Act agreed to)*

*Provisions relating to the Transition to Devolved Government Act, 2012*

*(Question of the amendment proposed)*

*(Provisions relating to Transition  
to Devolved Government Act agreed to)*

*Provisions relating to County Government Act*

*(Question of the amendment proposed)*

*(Provisions relating to County  
Governments Act agreed to)*

*Provisions relating to the Agriculture, Fisheries and Food Authority Act, 2013*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I think we are going to deal with all the sections at ago; so, you must take keen interest.

Hon. Chairman, please, explain the entire raft of amendments that you are proposing so that we can move ahead.

**Hon. Nooru:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT the Bill be amended in the Schedule—

(a) in the proposed amendments to the Agriculture, Fisheries and Food Authority Act, 2013 (No. 13 of 2013)

(i) by deleting the proposed amendment to section 5(e).

(ii) by deleting paragraph (h)'';

(iii) by deleting the proposed amendment to section 5(4);

(iv) by inserting the following new provision in its proper numerical sequence—

Provision Amendment

s.5(4)(a)

Delete paragraph (a) of subsection (4) and substitute therefor the following new subsection—

“(a) be persons who have expertise qualification and experience in agriculture, finance, law, administration, human resource management or any other relevant qualification as the appointing authority may determine”

(v) by inserting the following new amendment in its proper numerical sequence

Provision Amendment

s.10(1)

Delete subsection (1) and substitute therefor the following new subsection-

“(1) There shall be a Director General who shall be the Chief Executive Officer of the Authority to be recruited by the Board of the Authority through a competitive process.”

Hon. Temporary Deputy Chairman, I intend to amend the Agriculture, Fisheries and Food Authority Act, 2013. I propose deletion of the proposed amendment to Section 5(e). Section 5(e) is about Agriculture Secretary. Instead of that we should have the Principal Secretary for Lands. This is because the Secretary for Agriculture is already represented on the Authority. He or she is already a member of the Board. So, we are replacing him with the Principal Secretary for the Ministry of Land. We are also removing the representative of the Land Commission in Paragraph (h) of the same Act. This is because there is no need to have the Principal Secretary for Ministry of Lands and at the same time have the representative of the National Commission.

I intend to delete the proposed amendment to Section 5(4) on the members of the Board. They are talking of competitive appointment of the Board, yet the Board is just part time. There is no need of subjecting them to competitive appointment.

The last one section (iv), is an amendment to insert a new provision in its proper numerical sequence. It is about deleting paragraph (a) of subsection (4) and substituting therefor the following new subsection: “(a) be persons who have expertise qualification and experience in agriculture, finance, law, administration, human resource management or any other relevant qualification as the appointing authority may determine”

Originally this was about the agriculture sector only. The Chief Executive of the Board should be an agricultural person. So, we are going to allow wide experience of professionals, so that many Kenyans can apply for this substantive post of the Chief Executive Officer (CEO).

Hon. Temporary Deputy Chairman, I do not know whether I should read the whole of it or I stop there. Let me stop at Section 5. I am through with Section 5. I do not know whether I should continue with the other relevant sections for amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chair, I think we should proceed with all of them; Members kindly take interest because we might end up wanting to “exhume” things which will have passed.

**Hon. Nooru:** Hon. Temporary Deputy Chairman, the sixth amendment which I intend to propose is as follows.

I beg to move that the Bill be amended in the Schedule-

(v) by inserting the following new amendment in its proper numerical sequence

—  
s.10(1)

“Delete subsection (1) and substitute therefor the following new subsection-

“(1) There shall be a Director General who shall be the Chief Executive Officer of the Authority to be recruited by the Board of the Authority through a competitive process.”

Hon. Temporary Deputy Chairman, in the original Bill we are replacing the word “appointment” because the CEO can never be appointed. He or she should be recruited competitively. So, we are replacing the word “appointment” with the word “recruitment,” and then instead of taking it to the National Assembly, it should be taken to the Cabinet Secretary (CS) for final approval, but the Board should be able to recruit the CEO instead of the Cabinet Secretary doing so.

Hon. Temporary Deputy Chairman, the seventh amendment that I intend to move is to Section 11 (2), to which two amendments to delete have been proposed.

I beg to move that the Bill be amendment in the Schedule-

(vi) by deleting the second proposed amendment to Section 11(2).

Hon. Temporary Deputy Chairman, Section 16 is amended by deleting the proposed amendment to it and inserting an amendment in the proper numerical sequence. In this field, money from coffee is collected and taken to the Authority. Money from tea is collected and taken to the Authority. Instead of taking it to the Authority we intend to create directorates in different crop subsectors, so that instead of this money going to the Authority, it will go to the subsectors. In this way farmers will be able to benefit from the subsectors instead of taking the money from coffee, tea and cotton to one Board. We intend to retain the same money in different directorates. The oversight body, which is the Authority, will just get a certain percentage instead of collecting money directly from the farmers.

Hon. Deputy Chairman, I beg to move that the Bill be amended in the Schedule-

By deleting subsection (2) of Section 16 and substituting therefor the following new subsection-

“(2) Notwithstanding the provision of subsection (1) all levies imposed under the Act on scheduled crops, shall be applied towards the sustenance, development, provision and for the benefit of the crop or sector in respect of which the levies are imposed”.

Delete subsection (3) and substitute thereof the following new subsection—

“(3) All levies imposed under the Act shall be connected and remitted to the respective directorate---



**The Temporary Deputy Chairman** (Hon. Cheboi): Where are you now? Are you talking of 16(3)? I am looking at 16(2)!

**Hon. Nooru:** Hon. Temporary Deputy Chairman, I am on 16(3) since I am through with 16(2).

**The Temporary Deputy Speaker** (Hon. Cheboi): But I am not seeing any proposed amendment to 16(3)!

**Hon. Nooru:** We are amending very little on 16(3), and this is imposed under the same section.

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, hon. Chair, let us go step by step. You have handled Section 5(e). You have also handled Section 5(4). All right? Also 4(a)?

**Hon. Nooru:** Yes.

**The Temporary Deputy Chairman** (Hon. Cheboi): Have you done Section 10(1)?

**Hon. Nooru:** Not yet. I am still at 10(1).

**The Temporary Deputy Chairman** (Hon. Cheboi): If you are doing Section 16--

**Hon. Nooru:** No, I dealt with 10(1). Here I was talking about recruitment of the CEO; in the original text appointment was to be by the Cabinet Secretary and we replaced that with competitive recruitment by the Board.

**The Temporary Deputy Chairman** (Hon. Cheboi): So, you have dealt with that one?

**Hon. Nooru:** I have dealt with 10(1).

**The Temporary Deputy Chairman** (Hon. Cheboi): And 11(2)?

**Hon. Nooru:** On 11(2) there was just repetition. So, I have deleted one of the proposed provisions. I have dealt with that one. Section 11(2) was to be deleted twice according to the amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. 11(5)?

**Hon. Nooru:** In Section 11(5) we are talking about the removal of the approval of the National Assembly. These are just simple subsection heads in the directorate that should not be approved by Parliament. It will be just recruitment by the Board because they are not CEOs or Chairmen.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. So, you are now at 16?

**Hon. Nooru:** Yes.

**The Temporary Deputy Chairman** (Hon. Cheboi): But I am concerned that you are talking about 16(3) rather than 16(2), which I see here.

**Hon. Nooru:** Hon. Temporary Deputy Chairman, I dealt with 16(2). I said that the original text of the Bill talks about money being collected and forwarded to the Board of Trustees.

**The Temporary Deputy Chairman** (Hon. Cheboi): No. Let us stop there. The confusion is because you have handled 16(3), which is at the bottom of it. Let us deal with others first. Hon. Members, this is for clarity purposes; I can see many Members have approached the Chair here; we have dealt with the provisions relating to land adjudication. We proposed and put the Question.

Members probably you were not keen. We proceeded and also did the same on the Urban Areas and Cities Act; we have dealt with it. We have also dealt with the Transition to Devolved Government Act. We have dealt with the County Governments Act. I proposed the Question and proceeded to put it when I saw no interest from Members.

We are now on the Agriculture, Fisheries and Food Authority Act; it is what the Chair is moving on. He is moving his amendments; we completed the first bit. That was when I wanted to open the Floor to Members who wanted to contribute on it before we put the Question. First, let us deal with the Agriculture, Fisheries and Food Authority Act. I am going to look at those Members who are on the intervention slot. I will propose the Question.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Do I see any interest? Let us start with hon. Kemei.

**Hon. Kemei:** Thank you, hon. Temporary Deputy Chairman. I wish to support the amendments proposed by the Chair of the Departmental Committee on Agriculture, Livestock and Cooperatives, and give room to my colleagues to be able to give their contributions, I will just touch on three areas.

Hon. Temporary Deputy Chairman, area number one is, if the Chairman of the Authority will be appointed by the President on the recommendation of Parliament, I would suppose then that there will be no need for the CEO to be appointed by Parliament or by the President. We are saying as per the tradition and the culture of this country at this point in time it should be through competitive recruitment. If the levies from any particular crop are diverted to another crop, there will be conflict and confusion. Therefore, I support the idea that levies from particular crops be taken back to the directorate responsible for that crop and utilised exclusively for the promotion of that crop. For example, if sugar is being levied---

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, hon. Kemei! Since we have a raft of amendments under specific clauses, as you proceed, kindly, refer to the specific clauses that you are speaking to.

**Hon. Kemei:** I am much obliged, hon. Temporary Deputy Chairman. I was referring to sections 10(1), and 16(2) and (3).

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well; You may proceed.

**Hon. Kemei:** Hon. Temporary Deputy Chairman, I have already indicated that I am in support.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Yes, hon. Mulu!

**Hon. Mulu:** Hon. Temporary Deputy Chairman, I also rise to support the amendments, more so the ones to the Schedule, which talk about the CEO of the proposed Authority being hired competitively. That is actually the best practice. Bearing in mind the fact that these positions attract a lot of interest, I support the proposal that the

CEO be hired competitively, so that we can have the best brains taking charge of the Authority.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Yes, hon. Gichigi!

**Hon. Gichigi:** Hon. Temporary Deputy Chairman, I rise to support the amendments brought by the Chairman of the Departmental Committee. I would like to seek your direction on Clause 9(2). As proposed, this clause is completely wrong because the provisions that it is attempting to amend are in Clause 9(3), and not Clause 9(2).

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Gichigi, I do not know what you are speaking to, because I do not see any proposition to amend Clause 9(2).

**Hon. Gichigi:** My apology, hon. Temporary Deputy Chairman. I was addressing the Crops Act, and not the other one.

**The Temporary Deputy Chairman** (Hon. Cheboi): If you are talking of any other Act, we are not yet there. Is there any other hon. Member who wishes to speak to it? Hon. Washiali, I see that you have some amendments. We had slotted them in a way that gave precedence to what the Chair of the Departmental Committee has proposed. Immediately thereafter, we will come back to you.

Yes, hon. Shabir.

**Hon. S.S. Ahmed:** Hon. Temporary Deputy Chairman, I stand to support the proposal put forward by the Chairman of the Departmental Committee that the Director-General be the Chief Executive Officer, and that he be recruited through a competitive process. That is in line with the spirit of the Constitution. However, I disagree with the provisions moved under Clause 16(3), on the third page, where it says:-

“16(3)(xii) The Cabinet Secretary may appoint an interim board known as the “interim management committee” with a secretariat to undertake the functions of the Authority for a maximum period of two years.”

Hon. Temporary Deputy Speaker, at this point in time, the Government is rationalising the number of committees and commissions that we have in the country. This Bill is proposing the creation of an interim board as we wait for the establishment of the Authority. If the Authority is not yet operational, it should be operationalised. I do not think it is in line with the original idea that we have an interim board as the Authority is put together. So, I oppose that bit.

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, you are opposing without giving a proposition. Hon. Kisang had approached the Chair with a further amendment. I wish I had heard the specific proposition that you have in mind because I already have a proposal by hon. Kipsang. I am going to give him an opportunity to move it. What is your proposal, so that we can see whether it will be captured by hon. Kipsang’s amendment?

**Hon. S.S. Ahmed:** Hon. Temporary Deputy Speaker, the proposal that I had suggested is that if the Authority has not yet been put together, it should not be replaced with an interim board. It must be put in place. The proposal I have is that there should be no interim board. An interim board will dilute the responsibilities or functions of the Authority. The Authority must be constituted immediately.

