

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 20<sup>th</sup> March, 2014

The House met at 2.30 p.m.

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

### PRAYERS

### PAPERS LAID

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, hon. Members! We will have the Leader of Majority Party and then we can have hon. Chepkong'a, the Chair of the Justice and Legal Affairs Committee.

**Hon. Chepkong'a:** Thank you, hon. Temporary Deputy Speaker. I beg to lay the following Paper on the Table of the House today, Thursday 20<sup>th</sup> March, 2014:-

The Report of the Departmental Committee on Justice and Legal Affairs on the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No. 33 of 2013)

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well, hon. A.B Duale, the Leader of Majority Party.

**Hon. A.B. Duale:** Hon. Speaker, I apologise for coming late. The Marriage Bill was giving me problems; I had to carry my amendments.

I beg to lay the following Papers on the Table of the House today, Thursday, 20<sup>th</sup> March, 2014:-

The Report of the Auditor-General on the Financial Statements of the Witness Protection Agency 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 Authority for the Campaign Against Alcohol and Drug Abuse 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 Public Procurement Oversight 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 the Sugar Development Fund 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 Tea Board of Kenya for the year ended 30<sup>th</sup> June, 2013 and the certificate of the Auditor-General therein.

These are serious documents for the Public Investments Committee, picking from where we left yesterday. Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well, those documents therefore are referred to the relevant committee; the Public Investments Committee. Hon. (Ms.) Nyamai.

**Hon. (Ms.) Nyamai:** Thank you, hon. Temporary Deputy Speaker. I beg to lay the following Paper on the Table of the House today, Thursday, 20<sup>th</sup> March, 2014.

The Report of the Departmental Committee on Health on Devolution of Health Services.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. Let us, therefore, go to the next Order. Hon. (Ms.) Nyamai, you wish to give notice of Motion?

### NOTICES OF MOTIONS

#### ADOPTION OF REPORT ON DEVOLUTION OF HEALTH SERVICES

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

THAT, the House adopts the Report of the Departmental Committee on Health on Devolution of Health Services laid on the Table of the House Today, 20<sup>th</sup> March, 2014.

**The Temporary Deputy Speaker** (Hon. Cheboi): You are a bit inaudible and I think it is because of the choice of the microphone. I think we should reserve it for hon. Birdi or Members who are of that height.

Today, we have only one Statement to be responded to namely, the one sought from the Committee on Transport, Public Works and Housing. Hon. Kamanda!

#### MEASURES TO GUARANTEE SAFETY OF ROAD USERS ON KIAMBU ROAD

**Hon. Kamanda:** Thank you, hon. Temporary Deputy Speaker for giving me a chance to reply to this question. The Member for Kiambu Constituency, hon. Jude Njomo, requested for a Statement from my Committee. He stated that there are various activities being carried out on this major road without proper identification of who is carrying them out and there are no warning signs on dangers to avoid. When you drive along the road between the Muthaiga Golf Club and Kiambu Institute of Science and Technology, you will notice deep holes and trenches dug along it every three to five metres. This not only weakens the road, but also poses danger of accidents to the motorists and pedestrians. There have already been several incidents due to this. In addition, the turn off into the Ridgeways Mall has no provision for acceleration or turn off lane, which leads to daily traffic jams on the Kiambu Road.

The hon. Member asked the following three questions:-

(i) the reasons for this digging along the Kiambu Road;

(ii) the measures being put in place to guarantee the safety of pedestrians and road users during the ongoing road activities; and

(iii) the steps being taken by the Ministry to provide a turn off and an acceleration lane to the Ridgeways Mall to reduce traffic jam.

I beg to reply.

The digging up of the trenches on this road is as a result of scrap metal vendors who dig the road to remove the underground mounted cables that connect various street lighting poles. The destruction is carried out late at night under the cover of darkness and Karura Forest making it difficult to guarantee safety of pedestrians and road users during the ongoing road activities. The matter has already been reported to the police with a view of apprehending these criminals.

There is traffic jam as a result of the construction of Ridgeway Mall which was done after the rehabilitation of Kiambu Road in 2007. The construction of Ridgeway Mall did not include acceleration and deceleration lines for vehicles leaving and entering the Mall, hence creating traffic jam. However there is a proposal to redesign the section of the road to include acceleration, deceleration and parking lane.

**The Temporary Deputy Speaker** (Hon. Cheboi): First, let us have hon. Njomo.

**Hon. Njomo:** Thank you, hon. Temporary Deputy Speaker. First and foremost, I would like to thank the Chairman for the Departmental Committee on Transport, Public Works and Housing and congratulate him for the speed at which this matter has been expedited. This was a question that was asked about a week ago and we now have an answer.

In his answer, the Chairman has mentioned that the street lights on Kiambu Road which were installed in 2007 went into disrepair in 2014. That is about six years ago. I am wondering whether inspection was done after this road was constructed. How can we have street lights getting into disrepair in a period of less than ten weeks? I am sure the street lighting poles were not made of plastic but of steel. Therefore, they were meant to last. We have street lights in Nairobi which were installed during the colonial time and they are still in existence and are in good repair. How comes the ones that were done on this road went into disrepair after such a short time and yet this was a job that was well supervised by the relevant Ministry?

Secondly, on the junction to Ridgeways Mall---

**The Temporary Deputy Speaker** (Hon. Cheboi): It is always fair to ask one clarification, but I will give you a chance to ask the second one. However, that should not be the norm.

**Hon. Njomo:** Hon Temporary Deputy Speaker, you will realize that this question was in two sections. I am through with the first section and I am in the second section now.

I am sure every person who wants to create an entrance to his premises from a major road gets authority, a permit or some kind of licence from the Ministry in charge of roads. This must have been given to Ridgeways Mall and consideration given to allow free flow of traffic. How could this happen? We have been told that it is going to be done. What we have not been told is who is responsible for that and when it will be done

because people travelling to and from Kiambu are really suffering due to traffic jam on the road.

To conclude---

**The Temporary Deputy Speaker** (Hon. Cheboi): You will be going to the third point and I will not allow you to do that because I want other Members to also get an opportunity to seek their clarifications. I think you have sought two clarifications.

**Hon. Njomo:** I stand guided, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): So, let us have hon. Baiya. Hon. Chair, you will take notes. I will give hon. Baiya a chance and two more Members and then you will respond to the queries.

**Hon. Baiya:** Thank you, hon. Temporary Deputy Speaker. The number of people using the Kiambu-Nairobi Road has kept increasing because all the settlements around the road are fully cosmopolitan. The people residing there are from different parts of the country. Therefore, there is urgent need to facilitate this road to handle the kind of traffic that it is handling. But most importantly, those streets lights never functioned even for a single day. So, we would like to get a clear response. The destruction that is being done on the pavement; that is the digging of those trenches is done openly and continuously. I am surprised that the police purport not to know that. Could the Chair get a confirmation that the Government will ensure that there is security for the installation; otherwise there is no need of spending public funds only for the projects to be left to vandals as the police watch.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Lastly, let us have hon. Waititu, the Member for Juja.

**Hon. Waititu:** Thank you, hon. Temporary Deputy Speaker. Having also come from Kiambu County, I agree with hon. Njomo that, that road is really bad. However, if you look at the Thika Superhighway some of whose sections fall under Kiambu County, it is true that lights have been vandalized. If you drive from Muthaiga Police Station to Thika, you will find that all those cables have been vandalized. That is up to Kenyatta Road which is in my constituency. I would like to ask the Ministry officials to visit those areas because the scrap metal dealers have really moved in.

The House should understand that Thika Superhighway was just done the other day. If you travel on the highway, you will find that the scrap metal dealers have vandalized almost everything along the highway. I raise this matter so that Kenyans who travel on that highway today---

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, hon. Member! I am finding it very difficult and I am sure that the rest of the Members are also finding it very difficult---

**Hon. Waititu:** Hon. Temporary Deputy Speaker, I stand guided.

**The Temporary Deputy Speaker** (Hon. Cheboi): You are not very clear because of the microphone which you are using. It is a bit low but I believe that the Chair has probably picked something from you.

I can see a lot of interest from Members from Kiambu County. In all fairness, I will give the very last chance to hon. Muchai. After that the Chairman can respond.

**Hon. Muchai:** Thank you, hon. Temporary Deputy Speaker for giving me an opportunity to comment on this issue.

**The Temporary Deputy Speaker** (Hon. Cheboi): No, I am not giving you an opportunity to comment, but I want you to seek a clarification.

**Hon. Muchai:** Hon. Temporary Deputy Speaker, I am of the view that Kenya is the only country that allows development to precede planning. Hon. Njomo has said that it is a requirement that when you do a development along a major road such as Nairobi-Kiambu Road, you must have easy access to your premises without inconveniencing the other road users. So, the Chairman of the Departmental Committee on Transport, Public Works and Housing needs to come out clearly and tell us whether this requirement was met or whether development was allowed to precede the planning of this road.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. Let us have the Chair respond to those clarifications.

**Hon. Kamanda:** Hon. Temporary Deputy Speaker, first I want to thank the Member who has brought this question because I also use that road.

**The Temporary Deputy Speaker** (Hon. Cheboi): You are the Chairman.

**Hon. Kamanda:** Yes, and I had not even noticed, but he noticed what was going on.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Members! It is becoming extremely difficult for even the Members who sought clarifications to follow because the consultations are loud, particularly from the Member for Kiharu. Member for Kiharu!

**Hon. Kamanda:** Hon. Temporary Deputy Speaker, it is true that street lighting is not working on that road, but the Ministry has promised it is going to work on it. We do not work for the Executive, but I can only read what they have prepared. They have indicated that they are going to repair the street lighting.

*(Hon. Kang'ata obstructed the view of the Chair)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Chair! The Member for Kiharu, I am sure you know that what you are doing is totally out of order, namely standing between me and the Chairman. It is absolutely out of order. That should never happen again.

Proceed and answer.

**Hon. Kamanda:** Hon. Temporary Deputy Speaker, I want to assure the Member that they are going to do that. The other question is about who is going to do the access road. They have not indicated here, but I believe that it should be the developer. So, we are going to make sure that the developer is compelled to do that. The other issue is about the traffic jam and the fact that the road is also narrow. I concur with hon. Baiya that, that is a very busy road. I am also going to report to the Ministry to see whether they can do something in future.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. Then we will go to the next response by the Leader of Majority Party.

STATUS REPORT ON NOMINATION OF  
TSC COMMISSIONERS/CHAIRPERSON

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I have a Statement on the status of the appointment of the chairperson and commissioners of the Teachers Service Commission (TSC) that was sought by hon. Stephen Mutinda Mule, Member for Matungulu, pursuant to Standing Order No.44(2)(c).

I wish to give the highlights of what has transpired so far, in the appointment process of the TSC chairperson and commissioners. A selection panel, chaired by Dr. Kamunge was constituted by the President in consultation with the Prime Minister as was the requirement then. In line with statutory provisions, the panel initially advertised, selected and forwarded three names for the position of chairperson and five candidates as members of the Commission as at March, 2013. The three names were; Mr. Kiragu wa Magochi, Mr. Simon Musyimi Kavisi and Mr. Ismail Hassan. They were shortlisted and forwarded to the President for the position of the chairperson. The President picked Kiragu wa Magochi and forwarded his name to Parliament for vetting. However, Parliament rejected the nominee on the account of lack of merit.

Further, out of the five names submitted, which were Cleopas Tirop, Dr. Salome Wanjiku Gichura, Francis Ochieng', Aden Sheikh Abdullahi and James Kahindi Ziro, who were interviewed for the position of members of the Commission, three names, namely, Francis Ochieng', Aden Sheikh Abdullahi and James Kahindi Ziro were picked by the President and forwarded to the Tenth Parliament for vetting. Parliament approved the nominees - because I had the pleasure to serve in that Parliament - for these positions but the nomination was later overturned by an appeal at the High Court; HCC Petition No.8 of 2013. The court in its ruling stated that the action by the President was irregular, unlawful and in so far as they were concerned, the list had to be resubmitted to Parliament with new names that were in the previous list.

As you may notice, this process has been extensively litigated in court under Petition No.8 of 2013, No.34 of 2013 and No.370 of 2013. Following this litigation process, on 13<sup>th</sup> September, 2013, His Excellency the President, hon. Uhuru Kenyatta, forwarded the following names to Parliament for vetting:- Kiragu wa Magochi as the chairperson. His name was resubmitted for the second time. We had Albert Ekirapa as a member; Jecinta Anyango as a Member; James M. Nkoroï as a member and Mohamed M. Mwenyipembe as a member. The Departmental Committee on Education, Research and Technology of this Eleventh Parliament, interviewed the nominees and in its report to Parliament made a recommendation of rejecting all the nominees for various reasons. The report of the Committee was subsequently placed before the whole House and adopted and the position of the Committee was upheld.

While adopting the report of the Committee, observation was made that the panel led by Dr. Kamunge had failed in its various attempts to recruit for the Commission a chairperson and members and in the same breadth, the Committee on Education,

Research and Technology recommended that a fresh selection panel be reconstituted to undertake and finalize the process.

*(Loud consultations)*

Hon. Temporary Deputy Speaker, there is serious debate going on between the Members and I do not know whether the Member is listening. The consultations are very high.

**The Temporary Deputy Speaker** (Hon. Cheboi): Order Members! Hon. (Dr.) Murgor, let us consult in lower tones for us to hear what the Leader of Majority is saying.

**Hon. A.B. Duale:** The Committee recommended that they have no faith in the panel that is led by Dr. Kamunge and recommended that a fresh selection panel be reconstituted to undertake and finalize the process.

As it stands, the appointment process is still pending whereas the Commission is operating with only three members out of a possible nine members. The small number of commissioners is currently undertaking the role and functions that were previously performed by 24 commissioners before the TSC Act came into place in 2011. Clearly, the operations of the TSC have been adversely affected as it cannot effectively carry out its constitutional mandate without a fully constituted commission. Accordingly, in line with the Commission's constitutional mandate to advise the national Government, it has become necessary to revisit this issue afresh. The Kamunge Selection Panel in accordance with Section 8(5) and (6) of the TSC Act, shall invite applications from persons who qualify for nomination as chairperson by advertisement in, at least, two daily newspapers of national circulation. The selection panel, as per Subsection 6 shall, after the interviews, submit three names of persons qualified for the chairperson to the President. The Kamunge Selection Panel shall then stand dissolved upon the appointment of the chairperson as per the provisions of Section 8 of the Act.

In view of the recommendations by Parliament and its Committee, and in order to comply with the law and the resolution of this House, the President is under obligation and shall appoint a new selection panel in accordance with Section 8 of the Act for the selection of five members of the Commission.

Once constituted, the selection panel shall post an advertisement in two daily newspapers with nationwide circulation, conduct an interview and forward to the President 13 names of qualified applicants. The President will then forward five names of persons for approval. The panel, in its exercise, must ensure that the following parameters as set out in the Constitution and the Teachers Service Commission Act are adhered to:-

- (i) regional representation and balance;
- (ii) gender balance;
- (iii) a blend of expertise; and,
- (iv) consider persons with disabilities.

Hon. Temporary Deputy Speaker, finally, I want to re-state the need for adhering to the Constitution and the law with a view to avoiding further litigation on this matter. Any further delay in the process of recruiting commissioners will replay harm on the Commission. Given this nature, the Attorney-General has been tasked to advise and appoint, through the President, the selection panel, so that the process can be started

afresh. A new panel to be led by another distinguished Kenyan, and not Dr. Kamunge, will be established.

Hon. Temporary Deputy Speaker, that is the response I have got from the Executive.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, I will give chance to four people to seek clarification, of course, starting with hon. Mutinda Mule. Kindly, be straight to the point while seeking clarification, so that we can give chance to more Members to do the same.

**Hon. Mule:** Thank you, hon. Temporary Deputy Speaker. I want to thank the Leader of Majority Party for giving us that comprehensive report but I would like to seek clarification from him on the recommendation being done by the Attorney-General to the President to form a new panel. We still have names of persons from amongst the 400 persons who had applied for the job. Eighty-nine persons were shortlisted but less than 20 names were brought forward for vetting. What is stopping the Executive from picking other names from the list of those who had been shortlisted and forwarding them to the Committee on Education, Research and Technology to ensure that we have a panel?

I want to justify this proposition. The TSC regulates the highest number of employees---

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Mule, you have sought the clarification. So---

**Hon. Mule:** Hon. Temporary Deputy Speaker, I have a second clarification. Is the Government aware that there are teachers who have been suspended? The Teachers Service Commission Act is very clear that teachers should not be suspended for more than six months. If those teachers go to court, what will the Government do? The third clarification is---

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Mule, the two will be sufficient. Let us give chance to other Members.

**Hon. Mule:** Hon. Temporary Deputy Speaker, let me seek the last clarification---

**The Temporary Deputy Speaker** (Hon. Cheboi): No, no, no! I am not going to allow you.

**Hon. Mule:** Hon. Temporary Deputy Speaker, this was my Statement request, I need to get clarification.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Mule, it does not matter. I am sure you know you need to be fair to other Members.

**Hon. Mule:** Hon. Temporary Deputy Speaker, allow me to seek the last clarification. If the Government take that route, the same group of people who have been taking them to court, will go to court again and delay this process by another one year. How is the Government prepared for such an eventuality?

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have hon. Huka of Mandera South.

**Hon. Huka:** Thank you, hon. Temporary Deputy Speaker. The Leader of Majority Party has informed us about the processes and the stages at which the matter has reached. What plans has the Government put in place to fast-track the appointment of commissioners to the TSC?



**The Temporary Deputy Speaker** (Hon. Cheboi): That is fairly brief one. Let us have hon. Njagagua.

**Hon. Njagagua:** Thank you, hon. Temporary Deputy Speaker. The Government is on record as saying that the wage bill has gotten out of hand and, therefore, we need to reduce the independent commission as well as reduce their memberships to three commissioners per commission. So, what is the need of having more commissioners for the TSC? We have already been told that three commissioners are in office, and that they have been working for the last one year.

My second clarification---

**The Temporary Deputy Speaker** (Hon. Cheboi): No, no, no! That is a fair one.

**Hon. Njagagua:** Hon. Temporary Deputy Speaker, this is a weightier one. With your kind permission, I seek your indulgence.

**The Temporary Deputy Speaker** (Hon. Cheboi): No, no! I am not going to allow you. Let us have hon. Saney.

**Hon. Saney:** Thank you, hon. Temporary Deputy Speaker. Section 8 of the Teachers Service Act, 2012, is explicit on the manner in which the chairperson and the commissioners are to be recruited. It is only after the list of those who have been interviewed is exhausted that a fresh interview can be conducted. Right now, there is serious impunity. There is violation of the Teachers Service Act. There are still people for nomination by the Head of State. So, it is clear that the list is not exhausted. Why should the Kamunge team re-advertise the same positions when there are duly qualified Kenyans, in terms of gender and merit, available for nomination?

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Huka, your point is made. I want the Leader of Majority Party to respond to those clarifications and then I will take another round of Members to seek clarifications. I am being a little generous on this matter because I know that it has a lot of issues.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, my Statement is very categorical. Hon. Mule asked why we are reinventing the wheel, and why we cannot go back to the available list.

The Jubilee Government believes in the rule of law. This same House, in rejecting the chairperson and five other members of the Commission made a serious recommendation – that the selection panel, headed by one Dr. Kamunge, had integrity issues and, therefore, we must go for a fresh panel. So, that is why the Government has taken that direction. It is not the decision of the Executive. Even today the Executive can go back to the existing list. However, this House, in a resolution that followed recommendation by the Departmental Committee that oversees the TSC, says that Dr. Kamunge's panel should pack their bags and go home. This House's resolution was that a fresh panel should be instituted and the vacancies advertised for Kenyans to apply afresh.

The second one is about the court case. Why are people filing court cases?

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Mbadi, I can see that you have a point of order.

**Hon. Ng'ongo:** Hon. Speaker, I am a bit concerned, and I would like the Leader of Majority Party to confirm something. If there is a conflict between a statute law and a resolution of the House, which one would take precedence over the other? I am concerned because of what the Leader of Majority Party is telling us. The statute law

spells out clearly what needs to be done. At the same time, he is telling us that the hands of the Government are tied by a resolution of the House. Is it in order for me to ask the Leader of Majority Party to clarify, in this case, which one takes precedence over the other?

**Hon. A.B. Duale:** You know my good friend hon. Mbadi is very busy; he is more concerned with the Marriage Bill, which is coming. He did not listen to the last bit of my Statement saying what the Committee of Parliament recommended as a resolution of the House *vis a vis* the Statute Law, Section 8(6) of the TSC Act. The ball now is with the Attorney General to advise both Parliament and TSC. So, we are yet to appoint a panel to replace Dr. Kamunge. If you want to read the Statement, I will give it to you. But because of the serious issues he has with the Marriage Bill---

*(Laughter)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Now, what does hon. Mbadi have to do with this Marriage Bill, because I had---

**Hon. A.B. Duale:** Of course, he has the VAT Bill and some other serious Bills which I am sure we are yet to discuss. If you allow me, hon. Mule talked about people going to court. There are a number of litigation issues---

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Chachu Ganya, you have a point of order? I am giving you a chance because you had requested earlier.

**Hon. Ganya:** On a point of order, hon. Temporary Deputy Speaker. Is it in order for the Leader of Majority Party to deviate from the real issue being addressed by hon. Mbadi and dwell on the Marriage Bill? Is he in order to deviate from the substance---

**The Temporary Deputy Speaker** (Hon. Cheboi): Well, he is not the only one, I heard hon. Chepkong'a talking about the same thing when hon. Mbadi spoke, but really the Leader of Majority Party, I want you to respond specifically.

*(Laughter)*

**Hon. A.B. Duale:** I want to confirm to the House that the TSC matter is very important as well as the Marriage Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Just respond to it directly.

**Hon. A.B. Duale:** They are all important but one has come earlier. The issue of the court cases, these are serious litigation matters. Even if we form another panel or other names are brought to Parliament, Kenyans are at liberty to go to court from Monday to Friday. That is why we created the Judiciary under the able leadership of hon. Willy Mutunga.

As my good neighbour here, the Member for Mandera South, hon. Huka, stated, we need to fast track and deal with the lacuna raised by the hon. Member for Suba, about which way to go. The Parliamentary Committee way is what we need to look at. When that recommendation was brought before the House, the issue should have been raised or the Legal Department of Parliament should have informed the Committee that the recommendation they were giving would fundamentally contradict a statute that was in place.

Hon. Saney raised an issue about the panel. I can tell you that it is the same Committee on Education, Research and Technology which gave a recommendation on the integrity of the process that was led by Dr. Kamunge. It was in question and they needed a fresh panel.

Hon. Njagagua talked about three commissioners instead of five. The TSC is a very unique commission; it deals with over 50 per cent of the employees in our country. It deals with a huge workforce and therefore, it needs nine commissioners. If a Member brings an amendment to reduce the number of commissioners, including those in TSC from nine to three, that will be a thought for another day. But for now, the law says TSC must have nine commissioners. I am sure we will talk to the Attorney General to clear the lacuna but we must have five commissioners and a chair.

**The Temporary Deputy Speaker** (Hon. Cheboi): I will give only three members a chance and they must be straight to the point, starting with hon. Jared Opiyo.

**Hon. Opiyo:** Thank you, hon. Speaker. You realize that it has been some time since this House passed the resolution of the Committee on Education, Research and Technology, which threw out the names of those people who were proposed to be TSC commissioners. My point of clarification is---

**The Temporary Deputy Speaker** (Hon. Cheboi): Seek clarifications straight, do not build the point.

**Hon. Opiyo:** My point of clarification is; why does it take too much time to solve the issue? Is the Attorney General overworked so that probably, we can give the task to somebody who is more competent to deal with issues as and when they come?

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have hon. Injendi.

**Hon. Injendi:** Thank you, hon. Speaker. I wish to clarify that there were some people who appeared on the list, whose names were just sneaked in to the President. When we have fresh applications, are those people also eligible to apply and be interviewed?

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): Lastly, hon. Kathuri.

**Hon. Murungi:** Thank you, hon. Temporary Deputy Speaker. Of the five names which were brought to this House last year, only two names had issues and the Committee on Education, Research and Technology knows that. When we were debating that report, those issues were clearly articulated by Members of this House. Now, why can they not look at these three commissioners and add two more and then this exercise can proceed?

**The Temporary Deputy Speaker** (Hon. Cheboi): That looks like what hon. Njagagua sought to clarify. The Leader of Majority Party, proceed and respond briefly.

**Hon. A.B. Duale:** I want to start with the last one because it was very interesting. If a Committee of this House receives five nominees and they feel two have issues and three are okay, you bring an approval for those three---

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Mithika Linturi, you are on a point of order?

**Hon. Linturi:** On a point of order, hon. Temporary Deputy Speaker. I have listened to the Leader of Majority Party very well and there is a matter that he really did not pursue to put into proper perspective or light---

**The Temporary Deputy Speaker** (Hon. Cheboi): What is out of order? The reason I am asking you hon. Linturi is because you had made both a request and sought an intervention.

**Hon. Linturi:** Hon. Temporary Deputy Speaker, I want the Leader of Majority Party to give this House a proper position on what the Government should do in the event or in a situation where the statute is in conflict with a resolution of the House, as hon. Mbadi was asking because this House has clearly resolved that the appointments of those Members of the Commission did not follow the procedure and I know---

**The Temporary Deputy Speaker** (Hon. Cheboi): That is fair now, let us stop there, what you have actually done is to seek clarification. I hope somehow, the Leader of Majority Party will be able to respond to it. Press the button, hon. Duale.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I had the privilege of serving with hon. Linturi in the last Parliament and the whole circus of Teachers Service Commission (TSC) started in the last Parliament, particularly in the wee hours of the night when we used to debate. I do not want to go into it, but the issue of statutes and the resolution of the House is under the Attorney-General (AG) and of course our Legal Department. From tomorrow, we are going to sort it out and come back. But that was the genesis of the question.

Hon. Opiyo asked if the AG is overworked. Of course he is. All the Bills that you see in this House and many others are done by the office of the AG. But I am sure this one now is going to be done very fast. I will make sure that the AG gives direction and, either a panel is constituted or the panel takes names to the President.

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

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Kaluma, what is out of order? Make sure it is a point of order.

**Hon. Kaluma:** Yes, it is a point of order. Is the Leader of Majority Party in order to say that the AG is overburdened by Bills when under the law, the legislation is really our work? Why is the AG doing work which does not belong to him and not doing work that he should be doing?

**The Temporary Deputy Speaker** (Hon. Cheboi): That is fair.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, before Bills come to Parliament, they go through a number of stages and the final custodian of Bills, for your information, is the AG of the Republic of Kenya. It is him who passes them to Parliament. Therefore, Government Bills come through the stakeholders, the Kenya Law Reform Commission, the CIC, Cabinet, AG and back to Parliament. I am sure that this is part of the learning process for some of our colleagues.

Hon. Temporary Deputy Speaker, hon. Kathuri raised the issue of the two names and why they were rejected. Hon. Kathuri, I think the blame goes to the Committee on Education, Research and Technology. If you have five nominees to vet and in your opinion three of them have no issues, the Standing Orders provide that we reject two and we approve three. It has taken place a number of times in this Parliament. Therefore, the failure is on the part of the committee that brought the names.

Finally, I think there was the issue raised by hon. Injendi about applying and being rejected. I am sure if you apply after the positions have been advertised and you know you meet all the criteria and you have no integrity issues – that is with regard to Chapter Six of the Constitution - your name will pass through Parliament.

**The Temporary Deputy Speaker** (Hon. Cheboi): I think that marks the end of that matter. We have given this issue a lot of time because of the interest it had generated. I will now give the opportunity to the Leader of Majority Party to give us the order of business for the coming week.

You have the Floor, hon. A.B. Duale.

BUSINESS FOR THE WEEK COMMENCING 25<sup>TH</sup> TO 27<sup>TH</sup> MARCH, 2014

**Hon. A.B. Duale:** Thank you, hon. Temporary Deputy Speaker. I want to read the Statement on behalf of the House Business Committee (HBC) on what is coming up next week.

Pursuant to Standing Order 44(2), on behalf of the HBC, I rise to give a Statement regarding the business which will be appearing before the House the week beginning Tuesday 25<sup>th</sup> March, 2014.

Hon. Temporary Deputy Speaker, the HBC meet on Tuesday this week to give the programme of business of the House. In this regard, the HBC has given priority to debate on the Report of the Joint Sittings of the Departmental Committee on Administration and National Security and Defence and Foreign Relations on the Inquiry into the Tourist Attacks at the Westgate Mall and other Terror Attacks in Mandera and Kilifi, next week. This will happen if the debates on the Order Paper today are not concluded.

Further, next week the House will consider debate on a number of Bills that are already here for Second Reading, in the event these Bills are not concluded today which include, the Statute Law (Miscellaneous Amendments) (No.2) Bill and the Protection against Domestic Violence Bill, 2013.

Hon. Temporary Deputy Speaker, on the same day - this is good news for my good friend, hon. Linturi, who is not around - this House will consider debating the Report of the *Ad hoc* Committee on *khat; miraa*. Since the report was laid on the Table of this House in the last Session, we do hope that the Chairperson will give a fresh notice of Motion on Tuesday next week. Therefore, I urge hon. Members to read that report so that we can have quality debate on this very important matter.

Hon. Temporary Deputy Speaker, in the morning of Wednesday next week, the House----

*(Loud consultations)*

Hon. Chair, if you allow me, the hon. Member for Kibra, the purported Secretary-General of ODM and the hon. Member for Taveta are busy---

**The Temporary Deputy Speaker** (Hon. Cheboi): Just proceed, hon. A.B. Duale.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, in the morning of Wednesday next week, the House will go into Committee of the whole House to consider

the National Flag, Emblems and Names (Amendment) Bill, 2013 and the Public Procurement (Amendment) Bill, 2013.

Hon. Temporary Deputy Speaker, as usual, allow me to remind my colleagues with proposed amendments to any of the two Bills to ensure that they formally write to the Clerk in accordance with the requirement of paragraph (2) of Standing Order No.133. If we will have done that, we will conclude the VAT (Amendment) Bill.

Hon. Temporary Deputy Speaker, allow me to thank hon. Members who have already published Bills and are awaiting debate. The HBC takes note that the number of Bills has since increased and will be given priority for debate. On that note, the HBC resolved that all Bills, other than those sponsored by a Committee or the Majority Party will be listed on the Order Paper accordingly. The following Bills have been approved to appear on the Order Paper for Second Reading on Wednesday morning beginning next week:-

The VAT (Amendment) Bill; the Fertilizers and Animals Foodstuffs (Amendment) Bill, the Counsellors, Psychologists and Psychotherapists Bill, the Retirement Benefits (Deputy President and Designated State Officers) Bill; the Physiotherapists Bill; the Victim Protection Bill and the National Drought Management Authority Bill.

Hon. Temporary Deputy Speaker, other Bills will be listed thereafter, as they may be rearranged by the HBC. All these are Private Members' Bills. On a similar note, the HBC appreciates the increasing number of Statements directed to Departmental Committees requesting for information and inquiries in different areas of public interest.

Hon. Temporary Deputy Speaker, through the Chair, I wish to seek the indulgence of hon. Members to exercise patience and wait until the Statements appear on the Order Paper. This is informed by the fact that over 80 Statements are in the queue to appear on the Order Paper.

Hon. Temporary Deputy Speaker, the President of the Republic of Kenya, Hon. Uhuru Muigai Kenyatta and the Leader of the Jubilee Coalition, has indicated that he intends to address Parliament on Thursday next week.

Of course I have to pause.

**Hon. Member:** It is not allowed.

**Hon. A.B. Duale:** That will be on 27<sup>th</sup> March, 2013 in the afternoon. He intends to give State Address to Parliament in addition to submitting the following status reports:-

(i) Report on the implementation of Kenya's international obligations as per the Constitution;

(ii) The implementation of the national values and ethics, as per the Constitution;

(iii) The state of the nation's security; and

(iv) Give Parliament his Government's legislative agenda for this year.

Hon. Temporary Deputy Speaker, finally, the House Business Committee will meet on Tuesday, 25<sup>th</sup> March, 2014 at the rise of the House to consider business for the rest of the week.

Hon. Temporary Speaker, I wish to now lay the Statement on the Table of the House. Thank you.

*(Hon. A.B. Duale laid the Statement on the Table)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. That marks the end of any other business. Now, we want to go to real business and I see a lot of points of order. Hon. Gumbo, what is your point of order and what is out of order?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, I wish to thank the Leader of Majority Party for what he has just presented. However, on two occasions in this House I have risen to draw the attention of the Leader of Majority Party on a matter which is dear to me as a professional engineer and the country as a whole and this is on the matter of the Engineers Act.

Hon. Temporary Deputy Speaker, in early 2012 this House passed the Engineers Act which was a breakthrough in the sense that it was going to deal with the issues that are contemporary to the country; the issues of how to deal with many unqualified people both local and foreign who call themselves engineers and lead to endangering of Kenyans lives. It was about the prescriptions of the scales of fees of engineers and most importantly for the first time, that Act was going to establish the Kenya Academy of Engineering and Technology.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Gumbo, so that we are together, what are you actually saying?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, if you will indulge me because this is---

**The Temporary Deputy Speaker** (Hon. Cheboi): No, I really do not want us to take a lot of time on it because we have quite a handful today. So, I really want you to be straight to the point on what you want.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, what I am saying is that the Act is not operable without the rules and regulations anticipated under Clause 58 of the Act. On two occasions I have risen here to request the Leader of Majority Party when those rules are going to be brought here so that we can debate them. This is because if you look at Clause 58---

**The Temporary Deputy Speaker** (Hon. Cheboi): You have made your point and, in fact, I would want to---

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, let me just conclude. If you look at Clause 58, without those rules, that Act remains not useful.

**The Temporary Deputy Speaker** (Hon. Cheboi): That is valid. So, I want to ask the Leader of Majority Party to answer you. I mean if you are going to get what you want, really we do not need to waste a lot of time.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, last week I did the same and he promised to lay them today. That is what I am coming to. The HANSARD will bear me witness. He said in a week's time he will lay the documents today.

**The Temporary Deputy Speaker** (Hon. Cheboi): I, therefore, would want to ask the Leader of Majority Party to keep his promise this time.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, he said in a week's time. A week from Thursday is today. The HANSARD is there.

**The Temporary Deputy Speaker** (Hon. Cheboi): That is okay now. We are not going to debate it. I am sure this time the Leader of Majority Party will keep his promise. You really do not have to answer. I believe you will bring it.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I will give an undertaking.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay, if you have to briefly.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, you know hon. Gumbo is one of the most renowned internationally recognised engineers. So, he does not want to see quacks in Kenya and I took that undertaking. It is with the Cabinet Secretary for Infrastructure. It has gone through stakeholders and I promised that in two weeks' time, the documents will be tabled. I thought he was a son of a pastor, I did not say I will bring it today.

*(Laughter)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay. Lastly, I will give the chance to hon. Muhia in the interest of gender and that is it.

**Hon. (Ms.) Muhia:** Thank you, hon. Temporary Deputy Speaker. I am standing because I did not hear the Leader of Majority Leader mention my Bill which had passed through the First Reading immediately we came from recess. I am wondering how long it takes in the HBC. I expect 21 days to be already over.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Muhia, it will take 21 days.

**Hon. (Ms.) Muhia:** Yes but 21 days are already over.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay, Leader of Majority Party.

**Hon. (Ms.) Muhia:** Hon. Temporary Deputy Speaker, before the Leader of Majority Party responds, I was also standing because of the Statement I sought last week concerning Kisii University.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Muhia, on that one the Leader of Majority Party indicated, and probably it escaped you, that for the issues of Statements because they are many, he believes they should come on the Order Paper next week. That is what I thought I heard. So, let us have hon. Opiyo.

**Hon. (Ms.) Muhia:** Hon. Temporary Deputy Speaker, because I am on the Floor let me say that at 10 O'clock I was at Continental House waiting for the Cabinet Secretary and the Principal Secretary as he had said, but I now hear from hearsay that the Statement on Kisii University will come before the House. The students are still at home and tension is still there. So, I request the Chair of the Departmental Committee on Education, Research and Technology to respond.

**The Temporary Deputy Speaker** (Hon. Cheboi): Now, the Leader of Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I only report on Bills that come to the HBC. Some of the Bills are still with Committees.

**The Temporary Deputy Speaker** (Hon. Cheboi): Just a minute hon. Duale. So that we do not keep getting issues from Members, let me also give hon. Makali Mulu a chance. He seems to be having a burning one so that you can respond to both of them.



**Hon. Mulu:** Thank you, hon. Temporary Deputy Speaker. Yes, I really have a burning issue. I am a member of the HBC and at the same time also a member of the Budget and Appropriations Committee. One of the things we are saying in the Budget and Appropriations Committee is that we do not want supplementary budgets coming to us every time.

Hon. Temporary Deputy Speaker, I think this week we have gotten three Supplementary Order Papers. Is this not a pointer that the HBC is not doing justice to this House in terms of planning?

**The Temporary Deputy Speaker** (Hon. Cheboi): But you are a member?

**Hon. Mulu:** That is why I am raising this issue because the Leader of the Majority Party---

**The Temporary Deputy Speaker** (Hon. Cheboi): No, surely, hon. Makali you are a member of the HBC. That is a terrible indictment of you. Let me give a brief one to hon. Opiyo and that will be it. We now want to go to the real business.