**The Temporary Deputy Chairman** (Hon. Cheboi): Do you want to delete the entire paragraph? Hon. Kisang wants to propose a different further amendment.

**Hon. S.S. Ahmed:** Hon. Temporary Deputy Speaker, I would like to hear what hon. Kisang has to say.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay; I now give the opportunity to hon. Kisang.

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

THAT, section 9 of the First Schedule be further amended by deleting the word “two” and inserting the word “one” in place thereof.

I want it to read as follows:-

“The Cabinet Secretary may appoint an interim board to be known as the “interim---“

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kisang, you are proposing a further amendment to Clause 9 of the First Schedule. Is that the position?

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Temporary Deputy Chairman, I want to propose that instead of having an interim board to undertake the functions of the Authority for a period of two years, we reduce that period to one year.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your justification? It is not enough to simply say that you are proposing a certain amendment. You must convince your colleagues.

**Hon. Kisang:** Hon. Temporary Deputy Chairman, the reason as to why I am proposing a reduction of the period from two years to one year is that an interim board for two years is too long. One year should be sufficient for the Authority to advertise and recruit members of the board competitively.

*(Question of further amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your position, hon. Shabir?

**Hon. S.S. Ahmed:** Hon. Temporary Deputy Chairman, having heard my colleague’s proposal, I am not sure of the procedure but I believe that we have to dispose of his amendment first. Can you guide me? Can I also have a chance to move a further amendment to delete this particular provision?

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, the position is that we shall be disposing of the further amendment by hon. Kisang. If it carries the day, I will propose the Question of the provision as amended.

**Hon. S.S. Ahmed:** If I were going to suggest that this whole clause be deleted, would it not mean that it should be discussed before hon. Kisang’s proposal?

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Shabbir, the only difficulty is that you have approached the Chair from the Floor. I could not know what was in your mind before you spoke. Hon. Kipsang had approached the Chair. If yours were to---

**Hon. S.S. Ahmed:** Hon. Temporary Deputy Chairman, may I approach the Chair?

**The Temporary Deputy Chairman** (Hon. Cheboi): Do so quickly, even though you have already raised the matter on the Floor.

*(Hon. S.S. Ahmed approached the Chair)*

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

**Hon. (Dr.) Kibunguchy**: On a point of order, hon. Temporary Deputy Chairman. I thought the Chair of the Committee on Agriculture, Livestock and Co-operatives was taking us through the Bill very well. He had reached 16(ii) and was going to 16(iii). But we are now jumping to 16(xii).

**The Temporary Deputy Chairman** (Hon. Cheboi): I agree with you totally, hon. Kibunguchy. The Chair had taken us through a raft of amendments---

**Hon. (Dr.) Kibunguchy**: But, he had reached 16(ii).

**The Temporary Deputy Chairman** (Hon. Cheboi): He had actually touched 16(ii). Yes---

**Hon. (Dr.) Kibunguchy**: He was going to 16(iii).

**The Temporary Deputy Chairman** (Hon. Cheboi): Yes, he had not gone to 16(iii), but as we were doing that, there was a proposal for a further amendment.

**Hon. (Dr.) Kibunguchy**: But that is 16(xii), is it not?

**Hon. Nooru**: Hon. Temporary Deputy Chair, I think what is confusing the Members is that we are dealing with three different Acts. So, we are at (ix) going to 16. That is a different Act. Originally, we were dealing with AFFA Act, but after that, we are going to Crops Act, which is coming at (ix). That is what they are talking about. So, those are two different things. We are going to reach there as the hon. Member has suggested.

Thank you, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): We will, therefore, deal with the amendments which the Chair had proposed. We will start from 16(i) to (ix) on the Order Paper. Are the Members following? I see the interest in terms of further amendments are in (ix) and (x). So, can we deal with them? We will dispose sections (i) to (viii).

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

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

*(Sections (i) to (viii) of the Schedule as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I hope hon. Kipsang is still in the House. We will start from 16(ix) to (xii) in the Order Paper and we are still dealing with the provisions relating to Agriculture, Fisheries and Food Authority Act. Hon. Chair.

**Hon. Nooru**: Hon. Temporary Deputy Chairman, 16(iii) is more or less dealing with the same levies as 16(ii), but it talks of all monies instead of collecting the money and then remitting it to the Authority. We only amend and say remit the same to the

respective directorate responsible for the crops appearing in the First Schedule of the Crops Act and, if not remitted on time, then the penalties follow. Here we only amend so that, that money, instead of remitting it to the Authority itself - which is a regulatory body - then respective crops will have respective directorates so that they can manage the affairs and assist the farmers with the levies that they pay.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have hon. Washiali.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it? I thought you were giving hon. Washiali to support your case? Okay! Complete and then hon. Washiali can---

**Hon. Nooru**: Before I go to the Schedule, I want to deal with No.4 on the percentage of the proceeds of any levy as imposed under the Acts, shall be gazetted by the Cabinet Secretary---

**The Temporary Deputy Chairman** (Hon. Cheboi): Which part are you speaking to hon. Chair?

**Hon. Nooru**: No.4.

**The Temporary Deputy Chairman** (Hon. Cheboi): Which No.4?

**Hon. Nooru**: Sub-section 16. No.4 is an inclusion.

**The Temporary Deputy Chairman** (Hon. Cheboi): Yes, we have it. Proceed.

**Hon. Nooru**: It is no. 4. Are we together hon. Temporary Deputy Chairman?

**The Temporary Deputy Chairman** (Hon. Cheboi): Proceed.

**Hon. Nooru**: No. 4 talks about the percentage of the proceedings of any levy as imposed under the Act as shall be gazette by the Cabinet Secretary and shall be remitted to the Board. So, after the directorates have collected the levies, then the Principal Secretary or the Cabinet Secretary will decide a certain percentage - whether 1 or 2 percent from each board to go to the regulatory board, which is AFFA. So, we are just proposing that a certain percentage for the administrative cost of the regulatory body, that is AFFA, can be gazetted by the Cabinet Secretary so that it cannot be abused.

Thank you, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. Let us have hon. Washiali. Hon. Baiya, be prepared! We shall be coming back to that particular bit on Transition Devolved Government Act after we deal with the Agriculture one.

**Hon. Washiali**: Thank you, hon. Temporary Deputy Chairman and, as a Member of this Committee, we had a lengthy time discussing this Section (16). I rise to support the position of the Chair that this amendment seeks to clarify the levies that are derived from taxation in respect to particular crops. For example, money that is acquired through taxation, like the Sugar Development Levy, will remain in the sugar sector. The tea, sisal and other sectors will have their own money. I think this is a very good thing in this Act. I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Are there Members who are interested in contributing? Let us have the Member for Nakuru Town East.

**Hon. Gikaria**: Thank you, hon. Temporary Deputy Chairman. I am on 16(xii) as regards the two years period that has been proposed. Somebody had proposed to reduce that to one year. I think one of the hon. Members behind me---

**The Temporary Deputy Chairman** (Hon. Cheboi): I hope you are speaking to the proposals by the Committee.

**Hon. Gikaria:** Yes.

**The Temporary Deputy Chairman** (Hon. Cheboi): Because we will come back to the proposal of a further amendment.

**Hon. Gikaria:** What I wanted is a further amendment actually to remove the time frame and be immediate. Why should we have an interim, when we can---

**The Temporary Deputy Chairman** (Hon. Cheboi): You see the option that we have is probably what hon. S. S. Ahmed was proposing; which was to probably delete the entire---

**Hon. Gikaria:** Delete exactly.

**The Temporary Deputy Chairman** (Hon. Cheboi): So, if that is to be carried, when that opportunity comes, then the further amendment by hon. Kipsang will have been defeated. So, let us propose the first bit then we will come back to that.

**Hon. Gikaria:** Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Tonui.

**Hon. Tonui:** Thank you, hon. Temporary Deputy Chairman. I want to comment on 16 (iii) and (iv), where we intend to allow the Cabinet Secretary to be imposing some levies at a certain percentage. I believe it is going to be highly irresponsible of us if we allow this to go through, especially having it as open as it is, and leaving the Cabinet Secretary to decide on the percentage of levy, without even a maximum. That is going to be giving a blank cheque to the Cabinet Secretary.

That is going to open an opportunity for our farmers to be exploited. I know our tea farmers are going to be the greatest victims of this. Already, they have been victims under the previous Tea Act. So, if we allow the Cabinet Secretary to do this, I think this will be misused and our farmers will be exploited. We know agriculture is a devolved function. Those levies should no longer be under the national Government but be discussed in the county assemblies and not here. So, I am completely opposed to this section where crop levies are introduced. I propose that we get rid of those levies.

Thank you, hon. Temporary Deputy Chair.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well! You have put your position. But I will give an opportunity to hon. S.S. Ahmed to move a further amendment and if it is carried then, hon. Kipsang, we will have yours dropped.

Hon. Members, the essence of it – and I hope you will bring it clearly - is to delete this particular bit completely.

**Hon. S.S. Ahmed:** Hon. Temporary Deputy Chairman, having consulted with the Chair of the Committee, he has shown me very clearly that if we do not carry the amendment he has proposed, the original clause was even more restrictive.

Therefore, I will withdraw the deletion of that particular clause and leave it to my colleague hon. Kisang to see whether he can reduce.

**The Temporary Deputy Chairman** (hon. Cheboi): Very well. That shows that you have withdrawn your amendment.

Now, hon. Kisang, are you still standing by your proposal? If you are, I would like to hear it from you. Are you still standing by your proposal for the further amendment?

**Hon. Kisang:** Yes, hon. Temporary Deputy Chairman. But I would wish to reduce it to six months because of---

**The Temporary Deputy Chairman** (hon. Cheboi): No! We cannot work like that. You had proposed a further amendment to reduce it to one year. I would like to hear from the Chairman of the Departmental Committee of Agriculture, Livestock and Co-operatives.

**Hon. Nooru:** Hon. Temporary Deputy Chairman, the intention of putting this clause was meant to give room for the Executive to appoint. But when you say competitive appointment of the CEO and then you go to the Chairman and the board, it will take a little bit of time. Therefore, we are only putting in an interim board, after the Act becomes operational. Then we will need a little bit of time so that the full board can be operational. So, that was the purpose. But I have no objection by the one year amendment that has been proposed.

**The Temporary Deputy Chairman** (hon. Cheboi): Are you supporting the amendment or you are opposing it?

**Hon. Nooru:** I support the amendment, hon. Temporary Deputy Chairman. . One year is enough.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us hear from hon. F.K. Wanyonyi.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Chairman, there is an amendment which has been proposed for a year. I think it is more acceptable than reducing it to six months.

**The Temporary Deputy Chairman** (Hon. Cheboi): No! There is nothing on the Floor reducing it to six months. I overruled the proposer. So, you should be supporting the one year amendment.

**Hon. F.K. Wanyonyi:** I will go by the amendment. Yes, I am supporting the one year amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Therefore, it means that you are supporting hon. Kisang's further amendment?

**Hon. F.K. Wanyonyi:** Yes.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Justice Kemei, you have spoken. I would rather give this chance to an hon. Member who has not spoken to this particular one.

Hon. Langat, hon. Member for Ainamoi.

**Hon. Langat:** Hon. Temporary Deputy Chairman, this is the first time I am seeing a proposal to create an interim board, except the former Electoral Commission of Kenya. This is the first time I am hearing that we appoint an interim board and then there will a substantive board. Okay! Reducing it to one year makes it better. But the whole idea - unless there is a good reason - is that they should appoint a substantive board immediately. I support because one year makes it better.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Langat, you are supporting hon. Kisang's further amendment because what we should have scrapped was withdrawn by hon. S.S. Ahmed.



**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, the AFFA Act was passed by the last Parliament. It took many years for it to be effective. Now again, we are proposing an interim board.

**An hon. Member:** Why an interim board?

**Hon. A.B. Duale:** Yes! Recruiting a competitive board with the Director-General can even be done by the parent Ministry. Therefore, an interim board for another one year and then you form another one – I tend to oppose.

**The Temporary Deputy Chairman (Hon. Cheboi):** But hon. A.B. Duale, there is no further amendment to the effect that you are actually proposing. What is before you, hon. Members, is the reduction from two years to one year.

Hon. S.S. Ahmed had an opportunity to delete that particular sub-section, but he withdrew. Therefore, we will deal with the further amendment and it is up to hon. Members to make the decision. But, unfortunately, we do not have an amendment on the Floor.