**Hon. Opiyo:** Thank you, hon. Temporary Deputy Speaker. Actually, I want to bring it to your attention that about four weeks ago, I sought a Statement from the Chair of the Departmental Committee on Agriculture, Livestock and Cooperatives and then he gave a commitment that he would give me a reply in two weeks' time. Now, it is about four weeks and we are going to the fifth week. The matter was on illegal importation of sugar and it is hurting our farmers so badly. I really need that answer so that I know what I will tell my people.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay, Leader of Majority Party and kindly be brief so that we can move on.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I want to start with my good friend, the Member for Nyandarua County. If you look at the Parliament's website or if you go to the Legal Department you can follow and be told at what stage your Private Members' Bill is. The Bills that I have read here appeared in the HBC for them to be slotted a place on the Order Paper.

Secondly, hon. Makali, you are a very diligent and obedient member of the HBC and for your information, the Standing Orders provide for a Supplementary Order Paper. Supplementary Order Papers sometimes come to consider the interests of Members. I do not want to speculate, but if you look at yesterday's Order Paper and compare it with today's, you will see there are more Members who want to amend the Marriage Bill. They are your colleagues. A Supplementary Order Paper, and I do not want to speak for the National Treasury, is provided for in the Standing Orders. Please, you are a member of the HBC. The document I have read is not from Jubilee, hon. Duale or from the people of Garissa Township but it is from the HBC in which CORD in their wisdom nominated you. I can tell them that you are up to the task. You are one of the best guys in the HBC.

Thank you, hon. Temporary Deputy Speaker.

## MOTION

### ADOPTION OF REPORT ON BUDGET POLICY STATEMENT 2014

THAT, pursuant to the provisions of Section 25(7) of the Public Finance Management Act, (Cap. 412 C) and Standing Order No.232(7), this House adopts the Report of the Budget and Appropriations Committee on the Budget Policy Statement 2014, laid on the table of the House on Thursday, 6<sup>th</sup> March, 2014.

*(Hon. Musyimi on 13.3.2013)*

*(Resumption of Debate interrupted on 19.3.2013)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, the Motion by the Chairperson, Budget and Appropriations Committee had been exhaustively debated. What remained was the putting of the Question.

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly:*

THAT, pursuant to the provisions of Section 25(7) of the Public Finance Management Act, (Cap. 412 C) and Standing Order No.232(7), this House adopts the Report of the Budget and Appropriations Committee on the Budget Policy Statement 2014, laid on the table of the House on Thursday, 6<sup>th</sup> March, 2014, subject to:-

(i) deletion of “recommendation (f)” on page 22 of the Report and substituting therefor with the following new paragraph:-

(f) That the following provisions be transferred as conditional grants to the County Government:-

(i) Provision towards revamping youth polytechnics amounting to Kshs1.4 billion to be shared equally among all counties; and

(ii) Provision for supporting service delivery in Level 5 hospitals amounting to Kshs3.74 billion.

(ii) insertion of the following new paragraph (g):-

(g) That the following provisions be “ring-fenced” and be included in the share of the national government:-

(i) Provision of Kshs5 million per constituency towards completion of centers of excellence under the Economic Stimulus Package; and

ii) Provisions of Kshs.7.3 billion for rural electrification projects under the Rural Electrification Authority (REA).

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

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

## THE MARRIAGE BILL

*(Resumption of consideration interrupted in Committee)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Members, you may resume your seats.

*(Several hon. Members withdrew from the Chamber)*

Those hon. Members who are withdrawing from the Chamber, I do not know for what reason you would want to withdraw from the Chamber because someone had made very good statement that this is, perhaps, a very important Bill that you want to look at. If you are forced to leave the Chamber, will you please do so quietly? There are several hon. Members on the gangway; many of you are hon. Members who should be interested in the Bill we are about to consider.

*(Loud consultations)*

There is a lot of consultation in the gangway. This is the Committee of the whole House, considering the Marriage Bill, National Assembly Bill, Bill No.13 of 2013.

*Clause 3*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. A.B. Duale, as you rise remember that last night we made very good progress, and the Chair of the Departmental Committee pointed out an amendment that they were suggesting. We sought your opinion on whether you thought that provision captured as much of your amendment as possible. I remember the HANSARD states that you said that, that was okay. What we need to do, to be fair to you, is that if you think there is any general amendment which is not captured, you are free to prosecute it. The Leader of Majority Party, although I should now be addressing you as Member for Garrisa Town, what do you have to say about the amendment proposed in Sub-clause (1)?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chair, this Bill is called "The Marriage Bill, 2013". If you look at the Constitution, Islamic marriage is well covered under the Kadhis Courts. I had a raft of amendments and I have shared about them with the Chair. Where we have agreed, I have dropped them, but on the ones remaining--- As the Member of Parliament who represents 90 per cent of my constituents, who are Muslims, I feel that they should participate in this Bill. From the interpretation, the preliminary to the final--- I have finished the rest but these are areas which have not been covered.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I am not stopping you but I am just telling you that Clause 2 will be our last item. So, we are starting with Clause 3. We are adopting a consensus approach that will allow us to make as much headway as we can; where we have to determine something, we will not run away from it. We will have to stop and determine it because this is a debating Chamber.

**Hon. A.B. Duale:** Then, hon. Temporary Deputy Chair, as we move in the right direction, we must also carry everybody on board while on this very important Bill. The amendments that I have are not amendments for hon. A.B. Duale, they are amendments for a section of the community in Kenya. It is a serious matter.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right, hon. A.B. Duale. We are with you. Therefore you want to prosecute your amendment to Sub-clause (1), is that so? Can you, therefore, move if you want to prosecute the amendment under Clause 3(1)? Are you still prosecuting it or do you think that it has been sufficiently covered by the amendment proposed by the Chair? It is in our interest to get a way in which we can move as fast as we can in spite of the fact that we have to listen to debate.

**Hon. A. B. Duale:** Hon. Temporary Deputy Chair, I beg to move:-  
THAT clause 3 be amended –  
(a) in Sub-clause (1) by deleting the expression “and registered in accordance with this Act.”

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, I want to inform you that we have several amendments to Clause 3 and this is how we will go. We will go sub-clause by sub-clause. So, we are taking Sub-clause (1). I hear you. He has proposed.

**Hon. A. B Duale:** Yes I have moved.

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, before you get to the Chair.

*(Question of the amendment proposed)*

We want to go step by step; we are only considering Sub-clause (1) for the time being. Member for Homa Bay Town.

**Hon. Kaluma:** With great respect to the Majority Leader, I oppose that amendment for the reason that if you look at Clause 48(2), all marriages, including Islamic marriages, are now required to be registered. In fact, that is the main purpose of this Bill; to have a system where all marriages, including customary---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Clause 42 what?

**Hon. Kaluma:** Clause 48(2)

**The Temporary Deputy Chairman** (Hon. Kajwang’): Of the Bill?

**Hon. Kaluma:** Yes

**The Temporary Deputy Chairman** (Hon. Kajwang’): Which page is that, so that Members can be with you?

**Hon. Kaluma:** This is Clause 48(2).

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, you may proceed

**Hon. Kaluma:** A person authorized to officiate the marriage under this part shall record the details of a marriage in the prescribed form and shall deliver the record to the

director for the registration of such marriage. This is Islamic marriages. So, the removal of the registration of Islamic marriages is not in tandem with---

**The Temporary Deputy Chairman** (Hon. Kajwang’): No! I beg your pardon. We are in Clause 3. That is where we are.

**Hon. Kaluma:** Yes.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Alright. Thank you. Let us deal with a point of order first. Member for Rarieda.

**Hon. (Eng.) Gumbo:** On a point of order, hon. Temporary Deputy Chairman. I thought it is in line with our rules of carrying out amendments that the Leader of Majority Party should have given us the justification for his proposed amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Well, he moved and said according to the Order Paper that has been circulated.

**Hon. (Eng.) Gumbo:** Yes, but some of us do not seem to understand what the justification is.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay, Member for Garissa Town. Please be very brief. We are not subjecting this to debate. This is the Committee of the whole House.

**Hon. A.B. Duale:** Thank you hon. Temporary Deputy Chairman. I first want to thank hon. (Eng.) Gumbo because I wanted to explain. Chair, if you look at Article 45(3) of the Constitution and you look at Islamic marriages, the registration we are talking about is the registration under the director or the registrar we are going to establish. That does not fall within the Islamic concept of marriage. I want to make it very clear and I am sure my colleagues, the Muslims who are here, can attest to that. A marriage in Islam is independent of registration. That should be basic. In the far-flung constituency where I live, two people can marry each other in a mosque and that becomes a marriage. So, from the outset - and I want my colleagues to agree with me - a marriage in Islam is independent of registration.

Secondly and more fundamentally, failure to register does not invalidate an Islamic marriage. That is very important and I want hon. Kaluma to understand me. From where I come from, if you do not register, that does not invalidate your marriage. If we do not amend this, then that means that if somebody gets married in a mosque and he has not registered with the so-called either director or registrar in this Bill, then you are telling me, the people in the far-flung areas who are under the Islamic law---. The Constitution is very clear. The Chief *Kadhi* deals with three aspects of Islamic law, marriage, dowry--- So, for us - and I want to make it clear to you - failure to register does not invalidate an Islamic marriage.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Absolutely! That last sentence explains the justification of the Mover. Chairperson of the Committee?

**Hon. Chepkong’a:** Thank you, hon. Temporary Deputy Chairman. You know I agree with hon. Duale that Islamic marriages are not registered. That is known, In fact, all precedents and even courts state that all Islamic marriages are not registered. Now, the consequences of the removal of “registered” in accordance with this Act - and this is with regard to other marriages and not Islamic ones – is that if you remove this one, all other marriages whether civil, Christian or customary are all registerable. With regard to

the issue of Islam, we have made a proposed amendment which is contained--- If you look at the Order Paper---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Which page are you referring to? Are you referring to page 94?

**Hon. Chepkong’a**: Page No.90. We have made substantial amendments to take that into account. This was discussed in the Committees where we also have Muslims. So, this matter was canvassed quite effectively. In Clause 48(a), which is a proposed amendment, we have stated very clearly that Islamic marriages are celebrated in accordance with Islamic law. Then the final one which is more important, and which he should take into account is this: An amendment to Clause 48(3) which reads as follows:-

“Any provision of this Act which is inconsistent with Islamic law shall not apply to persons who profess the Islamic faith.”

That has already been taken into account. With regard to the proposed amendment, if you then remove “unregistered in accordance”, then what happens to the Christian marriages which are supposed to be registered? What happens to the civil marriages which are supposed to be registered? What happens to the Hindu marriages which are supposed to be registered?

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Thank you very much. Please, resume your seats. We are not turning this into a debating Chamber. This is the Committee of the whole House. Please, sit down. We want to move very fast, Members are intelligent and they are in this House to make up their minds. A discussion has been made---

Can you, please, sit down? You never know. I will come to your point of order and see whether it is so critical. Please give me time to say what I want to say. So, Members, you have heard the discussions from the Mover of the amendment and the justifications thereof. You have also heard the discussions and you have the Supplementary Order Paper on page 90. I want us to vote.

I will give somebody else. I do not think you must--- Let me give somebody else. Member for Mvita!

**Hon. Nassir**: Thank you very much, hon. Chairman. First and foremost, when we are discussing something as important as this document, I actually do not think that it is in order for us to say that we are in a hurry. We can never be in a hurry to rush this. Even if it means sitting here until midnight, let it be, so that Kenyans can get what actually is the right thing and what they deserve.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Unfortunately, hon. Member, I hear you. Let me tell you this--- Hold on! I will give you the opportunity. You see hon. Members, we will proceed with decorum. We will debate this matter very soberly and, at the end of the day, we will have legislation. So, do not panic wherever you are. We are prepared to look at this thing very carefully. Now, hon. Members, because we do not have a Procedural Motion, we cannot sit here up to midnight. We can only sit here up to the time that our calendar allows, that is 6.30 p.m. So, we cannot sit here up to midnight, but proceed.

**Hon. Nassir:** Thank you very much Chair. I think it is important. I think what hon. Duale was trying to imply, and which I might support if I am safeguarded from their noise--- What hon. Duale was rightfully saying and which the Chairperson of Justice and Legal Affairs Committee was trying to imply, any provision in this Act, which is inconsistent with Islamic law, shall not apply to persons who profess the Islamic faith.

*(Loud consultations)*

**The Temporary Deputy Chairman (Hon. Kajwang’):** All right. Can I have silence here? Hon. Duale, you are the Mover of this amendment, I will definitely come back to you to have the last query. And, please, do not take the position of the Chair. You are the Leader of Majority Party and so, you will have the last say. But you cannot have the first say. Let all other Members explain themselves on important issues. That is my ruling. Can you, please, finish what you are saying?

**Hon. Nassir:** Thank you, hon. Temporary Deputy Chairman. I am saying that hon. Chepkong’a has not justified why he is trying to refuse the amendment that hon. A.B. Duale has moved. It needs to be considered because one simple statement or sentence can render a whole religion problematic when it comes to marriage.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Well spoken. The last Member to speak on this before I call hon. A.B. Duale is nominated Member, Bishop Mutua.

**Hon. (Bishop) R. Mutua:** Thank you very much, hon. Temporary Deputy Chairman. One of the very important things to note about this Bill is that it has five very important and distinct parts. One deals with Christian marriage and another one deals with Hindu marriage. There is also a part that deals with Islamic marriage and another one deals with civil marriage. The amendment touches on the general provisions which should be as general as possible. Therefore, if there are specific issues to be addressed, they should be addressed under specific parts that are related to a particular faith.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Thank you. Let us hear from the Mover. You are entitled to a response.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, first, I want to say that we are lawmakers and we legislate for posterity. We also represent people, we are not in a hurry and we have prepared these amendments. Some of the amendments come from legal minds that we represent. So, it is not a minor amendment.

I have an amendment which will cover Hindu and Christianity marriages. We also have civil marriages. We will be very comfortable with the Muslim faith. Because I have an issue with that amendment I have proposed a further amendment and it is on the Order Paper; we must put a proviso that---

**The Temporary Deputy Chairman (Hon. Kajwang’):** Where is that amendment?

**Hon. A.B. Duale:** Clause 3(2)---

**The Temporary Deputy Chairman (Hon. Kajwang’):** No, I am looking at page 93, Clause 3(1).

**Hon. A.B. Duale:** That is why I am saying that the element that Bishop Mutua said---

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, the question I have put to you is: Is there a further amendment which I do not have on the Order Paper?

**Hon. A.B. Duale:** No, I am saying that we are on Clause 3(1), where we are talking about registration of a marriage. The proviso which I have put in the amendment that I want to further amend, if it is agreeable to every Member, is that provided that in an Islamic marriage these rights shall be subjected---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order, Leader of Majority Party. I will give you all the time you need because you deserve it as the Member for Garissa Town.

**Hon. A.B. Duale:** Absolutely. That is why I am here.

**The Temporary Deputy Chairman** (Hon. Kajwang’): However, you also must deserve that right by confining yourself to issues. I do not seem to see that further amendment. Let me see it if you have a signed further amendment to Sub-clause (1) which I do not see on the Order Paper. Do you have it?

**Hon. A.B. Duale:** It is on the Order Paper, hon. Temporary Deputy Chairman. The first thing I asked for is a deletion. If you read the Order Paper, Clause 3(1) says, “deleting the expression “and registered in accordance with this Act.” Basically, I have a problem with the word “registration”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I understand that but where is this further amendment?

**Hon. A.B. Duale:** If you go to Clause 3(1), my problem is the issue of registration. That is why I am saying---

**The Temporary Deputy Chairman** (Hon. Kajwang’): I am sorry. You are just ahead of us because we are not there yet. We have agreed that we will go---

**Hon. A.B. Duale:** No, we are on 3(a), am I right?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, we are on 3(a) considering Sub-clause (1) only. We have agreed that we will go sub-clause by sub-clause.

**Hon. A.B. Duale:** So, in Sub-clause 3(a) of my amendment, I am deleting the whole element of registration. Are we together?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, I am with you.

**Hon. A.B. Duale:** That is why I am saying that if it is comfortable to the Chair and the House, a further amendment can be moved. This is because---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Unfortunately, you know that we will not have a further amendment which is not on the Order Paper. We have agreed on that because we want to follow the Standing Orders. To be honest with you, you know as I do that we do not have a further amendment on the Order Paper. Just confine yourself to the deletion which appears very clearly on the Order Paper.

**Hon. A.B. Duale:** But hon. Temporary Deputy Chairman, I am telling you that my amendment is very clear. The Chair has raised his point and I totally agree with him. This is because the Bishop has said that Christians and Hindus will be affected if we go this way. It is allowed in the Standing Orders to have a further amendment and say “provided that in an Islamic Marriage this registration does not apply.”



**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Thank you very much. That amendment has been prosecuted and debated sufficiently. I want to put the Question.

*(Question of the amendment proposed)*

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

Order, hon. Members! All of you will have the right to say what you must say. Also, all of you will allow some Members or all the Members to respond. Order, the Member for Ijara and the Member for Homa Bay! This is the National Assembly of the Republic of Kenya. Sit down!

**Hon. Waiganjo:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 3---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Proceed.

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

THAT, Clause 3 be amended in Sub-clause (2) by inserting the words “and obligations” immediately after the word “rights”.

The justification for this amendment is that the clause reads that parties to a marriage have equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.

We are talking about rights of spouses in marriage, but in this clause there does not appear to be any obligations. As you know, every right must have an obligation or a corresponding duty. So, if we leave rights as rights only, there are rights that are not exercisable without obligations. For instance, if you talk about conjugal rights, they are rights which can be exercised if the other spouse obliges. So, if we have only rights without obligations, even at the death of the marriage--- because it is envisaged that these rights will last up to the dissolution of the marriage. At the dissolution of the marriage, when we are left with only rights, where shall the corresponding duties and obligations come from?

Hon. Members, if you agree, I see this as a very important amendment because it takes care of the spouses during their marriage. It also makes certain rights to be exercised within the marriage. Rights to in a marriage are not just the rights envisaged in this Bill. They also include rights to companionship, duty of care---

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Ol Jorok, we hear you.

*(Hon. A.B. Duale stood up)*

First of all, you are out of order, both of you.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I have a serious issue.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You have, I am sure you do. Sit down! Thank you very much. I am coming to you, the Leader of Majority Party, I can assure you, but let us just finish this. It has been proposed. I have a lot of requests and I want you now to speak to Sub-clause (2) and not water which is under the bridge. I want you to speak on Sub-clause (2). I have several requests and I hope that you---

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, I will come back to you. Take the Chair’s word as a word of honour. I am coming to you. Member for Rarieda.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I had requested an intervention after the Leader of Majority Party.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Just a minute, let him be fair to be able to raise it. Why do you not wait for him to say something and then you can respond? Who is speaking on Sub-clause (2)?

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

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, in fact, I want you to give direction on a matter of the Constitution. With your indulgence, the matter before us is not a matter of “ayes” and “noes”, it is a matter of our faith. If you want me to do that, I will withdraw all---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Members, I think he is right to suggest what he has suggested.

**Hon. A.B. Duale:** I am talking as a Member for Garissa Town, and I am ready to withdraw all these amendments and walk out of this House. If you allow me, Article 170-- I want my colleagues from other faiths to have tolerance. Religion is about tolerance, unless you do not go to church.

I want you to listen to me. Article 170 of the Constitution has the subtitle “Kadhis’ Courts”. It provides that:-

“There shall be a Chief Kadhi and such number, being not fewer than three---”  
Some of us supported the Constitution because of this Article.

*(Loud consultations)*

If you allow me, I will talk and you listen. The subtitle of Article 170 is “Kadhis’ Court”. If you go further to subsection (5) of Article 170, it reads - I will read for all and sundry - that:-

“(5) The jurisdiction of a Kadhis’ Court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhis’ courts”.

That is the supreme law. That is the Constitution. That is why the Muslim community in this country, whom I happen to represent in one constituency, voted for the Constitution. What we are trying to do, and what you have voted for is the creation of an office for the registrar, who will register marriages. It is different. If you allow me, our Christian brothers and sisters have no problem with that. Hindus have no problem with that; as Muslims, and I have made it very clear, our marriages---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): I am protecting the Member for Garissa Township. He is entitled to say what he is saying. So, just give him time to finish, hon. Members.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I have said candidly that a marriage in Islam is independent of registration. I have also stated very clearly on the Floor of the House that failure to register does not invalidate an Islamic marriage.

I have no problem with the registrar; if you allow me---

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

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, if you allow me, I have no problem with the registrar. I am saying that we have a further amendment to say that “provided that in the Islamic marriage---

**An hon. Member:** On a point of order, hon. Temporary Deputy Chairman.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I want you to listen to me. I have no problem with the registrar or a director. What I have a problem with, because my other colleagues are comfortable, I am saying that we need a proviso; a further amendment saying that “provided that in an Islamic marriage, these rights are subjected to Islamic law”.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you. I can see the agitation. I can see the passion.

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

Will you, please, just sit down! Member for Rarieda! Order Members! Let us speak to this subject in the most sober manner. That is number one; number two, allow Members who have contrary opinions, however bad they are, to express them.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I seek your indulgence so that---

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

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order!

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, we all belong to faiths and religions, and we must respect each other’s religion; but my request--- I am asking my friend, the Leader of Majority Party, if he can listen to this.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order, you two leaders.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, if the Leader of Majority Party can listen to me, I believe that we can engage in this debate without grandstanding, without unnecessary histrionics and without unnecessary religious fanaticism. I want to refer you to the Constitution.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Just a minute, let me come to his protection. Will you withdraw the term that suggests that the Member could have religious fanaticism?

**Hon. (Eng.) Gumbo:** I withdraw that one.

His fears are taken care of in the Constitution. If you look at the Constitution, under Article 45(4), it says that:-

(4) Parliament shall enact legislation that recognises—

(a) marriages concluded under any tradition, or system of religious, personal or family law; and

(b) any system of personal and family law under any tradition, or adhered to by persons professing a particular religion---

That already takes care of the fears of the Leader of Majority Party. The Constitution says “shall”. Therefore, his interests have been taken care of.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Hon. Members, I want to avoid debate that is crowned near me. Can I hear somebody from the other side of the House? Yes, Member for Nyandarua.

**Hon. (Ms.) Muhia:** Hon. Temporary Deputy Chairman, I hope that we are on the next clause.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Hon. Members, we are on Clause 3 (2).

**Hon. (Ms.) Muhia:** Okay, I support.

*(Loud consultations)*

**The Temporary Deputy Chairman (Hon. Kajwang’):** Order! Order! Can everybody be seated? The hon. Member forfeited her chance to speak. This is how we will do it. I am impressed by the discussion that is going around here. I am sure that this discussion will produce text that will be agreeable to all. The most important thing in this Chamber is that we produce legislation that helps Kenyans. So, Leader of Minority Party, I want discussion that will help to move me forward, and not to take me backwards.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, let me, first of all, plead with the House to calm down because this is a rather controversial discussion. I want to agree with hon. (Eng.) Gumbo that we must respect each other’s religion. This is something we can overcome if we just calm down a bit. I have consulted the Leader of Majority Party. These are lots of amendments. We cannot blame him for trying to do what he is trying to do without anticipating discussion on the other amendments. The issue that is bothering him has been taken care of by another amendment that is yet to be moved. Since we have already voted, I want to plead with him and everybody else that we move---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order, hon. Members! Could you allow the Leader of Majority Party to listen to what hon. Midiwo is saying? I think there is a suggestion here.

Please, proceed, hon. Midiwo.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, because we have already voted on his amendment, and it was not carried, I want to persuade him that what is bothering him will be taken care of by an upcoming amendment as a way of respecting religion.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you very much. Can I hear the Leader of Majority Party?

**Hon. A.B. Duale:** Hon. Temporary Chairman, I agree with you. In Clause 3, which I sought to amend, I now have no problem with part (a). Part (b) will take care of the issues that I have raised. Clause 3(b) says:-

“(4) Subject to sub-section (2), the parties to an Islamic marriage shall only have rights granted under Islamic Law”. That one will take care of my concerns.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you very much. That is where we are headed.

**An hon. Member:** On a point of order, hon. Temporary Deputy Chairman!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order! Ken Obura from Kisumu, order! I will give you the microphone in a short while.

**An hon. Member:** On a point of information, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): My good lady over there; please, just resume your seat. You cannot purport to give information to a person who does not want your information. Approach the fellow you want to inform and let me know if he wants that information.

Hon. Members, before we stalled, we had finished with Sub-clause 3(a). We are now dealing with Sub-clause 3(b). Hon. Duale, can you speak into the microphone and move the amendment in Sub-clause 3(b)?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 3 be amended-

(b) by inserting the following new Sub-clause immediately after Sub-clause (3)-

“(4) Subject to subsection (2), the parties to an Islamic marriage shall only have rights granted under Islamic Law.”

Hon. Temporary Deputy Chairman, if this amendment is carried, other people and I will sleep soundly. The constitutional provision referred to by hon. (Eng.) Gumbo, in Article 45(4) is what we are doing. We are legislating on the same.

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

Yes, Member for Kisumu, hon. Ken Obura.

**Hon. Mirenga:** Thank you, hon. Temporary Deputy Chairman. First of all, let me correct you that I am the Member for Kisumu Central, not Kisumu.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you. I apologise.

**Hon. Mirenga:** Hon. Temporary Deputy Chairman, Sir, secondly, we are getting agitated around this area generally because you are only giving chance to four or five people to contribute to this very important Bill. So, we want to ask that you look at the

whole House rather than just concentrating on your immediate right, and on one or two persons on your immediate left.

Hon. Temporary Deputy Chairman, I am asking for your indulgence. There is a lot of excitement around the Leader of Majority Party. I do not know why. I wanted to ask all my Muslim brothers to look at Clause 48 of this Bill. Clause 48(3) says:-

“48(3) Any provision of this Act which is inconsistent with the Islamic Law shall not apply to persons who profess the Islamic faith.”

Hon. Temporary Deputy Chairman, this takes care of all the concerns that my Muslim brothers may be having. Once this is understood, the rest becomes irrelevant, and we may move on.

Thank you.

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

Yes, Member for Kajiado.

**Hon. (Ms.) Seneta:** Thank you, hon. Temporary Deputy Chairman. The point I wanted to raise is very important.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Is it still a point of information or point of order?

**Hon. (Ms.) Seneta:** Hon. Temporary Deputy Chairman, it was a point of information. What I wanted to raise---

**The Temporary Deputy Chairman** (Hon. Kajwang’): To whom are you giving the information?

**Hon. (Ms.) Seneta:** Hon. Temporary Deputy Chairman, I wanted to give the information to the Committee of the whole House.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Seneta, I will do the unique thing of accepting that information. Proceed.

**Hon. (Ms.) Seneta:** Hon. Temporary Deputy Chairman, this is a very important law we are making for Kenyans. Therefore, we should take care of all types of marriages. For example, we have customary marriages, which some of our people still practise. Such marriages, however, are not registered. I do not want any colleague or woman who has been married through customary law to suffer because of a law that I will make in this House. As you take care of the Islamic and Christian marriages, let us also take care of the customary marriages, which many of our colleagues outside there practise.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right, thank you very much, the information has been received.

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

*(Clause 3 as amended agreed to)*

*Clause 4*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. A.B. Duale.

**Hon. A.B. Duale:** Thank you, hon. Temporary Deputy Chairman, now I can breathe and sleep.

*(Laughter)*

The Muslim community will sleep as well. I beg to move:-

THAT, Clause 4 be amended by-

- (a) renumbering the existing provisions as Sub-clause (1) and;
- (b) inserting the following new Sub-clause, immediately after the renumbered Sub-clause (1)-

“(2), the minimum age for the parties to an Islamic marriage shall be in accordance with Islamic Law.”

My late father was a very religious man, and my chief campaigners in the constituency belong to this religion. So, I will stand with the Quran that nobody through legislation can set the age of marriage. We are saying the age for marriage is documented in Islam. I ask my colleagues that the minimum age for parties to an Islamic marriage, shall be in accordance with Islamic Law.

*(Hon. Members stood up in their place)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order! Order! All right; sit down. Everybody should resume their seats. There are Members at the back of the Chamber who are on their feet. Can you sit down! Member for Mvita and those Members over there, who are they? Please do not make me take action on you; just sit down. Thank you very much.

All right. The Member for Seme.

*(Question of the amendment proposed)*

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairman, I would want first of all to speak about this. If we say that every clause which we go through will carry this--- I am not a lawyer, but I would like the lawyers here to guide us on this. If there is a provision that carries all that is needed, is there need for every clause you bring in to have particulars? Let me speak, because I have been allowed. I have seen when we are making law, we refer to the Constitution, and we mention a particular Article; we do not import anything. What is going to happen here is that we are going to talk about virtually everything in every clause in relation to Islamic Law. In reality, when we are talking as technical people, why can we not say that Clause 48, which carries everything, is adequate?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you very much. Hon. Member, you need to come to it.

**Hon. (Prof.) Nyikal:** I am now coming specifically to Clause 4. I think we should not put anything that allows other interpretations, which will go against the Constitution and the rights of children.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Which Article are you referring to?

**Hon. (Prof.) Nyikal:** Article 53.

**The Temporary Deputy Chairman** (Hon. Kajwang’): A minute, which Article are you referring to?

**Hon. (Prof.) Nyikal:** In the Constitution, Article 53(1)(d). We cannot allow that.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you very much. Nominated Member, hon. Zuleikha. You are a young man or a young person in this National Assembly, let us hear from the young people also.

**Hon. (Ms.) Juma:** I am a young woman and I wanted to suggest to Members who are probably not part of the Islamic faith, when Muslims speak about their law, they say Islam is a way of life. I would like you to trust us also as leaders here, and we have consulted; whatever we put in, is in accordance with the Islamic Law. I would suggest that you allow us to move provisions because people are worried; at the implementation stage--- When in court, some judges might misinterpret the law and then put us into problems.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you; County Women Representative for Kiambu.

**Hon. (Ms.) Gathecha:** Thank you, hon. Temporary Deputy Chairman. As legislators in this country for everybody, every single citizen of this country---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order! Thank you. Proceed.

**Hon. (Ms.) Gathecha:** Hon. Temporary Deputy Chairman, please protect me. Consultations are too loud.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You are well protected. They are persuasively moved by the discussions; they have no option but to smile. Can you proceed?

**Hon. (Ms.) Gathecha:** We are here legislating for the whole country and we cannot violate the rights of the youth, or those who are considered minors, by allowing them to be legislated for under other cultures or religions. This is a country where we are legislating and we are expected to protect the rights of every individual within this country. Therefore, if we agree that we are going to allow children to marry because they are Muslims, it is not fair or right and we must protect the rights of children.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Gichigi, Member for Kipipiri.

**Hon. Gichigi:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to contribute. Although the hon. Member for Garissa Town is very busy and he may not be listening to my contribution---

*(Loud consultations)*



**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order, hon. Members! Let the consultations calm down.

**Hon. Gichigi:** I have heard him loud and clear, though I am not an expert in Islamic Law. I have been advised today by the hon. Member for Garissa Town that Islamic Law requires that a person must be 19 years old before he/she can marry or get married. That is what he has said. I have also read the Constitution, Article 45(2) states as follows:-

“Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.”

To me, “adult” means a person of 18 years of age. If it means 18 years of age, then the law, as stated in the Bill, must be the law that we uphold. The proposed amendment must be rejected.

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

*(Clause 4 agreed to)*

*Clause 5*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 5 be amended by—

(a) inserting the following sub-clause immediately after sub-clause

(2) —

“(3) A person shall not be a witness to an Islamic marriage unless the person is competent to be a witness under Islamic Law.”; and

(b) renumbering sub-clause (3) as sub-clause (4).

Hon. Temporary Deputy Chairman, if you agree with me — I have consulted the Chair — I have an amendment on Clause 48. If I am allowed to amend that Clause, then I will drop all my amendments.

**The Temporary Deputy Chairman** (hon. Kajwang’): An amendment to which clause? I did not hear you properly.

**Hon. A.B. Duale:** On Clause 48 at a later stage.

**Hon. Member:** We are not yet there.

**Hon. A.B. Duale:** I am talking to the Chair.

*(Loud consultations)*

**The Temporary Deputy Chairman** (hon. Kajwang’): All right. Can I allow this conversation to go on? Order, before I get to that--- Hon. A.B. Duale, I understand where you are going. Just a minute, so that we can entertain the discussion on it; that amendment needs to be moved. Once it is moved, then we will entertain the discourse that you are having. For the purpose of HANSARD, move the amendment so that we can have a discussion it. This is because it is still before the House.

**Hon. A.B. Duale:** That is why I am saying that you are the one who said that we need to move in a systematic way. I have a raft of amendments which are very similar and I have consulted with the Chair; I can drop all my amendments and then agree with the amendments of the Committee,

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay. Thank you. Can I hear from the Chair on this?

**Hon. A.B. Duale:** But hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon. Kajwang’): No! No! You will have the chance.

**Hon. Chepkong’a:** Thank you, hon. Temporary Deputy Chairman. I have consulted with the Leader of Majority Party with regard to the various amendments that he is seeking to move. We would like him to be comfortable with the proposed amendment to Clause 48. What we have agreed with him is that we make some changes to the amendment to Clause 48, which will read as follows:-

“Any provision of this Act which is inconsistent with Islamic Law shall not apply to persons who profess the Islamic faith.”

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. That is a very good development; we must encourage it. We will handle it at that point; as the Chair and a Member of National Assembly, we will hold you to your honour.

So, do I hear for record that this amendment is, therefore, dropped, hon. A.B. Duale?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chair, you know that the institution of marriage to some of us is a serious thing. We do not have what we call “come we stay.” Therefore, on the agreement with the Chair of the Committee and the House, and for us to move forward, I withdraw and drop Clause 5 and all my amendments.

**The Temporary Deputy Chairman** (hon. Kajwang’): Okay.

*(Clause 5 and all other proposed amendments  
by hon. A.B. Duale dropped)*

#### *Clause 6*

**Hon. Chepkong’a:** Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 6 of the Bill be amended in Sub-clause (1) by deleting paragraph (f).

Hon. Temporary Deputy Chairman, the Committee felt very strongly that if we leave any other group, it is inconsistent with Article 45 of the Constitution which recognizes marriage between man and women. Therefore, this would have allowed other marriages that were not anticipated under Article 45. These were proposed to be deleted.

Thank you.

*(Question of the amendment proposed)*

**Hon. Nuh:** Hon. Temporary Deputy Chairman, I agree with the Chair of the Committee that paragraph (f) needs to be deleted because when you say, “in accordance with the practice of any other faith or other group” lesbians and gays come in. You cannot allow gays and lesbians to have permission to marry each other in this country.

I agree with the Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Kiharu, can you press your intervention button?

**Hon. Kang’ata:** Thank you, hon. Temporary Deputy Chairman. I happen to be the chairman of the anti-gay lobby group in this House, and I am happy that the Committee has seen the light.

**The Temporary Deputy Chairman** (Hon. Kajwang’): No. I have a problem with you when you are Member of the National Assembly expressing yourself as the leader of the anti-gay lobby. I find that unfair. Can you just say what you want to say?

**Hon. Kang’ata:** Thank you, hon. Temporary Deputy Chairman. I want to support the proposed deletion because some of the marriages which can be procured in foreign countries maybe inconsistent with our local laws. For instance, same sex marriages in South Africa may be incorporated into our laws.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Thank you. Lastly on this subject is nominated Member, Sunjeev Birdi.

**Hon. (Ms.) Sunjeev:** Thank you very much, hon. Temporary Deputy Chairman for giving me this opportunity. Let me say that I have been burning for the last few days to contribute to this Bill. I have so much to say but since I am going to talk about this particular Clause, I looked at it recently and I actually oppose its deletion. I believe paragraph (f) should be in this Bill. The first reason is that there are very many religions in this world that are actually known. An example is the Rastafarian religion and many others.

Secondly, this paragraph (f) takes care of all the religions because a religion has to be gazetted, and if it is not gazetted then it is not legal. So, it takes care of religions that are not registered because they have to be registered to be legal. I believe paragraph (f) should be in the Bill.

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

*(Clause 6 as amended agreed to)*

*(Clause 7 agreed to)*

*Clause 8*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 8 be amended –

(a) in sub-clause (4), by deleting the word “Director” and substituting therefor the word “Registrar”.

(b) in sub-clause (5), by deleting the word “Director” and substituting therefore the word “Registrar”.

(c) in sub-clause (6) by deleting the word “Director” and substituting therefore the word “Registrar”.

We do not think that people should be directing people’s marriages. They should just merely be registering marriages only and that should be the operational title of the person who will be registering marriages; the change is from “Director” to “Registrar” in the entire Act. That is the proposal that is being made. Even at the moment it is “Registrar” and not “Director”.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’) Now, hon. Duale you remember you had an amendment but you have addressed us before. So, can you speak to the HANSARD now?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I am withdrawing because all my amendments to the provisions in this section shall not apply to Islamic marriages.

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

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

*(Clause 8 as amended agreed to)*

*(Clauses 9 and 10 agreed to)*

*Clause 11*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 11 be amended in sub-clause (2) by deleting the words “mental disorder or mental disability” appearing in paragraph (c) and substituting therefor the words “mental condition”.