I will give hon. (Dr.) Kibunguchy a chance again.

**Hon. (Dr.) Kibunguchy:** Hon. Temporary Deputy Chairman, I have followed those amendments very well. But I think you are confusing us a bit. I say so because the Chairman of the Departmental Committee on Agriculture, Livestock and Co-operative had moved up to Section 16 (iv). We have not disposed of that and yet, you going to 16 (xii).

**The Temporary Deputy Chairman (Hon. Cheboi):** We have not disposed it off because we are transacting a further amendment. Therefore, immediately after that, we will dispose of the entire Bill. Actually, I am not confusing you. Probably, you are confusing yourself on this particular one.

**Hon. (Dr.) Kibunguchy:** No! What I am saying is that, after Section 16 (iv), there are other amendments before we reach Section 16 (xii)

**The Temporary Deputy Chairman (hon. Cheboi):** Hon. (Dr.) Kibunguchy, we are now dealing with a further amendment. If it is taken, there will be a reduction to one year, from two years. Then, we will dispose the entire lot with amendments.

**Hon. (Dr.) Kibunguchy:** I agree with you.

**The Temporary Deputy Chairman (Hon. Cheboi):** It is from (ix) to (xii). Are we on board?

**Hon. (Dr.) Kibunguchy:** I agree with you entirely.

**The Temporary Deputy Chairman (Hon. Cheboi):** Then where is the issue?

**Hon. (Dr.) Kibunguchy:** The issue is that the Chairman had reached Section 16(iv). He has not gone to 16 (x). He has not gone to 16 (xi) and now, you are talking about (xii)

**The Temporary Deputy Chairman (Hon. Cheboi):** Probably, the issue of the Roman numbers is the one which is bringing confusion. We are talking from (ix) to (xii); the amendments as per the Order Paper.

**Hon. (Dr.) Kibunguchy:** But, like the hon. Member said, we have an issue with a certain percentage

**The Temporary Deputy Chairman (Hon. Cheboi):** You see, hon. (Dr.) Kibunguchy, and you are a senior hon. Member of this House, if you do not bring any

amendment, the fact that you oppose a particular sub-section does not change much, other than lobbying your colleagues to drop the amendments completely.

There is nobody who had brought amendments, including hon. Tonui, who simply opposed. He did not propose any amendment. You are also doing exactly the same. You are opposing. Do you have a problem with that particular sub-section?

**Hon. (Dr.) Kibunguchy:** Correct!

**The Temporary Deputy Chairman** (Hon. Cheboi): But there is no amendment. By the way, you had an opportunity even to propose your own amendments and they would have been put on the Order Paper.

**Hon. (Dr.) Kibunguchy:** Can we do it now?

**The Temporary Deputy Chairman** (Hon. Cheboi): I will not allow you now.

**Hon. (Dr.) Kibunguchy:** The Chairman can!

**The Temporary Deputy Chairman** (Hon. Cheboi): I will not allow you now. We are proceeding very well. Hon. Members had an opportunity. You had the Order Paper. You should have brought your amendments earlier.

Therefore, I would want to dispose the further amendment by hon. Kisang.

*(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)*

**The Temporary Deputy Chairman** (Hon. Cheboi): The effect of that further amendment, hon. Members, is that we have reduced it from a maximum period of two years to one year. That is over because nobody has proposed a further amendment. There was only one and we have disposed it. We will now dispose the main amendment. We will now dispose of sections (ix,) (x) and (xi). The Chair had spoken to it and so, I will put the Question, which is that the provisions in sections (ix), (x) and (xi) be part of the Bill.

*(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)*

*(Sections (ix), (x) and (xi) of the Schedule as amended agreed to)*

We will now go to section (xii). Remember that hon. Kisang's further amendment has gone through and I see no major interest. So, I will put the Question, which is (xii) as amended be part of the Bill.

*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)*

*(Section (xii) of the Schedule as amended agreed to)*

The Chair, Committee on Agriculture, Livestock and Co-operatives, you do not seem to have any other amendment? We will now proceed to the proposed amendment by hon. Washiali.

**Hon. Washiali:** Hon. Temporary Deputy Chairman, as you can see, I am sitting next to the Chairman and we have consulted a bit. Therefore, for the sake of this session, I wish to withdraw my amendments in 5(1) and 40(1).

**The Temporary Deputy Chairman** (Hon. Cheboi): Correct. That is dropped.

*(Proposed amendments by hon. Washiali withdrawn)*

I now put the Question which is that provisions relating to the Agriculture, Fisheries and Food Authority Act be part of the Bill.

*(Provisions Relating to Agriculture, Fisheries and Food Authority as amended agreed to)*

*Provisions relating to the Crops Act*

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

THAT, the Bill be amended in the Schedule –  
(b)in the proposed amendments to the Crops Act, (No.16 of 2013) by deleting the expression s.9(2) appearing on the marginal note and substituting therefor the expression s.9(3).

This is the Board and there is no need for the Board to be taken to the National Assembly for approval. Members of boards, like in parastatals, are appointed by the Cabinet Secretary. It is the President who appoints Chairmen and Chief Executive Officers, but the board members are normally appointed by the Cabinet Secretary while he looks at the regional and gender balances as per the Constitution. So, the approval of the National Assembly for the simple Board members, which has not been there for any other board or parastatal, makes no sense.

**The Temporary Deputy Chairman** (Hon. Cheboi): Do you have any interest on that one before we get to the proposed amendment by the Member for Igembe Central?

*(Question of the amendment proposed)*

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

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

Let us now go to the Member for Igembe Central.

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

THAT, the Bill be amended in the Schedule, in the provisions relating to the Crops Act, 2013, by inserting the following new provision in its proper numerical sequence—

<i>Provision</i>	<i>Amendment</i>
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First Schedule

Part 3

Insert the following new item at the end thereof—

“*Miraa* ..... *catha edulis*”

I propose that we add the words “*Miraa*” or “*catha edulis*” to the foot of the scheduled crops at the last line where we have fig tree, mangoes, avocados, citrus fruits and pawpaws. This House is alive to the fact that recently, we had an *ad hoc* Committee which was dealing with the *Miraa* issue. We went very far and tabled our Report in this House, which was gracefully adopted by the House. I really thank the Members for that. I want to move further and add this important crop in the Meru Community and Kenya as a whole; a lucrative cash earner, which is being fought right, left and centre. I want to add it in the Crops Act, so that it can, at least, appear like the other cash crops which are listed in that Schedule. I also intend to have it protected like any other crop in this great nation of ours.

We had problems in the Committee, trying to get the history or the background of what research has ever been done on *Miraa*. When officials of the Ministry of Agriculture, Livestock and Fisheries came to the Committee, they reported that they did not know anything about *Miraa* because it was not among the scheduled crops. Therefore, they did not have any information. When we went to the researchers, we found that they have done very little about *Miraa*. Once this crop of the great Meru is included in the scheduled crops, it will have that protection and will get funding. We will also do research on it.

**The Temporary Deputy Chairman** (Hon. Cheboi): I do not want you to take too long. I hope the Members are keen and they understand what you are talking about. You are actually stating that you want *Miraa* to be declared a crop.

**Hon. Iringo:** Exactly. I strongly believe that the Members know what we have gone through. I request hon. Rotino to second.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is surprising that your Secunder is in the name of Rotino. But let us hear what he has to say.

**Hon. Rotino:** Hon. Temporary Deputy Chairman, I was the Vice-Chair of the *Miraa* Committee

**The Temporary Deputy Chairman** (Hon. Cheboi): I am surprised because I do not know whether you are confusing *Miraa* to Pyrethrum. That is because I know that is what grows more in your place. But proceed.

**Hon. Rotino:** I want to inform you that even in Pokot, we have *Miraa*. We grow *Miraa*

**The Temporary Deputy Chairman** (hon. Cheboi): Oh! perfect. I withdraw my statement

**Hon. Rotino:** That is why I strongly support this particular crop being put in the scheduled crop because it is important. The whole community of Meru depends entirely on *Miraa*

**The Temporary Deputy Chairman** (hon. Cheboi): As you speak, hon. Rotino, I was just wondering aloud. What was it called there before? Was it not a crop?

**Hon. Rotino:** It was not a crop before. It was not put in the list of the scheduled crops. So, I want to put it there now.

**The Temporary Deputy Chairman** (hon. Cheboi): It was a tree probably. Okay.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (hon. Cheboi): Yes, we have the other outgrower in Suba area, hon. Mbadi.

**Hon. Ng'ongo:** Thank you hon. Chair. I do not know what you mean by outgrower. Are you referring to me as an outgrower in Suba?

**The Temporary Deputy Chairman** (hon. Cheboi): No! I did not say that. That must have been from the Leader of the Majority Party. The problem with listening to yourselves on the Floor of the House--- I am not sure whether he does not know that. But let us proceed.

**Hon. Ng'ongo:** Fine, Chair, I want to support strongly this amendment. First, we have never been told who has been killed or who has lost his mental capacity because of *Miraa*. There is no evidence. I know hon. A.B. Duale has raised many issues, but I think it has more to do with religion than health. *Miraa* is not just a crop for Meru. Meru people are my friends and I would really support what provides economic stability. I have so many friends led by hon. (Ms.) Kajuju. Actually, my best friend from Meru is hon. (Ms.) Kajuju.

*(Applause)*

Yes! I can repeat that severally.

*(Laughter)*

Hon. Chair, allow me to say that *Miraa* is grown even in other areas in this country. The only problem is hindering its wide growth is these kinds of talks.

**The Temporary Deputy Chairman** (hon. Cheboi): You have made your point, hon. Ng'ongo.

**Hon. Ng'ongo:** Like in Suba, I would invite you to visit me. I will take you to a place called Got Kombuto and you will see real *Miraa* - like the one that is grown in

Meru. So, I support this amendment and I hope the United Kingdom Government is listening.

**The Temporary Deputy Chairman (Hon. Cheboi):** I am sure you have spoken on behalf of hon. (Ms.) Kajuju also. So, I will give hon. M'uthari.

**Hon. M'uthari:** Thank you hon. Temporary Deputy Chairman. I strongly support that *Miraa* be included as a scheduled crop. You know if you do not have *Miraa* in my place - and I have daughters - you will not even get married to them. Your sons cannot get them, if you do not bring *Miraa*. *Miraa* is very important for us culturally, economically and socially. Thank you hon. Chair.

**The Temporary Deputy Chairman (Hon. Cheboi):** Very well. Let us have hon. (Ms.) Kajuju before I give the Leader of the Majority Party. We will finalize at that particular point.

**Hon. (Ms.) Kajuju:** Thank you hon. Temporary Deputy Chairman. I sincerely thank hon. Iringo for bringing this amendment. In the report that this House passed from the *ad-hoc* Committee on *Miraa*, one of the issues that we recommended as a House was that the Crops Act be amended under Schedule IV to make *Miraa* one of the scheduled crops. So, this is the right procedure that we have undertaken and looking at the fact that our objective of getting into this particular amendment is to have Government come into the processes of the growing, processing and marketing of *Miraa* and, most importantly, the foreign policies that this Government must put into place, to ensure that we are able to relate with other Governments, especially those that have banned the crop.

**The Temporary Deputy Chairman (Hon. Cheboi):** I know you have a very strong passion and a very intimate relationship with the *Miraa*.

**Hon. (Ms.) Kajuju:** Yes, hon. Chair, and hon. Ng'ongo!

**The Temporary Deputy Chairman (Hon. Cheboi):** But at this point--- Yes?

**Hon. (Ms.) Kajuju:** Thank you hon. Chair.

**The Temporary Deputy Chairman (Hon. Cheboi):** Let us hear the Leader of the Majority Party and that will be---

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, you have heard hon. (Ms.) Kajuju saying that she has a very serious intimate relationship with hon. Ng'ongo.

**The Temporary Deputy Chairman (hon. Cheboi):** No! With *Miraa*. I will correct you.

**Hon. A.B. Duale:** It is on the HANSARD. Hon. Temporary Deputy Chair, I come from a community that consumes *Miraa*. Hon. Ng'ongo does not consume. It has very serious side effects. I talk for the consumers. Hon. (Ms.) Kajuju speaks for the producers. So, the voice of the consumers must be heard. I want to confirm that it has serious socio-economic effects. But, because this House resolves in one of its recommendation, and representing part of the consumers and they are not in the House, I will speak for some of my colleagues who are not in the House. I think that it is good that this is recognized as a crop.