The reason why we are saying that is because when you use the term “mental disorder or mental disability”, you are a little bit discourteous to the people who are suffering from such kind of disease or sickness. So, “mental condition” are more appropriate words to be used in the circumstances, and I think the Member of Parliament for Seme will totally agree that it is a mental condition. Thank you.

*(Question of the amendment proposed)*

**Hon. M’uthari:** Hon. Temporary Deputy Speaker, I agree with that amendment to that clause because the words “mental disorder or mental disability” are demeaning to the people with disabilities. So, it is good to delete it.

**Hon. Dido:** Hon. Temporary Deputy Chairman, I think saying “mental disability or mental disorder” is demeaning and discriminatory; if you say “mental condition” it suffices. Thank you.

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

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

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Mwaura, can you speak to sub-clauses (3) and (4)?

**Hon. Mwaura:** Thank you, hon. Temporary Deputy Chairman do indulge me also because I wanted to ventilate on “mental condition” although we have passed it. Just for clarity the term “mental condition” is broad enough.

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

THAT, Clause 11 be amended by inserting the following new sub-sections immediately after sub-section 2.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Are you referring to page 97 of the Supplementary Order Paper?

**Hon. Mwaura:** Page 98.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Well, on my copy it is 97. I am sure we are together. Are you referring to that, hon. Mwaura?

**Hon. Mwaura:** Yes.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right, so that all Members can follow you, can you proceed?

**Hon. Mwaura:** Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 11 be amended by inserting the following new subsections immediately after subsection (2)-

“(3) A person shall not be deemed to be suffering from a mental condition for purposes of subsection (2)(c) unless this has been certified by a medical board or the National Council for Persons with Disabilities.

(4) Notwithstanding subsection (2)(c), a person with a mental condition shall be deemed to have legal capacity to give consent to a marriage, and in this regard may be accorded support in decision making.”

*(Question of the further amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Seme, can you give guidance on this? I call on you because I know you are an expert in medicine.

**Hon. (Prof.) Nyikal:** In Clause 3 where we say medical board or National Council, I will oppose this because I do not think the National Council for Persons with Disabilities has the technical capacity to do that. Further, when we say a medical board, it is important to say which medical board. What we know is the medical board appointed by the Director of Medical Services. That is what is in practice now. So, the amendment

that would be required here, in my view, is a medical board appointed by the Director of Medical Services and we exclude the National Council for Persons with Disabilities. That is what would be consistent with the practice now.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you for your contribution; it presupposes a further amendment and I am holding very strictly the provisions of Standing Order No.55(2). So, we have to look at the amendment as it is. If you feel you like it, you vote for it; if you feel you do not like it, it is to be dropped.

*(Hon. Kaluma stood up in his place)*

Hon. Okoth, you have been on your feet for some time!

**An hon. Member:** He is not in the Chamber!

**Hon. Kaluma:** Hon. Temporary Deputy Chair, marriage is a social contract. In contract law, you cannot undertake a contract if you do not have the mental capacity to go into it. I was going to say that this issue of mental condition is already qualified in the last line without the amendment by hon. Mwaura. It says, “so as not to appreciate the nature or purport of the ceremony”. If that is proved, you cannot contract. This amendment by hon. Mwaura, the proposed new Sub-clause (4), contains the idea that somebody can enter into a marriage contract based on his own decision for another person. It cannot work! It deviates from all contract law.

**Hon. Kangara:** Hon. Temporary Deputy Chair, I stand to oppose this amendment in that marriage is a contract between two people who are willing and at the same time their mental capacity to make decisions wisely is intact. Otherwise, if we start engaging other parties, like the National Council for Persons with Disabilities, we will be complicating the issue of marriage.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chair, now that I am back to the debate, I strongly oppose for several reasons. One, the Kenya Medical Practitioners Board deals with ethics of doctors who do not perform, or who do unethical things. Remember people have misused the element of mental incapacity; when you are indisposed that is when documents are signed. On the point of the National Council for Persons with Disabilities, their mandate does not fall anywhere around this Bill. So, I strongly oppose and agree with hon. Kaluma.

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

*(Hon. Mwaura stood up in his place)*

**Hon. Mwaura:** Give me a chance!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Of course, you have a right, although you are raising your hand and standing up, reminding us of the scenes we have seen in the recent past, particularly from the colour of the suit that you wear.

**Hon. Mwaura:** Yes, I am in black!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Speak to the microphone!

**Hon. Mwaura:** Hon. Temporary Deputy Chair, as a person representing special interest groups, I seek your indulgence to guide this House.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Of course, you get it.

**Hon. Mwaura:** Hon. Temporary Deputy Chair, there is a difference between mental illness and psychosocial disability. There is a difference between mental capacity and legal capacity. In terms of international practice, I am referring to Article 12 of the Convention on the Rights of Persons with Disabilities which clearly recognizes that persons who fall under the ambit of this broad definition of mental condition, including persons with psychosocial disabilities - please note, not mental illness - will be deprived of their right to freely give consent.

The import of my amendment, therefor, is to clarify that nobody has the capacity to just label anybody as having a mental condition. That will be the responsibility of a medical board. With regard to disability, which is part of the broader definition of mental condition, the National Council for Persons with Disabilities has the mandate in law, to register all persons with disabilities of whatever kind.

Secondly, the idea of legal capacity, being equal before the law, and supported decision making does not mean making decisions. It is facilitation to make the right decision. Therefore, this protects persons with any form of mental condition and mental disability.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you very much! The amendment has been prosecuted very well. It has been debated and the Mover has had the second chance to respond.

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

*(Clause 11 as amended agreed to)*

#### *Clause 12*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 12 be amended by—

- (a) deleting paragraph (d); and
- (b) deleting paragraph (f)

The reason we are proposing the deletion is because the question of procedural error does not undermine the question of marriage. Under “(d)” it is stated that a person officiating thereat is not lawfully entitled to do so. If two persons have come together, get married and the person was not lawfully allowed to or entitled to officiate at that particular function, we are saying it is not the problem of the persons who are getting married. To invalidate that marriage because of the wrong of one person, or the officiating party, would be unfair to the parties to the marriage.

*(Question of the amendment proposed)*

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

*(Clause 12 as amended agreed to)*

*(Clause 13 agreed to)*

*Clause 14*

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

THAT, Clause 14 be amended by deleting the words "one year" appearing in Sub-clause (1) and substituting therefor the words "six months".

The Committee felt that for two parties to agree to undermine their marriage for more than a year or a year, it is too long. We thought that six months would be more than sufficient to think about the matter. So, we propose to reduce that period from one year to six months.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): The hon. Member for Mbeere North, it is good that your constituents hear their Member speak in the National Assembly.

**Hon. Njagagua:** Hon. Temporary Deputy Chairman, with a lot of respect, I have spoken in this House for the last one year and the people of Mbeere are happy about it.

However, I oppose this amendment. We know that even when you go to court to dissolve your marriage before you get the decree absolute, there is what we call the *decree nisi*, which is basically for six months. The reason for getting *decree nisi* is to allow for the cooling of tempers or any friction that must have been in the marriage. So, when parties agree out of their own volition to be apart for one year for whatever reason, give it to them. I thought this was a well thought out Bill when it came to this House, and the one year period had been researched and there was sufficient reason why people had to be given that period. I do not think six months---

**The Temporary Deputy Chairman** (Hon. Kajwang'): So, you oppose that amendment?

**Hon. Njagagua:** Yes, I oppose that amendment, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Where is your card the Member for Teso South? I believe you do not go to those places where you can misplace it. Proceed.

**Hon. (Ms.) Otucho:** Thank you, hon. Temporary Deputy Chairman for giving me this opportunity. I will ensure that I keep my card well.

I would like to oppose the amendment to Clause 14. Sometimes when people decide to live apart, it depends on why they separate. So, I want to agree with my colleague who has said that we leave the clause as it is. One year is sufficient for people to be able to heal wounds or cool down and then get back together. Six months might be too short a period.

Thank you, hon. Temporary Deputy Chairman.



**The Temporary Deputy Chairman** (Hon. Kajwang): Yes, hon. Wamunyinyi.

**An hon. Member:** Wamunyinyi, talk to us!

**Hon. Wamunyinyi:** Thank you, hon. Temporary Deputy Chairman. I do not know why Members are excited when we are talking about normal business that we do every day.

On the proposed amendment, I would like to draw Members' attention to Clause 14(2). Even in Sub-clause (1), you will have to file the same with the court. Either it is six months or one year. If you look at the subsequent one, although we have not got there, but just to help Members so that we do not belabour this, it says that the court may vary or even set aside the agreement or any of its provisions, if it is satisfied that since the agreement was made there has been a material change of circumstances. Even members of families or parties could even agree to three months and this does not matter. It may be three, five or nine months. To me, it does not matter. We can still have either the six months period or the one year period.

**The Temporary Deputy Chairman** (Hon. Kajwang'): So, you are neither hot nor cold.

**Hon. Wamunyinyi:** I support the amendment, hon. Temporary Deputy Chairman.

**Hon. Mulu:** Thank you, hon. Temporary Deputy Chairman. I have actually been waiting for this opportunity for some time. I want to oppose this amendment bearing in mind that it takes a lot of time for people even to agree to marry. Some people will take as long as five years while others will take six or four years. I think it will be unfair just to allow six months to dissolve a marriage. I propose that we retain the one year period, so that we allow people to cool---

**The Temporary Deputy Chairman** (Hon. Kajwang'): So, you oppose the amendment.

Hon. Members, I think we have a consensus. Do we put this amendment to vote?

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

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

*(Clause 14 agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Members, you are driving me a little faster than I should go.

Hon. Gichigi, what is burning?

**Hon. Gichigi:** Hon. Temporary Deputy Chairman, I wanted to oppose the entire clause. That is why I was seeking an opportunity before the Question was put.

**Hon. Members:** It is gone!

**The Temporary Deputy Chairman** (Hon. Kajwang'): All right. You will have a chance to handle another one.

*(Clauses 15, 16 and 17 agreed to)*

*Clause 18*

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

THAT, Clause 18 be deleted and replaced with the following new

clauses-

Place of

celebration of

Christian

marriage

18A. A marriage under this Part may be celebrated in a public place of worship or any other place as may be permitted by the church.

Objection to a

notice of

intention to

marry.

18B. (1) A person who knows of an impediment to an intended marriage may give a written notice of objection to the person in charge of a public place of worship where notice of intended marriage has been posted in accordance with section 20.

2) A notice of objection shall include the name of the person giving the notice of objection and the person's relationship with either of the intended parties and shall state the reasons for the objection to the intended marriage.

(3) A person who has given notice of objection may, at any time, withdraw the objection in writing.

Obligations of

the Church

Minister in

relation to

objections.

18C. (1) Upon receiving the notice of objection, the person in charge of a public place of worship shall hear the objection forthwith and if the person in charge of a public place of worship considers that the objection requires further hearing, he or she shall postpone the marriage ceremony until such time as the objections will be determined in accordance with the church regulations.

(2) The person in charge of a public place of worship shall determine an objection within a reasonable period which shall not be more than seven days after hearing the objection.

(3) Upon determination of an objection, the person in charge of a public place of worship shall prepare and submit a report of the process of determination of the objection in the prescribed form to the parties and the Registrar within seven days of the determination.

(4) Any party dissatisfied with the decision of the person in charge of a public place of worship may appeal to the court within fourteen days of the decision.

The Committee had discussions with the stakeholders and all the persons concerned within the Christian religion and it was proposed that Clauses 18 through to 26 do not apply to Christian marriages. Therefore, Clauses 18 to 26 were proposed for deletion, transferred to be under civil marriages and new Clauses 18A, 18B and 18C are introduced.

*(Question of the amendment proposed)*

**Hon. Nuh:** Hon. Temporary Deputy Chairman, I support the amendments and the provisions that have been proposed by the Chairman of the Committee. These new provisions are meant to cure a situation where people who, after marriages are prepared, money spent and people go to church and want to conduct the wedding, appear from nowhere and say that they are objecting to that marriage, and that the bride is their wife. This is the biggest problem Christian marriages have been facing. Somebody spends Kshs.1 million to prepare a wedding and then when they appear before a pastor to say “I do”, somebody appears from nowhere and says: “this is my wife”. We must have provisions of this nature to deter people who come to claim other people’s properties. Is it allowed? I support the Chairman.

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, I rise to oppose the amendment. Look at the way it is worded, “giving a written notification”, that will ruin plans of people who have prepared a wedding. This will be done by somebody who has been working behind doors. You will remember just the other day an old man appeared at his daughter’s marriage and stopped it. So, I say that we should not allow anybody to give a written notification. Assuming my father, who is not educated, wants to stop a marriage and he cannot write, what will happen? I oppose.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Too many men have spoken on this. Can I hear also the voice of the ladies?

**Hon. (Ms.) Korere:** On a point of order, hon. Temporary Deputy Chairman. I was rising on a point of order. When hon. Junet was speaking he insinuated that a problem will arise only when a man will appear and claim that a woman is his wife. He even went further to claim that these people come to claim other people’s properties. Is it right for him to refer to women as property?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! I want to give direction before that. Can all the hands come down? This is the direction I am giving on this. I want us to deal with this clause by clause, so that another clause is not affected by discussion that has happened on another clause. Members can intelligibly interrogate each clause. So, we are on Clause 18A. There is a substitution brought for Clause 18A.

One more lady, member for Bomet County!

**Hon. (Ms.) Ng’etich:** Thank you very much, hon. Temporary Deputy Chairman. I want to support this amendment. It is not anything new because we are aware that before any Christian marriage there are three announcements made in church. It is at that time that one is required to give an objection in writing and state reasons. Rather than people

going to court to get a court order in the last minute, it is good for the Minister to look at the issue and recommend, if they so wish, to the registrar for further discussion. It is good because it will avoid the last minute rush when the wedding is taking place, for somebody to come with an order to say that a wedding must stop.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. I will give a chance to two more people. One of them is the Leader of Majority Party and the other is a Bishop. Only those two people will speak on this.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, you must protect me. I am a legislator and I also have Christian men and women in my constituency. I oppose this because characters will sit somewhere when they know that somebody is going to get married and write letters. Owing to the Omtatas of today, no marriage will ever take place.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I want to protect that gentleman who happens not to be in this Chamber, and whose name you may have mentioned.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I withdraw. Before, they used to go to churches and raise their hands. If you give them this chance in this law, they will sit somewhere at Serena and plan how to stop the marriage of my good friend, hon. Wafula Wamunyinyi; I will not allow that. So, I oppose.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The last on this is Bishop Mutua, nominated Member.

**Hon. (Bishop) R. Mutua:** Thank you, hon. Temporary Deputy Chairman for giving me this opportunity. I would like to draw your attention to the fact that this is a Christian marriage and the notice is given to the minister who is going to officiate the wedding. Once the notice is given, the Christian minister for that particular wedding will call the people to substantiate or explain the background of that particular intention. This is not just an automatic stopping. It is something that is going to be discussed and examined by even the church council before they can decide whether to accept that intention or reject it. So, this is very important in house-keeping issues. The Church has the mandate to make the final decision. So, I support.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Members, we have agreed that we are going to go clause by clause. So, you may preserve your comments for the next clause. Well, this Member, I can restrict you. I have that power, but you can speak. I am trying to struggle with the digitals here also. Hon. Johana Kipyegon.

**Hon. Kipyegon:** Hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon. Kajwang’): You are laughing and you are on the microphone.

**Hon. Kipyegon:** Thank you, hon. Temporary Deputy Chairman. The reason I am passionate about this is because it affects me directly. I am not married and I am going to marry. We have to legislate on something.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Do I hear some foot thumping from the Member for---

**Hon. Kipyegon:** Hon. Temporary Deputy Chairman, the issue here is that we have to respect, not even the marriage itself, but even the consent to marry, so that if somebody was to stop a marriage, there must be very serious grounds. Nobody can just

come to the church and say “I have this man’s child” or something like that and then the marriage stops. We have witnessed marriages stopped in such circumstances for as long as two or three years. So, I support this particular amendment, knowing very well that marriages have to be protected.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, let us go to the next subclause 18B.

**Hon. Chepkong’a**: On a point of order, hon. Temporary Deputy Chairman. I am rising on a point of order.

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, just refresh our minds on this amendment. We do not have time.

**Hon. Chepkong’a**: Hon. Temporary Deputy Chairman, I rise pursuant to Standing Order No.134.

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, no, no! Order! Who is this behind me?

*(Laughter)*

Departmental Committee Chairman, I want us to finish with this amendment. So, just refresh hon. Members’ minds on what sub-clause 18B is about.

**Hon. Chepkong’a**: Hon. Temporary Deputy Chairman, can hon. Members listen to me clearly?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Just a minute! I can see that sub-clause 18B is related very closely to sub-clause 18A.

**Hon. Chepkong’a**: Correct!

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, can you just refresh the hon. Members’ minds, so that they know where we are?

**Hon. Chepkong’a**: Hon. Temporary Deputy Speaker, hon. Members need to listen, so that they can vote rightly. This is a matter that was discussed by the Departmental Committee on Justice and Legal Affairs. As we all know, it is mandatory for this House to invite members of the public to give opinion with respect to any legislation we intend to enact. Pursuant to that provision, we invited memoranda, which were forwarded to the Justice and Legal Affairs Committee. The National Council of Churches of Kenya (NCCCK) appeared before the Committee. The Anglican Church and the Methodist Church also appeared. We asked them to come up with that which is acceptable to the Christian faith. They came back and gave us a written proposal to replace what was contained in clauses 18 to 26.

This is the part that deals with Christian marriages. Let us not confuse it with civil marriages. We will come back to civil marriages, where we will then deal with other issues. We will come back to the customary law and deal with customary marriages. With respect to Christian marriages, the Christian community has unanimously agreed to this proposal. On this one, they appeared before us.

I can hear hon. Kang'ata requesting a chance to give me information. He is a Member of my Committee. There is no information to give me. I am well versed with this matter. These are matters which were taken very seriously. If you listen to the Bishop in this House, you will appreciate what I am saying. He is a Bishop of a particular church. We sat down. There are very many Christians in this House.

Hon. Temporary Deputy Chairman, if you go to any local church, you will find that there are what we call "banns of marriage", which are read out for three consecutive Sundays before one gets married on the next Saturday. They ask if there is any person with any reason as to why two parties should not be joined in marriage. Whoever is opposed to the marriage is required to give reasons, in writing, to the church.

*(Loud consultations)*

Hon. Temporary Deputy Speaker, it does not say "written" but it says "give reasons". In order to discourage people from coming forward with frivolous reasons, churches demand that the reasons should be written down, because they cannot act on verbal objections. Somebody will say that they objected, and you will have to produce evidence if one goes to court.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Yes, Member for Turkana South.

**Hon. Ekomwa:** Hon. Temporary Deputy Speaker, I agree with the Chairman of the Departmental Committee on Justice and Legal Affairs. He has clearly mentioned that they have actually consulted bishops of different churches. I want to inform him that we are also "bishops" of our constituencies, because we consult our constituents. One thing I want to be clear to Kenyans is that there are citizens who do not know how to write.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Please, save us from stories. Just give us the gist of it.

**Hon. Ekomwa:** Hon. Temporary Deputy Speaker, that is exactly what I am doing. We have elders in the church, whose role is to perform the function of ensuring that if there is a problem in a marriage, they sit down, square the problem and report to the bishop.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Thank you, hon. Ekomwa.

**Hon. Ekomwa:** Hon. Temporary Deputy Chairman, I have not yet completed. We are Africans---

**The Temporary Deputy Chairman** (Hon. Kajwang'): Thank you, hon. Ekomwa.

Hon. Members, can I now put the Question?

**Hon. Members:** No! No!

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Members, we have other business to do.

**An hon. Member:** Give a few more Members a chance!

**The Temporary Deputy Chairman** (Hon. Kajwang'): All right. Member for Juja, you will be the last to speak on this matter before I put the Question.

**Hon. Members:** No! No!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, not all of us can speak on a matter like this one. This is not debate time.

**Hon. Waititu:** Hon. Temporary Deputy Chairman, with due respect, I am the chairman of the Catholic Church Parish at Jomo Kenyatta University of Agriculture and Technology. As Catholics, it is misleading for one to say that if a marriage is announced in the church three times, there is a letter that follows. It is the duty of the church elders to call the two persons, before even the matter goes to the priest, who makes the final decision. So, it is not in order for the Chairman of the Departmental Committee to say that there is a written document that comes to the church.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Thank you.

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

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

*(Clause 18 as amended agreed to)*

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

**The Temporary Deputy Chairman** (Hon. Kajwang’): What is your point of order, hon. Chepkong’a? What is out of order?

## PROGRESS REPORTED

### MARRIAGE BILL

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, you know the agreement that we had yesterday with the Leader of Majority Party and the Leader of Minority Party was that we would need to complete this matter today.

Therefore, pursuant to Standing Order No. 134, I beg to report that the Committee of the whole House is considering the Marriage Bill, National Assembly Bill No. 13 of 2013 and has instructed me to report progress that has been made so far, and seek leave to sit again today.

**Hon. Waitu** seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**.PROCEDURAL MOTION**

## EXTENSION OF SITTING TIME

**Hon. A.B. Duale:** Thank you, hon. Temporary Deputy Speaker. I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order 30(3), this House resolves to extend sitting of the House until conclusion of business appearing under Order No.9 on today's Supplementary Order Paper.

Hon. Temporary Deputy Speaker, I think the reasons are very clear. We need to dispose of the Marriage Bill at the Committee of the whole House stage. I will ask the Deputy Leader of Minority Party to second.

**Hon. Midiwo:** Duale needs to know that I am even the Party Leader. So, now I am---

**The Temporary Deputy Speaker** (Hon. Kajwang'): But he is also hon. Duale, not Duale.

**Hon. Midiwo:** Okay, hon. A.B. Duale. I apologise.

**The Temporary Deputy Speaker** (Hon. Kajwang'): All right, proceed.

**Hon. Midiwo:** Hon. Temporary Deputy Speaker, I support because we agreed we want to finish with this Bill and we are making good progress. If we let this Bill delay, something bad may happen. You can just see the mood of the House. Now that we are in it, let us just finish. Men in black may just appear here.

I second.

*(Question proposed)*

**Hon. ole Ntutu:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity. I just want to say that I support this Motion. We need to finish up this work because we have started it. We need to complete it no matter how long it will take. I support.

*(Question put and agreed to)*

*[The Temporary Deputy Speaker  
(Hon. Kajwang') left the Chair]*

## IN THE COMMITTEE

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

## THE MARRIAGE BILL

*(Resumption of consideration  
interrupted in Committee today)*



**The Temporary Deputy Chairman** (Hon. Kajwang'): Order! We are continuing with consideration of the Marriage Bill, National Assembly Bill No.13 of 2013.

*Clause 19*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 19 be deleted.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Let us hear from the Chair of Committee. Hon. Chepkong'a, the Floor is yours.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I am proposing that Clause 19 be replaced with Clause 18 (C).

**The Temporary Deputy Chairman** (Hon. Kajwang'): Order! We are on Clause 19.

**Hon. Chepkong'a:** No, we disposed of Clause 18 (C).

**The Temporary Deputy Chairman** (Hon. Kajwang'): No, we disposed of all of them.

**Hon. Chepkong'a:** No, we disposed of Clause 18.

**The Temporary Deputy Chairman** (Hon. Kajwang'): No, I remember that we put the Question on sub-clause 18B and 18C. Therefore, we are on Clause 19.

**Hon. Chepkong'a:** Okay.

**Hon. Member:** *(Inaudible)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Order! Order, hon. Member! Hon. Yohana, this Chair happens to be very attentive. Therefore, relax.

Let us go on.

**Hon. Member:** Those clauses are affecting---

**Hon. Chepkong'a:** Thank you, hon. Temporary Deputy Chairman, as long as we are captured on HANSARD showing that Clause 18B and 18C have already been adopted.

Hon. Temporary Deputy Chair, I propose that Clause 19 be deleted.

**The Temporary Deputy Chairman** (Hon. Kajwang'): What is the reason for the deletion?

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, this is a Clause that deals with civil marriages and not Christian marriages.

*(Question of the amendment proposed)*

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

*(Clause 19 deleted)*

*Clause 20*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 20 be deleted.

This relates to civil marriages. It should be removed and renumbered as Clause 31.

*(Question of the amendment proposed)*

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

*(Clause 20 deleted)*

*Clause 21*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 21 be deleted.

This relates specifically to civil marriages.

*(Question of the amendment proposed)*

**Hon. A.B. Duale:** On a point of order, hon. Temporary Deputy Chairman. If you look from Clause 19 to Clause 22, the Chair is deleting the whole of that section because they are misplaced clauses. They all talk about civil marriages and we are dealing with Christian marriages. So, we will save time if the Chairman talks about all of them from Clause 19 to 26 and give one reason for it to be captured on the HANSARD and then we move on.

**The Temporary Deputy Chairman** (Hon. Kajwang'): No, thank you very much but, unfortunately, the Standing Orders take me to that long route. I also understand but I do not have a choice in this.

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

*(Clause 21 deleted)*

*Clause 22*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 22 be deleted.

This specifically relates to civil marriages and it falls under the Christian marriages.

*(Question of the amendment proposed)*

*(Question, that the words to be left out*

*be left out, put and agreed to)*

*(Clause 22 deleted)*

*Clause 23*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 23 be deleted.

This relates specifically to the civil marriages and not Christian marriages.

*(Question of the amendment proposed)*

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

*(Clause 23 deleted)*

*Clause 24*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 24 be deleted.

This relates specifically to civil marriages and not Christian marriages.

*(Question of the amendment proposed)*

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

*(Clause 24 deleted)*

*Clause 25*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 25 be deleted.

This specifically relates to civil marriages and it falls within the part that deal with Christian marriages.

*(Question of the amendment proposed)*

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

*(Clause 25 deleted)*

*Clause 26*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 26 be deleted.

This also relates to civil marriages and not Christian marriages.

*(Question of the amendment proposed)*

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

*(Clause 26 deleted)*

*Clause 27*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 27 be amended in Sub-clause (2) (c) by deleting the  
word "Director" and substituting therefore the word "Registrar".

As already stated, the appropriate title for the person registering marriages is not  
Director but Registrar.

*(Question of the amendment proposed)*

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

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

*(Clause 27 as amended agreed to)*

*(Clauses 28 and 29 agreed to)*

*Clause 30*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 30 be amended by deleting the word "Director"  
wherever it appears and substituting therefore the word "Registrar".

Again, briefly the right title for the person registering marriages is Registrar and  
not Director.

*(Question of the amendment proposed)*

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

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

*(Clause 30 as amended agreed to)*

*Clause 31*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 31 be deleted.

This is a consequence of amendment to Clause 31(a).

*(Question of the amendment proposed)*

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

*(Clause 31 deleted)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Just go to the Bill because you are considering Clause 32. We will deal with the new clauses later.

*Clause 32*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 32 of the Bill be amended-

(a) in Sub-clause (1) by deleting the word "Director" and substituting therefor the word "Registrar";

(b) in Sub-clause (2) by deleting the word "Director" and substituting therefor the word "Registrar"

Again, I have suggested that the most appropriate title of the person registering marriages is not the Director but the Registrar.

*(Question of the amendment proposed)*

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

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

*(Clause 32 as amended agreed to)*

*Clause 33*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, again as a consequence of the change of the title from Director to Registrar, I beg to move:-

THAT, Clause 33 be amended in Sub-clause (2) by deleting the word "Director" and substituting therefor the word "Registrar".

*(Question of the amendment proposed)*

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

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

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

*(Clause 37 as amended agreed to)*

*(Clauses 38 and 39 agreed to)*

#### *Clause 40*

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

THAT, Clause 40 be amended in Sub-clause (2) by deleting the word "Director" and substituting therefor the word "Registrar".

This is as a consequence of the amendments that we have made and we are aligning it with this Clause.

*(Question of the amendment proposed)*

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

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

*(Clause 40 as amended agreed to)*

#### *Clause 41*

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

THAT, Clause 41 be amended-

(a) in Sub-clause (1) by deleting the word "Director" wherever it appears and substituting therefor the word "Registrar";

- (b) in Sub-clause (2) by deleting the word “Director” wherever it appears and substituting therefor the word “Registrar”;
- (c) by deleting Sub-clause (4); and
- (d) by deleting Sub-clause (5).

This deals with the making of regulations by the Cabinet Secretary. That has been left at the tail-end in Clause 94, which provides for an omnibus making of regulations by the Secretary.

*(Question of the amendment proposed)*

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

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

*(Clause 41 as amended agreed to)*

#### *Clause 42*

**Hon Chepkong’a:** Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 42 be amended by deleting Sub-clause (3).

The reason why the Committee is proposing this deletion is so that the regulations as provided in Clause 94 can be clear.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): I recognize the Member for Garissa County. Let me also say that, when you were called to debate at some point, it went without response but go on.

**Hon (Ms.) Gure:** Thank you, hon. Temporary Deputy Chairman for giving me this opportunity. We are moving too fast. I want to make a correction on Clause 41(3) which says, “A person who fails to register a marriage commits an offence and shall upon conviction be liable to a fine not exceeding five thousand shillings or to a community service order or to both.” You know---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hold on. I appreciate your comments and contributions but there are two things. One, if you want to move an amendment, you need to have a written amendment within two hours to the debate. That is according to the Standing Orders.

Unfortunately, we cannot accommodate that. But I thank you for that communication. Two, you need to stay alert because that is water under the bridge. We have passed that specific Clause.

**Hon. (Ms.) Gure:** Hon. Temporary Deputy Chairman, I know that we have passed that clause, but if it is affecting the people of Kenya, what happens?

**The Temporary Deputy Chairman** (Hon. Kajwang’): No! Unfortunately, the people of Kenya have also made laws and Standing Orders which we now follow.

Yes, Leader of Majority Party.

**Hon A.B. Duale:** Hon. Temporary Deputy Chairman, you will forgive me because when it comes to customary law, I need to protect the interests of the pastoralist community to which I belong. Apart from the Muslim faith, I support the deletion of Clause 42(3) because the same has been provided - for Members’ information - under Clause 94 where the Cabinet Secretary may make regulations for better carrying into effect of this Act. So, we will do that.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The Leader of Majority Party, did you refer to Clause 42(3)?

**Hon A.B. Duale:** Yes! I support the deletion.

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

*(Clause 42 as amended agreed to)*

#### *Clause 43*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 43 be amended by deleting the word “Director” and substituting therefor the word “Registrar”.

Again, this is as a consequence of the amendments that we have made.

*(Question of the amendment proposed)*

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

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

*(Clause 43 as amended agreed to)*

#### *Clause 44*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 44 be amended by-

(a) deleting Sub-clause 3(d);and

(b) by deleting Sub-clause 4.

Sub-clause 3(d) reads:- “in the case of a second or subsequent marriage, that the current wife or wives has or have, as the case may be, been informed of the marriage.



Sub-clause 4 reads:- “Despite Subsections (1) and (2), if the marriage is a subsequent marriage, the notification shall also declare whether the current wife or wives has or have been informed of the intended marriage and whether she or they approve or disapprove of the intended marriage and her or their reasons for approving or disapproving the intended marriage”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can we have a justification to this very interesting proposal?

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, when two parties get married under the customary law, the law is very clear. That particular---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Member for Kiambu, you may want to listen to this. This is very pertinent. Order! You may want to listen to what the Chair is saying. I am sure you want to be alert to this amendment. Do not say that it passed without you knowing. Go on.

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, the Committee felt very strongly - and it was unanimous - that once you get married under the customary law, the law is very clear. Under all the customs of Kenya in all the 42 tribes, marriages are potentially polygamous. That is so that the wife expects potentially another wife. So, any time a man comes with a woman, it would be assumed that, that is the second or third wife. Again, this was informed by the experience, particularly of *Mzee* Akuku Danger, as you know, who got married to almost 400 wives. It is just an example

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! I want to protect the family of the person that you have mentioned which, unfortunately, is not here.

**Hon. Chepkong’a:** I withdraw. Like even in my own sub-tribe in the Kalenjin Community, under customary law, you do not inform your wives of the coming of the second or the third wife. You just appear with a lady and she knows this is the wife, as long as I have paid dowry. This particular Clause offends the customs of the various tribes.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Washiali, before I come to you, let me go to the Member for Kilome.

**Hon. (Ms.) Muia:** Hon. Temporary Deputy Chairman, I am not going to support this particular amendment. It is not all women who are able to solemnize their marriages in church. This is only going to serve women who have money. Women who are not able will allow other women to come on board.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Why is this Member marching in the Chamber?

**Hon. (Ms.) Muia:** Hon. Temporary Deputy Chairman, the law that we are passing here is not for us only. It is for all the women in Kenya. It is not for all the women who go to church only. What about our mothers who do not have money to have church weddings? Does it mean that we want to favour men? We are not going to favour them. This Bill is for women. We are not going to support it. We will shoot it down!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, allow more ladies to speak on this subject.

**Hon. A.B. Duale:** On a point of order, hon. Temporary Deputy Chairman. I have a lot of respect for the Member who has just spoken - the Member for Kilome. She said

that this Bill is for women. I want her to apologise and withdraw that. The Bill is not for women, it is for Kenya and the National Assembly. I want her to withdraw and apologise.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay, Member for Kilome, without altercation, I rule that you do not have to respond because this Bill, truly, is for women as it is for men. I did not hear her say that this Bill is not for men. I only heard her say that is it for women, which means that it is for women, but could also be or could not be for men. Member for Kiambu! Sorry, I am coming back to you, but let me hear more ladies on this, if you do not mind.

**Hon. (Ms.) Gathecha:** Thank you hon. Temporary Deputy Chairman.

*(Several hon. Members stood up in their places)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order! Can you resume your seats? The Member who is sensationally called “KK”, are you a leader of some troops of some sort?

**An hon. Member:** He is a Whip.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. I understand that he is a Whip, but the Member for Kiambu was on her feet.

**Hon. (Ms.) Gathecha:** Thank you, hon. Temporary Deputy Chairman. I rise to---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, can you, please, allow the lady to be heard without interruption?

**Hon. (Ms.) Gathecha:** Hon. Temporary Deputy Chairman, can you protect the hon. Member from Kiambu to speak, please?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order, hon. Members! Member for Kiambu, you are protected. Please, proceed.

**Hon. (Ms.) Gathecha:** Thank you, hon. Temporary Deputy Chairman. I rise to support the retention of the amendment on Clause 3(d). We can agree to delete Clause 41(4). If a man chooses to marry, there is no objection. But it is important that the man of the house informs the rest of his wives, so that they can agree that he is bringing in another woman. First of all, what this does, is ensuring---

*(An hon. Member interjected)*

**Hon. (Ms. Gathecha):** I am on the Floor! I am seeking your protection, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, please, do not intimidate the Member for Kiambu.

**Hon. (Ms.) Gathecha:** Thank you for your protection, hon. Temporary Deputy Chairman.

My reason for supporting this particular position is for the sake of unity in the family and for the sake of cohesion. We know that men are afraid of womens’ tongues more than anything else but, at the end of the day, if you are the man of the house and

you choose to bring in another party, and there may be two or three, it behooves you to be man enough to agree that you---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you, Member for Kiambu. You have made your point. Let us now listen to hon. Washiali.

**Hon. Washiali:** Thank you, hon. Temporary Deputy Chairman. I rise to support the amendment.

*(Loud consultations)*

Hon. Temporary Deputy Chairman, can you, please, protect me?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order, hon. Members! Can you resume your seats? Remember that you have voted to stay here until you finish this Bill. So, there is no hurry. Do not unnecessarily be agitated. Let us hear this hon. Member.

**Hon. Washiali:** Hon. Temporary Deputy Chairman, some of us become very emotional when we are talking about this Clause. That is because when we introduce ourselves, we never say whether we are sons or daughters of the first mother or the second mother. I want to declare that I am a son of the second wife of my father. If this law was in place, probably I would not have been born. Mumias East would not have a Member of Parliament by the name of “Washiali”.

Therefore, in order to give a chance to other potential mothers who are likely to give birth to a member of parliament like me, we need to delete this Clause. It should never appear in any of our statute books.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you, hon. Washiali. You have made your point.

Hon. Members, this debate is very interesting, but I want to give the Floor to Members who have not spoken. I notice the leadership of this House but can I hear from Ayub Savula, the Member for Lugari?

**Hon. Angatia:** Thank you so much, hon. Temporary Deputy Chairman. I am a son of a pastor and I want to say that what the right hand does, the left hand must know. In a marriage, the wife and the husband are one and the same. So, you must inform your wife when you are going to marry a second wife. You must! I support the women. That section should not be deleted.

*(Applause from women hon. Members)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order, hon. Members! I hold you to be out of order to purport to be clapping and to be ululating in the Chamber. That is quite out of order. The hon. Member for Taita Taveta County, the Floor is yours.

**Hon. (Ms.) Lay:** Thank you, hon. Temporary Deputy Chairman. I can see the excitement and the mood of the House. But this Clause is specifically on giving notification; you are notifying your spouse that you are going to get married and that you are bringing another wife. Also, it is going to safeguard your family and your property and everything else.