**The Temporary Deputy Chairman (Hon. Cheboi):** Then you are supporting.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chair, as I finish, when my camels, goats and cows flood from Garissa to Tharaka Nith, they can feed on the *Miraa* as a crop. That is because they do not allow our animals to feed on *Miraa*. So, I support it.

*(Laughter)*

**The Temporary Deputy Chairman (Hon. Cheboi):** You know hon. Member for Gem, I know you have been missing in action for quite some time. But you see, the Leader of the Majority Party has spoken. Now, I do not know if you want to speak on behalf of the--- Well, I will give you the opportunity because you have been missing in action for quite some time. It has to be brief because we want to dispose it. Ordinarily, we would not take long on such an amendment. It is straightforward and everybody seems to be having the same opinion. Give a contribution on behalf of the minority.

**Hon. Midiwo:** We are a Minority but not minors. We are old enough to support the classification of *Miraa* as a crop. It should be as a cash crop. This economy largely depends on *Miraa* to some extent. I agree with hon. (Ms.) Kajuju that we must address the foreign policy because I think it is racist and discriminatory - the way this issue of *Miraa* is being dealt with by the British Government. I think we must take a stand as a country. We must also find other markets also, so that anytime one country wants to strangle us, we can seek alternatives. I support.

**The Temporary Deputy Chairman (Hon. Cheboi):** I will now put the Question.

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

*(Provisions Relating to the Crops Act as amended agreed to)*

*Provisions Relating to Kenya Agricultural and Livestock Research Act*

**Hon. Nooru:** Hon. Chair, I beg to move:-

THAT, the Bill be amended in the Schedule-

(c) in the proposed amendments to the Kenya Agricultural and Livestock Research Act, 2013 (No. 17 of 2013)

(i) by deleting proposed amendment to section 6(3) and substituting therefor the following new amendment-

“Delete paragraph ( c)”

(ii) by inserting the following new amendments in their proper numerical sequence-

Provision	Amendment
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s.6(3)

Delete paragraph (b) and substitute therefor the following new paragraph—

“(b) at least two Deputy Directors whom shall include –

(i) Deputy Director General- Crops;

(ii) Deputy Director General- Livestock.

(iii) by deleting the proposed amendment to section 14(1).

(iv) by inserting the following new amendments in their proper numerical sequence —

Provision	Amendment
s.15(a)	Delete paragraph (a) and substitute therefor the following new paragraph— “holds a post graduate degree or its equivalent in a relevant area”

(v) by deleting the proposed amendment to section 16.

(vi) by inserting the following new amendments in their proper numerical sequence —

Provision	Amendment
s.6(3)	Insert the words “or crops” immediately after the word “Livestock”; Insert the words “or crops” immediately after the word “animal” in paragraph (b); Delete paragraph (c) and substitute therefor the following new paragraph— “a postgraduate degree or its equivalent from a recognized university” Delete the word “ten” appearing in paragraph (d), and substitute therefor the word “five”

On this one, we are trying to make some changes because we intend to delete the entire Section 3. Section 3 of AFFA Act reads--- I am sure most of the Members may not have read the section. Board Members appointed under Section VI (a), (g) and (h), shall serve on a part-time basis and a secretariat of the board shall comprise of Director-General, Deputy Director-General of Livestock, Deputy Director-General of Crops and any other staff. This is a secretariat of the board. We are deleting that section as a whole, and substituting it with the Director-General and two Deputy Directors to form part of the secretariat. So, I am deleting the entire Section 3 and replacing it with the following new paragraph.

(b) at least, two Deputy Directors whom shall include-

(i) Deputy Director-General – Crops

(ii) Deputy Director General – Livestock.

(iii) by deleting the proposed amendment to Section 14(i). It is 14(1) and (3).

By deleting the proposed amendment to Sub-section---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chair, hon. Members insist that they need some clarity. What specific bit is not clear hon. Duale?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, it is 14(1).

**Hon. Nooru:** Hon. Temporary Deputy Chairman, 14(1) reads:-



“There shall be a Director-General, Deputy Director-General of Livestock and Deputy Director-General of Crops who shall be competitively recruited by the Board and appointed by the Cabinet Secretary.”

I think we are repeating ourselves. It is good to do competitive appointment of the Deputy Director-General, but taking it to the Cabinet Secretary for approval is not necessary. This is after you have already taken the Director-General’s name for approval. So, we are trying to delete 14(1).

By inserting the following new amendment in numerical sequence---

**The Temporary Deputy Chairman** (Hon. Cheboi): As you proceed, for purposes of Members being brought on board, it is important you also clarify--- You must build your case so that Members can be able to follow. That is because if you simply say that you want to delete it, some Members may not have the Order Paper while others may not have the Act. It is good for Members to be with you.

**Hon. Nooru:** Hon. Temporary Deputy Chairman, if you look at the title of the original Act, you will find that it talks about the appointment of the Director-General while 14(1) talks about the appointment of the Deputy Director-General of Crops and the Deputy Director-General of Livestock. The gist of the matter is that there is no reason why the two Deputies, after they have competitively been appointed by the Board, their names should be taken to the Cabinet Secretary for approval. Those are just staff of the Board. So, there is no need for taking their names to the Cabinet Secretary for appointment. The appointing authority should be the Board or the Authority in the case of the two Deputies. That is the gist of the matter.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I want the Chair to move us very slowly.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. A.B. Duale, allow me to propose the Question and then we can raise all those issues and ventilate on the matter.

*(Question of the amendment proposed)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I want the Chairman to come out very clearly. Under the Kenya Agricultural and Livestock Research Act, 2013, 14(1) talks about deleting the words “Deputy Director-General of Livestock and Deputy Director-General of Crops.” Does the Chair agree with that deletion? If the answer is “Yes”---

**The Temporary Deputy Chairman** (Hon. Cheboi): But he is the one who is proposing the deletion.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, what does he want to propose because he is talking about the Cabinet Minister’s approval, but I am not seeing it in this Bill? That is 14(1) which basically talks about the deletion of the words “Deputy Director-General of Livestock and Deputy Director-General of Crops.”

**The Temporary Deputy Chairman** (Hon. Cheboi): Just a minute. I can see the hon. Chair is proposing a deletion to a deletion. That is something which I wanted us to be very clear on. Could we have the Chair before you speak hon. Gikaria? Hon. Gikaria, you can raise your issues and then the Chair can respond quickly.

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, the Chair is also proposing that the Deputy Director-General of Livestock and the Deputy Director-General of Crops should not be competitively sought, but should be appointed by the Cabinet Secretary. I think this has landed us in problems in the past. This is where the Cabinet Secretary appoints people and then they are told that they have not come from the Board. The Board just gives a proposal to the Cabinet Secretary. It is not a must that whatever the Board has decided, the Cabinet should implement it. If the two deputies are competitively sought by the Board, then they must be appointed by the Cabinet Secretary. It is either he accepts them or refuses. Assuming the two deputies have other issues which the Board never--- If he again says that they should not be appointed by the Cabinet Secretary, it going to bring us many problems

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Gikaria, are you supporting, opposing or seeking a clarification?

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, I am seeking a clarification.

**The Temporary Deputy Chairman** (Hon. Cheboi): Of course, let us not talk about clarification. You are either supporting or opposing it. If you are opposing, what is it that you are opposing?

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, if I heard the Chair correctly, he has said---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Gikaria, you know you are a very serious Member of this House. I would like you to have the Act.

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, he has just picked it from me. I know it is his but I just borrowed it to read. If I heard what the Chairman said, 14(1) is to delete the proposal for the two deputies not to be competitively sought. That is if I got him right.

**The Temporary Deputy Chairman** (Hon. Cheboi): Can we hear what the Chair has to say to that before we can dispose it of? Hon. Chair, is that the factual position?

**Hon. Nooru:** Hon. Temporary Deputy Chairman, I think the hon. Member must have mis-heard me. I said that the two deputies should be competitively recruited by the Board and not by the Cabinet Secretary. If the Chief Executive Officer and the Board are there, I am deleting the words "there shall be a Director-General, Deputy Director-General of Livestock and Deputy Director-General of Crops of the organization who shall be competitively recruited by the Board and appointed by the Cabinet Secretary." "Appointed by the Cabinet Secretary" is what we are against. So---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chair, what you are proposing is a deletion in the appointment of the two Deputy Director-Generals by the Cabinet Secretary?

**Hon. Nooru:** Yes, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Are we on board hon. Gikaria? I will give you another opportunity because I want to know whether you have got what the Chairman of the Committee is proposing to delete. That is the appointment of the two Deputy Director-Generals by the Cabinet Secretary.

**Hon. Gikaria:** What is the problem with that? The Board could have some problems and so that should be left to the Cabinet Secretary.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Gikaria, you are contradicting yourself. I thought what you were opposing was the appointment of the two Deputy Director-Generals by the Cabinet Secretary. Now, you are having a problem with the appointment by the Cabinet Secretary because you think that the Board will have a problem.

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, I thought the Chairman was at first saying that they should not be competitively sought. But he has now made it very clear. He is saying that since it is the Board which has competitively sought those people, they should not be appointed by the Cabinet Secretary. So, what is the problem with the Cabinet Secretary appointing them?

**The Temporary Deputy Chairman** (Hon. Cheboi): I really think that there are some problems somewhere because I do not seem to be following you. You have indicated and you can confirm that, that you had a problem with the appointment of the Deputy Director-Generals by the Cabinet Secretary.

**Hon. Gikaria:** No!

**The Temporary Deputy Chairman** (Hon. Cheboi): Then you must be opposing his amendment. You are simply opposing his amendment. We will have somebody from this direction.

**Hon. M'uthari:** Thank you, hon. Temporary Deputy Chairman. I am supporting the amendment by the Chairman of the Departmental Committee on Agriculture, Livestock and Co-operatives. This is because I believe that, at this level of appointment of the Deputy Directors, it is better when it is handled at the level of the Board. Otherwise, there will be conflicts between the Deputy Director and the Director if they are appointed by the same authority at the same time. This will clarify the authority and also the organization structure.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have hon. Kibunguchy. Hon. Kibunguchy I actually just got confused somewhere in terms of the constituency which you represent. This is because when I knew you a little earlier, you represented somewhere else and now you are representing another place.

**Hon. (Dr.) Kibunguchy:** Just to put that record straight, I represent a constituency called Lukuyani. But these days, we call it, "Look young".

Mine was just English really. When the Chairman says, "at least two Deputy Directors who shall include---" So, will they be more or are they just two?

**Hon. Members:** They could be more!

**Hon. (Dr.) Kibunguchy:** Is that what the Act says? I thought they are just two Deputy Directors.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. (Dr.) Kibunguchy if the English placed in that particular Act says, "at least" I am sure that, as a very qualified medical doctor, you will know that it could be more.

**Hon. (Dr.) Kibunguchy:** But does the Act say that?

**The Temporary Deputy Chairman** (Hon. Cheboi): You should be having the Act yourself.

**Hon. (Dr.) Kibunguchy:** It does not say that and that is what I am saying.

**The Temporary Deputy Chairman** (Hon. Cheboi): If the Act does not say that, then you say that the Act does not say it.

**Hon. (Dr.) Kibunguchy:** That is what I meant.

**The Temporary Deputy Chairman** (Hon. Cheboi): We will proceed as we look at that. Are you, therefore, opposing or proposing?

**Hon. (Dr.) Kibunguchy:** I just wanted us to clean really; nothing more.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Chairman clarify that.

**Hon. Nooru:** Hon. Temporary Deputy Chairman, the original Bill under Section 14(1) talks about the appointment of the director. It states: "There shall be a Director-General, Deputy Director-General, Livestock; and Deputy Director-General, Crops." Section 14(2) specifically talks about the Director-General. It states that the Director-General shall be appointed on such terms and conditions of service as the Board shall determine, with approval of the Cabinet Secretary for a term of five years renewable for one term---

This Section 14 entirely deals with appointment of the CEO specifically. So, what we are deleting is the provision of the two deputies---

**The Temporary Deputy Chairman** (Hon. Cheboi): So, we are talking of appointment of two deputies. That is the position, hon. Kibunguchy.

**Hon. (Dr.) Kibunguchy:** Initially, I was saying that when a Statement comes forward to the House and it says, "At least, two Deputy Directors who shall include---", it means we will have more. However, the Act is very clear that they are just three, that is, the Director-General and two Deputies. So, we should just say that there shall be two deputies; one in charge of crops and another one in charge of livestock.