There are cases where husbands die and two or three more women come up to claim the properties. They also come with children. But just because nobody was given any notification that there is a second wife to be brought into the marriage, that becomes a problem. This is to avoid embarrassment when your husband dies.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you, hon. Member for Suna East?

**Hon. Nuh**: Thank you, hon. Temporary Deputy Chairman. We are making laws for this country so that we can have a conducive environment for people to live together. For that reason, we are in Africa. African men are potentially polygamous for that reason; there is no need for informing your first wife. When you marry an African woman, she must know that the second one is on the way, and even the third and fourth one. This is Africa! We are not living in Europe or America. There is no need of informing the first wife.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Only one person is going to speak to this Clause. I have heard it from the Leader of Majority Party. I want to hear from the Leader of Minority Party and then we can vote on this.

**Hon. Midiwo**: Hon. Temporary Deputy Speaker, protect me.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay. The hon. Member who is sensationally called *Bwana Dawa*; I do not know what he is doing standing out there.

**Hon. Midiwo**: Hon. Temporary Deputy Chairman, there are two most exciting amendments in what we are doing this evening; the one that is protecting the Muslim faith and how they get married and this particular one. You can see the excitement. I can tell you that, once this business up to the end of the page is done, the rest will be a formality. The person who conceived this Clause in an African setting that, when you want to marry, you must notify another interested party and that party is interested negatively--- Who was notified when they were getting married?

Hon. Temporary Deputy Chairman, I have a wife and I never notified anybody!

*(Loud consultations)*

Who was notified when I married her? We just met, fell in love and got married. Therefore, what will happen in this country - and you have heard from a female Member of this august House saying that they want to protect wealth. Men are jittery because these people want to take our wealth and it is very important. It is very important not to open a *Pandora’s Box*.

Therefore, I support the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you. Let us now have the Leader of Majority Party.

**Hon. A.B. Duale**: Hon. Temporary Deputy Chair, if you allow me---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Just a minute! Yes, in defence of the ladies. You do not even have to raise it.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, we need order. I want to make--

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order, hon. A.B. Duale! Just one minute. Let me correct something. You do not even have to raise it. I have seen it. It is my business to see when something is out of order. Where are you, hon. Member for Gem?

**Hon. Midiwo:** I am here, hon. Temporary Deputy Chairman.

**Hon. Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Midiwo, you are out of order to suggest that there are ladies, either in the Chamber or outside, who want to rob you of your property. Therefore, you are out of order. Just correct that by withdrawing.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, if I gave the wrong impression, I am sorry. But a Member said---

**An hon. Member:** No!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order. All right!

**Hon. Midiwo:** You know that lady is from Narok. She may be---

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Go on.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, you know now they are war-like. I am saying, a female hon. Member of this House has said they want to protect their wealth. And it is our wealth. These people come and find you with your wealth and they come with all kinds of things and they want to take our wealth away.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All Right. Order, Leader of Majority Party.

**Hon. Midiwo:** I do not want to die poor, hon. Temporary Deputy Chairman.

*(Laughter)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Leader of Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I support the amendment of the Chair. I have a lot of respect for the women of Kenya but I have two fundamental books that I read every day. One is the Holy Quran and it has stated very clearly that you can marry four and you cannot consult anybody. Number two, I want to use the Constitution and I want the ladies of this---

*(Loud consultations)*

Hon. Temporary Deputy Chairman, protect me from the lady Members of Parliament.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order. Order, hon Members! I want to protect the Leader of the Majority Party. Order! Order! Order, hon. Wamunyinyi. Well, the Member has said that those are the books he reads. Do not impose any other book on him because those are the ones he reads. Go on.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I will even go further and I want my Christian brothers to read the Old Testament. *Daudi* never consulted anybody. Solomon never consulted anybody. It is in the Old Testament.

However, finally, hon. Temporary Deputy Chairman, I want to read the Constitution on the Bill of Rights on the Family. Article 45(2) says:-

“Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.”

It does not say any consultations.

*(Applause)*

So, I support the Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All Right. Order! Thank you. Hon. Kaluma, what is it? What is so burning? Member for Homa Bay Town, what is so burning?

**Hon. Kaluma:** Yes, it is burning! I request for the audience of, particularly---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order!

**Hon. Kaluma:** Please, I request for the attention of all.

**An hon. Member:** On a point of information, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Kaluma, do you want information from your counterpart from---

**Hon. Kaluma:** No. I do not need information, please. Let me give information particularly to female Members of Parliament. Please, listen to this---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order. Member for Kilome! Order!

**Hon. Kaluma:** Yes! I want to explain the following:-

Hon. Temporary Deputy Chairman and my honourable colleagues, when you look at Clause 44, it does not say that the first wife shall be informed. What these provisions are saying are the details which should be in the notification and I think you should support their deletion. I want to beg for your audience on this. These are the particular details which the husband has to put in the notification. What will happen is that he will file the notification there. The provisions do not say your husband will have to inform you or be with you when filling this notification. So, when the man dies, what you will have is a situation where you were not informed of the marriage because the provisions really, do not require that. It is a requirement in the notification.

Another woman you did not know as a co-wife will spring a notification telling you that really, even your husband confirmed you are already informed and she will take your property before you know it. So, really, before you oppose the deletion, look at it very keenly. By the way, you will have a lot of difficulties.

Hon. Temporary Deputy Chairman, I want to end by saying---

*(Loud consultations)*

Please, listen Regina. You know---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Homa Bay Town, hold on. Order! I appreciate your contribution.

**Hon. Kaluma:** Let me finish.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hold on. I appreciate your contribution, but what I object to is the way you are suggesting that you are addressing the female Members of this House. Address Members of the National Assembly. If you want, address the Chair as you are addressing people outside there.

**Hon. Kaluma:** Thank you, hon. Temporary Deputy Chairman. Lastly, I want to state this: That, I am the last born of a first wife and I know the problems. I am the father of a daughter. I am a brother of a married sister and so, let us disabuse our minds that there are genders in the National Assembly who can protect some genders better. I am doing this for all those people I am related to, including my mother. So, this is good for the women, particularly the first wife. Think through it!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Let us put this to vote so that we can proceed.

*(Hon. Njagagua consulted loudly)*

Hon. Njagagua, please, let me not have problems from lawyers.

**Hon. Njagagua:** Hon. Temporary Deputy Chairman, what I want to tell those who are opposed to this deletion is that their property is safeguarded and the properties for married women are safeguarded. So, what is matrimonial? What is this entire hullabaloo about? I support the amendment.

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

*(Several hon. Members stood up in their places)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Remain standing and let me get the count.

*(A count was taken by the Clerks-at-the-Table)*

Hon. Members, you are only 13 and you know the Standing Orders. So, can you resume your seats?

*(Clause 44 as amended agreed to)*

*(Clause 45 agreed to)*

*Clause 46*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 46 Bill be amended-

(e) in Sub-clause (1) by deleting the word “Director” and substituting therefor the words “Registrar”;

(f) in Sub-clause (2) by deleting the word “Director” and substituting therefor the word “Registrar”;

This is again to clean the Bill as amended.

*(Question of the amendment proposed)*

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

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

*(Clause 46 as amended agreed to)*

*(Clause 47 agreed to)*

*Clause 48*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 48 be amended-

(a) in Sub-clause (1) by deleting the word “Director” and substituting therefor the word “Registrar and celebrated in accordance with Islamic Law”;

(b) in Sub-clause (2) by deleting the word “Director” and substituting therefor the word “Registrar”; and---

**The Temporary Deputy Chairman** (Hon. Kajwang): Hold there! I want us to take those two together.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairman** (Hon. Kajwang): Proceed, hon. Chepkong’a on Clause 48(c).

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 48 be amended-



(c) by inserting the following new Sub-clause immediately after Sub-clause (2) –

“(3) Any sections or provision of this Act which is inconsistent with Islamic Law and practices shall not apply to persons who profess the Islamic faith.”

**The Temporary Deputy Chairman** (Hon. Kajwang): Okay. Can you now ground the justification of this amendment properly so that we understand where you are coming from?

**Hon. Chepkong’a:** Thank you, hon. Temporary Deputy Chairman. I am moving this amendment so that we can align it with the Constitution. As you know, Article 24 of the Constitution clearly limits the rights of individuals by exclusively excluding Islamic Law from applying to those provisions. It specifically mentions marriage, inheritance and divorce. This is equally in Article 75. So, this is to make it consistent with the Constitution.

Secondly, Islamic Law is wide. So, it cannot be contained within this particular law. It is important that we exclude provisions that relate to other marriages from applying to Islamic marriages.

Thank you.

*(Question of the amendment proposed)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I support the amendment. I am very happy and contented. That is because this is in line with Article 170(5) of the Constitution which reads:-

“The jurisdiction of a *Kadhi’s* court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the *Kadhi’s* courts.”

So, the Chair has given that safeguard in as far as making this Act is concerned. I am comfortable and I support the amendment.

**Hon. Farah:** Hon. Temporary Deputy Chairman, I support the sentiments by the Majority Leader.

Thank you.

*(Several hon. Members withdrew from the Chamber)*

**Hon. (Ms.) Gure:** Hon. Temporary Deputy Chairman, we want to notify the House that all the women of this House have walked out---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order, the County Women Representative for Garissa, stay where you are. I did not hear you properly. First of all, the Member standing next to you should sit down! Could you say what you have said again?

**Hon. (Ms.) Gure:** Hon. Temporary Deputy Chairman, you need to protect me from the men behind me!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Please, particularly, the men behind her. I want to protect her from those Members.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Please, proceed. I want to hear you on the HANSARD. I cannot hear you. That is dropped. Can I put this to the vote? I want to put the Question.

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

*(Clause 48 as amended agreed to)*

*Clause 49*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 49 be amended –

(a) in Sub-clause (1) by deleting the word “Director” and substituting therefor the word “Registrar”;

(b) in Sub-clause (2) by deleting the word “Director” and substituting therefor the word “Registrar”;

(c) in Sub-clause (3) by deleting the word “Director” and substituting therefor the word “Registrar”;

This is to align it with the other Clauses that we have amended.

*(Question of the amendment proposed)*

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

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

*(Clause 49 as amended agreed to)*

*Clause 50*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 50 be amended-

(a) in Sub-clause (1) by deleting the word “Director” and substituting therefor the word “Registrar”;

(b) in Sub-clause (2) by deleting the word “Director” and substituting therefor the word “Registrar”;

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out,*

*put and agreed to)*

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

*(Clause 50 as amended agreed to)*

*Clause 51*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 51 be amended by deleting the word "Director" wherever it occurs and substituting therefor the word "Registrar."

*(Question of the amendment proposed)*

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

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

*(Clause 51 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Chair, look at the Order Paper on page 90. Can you speak to the Title of that part? What do you have to say about it?

*PART VIII*

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

THAT, the heading of Part VIII be amended by deleting the word "DIRECTOR" and substituting therefor the word "REGISTRAR".

Hon. Temporary Deputy Chairman, this is as a consequence of the amendments that we have made.

*(Question of the amendment proposed)*

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

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

*(PART VIII as amended agreed to)*

*Clause 52*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 52 be amended by deleting the word "Director"  
wherever it occurs and substituting therefor the word "Registrar".

*(Question of the amendment proposed)*

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

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

*(Clause 52 as amended agreed to)*

*Clause 53*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 53 be amended by deleting the word "Director"  
wherever it occurs and substituting therefor the word "Registrar".

*(Question of the amendment proposed)*

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

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

*(Clause 53 as amended agreed to)*

*Clause 54*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 54 be amended by deleting the word "Director"  
wherever it occurs and substituting therefor the word "Registrar".

*(Question of the amendment proposed)*

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

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

*(Clause 54 as amended agreed to)*

*Clause 55*

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

THAT, Clause 55 of the Bill be amended by deleting the word "Director" wherever it occurs and substituting therefor the word "Registrar".

*(Question of the amendment proposed)*

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

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

*(Clause 55 as amended agreed to)*

*Clause 56*

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

THAT, Clause 56 be amended –

(a) in Sub-clause (1), by—

(i) inserting the word "Mukhi" immediately after the word "Sheikh";

(ii) deleting the word "Director" wherever it appears and substituting therefor the word "Registrar";

(b) in Sub-clause (2) by deleting the word "Director" wherever it appears and substituting therefor the word "Registrar".

*(Question of the amendment proposed)*

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

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

*(Clause 56 as amended agreed to)*

*Clause 57*

**Hon. Kang'ata:** Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 57 be deleted.

Hon. Temporary Deputy Chairman, Clause 57 provides that the Cabinet Secretary has the power to come up with regulations and have a situation where he can allow other forms of marriages through some form of regulations.

Hon. Temporary Deputy Chairman, there is a major lacuna where you may find the Minister is agreeing to some form of the marriages which we Africans may not be agreeable to. Therefore, I am proposing that we delete it. I want to report to the House that indeed, today, my Chairman of Justice and Legal Affairs Committee has also agreed to the deletion of this Clause.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Chepkong’a, I understand that you have concurred. What are your views?

**Hon. Chepkong’a**: I totally concur. Of course, you know that he is a Member of our Committee. There was an oversight on our part. I can withdraw mine so that this one takes effect.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you. Hon. Midiwo, you have the Floor

**Hon. Midiwo**: Hon. Temporary Deputy Chairman, let me go on record as agreeing with hon. Kang’ata on this particular one. This is one of the reasons we opted yesterday to postpone the debate because this amendment was not included. I want to thank you.

This could have been the most dangerous thing if it was left to happen because you can get a rogue Cabinet Secretary (CS) ---

**Hon. Member**: No! You can get a gay CS!

**Hon. Midiwo**: You can also get a gay CS. Let me just say like that.

*(Laughter)*

Hon. Temporary Deputy Chairman, the danger in this Clause is that somebody can say if somebody kisses a woman in the streets, that is marriage. If you greet a woman, that is marriage. The way this Clause is and the way it was drafted in the Bill is meant to ruin our society and that is why we are here. I wish to go on record that this kind of law cannot see the light of the day, so long as we are here in this Parliament.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you. Nominated hon. Member, Sunjeev Birdi.

**Hon. (Ms.) Sunjeev**: Thank you very much, hon. Temporary Deputy Chairman. I seek your guidance and this is the reason why I decided to stay on when most of my counterparts decided not to be here. I support the deletion of Clause 57, however, if we are deleting it, then Clause 55 on the registration of Hindu Marriages, why is it that Sub-section (3) is not being deleted?

**The Temporary Deputy Chairman** (Hon. Kajwang’): We have passed it.

**Hon. (Ms.) Sunjeev**: I know we have passed it and that is why I am seeking your guidance.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I will absorb and respond to you in a short while. Meanwhile, just resume your seat. While we are there, let us have the Leader of Majority Party.

**Hon. A.B. Duale:** Thank you, hon. Temporary Deputy Chairman. On this one, I must go on record. The drafters of this Bill, when they said that a Cabinet Secretary (CS) may, in consultation with relevant stakeholders make regulations for registration of any type of marriage which is not provided for under this Act, meant exactly that. There is nothing we are going to regulate. The CS wants to bring gay marriages and lesbianism.

Hon. Temporary Deputy Chairman, you have read the Bible and the Quran and you know what has happened to those who practise gay relationships and lesbianism. They were destroyed by the Almighty God. We do not want, 50 years from now---

*(Applause)*

We do not want our children to be told that we enacted a law for the gay relationships. We must delete this and tell the Attorney-General to explain to the country what he meant by Clause 57. That is because Clause 57 is basically sneaking in gay marriages and lesbianism. I am happy that the Chair, the very able Chair and his Committee; the likes of hon. Kaluma, were able to detect this. There are hon. Members here who are not married and another CS might force them--- This clause can force them to marry somebody. I support the deletion.

**Hon. Njomo:** Thank you, hon. Temporary Deputy Chairman. I support this amendment by hon. Kang’ata and the debate before the Floor. We have had a very good discussion and we have considered different cultures when we are passing these rules. We have considered religions like Islam, Christianity, Hindu and customary marriages. That is because that is where we fall. We did not consider foreign marriages and ideologies when we were coming up with these amendments. Therefore, we should not leave a window open for those ideologies to be forced down our throats. We are guided by our customs, religions and beliefs.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Let us not make this a discussion area. Nominated Member, you were on a point of order. Are you satisfied or you want me to give you directions because we want all sections of the National Assembly to be comfortable? Have you now followed the discussion?

**Hon. (Ms.) Sunjeev:** Hon Temporary Deputy Chairman, I seek your guidance, please.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Well. Then I will give it as follows:-

If you look at Clause 55(3), the Cabinet Secretary makes rules regarding registration of marriages. In other words, those are marriages under Part VI. Marriages under this Act have been declared to be registered marriages. However, when you look at the issue that you are discussing, which is in Clause 57, there is a sentence there which says:-

“Make regulations for registration of any other type of marriage not provided for under this Act.”

Now, that is the whole difference. Are you satisfied?

**Hon. (Ms.) Sunjeev:** Yes.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you very much. I want to put this to vote. I now put the Question. Do I hear voices opposing this deletion? I will give you a chance hon. Wamunyinyi, but not because you are standing and you are so tall; it is because you are a senior Member of this Assembly. All right, hon. Wamunyinyi. If this is in opposition, I will give you a chance. Hon Wamunyinyi.

**Hon. Wamunyinyi:** Thank you, hon. Temporary Deputy Chairman. This is fairly straightforward. What we do not need is this ambiguity. Hon Members have mentioned instances which cannot be allowed. We can have an activist Cabinet Secretary. An activist will come and create his or her own rules which will be contrary to the Constitution and the Kenyan culture.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Therefore, you are appearing to be supporting the deletion?

**Hon. Wamunyinyi:** I am supporting the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, anybody who is opposed to the deletion? All right. Now, let me put the Question.

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

*(Clause 57 as amended agreed to)*

*Clause 58*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 58 be amended by deleting the word “Director” wherever it occurs and substituting therefore the word “Registrar”.

*(Question of the amendment proposed)*

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

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

*(Clause 58 as amended agreed to)*

*(Clause 59 agreed to)*

*Clause 60*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 60 be amended by deleting the word “Director” wherever it occurs and substituting therefor the word “Registrar”.



*(Question of the amendment proposed)*

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

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

*(Clause 60 as amended agreed to)*

*Clause 61*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 61 be amended by deleting the word "Director"  
wherever it occurs and substituting therefor the word "Registrar".

*(Question of the amendment proposed)*

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

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

*(Clause 61 as amended agreed to)*

*Clause 62*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 62 be amended by deleting the word "Director"  
wherever it occurs and substituting therefor the word "Registrar".

*(Question of the amendment proposed)*

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

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

*(Clause 62 as amended agreed to)*

*Clause 63*

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

THAT, Clause 63 be amended by deleting the word “Director” wherever it occurs and substituting therefor the word “Registrar”.