**The Temporary Deputy Chairman** (Hon. Cheboi): And that is what the Chairman has confirmed.

**Hon. (Dr.) Kibunguchy:** No! But the statement in itself is wrong!

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Chairman, I want to agree with hon. Kibunguchy that if you actually say, "at least two" then you are giving room for more than two. I want to encourage my Chairman, now that he is the one with the authority to make amendments on his feet, to propose a further amendment to delete the words, "at least two" and therefore provide, "two Deputy Directors who shall include the Deputy Director for Crops (including *Miraa*) and the Deputy Director for Livestock. I am encouraging the Chairman to move a further amendment to that amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, you see why I will have a problem with the Chairman proposing a further amendment on the Floor at the spur of the moment is that you are likely to re-engineer the entire process. I am sure it is something that he has gone through with his members.

**Hon. (Ms.) Odhiambo-Mabona:** But I am a member of that Committee.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is what I am trying to say. If you are a member of that Committee and you did not propose that at that particular time--- The issue of "at least two" does not look prejudicial to me because it has proceeded to indicate that we will have two deputies; the one in charge of crops and the one in charge of livestock. So, for me, it does not open it too much.

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Chairman, the essence of the Committee of the Whole House is so that even the things that we may have missed at the Committee stage, we look at them at this point. I am a member of the Committee.

When you are in the Committee of the whole House, they enable you to see certain things that you may have missed at your Committee level. I know you are also a lawyer and by the moment you see somebody starting to question about interpretation, especially when it is very clear about the plain meaning, then it is--- I agree with hon. Dr. Kibunguchy that the most obvious meaning is when you say, “at least two Deputy Directors”, “At least” means that there can be more. But that was not the intention! We sat as a Committee and our intention was not to have more. Rather, it was to have two. Having more Deputy Directors would only apply if we were dealing with the AFFA Act. But now, we are no longer dealing with AFFA Act because we are removing the crop, fish and livestock. So, the fisheries bit will be dealt with on its own and so is the livestock. So, let us just have the directors clearly.

**Hon. Langat:** Hon. Temporary Deputy Chairman, I want to support what the Chairman has proposed. The law is forward looking. We are saying, “at least two” meaning that we can have more because tomorrow we may realize that--- Crops cover a wide area. We have tea, coconut and we have even added *Miraa*. We may decide to break crops further and so we will not have to come to the House again to seek amendments every other time we are looking for a Deputy Director.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. (Ms.) Odhiambo-Mabona and hon. Kibunguchy, what prejudice will one suffer if you give room for a possibility of more appointments? Supposing at one point you want to increase one extra Director, do you have to come back again to Parliament to change the law? Is that what you want?

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Chairman, now that we are looking at the issue of the wage bill, the Government’s policy is to reduce and not to expand. So, why are we putting the Directors---

**Hon. Nooru:** Hon. Temporary Deputy Chairman, I stand my ground on the issue of having “at least two deputies” and it is for this reason: There may even be a Deputy Director of Administration or a Deputy Director of Finance or a Deputy Director of IT and so on. So, we have just cited two professional Directors of crops and livestock. So, the Deputies may be many, but only those two can be members of the Board.

**The Temporary Deputy Chairman** (Hon. Cheboi): We have taken too long on this one. I will, therefore, put the Question.

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)  
(Provisions Relating to Kenya Agricultural  
and Livestock Research Act as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it hon. Mbadi?

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, really this is not something to question but, really, the sense of voting by acclamation is for our ears to also prove to us

that really the “ayes” have it or the “nays” have it. In the case here, I have a feeling that the Chair has---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Mbadi, if I were in your position I would probably have agreed with you because you see, when you are the one shouting “nay”, you are likely to feel that it is louder than the “ayes” that you are hearing from further afield. But I would have been more convinced if you stood and marshaled a group to stand with you so that we can now change things. However, unfortunately, you did not stand.

Now, hon. Members, I will revisit the provisions relating to the Transition to Devolved Government Act because of an issue which has arisen and which, I think, at that particular point, Members were not very keen. We will reopen that particular bit only. Hon. A.B. Duale.

*Provisions Relating to Transition to Devolved Government Act*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, as the Mover of this Bill, I feel that the proposed amendment relating to Section 37 of the Transition to Devolved Government 2012 be deleted, I withdraw that amendment to the Bill for the simple reason that we cannot close shop over a whole institution through the Statute Law (Miscellaneous Amendments) Bill. So, I have consulted and I have withdrawn it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Are you withdrawing or deleting?

**Hon. A.B. Duale:** I am deleting. I am the Mover and so I am withdrawing. So, it should not be in the Bill. So, the right word is “withdrawing”. So, I am withdrawing that section.

Hon. Temporary Deputy Chairman, you know being the Mover of the Bill, I am its owner. So, I am withdrawing. I am removing it from the Bill and it is like deleting. I am deleting that the proposed amendment relating to Section 37 of the Transition to Devolved Government Act 2012 be deleted.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Duale, who are you proposing to second you?

**Hon. A.B. Duale:** I will ask the member of the Departmental Committee on Justice and Legal Affairs, hon. Baiya, to second.

**Hon. Baiya:** Thank you, hon. Temporary Deputy Chairman. This clause seeks to delete the institution in the law under the Transition to Devolved Government Act called the Transition Authority (TA). As you are aware, the role of this TA is central to the Transition to Devolved Government Act. So, if you remove that institution, the whole Act becomes superfluous and meaningless and this amendment is being moved on the misconceived belief that the functions of the TA can be performed by the Inter-Governmental Relations Council and that is not true. That is because the Inter-Governmental Relations Council - as the word proposes - deals with matters of harmonisation and co-ordination between two levels of Government which have totally different functions with the new and separate Act. The Transition Act deals clearly with transitional issues and there are clear functions set out in the Act, and that is what is

meant to be performed by this Act. If we do not allow this institution to remain, then it will be prejudicial to the process.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is sufficient hon. Baiya. I, therefore, propose the Question.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi); I will give only two Members because it looks to me like the mood is that, that should be the case. So, let us have Dr. Nyikal.

**Hon. (Prof.) Nyikal:** Thank you, hon. Temporary Deputy Chairman. I think the greatest aspect of our Constitution is devolution and, in my view, - and I have always said this - we have not planned devolution and done it properly. The simple reason has been that the Transition to Devolved Government Act was actually never followed to the letter. Now, the law as it stands provides that it should be on until three years or until the devolution is completed, none of which in my mind has been achieved. All the functions that were supposed to be done, and the most important one was actually the costing of the functions that were to be devolved, assessing the capacity and human resource--- That is one of the reasons why we are having the huge wage bill and now, we cannot come at this point and say we are actually doing away with TA while the functions which they were supposed to do are pending. Though we may pretend that we have devolved first, it has given us more problems. Therefore, I support that we delete the proposed amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Well said, *daktari*. Let us have the Member for Suba. I really do not want us to open debate on this unless there is a Member with a contrary opinion.

**Hon. Ng'ongo:** Thank you, hon. Temporary Deputy Chairman. Actually, my opinion is not contrary. I am supporting the deletion of this provision in the Statute Law (Miscellaneous Amendments) Bill. You know when we sat in the last Parliament to come up with the TA and gave it three years, actually it was after lengthy discussions and we needed an independent body to spearhead the devolution, especially the transition to the devolved system. I think the three years are not so long. If we feel we may need it later, we will add more years but cutting or reducing its time at this moment will not be very good for devolution.

I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is fine and so I will put the Question.

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

*(Provisions Relating to the Transition to  
Devolved Government Actas amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, there was also another one which we would want to reopen and that is the last one, the Land Adjudication Act, Cap.284. Hon. Duale.

*Provisions Relating to the Land Adjudication Act*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, again on the Land Adjudication Act, Cap.284, Clause 6(1), I move to delete Clauses 6(1), 26(1) and 29(1). Basically, Clause 6(1) is raising the number of committees from ten to 15 which, in my opinion, are too many.

Again, I am asking for deletion of Clause 26(1) because it reduces the period of appeal after land adjudication to 21 days from 60 days. We feel that the 60 days is enough time for people to deal with the complexity of that land adjudication.

I want Clause 29(1) to be deleted from the Bill because it also reduces the period of lodging objections to a decision in adjudication to 21 days from 60 days. You know, land is a serious matter and the conflicts are so many. So, as they reduce it to 21 days, imagine somebody in the very rural parts of our country! By the time the 21 days are over in the remotest part of Garissa or Suba, his decision will be taken over and a decision will be reached. So, I see it as being very mischievous. Why do you reduce from 60 days to 21 days? I think 60 days are enough for people to get time in every part of the country. So, I have done consultations with even the Departmental Committee on Lands, which is yet to bring its report. I intend to delete Clauses 6(1), 26(1) and Clause 29(1) of the Land Adjudication Act and I agree with the Committee. I want hon. Mbadi to second.

**The Temporary Deputy Chairman** (Hon. Cheboi): I now understand why you were to speak of Suba. That was to encourage hon. Mbadi to second you.

**Hon. Ng'ongo:** Hon. Temporary Deputy Chairman, I rise to second. Some of them have capacity in terms of resources. So many Kenyans suffer because a decision has been made. They feel aggrieved but they do not even have resources with which to immediately or quickly move to the next level. Therefore, giving them more time, like two months as it were in the parent Act, is most appropriate and ideal as opposed to reducing it.

With those remarks, I beg to second.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I propose the Question, which is that the provisions relating to the Land Adjudication Act, Cap. 284, be amended as proposed.

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

*(Provisions Relating to the Land Adjudication  
Act as amended agreed to)*

*(Clause 2 agreed to)*

*(Clause 1 agreed to)*



*(Title agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Yes, Mover!

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Statute Law (Miscellaneous Amendments) Bill No.2 (National Assembly Bill No.33 of 2013) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Deputy Speaker in the Chair]*

### REPORT AND THIRD READING

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Hon. Cheboi:** Hon. Deputy Chairman, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill and approved the same with amendments.

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

**Hon. Njenga:** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. A.B. Duale:** Hon. Deputy Chairman, I beg to move that the Statute Law (Miscellaneous Amendments) Bill be now read the Third Time.

**Hon. Njenga:** seconded.

*(Question proposed)*

**Hon. Deputy Speaker:** Yes, hon. M'uthari!

**Hon. M'uthari:** Thank you, hon. Deputy Chairman.

First of all, I want to say I am very happy that we have been able to include *Miraa* in the category of crops. Today is my best day in this House because, at least, the livelihood of my people has been recognised, from being marginalised.

**Hon. Deputy Speaker:** Hon. Mbadi, do you want to say something on this one? Please, proceed.

**Hon. Ngong'o:** Thank you, hon. Deputy Chairman. Even as we pass this Bill, I would want to give a word of caution to the Majority side, which sponsors Bills of this nature. The essence of Statute Law (Miscellaneous Amendments) Bills is really to make corrections where possible. Although there were minimal serious amendments in this Bill, in future, we do not expect serious amendments to be introduced to the House through a Statute Law (Miscellaneous Amendments) Bills, because it causes a lot of confusion in terms of analysis and scrutiny of the Bill. So, I would urge that if the Government wants to introduce serious legislative amendments, they do so through substantive amendment Bills. My experience in the Eleventh Parliament is that we legislate on Bills quite faster as opposed to what I witnessed in previous Parliaments. So, we can legislate as many laws as possible.

**Hon. Deputy Speaker:** Do you want to say something?

**Hon. Gichigi:** Thank you, hon. Deputy Speaker. I am happy that today we were very thorough when scrutinizing the provisions that were brought by this ordinarily feared creature called the Statute Law (Miscellaneous Amendments) Bill. I am also happy that we have tackled a variety of issues today like the Crops Act; we have also dealt with issues related to the county.

The fact that the House was very alert, although almost missing out, we were able to arrest the likelihood of creating a situation in the country that would have given fodder to people to say that we oppose devolution. I am very grateful and thank the Leader of Majority Party and the people who brought to the notice of this House the dangerous provisions.

**Hon. Deputy Speaker:** Hon. David Gikaria.

**Hon. Gikaria:** Thank you, hon. Deputy Speaker. First of all, I want to thank the Leader of Majority Party for at least withdrawing some of the very crucial issues that had come up through the land adjudication and the county government. It is important, especially for the Transition Authority that comes between the national Government and the county governments. Removing its functions would have created a lot of problems. Of course, you have seen what the county governments and the governors are doing; the Transition Authority is there to moderate some of these issues.

For the Crops Act, we come from a pyrethrum region and it has really assisted us in so many ways. I want to give thanks to the Leader of Majority Party for removing those two crucial issues that have been there.

**Hon. Deputy Speaker:** Hon. George Ogalo.

**Hon. Ogalo:** Thank you, hon. Deputy Speaker. I want to take this opportunity to thank the Leader of Majority Party for saving the Transition Authority. I also want to question him on how he managed to let such a draconian amendment reach the Committee of the whole House. It means he presents Bills that he does not scrutinize. I also want to take issues with the Clerk's Office for refusing to bring the numerous amendments that we made to the Land Adjudication Act through this Bill because as we stand now, land adjudication cannot go on across the country because of designations which have since changed, after the promulgation of the new Constitution.

I also want to take this opportunity to talk on the AFFA Act. They have created a monster which has been losing limbs and arms. I am happy today they lost pyrethrum

and I am hoping soon they will lose sugar so that we can structure how agriculture, livestock and fisheries are managed in this country.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Enock Kibunguchy.

**Hon. (Dr.) Kibunguchy:** Thank you, hon. Deputy Speaker. May I also thank the Leader of Majority Party, even as I support the Statute Law (Miscellaneous Amendments) Bill. I am still a little worried about a clause that we did not quite articulate. We need to think about it. We have given the Cabinet Secretary a free hand and a blank cheque, so to speak, to be able to remove a percentage of the levies that will remain with the board. I would like *Mhe. Duale* to listen so that we can see how to interrogate that in future, because we should not give this Cabinet Secretary such a free hand. He can remove 99 per cent of the levy because we have said a certain percentage, without giving a limit. That is my only worry and I do not think I will sleep very well today. So, we need to think about it and we can maybe include it in the Statute Law (Miscellaneous Amendments) Bill of 2014.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Cyprian Iringo and let us not go on for too long members.

**Hon. Iringo:** Thank you, hon. Deputy Speaker. Mine is to thank the Leader of Majority Party for bringing up the Bill, which has really been well discussed. I also appreciate the Members who have sat long this afternoon and really shared and deliberated well and more so, for the support they have given my amendment on the *Miraa* issue. I thank the Members and everybody, now I am a proud man because *Miraa* is now a cash crop.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** The Leader of Majority Party, we will end with you. Hon. Ogalo, do not let hon. Ng'ongo bully you; if you were feeling comfortable sitting on the Government side, you should have continued sitting there.

*(Laughter)*

Hon. Leader of the Majority Party.

**Hon. A.B. Duale:** Thank you, hon. Deputy Speaker. This is a Bill that will go to the Senate. So, hon. (Dr.) Kibunguchy we will consult our colleagues on the other side and fine tune the Bill before it goes for assent. Number two, hon. Oner, is the mandate of the House; the Legislative powers to amend and delete. These are not my powers; I should not be removing laws. Mine is to sign and give powers to each and every Member of the House to look at the laws in their own context and agree through the committees.

Of late, we have been giving a very good workload to the Senate. I am very happy and that is why you can see that the tension has come down. This is the fifth Bill that the National Assembly is sending to the Senate as a message. Now, they have more Bills from us including the Mediation Report that was tabled today.

Finally, I saw it as very mischievous to disband the Transition Authority. If this House agrees with that, then that means we are sending a very wrong signal in as far as sustaining and maintaining devolved system of government is concerned.

Hon. Ng'ongo, hon. (Ms.) Odhiambo-Mabona and I played a role in the creation of the Transition Authority in the last Parliament. Somebody should have given a very good justification on why he wants to remove the Transition Authority and replace it with something called Inter-governmental Agency composed of three governors and the rest of the members come from the national Government. The Transition Authority has also a role to play; the reason why somebody would want to get rid of them is because they have failed. Today, the House has saved them and they must be up to the task. They must do their county function, because every time we pass the Budget without costing the functions.

I hope the Transition Authority is watching. As much as we are saving you; the Chair and his team, we need you to live up to your task. I am sure somebody somewhere is not happy with you because you guys have slept on the job. The National Assembly, in its wisdom, has saved you, but you must work hard.

Thank you, hon. Deputy Speaker. I support and I hope the National Assembly will now send this Bill to the Senate.

**Hon. Deputy Speaker:** The Question will be put when we have the requisite numbers. Therefore, we move to the next Order.

## BILL

### *Second Reading*

#### THE MINING BILL

*(Hon. A.B. Duale on 16.7.2014)*

*(Resumption of Debate interrupted on 17.7.2014)*

**Hon. Deputy Speaker:** Hon. Gichigi had a balance of eight minutes on this debate.

**Hon. Gichigi:** Thank you, hon. Deputy Speaker. I had indicated that I was supporting the Bill. I was supporting the Bill because the Chair of the Departmental Committee on Environment and Natural Resources had indicated that they were going to bring serious amendments to the Bill that would reduce the powers of the Cabinet Secretary. There were very many provisions and several clauses that were vesting so much power on the Cabinet Secretary, in terms of appointing board members and approving applications for licences.

Hon. Deputy Speaker, I am made to understand that in Norway; when they drill oil, a certain percentage of the royalty that is received by the Government goes to a kitty that is a reserve for posterity. I am hoping that the Committee on Environment and Natural Resources will bring that amendment. If it will not, I will. At least, 10 per cent of the money that we will be getting from our minerals and oil be put in a reserve or be invested for posterity. That way, our grandchildren and great grandchildren will find that we did not exploit what God had given this country in a selfish way.

As we speak, we are exploiting soils and indigenous forests. Literally, we have cleared everything and our great grandchildren will have challenges knowing what this country had. We are almost wiping out the animals this country was given by God. We are clearing elephants and rhinos. What are we going to retain for our great grandchildren? I, therefore, suggest that we have that particular amendment so that this generation does not use all that we get from those minerals.

Hon. Deputy Speaker, I am happy that this particular Bill has provisions forcing investors to employ Kenyans. I implore the Committee to expand that particular clause so that communities neighbouring the mining areas benefit in terms of employment, especially where we do not have the technical skills required. They must benefit.

Hon. Deputy Speaker, we have had serious problems in this country, especially from multinationals who come to this country to do business. We can see most of these minerals; including petroleum, being extracted by multinationals. The companies have been practising what is called transfer-pricing. They lie to us that they have bought equipment at high prices and when they export the final product, they pretend that they are selling it at a very cheap price. It is found that most of them have been operating in this country for years, but they keep on making returns of losses in their accounts. You will find that these people do not pay taxes but instead, cheat us as a country.

Hon. Deputy Speaker, I am requesting the Kenya Revenue Authority (KRA) and the Treasury to put in place measures to ensure that they have trained enough officers to deal with accounting, trade and taxation on minerals and petroleum. It is important that this be done, otherwise, we do not need investors who come to this county to reap from our resources and at the end of the day, they do not give back to use what is due. It is also important we revisit the laws that take care of the environment. We do not want to leave our land with huge holes and then every other day we hear that a child has drowned in such huge holes. It is important that whenever we carry out mining activities, land is refilled. Anybody going to Mombasa can see what Bamburi Cement Company has done. They have created a very good park along Malindi Road. You cannot even imagine that they had excavated cement from that area. Therefore, it is important that refilling of excavated land be done.

The other thing that we must do as Kenyans is that, it is important that we enlighten the communities where these minerals are being extracted. We should not become hostile to investors. We must make sure that we befriend them even as much as we are asking them to employ our people. We must make sure that we are also friendly to them so that we do not scare them away.

As I wind up, this Bill is overdue. Let us make sure that the majority of our youth who are out there and who have become a serious security threat to this country are properly engaged so that they can do something.

With those remarks, I support this particular Bill, subject to those many amendments.

**Hon. Onyura:** Thank you very much, hon. Deputy Speaker for giving me this opportunity also to contribute to this very important Bill.

I rise to support the Bill because it is very timely. In fact, it is overdue. It is amazing to realize that the current law was enacted in the 1940s and that is what we have been using. It was enacted by people who had least interest in the welfare of Kenyans.

Therefore, it is overdue and it will assist in giving effect to the relevant sections of the Constitution.

Hon. Deputy Speaker, I think it is very important that a very important sector like that of mining is properly regulated so that there is order, predictability and those who wish to invest would know which laws apply. I hope that in this sector, through this kind of regulation and the provision of this Bill, prospecting of mines is going to be encouraged everywhere. I want to believe that our country has a lot of mineral wealth all over its regions. What we need to do is to create an environment that encourages prospecting and investors.

I have noticed, even in the county that I come from, we have hills like the Murende and Odiado Hills in Busia County. Even our grandfathers were mining iron ore and I want to believe that these kinds of minerals must be a lot in that area; just waiting to be discovered and exploited.

Also, with this kind of regulation, it is likely to ensure that the local community and the country as a whole benefit from this sector. In doing this, we must be careful of land and mine grabbers, profiteers and *wananchi* must be properly informed. They should be made aware about the rampant operations of some conmen. I know of many people who have come to a lot of grief through conmen who cheat them that they are able to sell them certain precious minerals like gold or diamond. Sometimes, we used to hear about things like uranium and mercury. Many people have suffered through the hands of such conmen. Regulations, Bills or laws like these should take care of these kinds of situations, so that our people do not necessarily fall into wrong hands and lose their lives savings.

The sad thing about our country is that our problem is not lack of laws, but usually the enforcement. We pass some very good laws here, but the enforcement is poor. I hope that with this, the Commission and the bodies that will be charged with the responsibility of enforcing laws will do a good job. If there are any loopholes, they should be quickly sealed, so that we do not get into the kind of situations where we have been into, even as a country, where some profiteers and conmen start selling air and papers in form of these minerals. We know what has happened to us in the past. So, the issue of enforcement is important. One thing that also needs to be taken care of here is the question of corruption. We may have very good laws, but unless the enforcement is also effective, it will not be able to serve us the way we would want.

I also noticed that going through this, there appears to be a lot of powers given to the Cabinet Secretary. That may not be quite in the spirit of devolution. We should avoid concentrating powers in the hands of a particular centre or one person. It is, therefore, important that where certain powers are to be exercised, they are better exercised by perhaps a Commission or a board rather than concentrating such immense powers in the hands of one person. This can lead to abuse and also corruption.

I would also suggest that the revenue coming from the mining sector, particularly be ring fenced. A substantial portion of the revenue should be ring fenced to be used in long-term projects that internally stimulate the economy. I have in mind projects like the infrastructure, roads, energy, electricity and water. These are long-term projects that would benefit this country. This is because minerals as we know are exhaustible and it would be good that for posterity sake, those who come before us can see that those who

went ahead of them used the wealth that God gave us through this sector in a good and a sustainable manner. This is worth considering.

With those comments, I beg to support the Bill.

**Hon. (Ms.) Emanikor:** Thank you, hon. Deputy Speaker for giving me this chance to contribute and to support this Bill. I am in the Committee on Environment and Natural Resources and I want to reassure Members on behalf of my Chair that we are working hard to bring many amendments regarding the royalties and the revenue sharing formula and even reducing the powers of the Cabinet Secretary.

An earlier speaker alluded that the law that we are using in mining was enacted in 1940, which vested a lot of powers in one man, namely, the Commissioner of Mines. This is in terms of the licensing and giving the mining rights. There was no other body. This Bill has created bodies with clearly defined and distinct roles and regulations. There will be a National Mining Corporation, which will have a board. This will deal with mineral prospecting. It will enter into contracts and agreements. It will also invest on behalf of the national Government. As I said earlier, some of the amendments that we are bringing will reduce the powers of the Cabinet Secretary in regard to the licensing regime and mineral rights. We have proposed an amendment that will establish a regulatory body which will have technical and professional bodies represented in it and maybe key relevant Ministries like the Treasury and the Ministry of Lands. The body will mainly deal with licensing and mineral rights.

Hon. Deputy Speaker, Clause 97 of this Bill stipulates that all agreements entered into will be accessed by the public. We know that many agreements in this country are not known. We are not able to access the agreements that the Government has entered with oil companies and other big investors in this country. This Bill clearly provides that the Cabinet Secretary shall publish reports, agreements and records alongside any important document within the website of the Ministry for ease of public access. Agreements relating to large scale mining will be subjected to parliamentary ratification before the execution of any activity by the Cabinet Secretary. This is a good indication that Parliament will be in control and that more bodies will be involved.

In Clause 44, this Bill ensures that mining investors or those who secure mining rights provide employment, skills, training or capacity to the citizens. That again, is a good thing. Finally, the Bill provides for adherence to the environment protection laws. Environmental and social impact assessments will be done and plans approved before any activity is undertaken. This is a very good Bill. For the first time, we have provided this country with a credible legal and regulatory document for the mining industry.

**Hon. (Eng.) Mahamud:** Thank you, hon. Deputy Speaker for giving me the chance to contribute to this very important Bill. For the first time, this country has attempted to come up with a Bill which will give a legal framework for the prospecting of minerals and our heritage as far as minerals are concerned.

The Bill is a very good attempt to regulate mining in this country. However, there are a lot of grey areas where one needs to amend. The Committee has to look at the Bill with a tooth comb and make sure that it does not become very bureaucratic in its management. Any attempt to over-centralise the sector in terms of mineral prospecting will also be counter-productive. A lot of reference is made to the Cabinet Secretary and this should not be a one man or one office show. We should have a technical group as the

previous speaker has said; experts in this field, who can know who is going to be licensed. A framework must be put in place.

To actually put in place two directorates, one for mining and the other one for geology is very important. I see that the directors will have certain qualifications; I only see that they will be required to have Masters and bachelors degree in mining and geology, but I think people with other qualifications such as lawyers and engineers can also play a part. We should not restrict it to only people who have got mining background. Otherwise, they will become too restricted in their thinking and just think about that very specialized area. We need people who have got broad mind in terms of financial and legal background so that they manage the institution well.

I see that the ownership of minerals in this country has been defined for the purpose of this Bill. Every mineral in this country belongs to the Government of Kenya and I think that is very important because there are instances where in this country we hear that individuals have actually closed some part of the country and think whatever is there belongs to them. This brings sanity there. This country has for a long time ignored the mining industry. I guess we are very comfortable with tea, coffee and other crops. We talk of being an agricultural country, yet we also go hungry. I think it is time we went to other areas where we can exploit the resources of this country for the benefit of Kenyans.

The Bill is also attempting to regulate so that we do not have any confusion. It is important that any concession which is given to large scale mining be in line with the Constitution. After the promulgation of the new Constitution, it was a requirement that such concession be sanctioned by Parliament. When we are looking at the amendments, we should make sure that those are put in place. A lot has been talked about the national Government, but I think we need to find a way to bring in the county governments in terms of management and operation of the mining industry in this country. Communities that have minerals in their areas must be taken care of; those people that are actually prospecting must lead people. We must have adequate people, so that we can attract investors and not scare them away.

This country has very bad history; we have exported gold under the Goldenberg in the 1990s and nobody knew where that gold was coming from. Once the Bill becomes law, we will be able to regulate and bring sanity to the sector.

We will wait for the amendments from our able Committee, so that we clear all the bottlenecks in the sector. We see that a lot of emphasis is put on the Cabinet Secretary. We need to put a structure in place; a structure that can facilitate proper implementation of this Bill.

With those few remarks, I support.

**Hon. Ogallo:** Thank you, hon. Deputy Speaker. I rise to debate the Mining Bill. As a Member of the Committee on Environment and Natural Resources, we have dealt with this Bill quite extensively. I want to raise a few points in regard to this Bill. One, on royalties and the sharing of royalties payable to the Government and the county governments, we will be proposing very agreeable sharing formula.

I also want to take this opportunity to appeal to Members not to become very local in their treatment of the Mining Bill. I know hon. Members who come from areas where minerals have already been discovered, have a tendency to push very hard for the



communities to be given more allocation from the royalties. I want to appeal to you, even if there is mineral deposit in your area that does not mean that there will be no mineral deposits in other areas. We cannot take all the money to that area because we will need to have infrastructure to move the minerals to the market and we will need security for the investors to come to those areas. So, we appeal to Members of Parliament who come from regions with minerals or other resources now, to approach debate on sharing of royalties with a lot of sobriety.

I am happy this Bill has, for once, taken care of the artisanal miners who had all along been rendered illegal by the previous Bill of 1940. This Bill creates perfect recognition of those miners and for once, gives them legal participation in mining sector. We have taken great steps to deal with the discretionary powers of the Cabinet Secretary. The original Bill had given the Cabinet Secretary feudal powers in the managing of the mining sector. As a Committee, we have taken every step to democratize the management of mineral resources and issuance of licences for both the artisanal and large scale operations in mining sector. We have taken steps to increase transparency in handling of applications for mineral licences; both prospecting and extraction licences. The Bill deals with the procedure of how an application is handled, from when it is presented to the board for consideration to when the licence is granted. We have taken great care in constituting the board. The Committee has ensured that players in the industry, that is, large scale investors, members of the Chamber of Mines and others do not get their way into the board. You cannot come as a player extracting minerals and at the same time regulate how minerals will be extracted. I want to appeal to the membership of this House to ensure that this sticks in this Bill until it is signed into law by the President.

We have this time round legitimized and put into law agreements made between large scale investors and communities. Communities will never be short-changed. Whenever they get into agreements, we will have agreements which are binding in law. No investor, large scale or small scale, will be able to carry out mining activity in an area disregarding any agreements they have gotten into with the communities. They also indicated that large scale operation licences and agreement will need at some stage to pass through the National Assembly to be debated clearly. This will ensure that when the country binds itself into a mining agreement or issuance of operation licence, there will be no possibility of back room dealing at the Executive. All such licences will be discussed and approved by this House.

We have also introduced something called the free carrier interest, which means that the Government of the Republic of Kenya will have a free stake in any large scale investor at a particular percentage that will probably be specified in the Committee stage. But the import is that, no large scale operation will take place excluding the Government completely. This is important because if the Government sits in the board of large scale operator, then it will be able to quantify even the credibility of the royalties being paid to the national Government, county governments and the communities. We also treat certain minerals whose discovery would be declared as strategic minerals. These are minerals that even though you have a licence to extract them from an area, any discovery of such minerals should be gazetted from time to time by the Cabinet Secretary in consultation with the Executive so that they are preserved for the Republic of Kenya.

Hon. Deputy Speaker, I think this is a Bill when finally signed into law will help improve the way mining has been taking place in this country. For those who have been keen in this House, there was a question asked sometime back about Sky Rock Company which exported gold. When we talked to the company in the Departmental Committee hearings, they specified that they were not keeping the details of where they got gold because the small-scale or traditional miners could not dare give them those details because they were engaging in an illegal activity. For the first time, the companies that deal in gold in Kenya will have to declare their sources of gold. If we are told that you are exporting tonnes of gold worth billions of shillings, we will be able to ascertain that, that gold originated from Kenya and that value went to the communities where that gold was mined. We will no longer be a conduit for smuggling of gold from the wider East African region where people go to Congo, buy gold cheaply, smuggle it into Kenya and declare it as gold originating from Kenya. This fuels what would easily be a money laundering scheme.

Hon. Deputy Speaker, with those few remarks, I support this Bill. I look forward to robust debate during the Committee stage.

Thank you.

**Hon. (Ms.) T.G. Ali:** Thank you, hon. Deputy Speaker. I rise to support the Mining Bill. I have some caution though. When I went through the Bill, I realized that some pastoral areas that are basically community owned land have not been mentioned in the Bill. We know that most of these areas have been categorized for the last 50 years as low potential areas and people thought that there was nothing good that could come from there. So, we have been marginalized in terms of development and it is only by God's grace that we are now discovering minerals in most of those areas. So, clear outlines on how the communities will benefit is important. The communities can be sensitized in terms of ensuring that they know what is happening in their respective areas.

Hon. Deputy Speaker, I would also like to say that some pastoral areas where we are discovering minerals are areas that are strategic grazing or drought reserve areas for these communities. In my county, our economy is basically a livestock economy and we rely on livestock. Some of the areas where we are discovering minerals are strategic drought reserve areas for our animals. Some of these areas are not gazetted at all in the documents held by the National Land Commission. So, if minerals are discovered in some of the strategic drought reserve areas and the communities are not involved, then conflicts will arise. I urge the Committee to include the areas that have already been mapped in northern Kenya as strategic grazing or drought reserve areas. Mining should be done in those areas very carefully.

Secondly, I would also like to say that we have multinational companies in some of our areas. We also have local companies which are doing mining without even consulting the communities in those areas. Some of the documentation is done in Nairobi. People go to these areas because they know that there are minerals in one, two or three places and yet the communities are not even aware. So, I do not know what will happen to the areas where mining has been done and the community has some disputes on those pieces of land. This issue also needs to be clarified.

Conflicts are rampant in some of the areas we are discovering minerals now. In terms of ensuring that we do not fuel conflicts, we need to consult more and ensure that

there is participation of the local communities so that they can benefit. These communities were forgotten by previous governments on several occasions. This is in terms of water, education and infrastructure. Now that goodies are coming from these areas, it is important for those communities to rest and enjoy the blessings God has given them.

Thank you, hon. Deputy Speaker.

**Hon. J.K. Ng'ang'a:** Thank you, hon. Deputy Speaker. I rise to support this Bill. Many Members who have contributed to this Bill have dwelt on environment, natural resources and how the local people will benefit in terms of employment, roads and other things.

However, there is one area which they have not touched. This is the political side. This issue needs to be relooked into thoroughly. We have seen many countries fall or become unstable because of natural resources. I hope many Members will agree with me that as we explore these areas, we need to be very careful because of the super powers and multinational companies. These companies come from the big prefects of the world. Some of them may feel or take advantage of our natural resources that have been discovered. They might have ill intentions of destabilizing the democratically elected governments by either supporting their political opponents or using other unorthodox means like sponsoring militia groups.

Hon. Deputy Speaker, as I support this Bill, I request that we relook at it so that it will be of benefit to the entire nation and for the future of this nation. Why am I saying this? We have seen a lot of turmoil in many African countries and governments have been overthrown or are fighting on a daily basis. This is not because the country is not stable but the super powers have tried to use their multinational companies to destabilize these countries. As I support this Bill, we need to make sure that the law is enacted to protect and close monitor these multinational companies so that they do not interfere or support the militia groups or the political opponents in our beloved country.

Thank you, hon. Deputy Speaker. I support the Bill.

**Hon. Ogolla:** Thank you, hon. Deputy Speaker. The history that we have in the world, a lot of it is basically a litany of wars. Most of these wars were fought on issues of resources and what we could call geopolitics. When you look at them in detail, you will realize that a lot of these resources fought for are mineral resources. This is what has disorganized the Third World for a long period of time and much more so Africa. This has been happening largely due to the fact that internal or national governments, as they were, hardly have arrangements where they are able to administer their resources especially the mineral deposits or resources.

In my view, this Bill comes in at a point that is very critical for this country. We are seeing a lot of discoveries. We are seeing different international and local companies doing a lot of prospects in various areas in the country. Whilst this is happening, the administration has been fairly weak. We have had all manner of loop holes. These are some of the loopholes that many more times lead to disorganization. I want to believe that the Bill has done very well in terms of this case by coming up with an arrangement on administration of minerals and the whole issue of management of resources. The Bill also takes care of the issue of licensing and processes involved during administration, exploitation and when there are benefits.

There is a good consideration of rights and I want to believe that the Bill really offers this country an opportunity to look forward to how we are going to properly manage our resources. There are a number of things that we still have to look at in a serious way if this legislation is to come through. A lot of mineral prospecting and exploitation is still going to be in the hands of foreign investors. As much as we have proposed a State corporation, it is important to recognize that a lot of this is going to be in the hands of foreign investors. As such, it is important that we provide certain water tight arrangements.

There are one or two things that have not been clearly put in place, for example, the definition of “strategic minerals”. The Bill is proposing in terms of sales of the strategic minerals to the State. As this happens, it is not very clear the kind of sales arrangement that is going to be in place for non-strategic minerals and neither do we have a proper definition of the so-called strategic minerals.

The other thing that the Committee has to look into is the situation where minerals are discovered on community lands. In real sense, community lands form about 70 per cent of the entire land mass of this country. The general administration of community land is still in the hands of the two governments. As much as we have the National Land Commission and the national Government, there is a provision that community land is to an extent entrusted to county governments. If that were so then there are difficulties when we talk of registration of community land. There are people who are supposed to be registered as registered owners of community land. This kind of provision needs to be clear or else there is going to be a lot of disputes especially when the county government is a trustee of community land and on the other hand we also register a number of individuals as owners of the community land. When it comes to prospecting agencies or those who have mining rights, I think this is not going to be easy.

With regard to capacity, if you allow individual community leaders in the local areas to negotiate with foreign investors – this is part of the problem that we have witnessed over a period of time – because of their capacity, when you do not have a clear provision in terms of the process when they are negotiating, and when the Government leaves these registered community land owners on their own, chances are that some of these things will not go right given what I have mentioned as their capacity.

The conditions are well set in terms of the issue of rights in the Bill. If a registered land owner goes ahead and negotiates and signs an agreement and then we have these other conditions of employment and royalties, then there are all manner of problems that are going to be associated with this. So, I want to believe that this part of the Bill must be looked at seriously so that we do not create disorder later on.

There is a provision in the Bill that talks about the Government having a mining right and at one moment claiming ten per cent. The Government is allowed ten per cent in terms of equity, but the Bill does not go ahead to indicate how the benefits are processed. If the Government goes in with a zero-equity arrangement what becomes of the benefits? How do you share out the benefits in terms of equity?

*(Hon. A.B. Duale and hon. Nyenze consulted loudly)*

**Hon. Deputy Speaker:** Order, hon. Members! The consultations in that corner are loud. We cannot hear the Member contributing.

**Hon. Ogolla:** Thank you, hon. Deputy Speaker for saving me from our leaders in the House.

With regard to the issue of off-loading stock to at least 20 per cent when a mining right has been given for, say, four years, again, here there is a problem that the Bill must look at. The Bill stipulates that the off-loading arrangement should be done at the stock exchange. When it is done at the stock exchange, chances of conflicts arising are very high. This is because it is free for all at the stock exchange and yet you want to look at the issue of royalties and what finally gets back to the host communities. If this is not looked at, there are going to be conflicts. At the stock exchange, anybody from anywhere will buy the 20 per cent off-loading stock.

Then on the issue of payment of royalties to the host communities or counties, I believe that the Bill has not come up with this arrangement in terms of how this is supposed to be done. However, a lot of care and attention must be put in this because this is where we are going to have all manner of problems, particularly with the hosting counties or areas where deposits are found. This must be considered in a very serious manner.

Hon. Deputy Speaker, there is a whole issue of complaints about the role of the Cabinet Secretary in all this. Rather than the involvement in terms of appointments and many other things that are there, I see the whole issue of the position of the Cabinet Secretary being so much in terms of the amount of regulation that this Bill requires. The Bill is saying that every single time, there has to be a regulation that the Cabinet Secretary must bring around.

**Hon. Deputy Speaker:** Your time is up, hon. Member.

**Hon. Ogolla:** Thanks a lot, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay. Ferdinand Wanyonyi.

**Hon. F.T. Wanyonyi:** Hon. Deputy Speaker, I rise to support this Bill on mining. As I do that, there is a *kamukunji* on my left hand side which is persisting. Maybe they should spare me time.

**Hon. Deputy Speaker:** The Leader of Majority Party and the Leader of Minority Party, there is a complaint by the Member that there is a *kamukunji* which is going on there.

**Hon. F.T. Wanyonyi:** There is an unlicensed *kamukunji* here between the two leaders.

(Laughter)

**Hon. Deputy Speaker:** Can you take it to another venue?

**Hon. F.T. Wanyonyi:** Hon. Deputy Speaker, thank you for protecting me. I want to take this opportunity to say that discovering mines is a curse to the nation because there are so many things that come with it, as one of the Members has mentioned. We have had mines that were actually discovered long before some of us were born and we have had conflicts in those areas. People have killed each other. Some people left those areas just because of the wars that erupted. I have a case in mind; northern Nigeria where

there is oil. There is a lot of conflict in that area. I know that this country is very lucky to have discovered oil in Turkana and I pray that it does not become a curse to our country. With the passing of this Bill, there will be harmony in mining because I understand we have a lot of deposits. We have deposits in Mombasa. I understand they are very strategic for our country and this may enable us attain the 2030 Millennium Development Goals (MDGs).

From what I have heard from the few members of the Departmental Committee on Environment and Natural Resources, we will have strict regulations and laws to determine the sharing of royalties because that is where the problem will be. Like in the case of Turkana, I hope there will be proper regulation where local communities will benefit because that is their luck. I wish I was born a Turkana for that reason because maybe then that is where my riches would come from. So, they should be given first priority in terms of royalties.

Hon. Deputy Speaker, I know that ownership of some of these mines will become an issue. This is because of the underhand dealings through the Government departments that will come up. In the Bill, I can see quite a number of boards that will be coming up. I am optimistic that with the passage of this Bill, we will do away with underhand dealings where people come in and through proxies, exploit the precious mines that we have. I believe that with this regulation and the mines that have been discovered in Mombasa, North Eastern Province and Turkana, we will have transfer of skills from elsewhere. I have gone to Lodwar in Turkana and I have seen a lot of heavy machinery coming in. Of course, I am also very happy that there is going to be a lot of training in various fields, both locally and transfer of knowledge from elsewhere into our country. People will be specialised in mining.

Hon. Deputy Speaker, recently I read that the President asked one of the universities to mount courses in mining so that we do not have to over-rely on people from outside the borders. I believe that by the time we get into serious business in mining, we will have our own local people to be able to help us achieve some of these goals. I am sure that with proper exploitation and proper sharing of the royalties, we will transform this country into an industrialised state. In Kakamega and South Nyanza where we have gold, people have died. I believe with the licensing in place, things will be all right. We will also avoid the risk of people dying in mines.

Hon. Deputy Speaker, this Bill will bring sanity into mining and as you all know, the regulation we are using today was enacted before any of us in this House was born. It was enacted in 1940.

**Hon. Deputy Speaker:** George Muchai.

**Hon. Muchai:** Thank you, hon. Deputy Speaker, for giving me the opportunity to contribute to this Bill. At the outset, I want to say that I support it fully and thank the Committee for finally coming up with a Bill that will give us a proper framework for the management of mineral resources in Kenya.

Hon. Deputy Speaker, I want to observe that given that the Memorandum of Objects and Reasons has declared the intention or the main objective of this Bill as: "To repeal the existing legislation relating to mining and, to establish a new legal framework for the management of mineral resource in Kenya", this Bill requires to be

comprehensive in terms of addressing all issues relating to mining and processing of minerals in Kenya.

Hon. Deputy Speaker, I want to cite a case in point where history tells us that precious stones used to float around in this country. You did not even need to open the ground to find them. They used to float around. Our great fathers used to tell us that when colonialists came to Kenya, they found precious stones floating around and they would offer gifts to anybody who would take trouble to collect them and present to them. Why was this the case? It is because the natives did not know the value of these stones. The colonialists knew their full value and they immensely benefited from our mineral resources.

Hon. Deputy Speaker, there is need for us to appreciate the work done by this Committee, but it requires to do more to address issues that hinder locals from processing to a final product, the minerals that are discovered in this country.

This Bill must deal with transfer of skills, so that we can get full value of our resources once discovered. I want to give a case of coffee. We grow coffee in this country, but we do not add value to it in terms of processing. The coffee is exported to China and elsewhere. It is then processed into instant coffee. Despite the fact that the raw material originated here, instant coffee is sold back to Kenyans at an exorbitant price.

I want to cite the case of South Africa, where they have lots of mines. When precious stones are mined in South Africa, the companies that process the stones into final products are not based in South Africa. They are based in Europe. They are not owned by people in Europe; they are owned by people who are based in South Africa. For purposes of processing, they open companies in foreign countries. They then take back the same minerals, processed into final products, and sell them at exorbitant prices. That is why I am saying there is need for this Bill to address the issue of transfer of technology, so that the locals can benefit.

Hon. Deputy Speaker, I want to address this Bill in terms of the newly discovered minerals. Clause 90 of this Bill states that the holder of a mining licence shall notify the Cabinet Secretary of the discovery of any mineral to which the licence does not relate within 30 days of the discovery. This is a very loose clause. If somebody had a licence to mine coal and then he discovers gold and, because of the benefits he stands to gain, chooses not to inform the Cabinet Secretary the location or cite where gold has been discovered, and the amount of gold that has been discovered; what will happen? Clauses 175 and 176 provide that the offences relating to unauthorised operations will be imprisonment for a term not exceeding two years or a fine not exceeding Kshs10 million or both. However, the offence relating to unauthorised possession of minerals will attract imprisonment for a term not exceeding six months or a fine equivalent to the value of the minerals but not less than Kshs500,000 or both.

There is need to harmonise the proposed penalties, in terms of what is provided for under Clause 90 – discovery of new minerals – where one can deliberately avoid notifying the Cabinet Secretary of the discovery and make colossal amounts of money to make a penalty of Kshs10 million a joke. So, I would urge the Committee to ensure that Clause 90 of this Bill, as read together with Clauses 175 and 176, are harmonised to ensure that the Cabinet Secretary is promptly notified of any new discoveries, and seal all

the possible loopholes that would enable one to exploit newly discovered minerals to his benefit without notifying the Cabinet Secretary.

Hon. Deputy Speaker, the other aspect that I would like to address in this Bill is that of who gains. Many hon. Members have spoken to the issue of communities living in areas where minerals are discovered. There must be a proper mechanism of ensuring that the communities benefit immensely. I come from a county which, perhaps, has no potential for minerals. I doubt whether there are mineral deposits in Kabete Constituency but that notwithstanding, there is need for us to ensure that communities living around areas where minerals are discovered benefit because the minerals were deposited there by God. They do not belong to anybody. They belong to Kenyans. It is part of our land. Minerals must benefit Kenyans, if discovered in an area where there are communities that live there.

With those few remarks, I beg to support.

**Hon. Deputy Speaker:** Yes, hon. Daniel Maanzo!

**Hon. Maanzo:** Thank you, hon. Temporary Deputy Speaker, for according me the opportunity to contribute to this Bill.

In many parts of Kenya, there are probably a lot of minerals which are yet to be discovered. Even in parts of my constituency of Makueni, during the rainy seasons children spot stones on the riverbeds – stones which eventually turn out to be very precious minerals. Therefore, there is need for us to come up with a law which could help the country to make proper use of the minerals which we have in the country. I have looked at this Bill and noted that the drafters were not very serious with the aspects of the offences and punishments provided therein. Some of them look very lean or offences that one can easily get away with.

Diamonds are found in plenty in the countryside of Botswana. In fact, an ostrich in that country is likely to swallow some diamonds to assist its digestive system. An individual is not allowed to slaughter an ostrich without the presence of diamond mines officials. The minimum jail term you can get for committing diamond-related offences is 24 years. The fines are also hefty. In our case, the average jail term is 10 years or less. So, there is need for the Committee to look at those provisions again with a view to proposing appropriate amendments, so that we can make the offences very strict.

A good example is the provision of a 30-days period for reporting of discovery of any new minerals, as cited by my colleague from Kabete. If somebody spots a very precious stone today and they have 30 days to report the discovery, in itself, that period is a leeway for such person to illegally extract the mineral within that period. By the time they report discovery of the mineral to the Cabinet Secretary, they will already have benefited. So, we need to review this aspect and require one to report such discovery immediately to ensure that our minerals are not exploited illegally.

Again, the proposed law does not seem to cover the communities, and how they benefit. I understand that there are massive coal and limestone deposits in Kitui County. If mined, those minerals can take this country to a great level of development. The biggest problem in having mineral exploited is failure to invest in the sector. For example, if we were to mine coal, what is the system of financing the sector? Should financing of such sectors always be undertaken by foreign companies?



Are we going to mine minerals only for them to benefit other people, and not ourselves? That aspect has generally been left out in the proposed law. It is, therefore, good for the Committee to look at it again, so that we can protect our resources. We should see what resources can come from our own National Treasury, so that we can exploit our minerals, just like is the case in Botswana. Minerals in Botswana were discovered by accident. People in that country do not pay tax because minerals provide the Government with enough money. Parents do not pay for education because minerals take care of such services. That country is generally rich. It is moving in the right direction.

Therefore, it would be very prudent for us to look at this law again very seriously because---

**Hon. Deputy Speaker:** Order! Order! Hon. Maanzo, you will have your balance of five minutes when this Bill comes up for debate next time.

### ADJOURNMENT

Hon. Members, it is now time for interruption of our business. The House, therefore, stands adjourned until tomorrow, Wednesday 23<sup>rd</sup> July, 2014 at 9.30 a.m.

The House rose at 6.30 p.m.