*(Question of the amendment proposed)*

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

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

*(Clause 63 as amended agreed to)*

*(Clause 64 agreed to)*

*Clause 65*

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

THAT, Clause 65 be amended by inserting the following new paragraphs immediately after paragraph (c)—

“(d) exceptional depravity by either party;

(e) the irretrievable breakdown of the marriage”.

This is just expanding the grounds for divorce in Christian marriages. “Exceptional depravity” simply means a person who has total lack of moral values and has no regard for others; a person who lives in her natural condition without any grace or goodness. These are important grounds for divorce. I ask hon. Members to accept them. “Irretrievable breakdown” means irrecoverable; impossible to retrieve. I find these grounds very important to be enshrined in this Bill.

*(Question of the amendment proposed)*

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

*(Clause 65 as amended agreed to)*

*(Clauses 66, 67 and 68 agreed to)*

**The Temporary Deputy Chairman (Hon. Kajwang’):** Mover! Hon. Waiganjo.

*Clause 69*

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

THAT, Clause 69 be amended in Sub-clause (1) by—

(a) inserting the following new paragraphs immediately after paragraph (c)—

- “(d) exceptional depravity by either party;
- (e) the irretrievable breakdown of the marriage”;
- (b) re-numbering paragraph (d) as paragraph (f).

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Nakuru Town East

**Hon. Gikaria:** It is just for clarity. He says we insert the following new paragraphs immediately after (c) --- Oh yeah, I think it is okay. I get it now. Sorry!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay

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

*(Clause 69 as amended agreed to)*

*Clause 70*

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

THAT, Clause 70 be amended by inserting the following new paragraphs immediately after paragraph (d)—

- “(e) the other party has committed cruelty on the other;
- (f) the other party has committed exceptional depravity on the other.”

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Sunjeev, look at Clause 70. You look at the title, then look at (c), look at the amendment and then let us see what your discussion will be like.

**Hon. (Ms.) Sunjeev:** Yes, hon. Temporary Deputy Chairman. I can see that (c) is when the other party has converted to another religion. With regard to (e) and (f) which he has inserted, I heard him and I am okay with it. I cannot see it on the Order Paper but I have heard it. I am okay with it.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you, I appreciate. Member for Kibwezi, I know that the seats are not very comfortable but we will take care of them. The taxpayers, I am sure, do not want to replace all the seats now. Let us live with discomfort.

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

*(Clause 70 as amended agreed to)*

*(Clause 71 agreed to)*

*Clause 72*

**The Temporary Deputy Chairman** (Hon. Kajwang): Mover!

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

THAT, Clause 72 be amended by—

(a) inserting the word “Mukhi” immediately after the word “Imam”;

(b) deleting the word “Director” wherever it appears and substituting

therefor the word “Registrar”.

**Hon. Chepkong'a:** I withdraw amendment in part “(a)”

**The Temporary Deputy Chairman** (Hon. Kajwang'): You say you withdraw?

**Hon. Chepkong'a:** I withdraw amendment in part “(a)”.

**The Temporary Deputy Chairman** (Hon. Kajwang'): It is okay. So, part “(a)” is withdrawn but part “(b)” is sustained.

*(Proposed amendment in part (a) withdrawn)*

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

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

*(Clause 72 as amended agreed to)*

**Hon. Manje:** Hon. Temporary Deputy Chairman, I seek your guidance on Clause 72. I am aware of the words “kadhis, Sheikhs” and “Imams”, but I have never heard of the word “Mukhi”. It was introduced in---

**An hon. Member:** It was withdrawn!

**Hon. Manje:** Was it also withdrawn in Clause 56?

**Hon. Members:** It was withdrawn!

**The Temporary Deputy Chairman** (Hon. Kajwang'): It is all right. Hon. Manje, they were all dropped unless the issue is that you do not know the meaning; which the hon. Leader of Majority Party can discuss with you quietly there.

*Clause 73*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I propose to drop this amendment so that the Clause is retained as it is.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Are you proposing that you are withdrawing the amendment to Clause 73?

**Hon. Chepkong'a:** Yes, I am withdrawing the amendment “within a reasonable period”, hon. Temporary Deputy Chairman. We should just leave the Clause the way it is.

*(Proposed amendment to Clause 73 by  
hon. Chepkong'a withdrawn)*

*(Clause 73 agreed to)*

*(Clauses 74 and 75 agreed to)*

*Clause 76*

**Hon. Waiganjo:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 76 be amended by deleting Sub-clause (2).

First of all, Clause 76(1) says, “Except as provided in this section, a promise by a person to marry another person is not binding”.

Sub-clause (2) continues to say, “Despite Sub-section (1), damages may be recoverable by a party that suffers a loss when the other party refuses to honour a promise to marry.”

To me, this appears to be legislating on courtship. If we retain this Clause, our young men and women who are courting--- Courtship need not necessarily end up in a marriage. If they break up at the courtship level, then it means that one of them may proceed to court and claim damages. This is penalizing courtship. People should be allowed to guard, guide and proceed with courtship regardless of the outcome. So, I urge hon. Members to look at this positively and realize that this is a Clause that could bring many people with broken hearts to the corridors of justice – that is the courts. I do not think we wish to legislate on courtship which is obviously different from cohabitation. So, we shall be protecting our young men and women who wish to make families from going through any manner of litigation.

I beg to move and request hon. Members to support this amendment.

*(Question of the amendment proposed)*

**Hon. Njomo:** Hon. Temporary Deputy Chairman, Clause 76 is very clear that a promise to marry is not binding. But when we go to Sub-section 2, it tells us about that which was not binding and that then you can be penalized; something that is not even recognized by Section 1. So, if we do not recognize that promise, why then are we recognizing some benefits---

**The Temporary Deputy Chairman** (Hon. Kajwang’): It means that you are in support of that deletion?

**Hon. Njomo:** I support that deletion.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you. Let me have a view from this side. The Member for Gem.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, I support the deletion. Where I come from and where you come from, courting is not these town things. When you

engage in courting, you may get to know a while later that you are courting an evil person. She may be a night runner. So, you must have the right and reserve the right to back off, so that the witch does not come back and claim damages.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Although the Member for Gem, you should know that in legislation; the Penal Code, misrepresentation is still a criminal offence. Let me come to this side. I want to recognize the ladies because they are very few in the Chamber. So, when I see them seeking to catch my eye, I surely will. So, Nominated Member, Sunjeev Birdi, what do you say about this? You may also want to address those societies in which it is the ladies that marry men or pay dowry to men’s families.

**Hon. (Ms.) Sunjeev:** Hon. Temporary Deputy Chairman, indeed, it is true that in our Asian culture - Sikh and Hindu culture - it is the girls who give dowry to the groom. I am wholeheartedly supporting the deletion of 76(2). The reason is that a marriage is a union of love and if people get together so as to get each other’s wealth or whatever it is or suing persons later on, then I think they got into the marriage wrongfully.

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, you support the deletion?

**Hon. (Ms.) Sunjeev:** I fully support.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Nominated Member, Korere Paulata, you are back in the Chamber. Thank you.

**Hon. (Ms.) Korere:** And I am glad to be. I do not support the deletion of this provision. The reason is simple: the society is so rotten today because we have thrown our values, cultures and traditions to the dogs. You cannot live with somebody’s daughter or son for five years and you say you are courting. Surely, it cannot happen. Traditionally, courtship was provided for. You know that style of throwing stones over the fence and asking in the neighbourhood how the daughter of so and so is and how her grandmother is. That is part of courtship. You do not have to go and make somebody cook for you or give you two children and you say you are courting that woman or that man. I want to caution my male colleagues, with all due respect, you are even protecting the men here. We have seen sugar mummies coming out in full force to use young men and then dump them.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Member, I do not seem to know the term “sugar mummies”.

**Hon. (Ms.) Korere:** I withdraw.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Well, you just explain. You do not have to withdraw. Just explain yourself.

**Hon. (Ms.) Korere:** Hon. Temporary Deputy Chairman, I am just saying that we do not have to assume that it is only women who are used in the name of courtship. Even our very young sons are misused. They pay for their university education and even buy them cars. When they are done with them, they dump them.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I now understand, except that somewhere in the same Bill, it is provided that if a man and a woman stay with each other for a period of time, there is a presumption of marriage. So, that should address that concern.

Yes, hon. David Gikaria.

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, I support the deletion of Clause 76(2). It is true for both men and women. During courtship, a woman might tell you that she is single with no children; only to realise after some time that she has four or five children, which you have to start taking care of. So, I support.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, Member for Saku.

**Hon. Dido:** Hon. Temporary Deputy Chairman, if allowed to pass as it is, this particular Clause will make marriage a sort of business enterprise. Most of the youngsters in colleges and universities will end up in jail. That is because they will have no properties to give, if they are taken to court. So, I support the deletion.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members to my left appear to be agitated. Can we hear the Member for Suna East?

**Hon. Nuh:** Hon. Temporary Deputy Chairman, I oppose the deletion of this Sub-clause. When you are courting and you end up giving the other party your car, or you give her a small piece of land measuring 50 metres by 100 metres, you need to claim back your property. For that reason, she must also have given you back your car. You must get back what belongs to you. So, the Clause must remain.

With those remarks, I beg to oppose.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, the last one on this amendment is the Member for North Horr. Can you also speak on behalf of the Member for Garissa Town, hon. Chachu Ganya?

**Hon. Ganya:** Hon. Temporary Deputy Chairman, I strongly support the deletion of Clause 76(2). If we retain it, we will destroy the institution of marriage. It will become a major business enterprise. Sometimes people make promises at a tender age of 16 or 18 years, when they are not even sure of what they are talking about. Let boys and girls date in high school. There is nothing wrong with that. But let us not make it a crime by taking them to jail or penalising them.

With those remarks, I strongly support the deletion of this Sub-clause.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Leader of Majority Party, can we close this debate?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, first of all, I want to thank the Member for Ol Jorok. This thing has become a serious business in our country. The Bible and the Quran tell us to respect the institution of marriage and the family. If this Clause passes the way it is, very many Members of this House will lose their properties because they make many promises every day. Every day, after the rise of the House, they make promises to many people. It is not only the male Members who make such promises, it is both male and female Members.

Hon. Temporary Deputy Chairman, why do you pay for something that is trial and error? This is trial and error. It is like gambling. So, let us stop. If you want to marry my daughter, come straight to me, pay the dowry and marry her. We must stop this culture in our country. If you want to marry, follow the due process and marry. You do not just sit somewhere on Wabera Street at 5.30 p.m. and give promises to young girls. We should stop that practice.

*(Laughter)*

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

*(Clause 76 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang): Next Clause!

*(Clauses 77, 78, 79, 80, and 81 agreed to)*

*Clause 82*

**The Temporary Deputy Chairman** (Hon. Kajwang): Mover! Chair!

**Hon. Chepkong'a:** Thank you, hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 82 be amended-

(a) in Sub-clause (1) by deleting the word “due” appearing immediately after the word “accrued;”

This was just an error that appeared.

Thank you, hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

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

*(Clause 82 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang): Next Clause! Mover!

*Clause 83*

**Hon. Chepkong'a:** Thank you, hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 83(3) be amended by deleting the word “gift” appearing immediately after the word “sale”.

*(Question of the amendment proposed)*

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

*(Clause 83 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Next Clause! Hon. Waiganjo.



*Clause 84*

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

THAT, Clause 84 be amended by deleting Sub-clause (3).

Hon Members, Clause 84(3) reads:-

“Where either the husband or wife has, without reasonable [good] grounds withdrawn from the society of the other, the aggrieved party may make an application to the court for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such application and there being no legal ground why the application should not be granted, may order restitution of conjugal rights accordingly”.

In my mind, conjugal rights are between spouses and when they retreat to their quiet chambers to purport to exercise this right, they are only the two of them. If a party moves to court and gets an order for his or her conjugal rights to be protected, who shall follow them to enforce that order?

Secondly, at a time when we are talking about marital rape for instance, if the court gives this kind of an order, then either the husband or wife may move to their house with the order and purport to enforce it, therefore, raping the other party. So, what we shall be doing, by allowing this kind of legislation or purporting to legislate in this kind of a manner, will be sanctioning marital rape. So, I ask Members to accept the deletion of this particular Clause.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member from Kinangop, I can see you are very energetic. Speak to this then.

**Hon. K.K. Kinyanjui:** Thank you, hon. Temporary Deputy Chairman. As my colleague, Member for Ol Jorok, hon. Waiganjo, a senior counsel, has just said, we shall not have anybody who will make sure that the orders which have been issued by the courts are executed. So, I really support his amendment to that effect.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. I will listen to the male hon. Members and I will also listen to female hon. Members because these are conjugal rights. Hon. (Ms) Muhia, the Floor is yours.

**Hon. (Ms.) Muhia:** Thank you, hon. Temporary Deputy Chairman. I hope it does not suggest that hon. Members from Nyandarua are the ones who are really supporting this. But I support. However, it is cold in Nyandarua and so, we may be knowing this.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right, hon. (Ms.) Otucho.

**Hon. (Ms.) Otucho:** Thank you, hon. Temporary Deputy Chairman for giving me this opportunity. I want to support the withdrawal of this provision. How will you justify or prove in a court of law that you have actually withdrawn conjugal rights? It is ambiguous in itself and it should be deleted.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Hon. Members, I need to remind you that there is a Speaker’s ruling on this issue that, if you again come

to the Chamber without your card, you completely have no right to speak in the Chamber. Therefore, next time make it easy for us.

**Hon. Kaluma:** Thank you, hon. Temporary Deputy Chairman. The one most serious facility in a marriage is conjugal rights. Therefore, we must enforce it. For those hon. Members who fear, I am opposing this deletion. I know the hon. Member proposing it knows that under Order 22 of the Civil Procedure Rules, we have several provisions dealing with how to enforce conjugal rights. It is in our laws. Therefore, do not worry about enforcement. The one thing that we must have in marriage is this facility and it is very important.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Let us hear from the hon. Member from Taita Taveta.

**Hon. (Ms.) Lay:** Thank you so much, hon. Temporary Deputy Chairman. I am also opposing that---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Are you opposing the deletion?

**Hon. J.N. Chege:** Hon. Temporary Deputy Chairman, I support the deletion of that Clause. As you are aware, there are no conjugal meters and some of these things may-

**The Temporary Deputy Chairman** (Hon. Kajwang): Hon. Members, there are no conjugal meters.

*(Laughter)*

**Hon. J.N. Chege:** Some of these things are very difficult to assess. But for me, I support the deletion.

**Hon. Kiaraho:** Hon. Temporary Deputy Chairman, I actually support the deletion of this particular Clause because when you talk about conjugal issues, if your heart is not there, even if the court, for instance, issues such orders, it is practically impossible to enforce.

I beg to support.

**Hon. Wamunyinyi:** Thank you very much Temporary Deputy Chairman. I just want to stress one point. I am opposed to this deletion for this reason. The only right the couples have is the right to enjoy. When any member of the two parties is denied the right to enjoy conjugal rights – it should be deleted. We should have this right.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I do not want to call it “this thing” since it is a very bad language. But I oppose the deletion on a fundamental principle. Marriages and the institutions of marriages are about procreation. When do you procreate? You procreate at night when the two of you are together.

Hon. Temporary Deputy Chairman, if you go to the history of this man who formed *Maendeleo ya Wanaume*, one of the reasons why he formed it is because there were many men who were suffering in bed. They had issues. They were denied that procreation. Procreation is in the Bible. It is in the Quran. It is the essence of a family. This deletion is killing procreation. I am opposed to the deletion.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Thank you. Member for Mount Elgon. You are an Independent Member and I think I need to recognize your presence.

**Hon. Serut:** Thank you, hon. Temporary Deputy Chairman for recognizing me after I had made several requests. I oppose the deletion because it talks of having been satisfied. So, certain facts actually have to be presented before a court before the court issues such an order. So, for purposes of procreation, I oppose it.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Member for Wajir East, Mohamed Abass.

**Hon. Mohamed Abass:** Thank you, hon. Temporary Deputy Chairman. I think I support the deletion because there is no way we are going to measure satisfaction and, of course, I know many people are suffering silently. This will cause a lot of problems in homes and, therefore, I support the deletion.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. The last of this is the Chair of the Departmental Committee.

**Hon. Chepkong’a:** Thank you, hon. Temporary Deputy Chairman. As you know, hon. Waiganjo is a very able member of our Committee. We considered this matter but we felt very strongly that it should remain; the reason being that if you delete it, it will be inconsistent with Clause 73 which we have already passed. It reads as follows:-

“A party to a marriage may petition the court to annul the marriage on the ground that the marriage has not been consummated since its celebration.”

So, part of the cruelty in which he has talked about is denial of conjugal rights. It is cruelty against the other party. Unless you have decided that you do not want to stay in the marriage, then you can withdraw conjugal rights and the consequences are that, that marriage is going to be annulled.

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

*(Clause 84 agreed to)*

*Clause 85*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 85 be amended by –

(a) renumbering the existing provision as Sub-clause (1); and

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

“(2) Custody and maintenance of children of an Islamic marriage shall be dealt with in accordance with the Children Act, Islamic Law and any other written law relating to children.”

*(Proposed amendment withdrawn)*

*(Clause 85 agreed to)*

*Clause 86*

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

THAT, Clause 86 be amended in Sub-clause (1) by—

(a) deleting the words “five years” appearing immediately after the words “a term not exceeding” and substituting therefore the words “two years”; and

(b) deleting the words “one million” and substituting therefore the words “two million”.

The reason the Committee felt that this Clause should be amended is because, if you lock up someone for five years because of issues of marriage, it is too cruel. You would rather pay more than pay less and stay in for fewer years. So, we proposed that we reduce the number of years in which the court can lock you in to two years and you pay more for your criminal offences from one million to two million. Some can afford to pay. It is a lesser pain as opposed to being locked in for five years.

*(Question of the amendment proposed)*

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

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

*(Clause 86 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Kang'ata, you are a young man. Stay alert.

*(Clauses 87, 88, 89, 90, 91, 92 and 93 agreed to)*

*Clause 94*

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

THAT, Clause 94 be amended in Sub-clause (2) by deleting the word “Director” wherever it appears and substituting therefor the word “Registrar”.

*(Question of the amendment proposed)*

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

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

*(Clause 94 as amended agreed to)*

*(Clause 95 agreed to)*

*Clause 96*

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

THAT, Clause 96 be amended –

(a) in Sub-clause (1) by deleting the word “Director” and substituting therefor the word “Registrar”;

(b) in Sub-clause (2) by deleting the word “Director” wherever it appears and substituting therefor the word “Registrar”;

(c) in Sub-clause (3) by deleting the word “the marriage” appearing immediately after the words “such a marriage”

*(Question of the amendment proposed)*

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

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

*(Clause 96 as amended agreed to)*

*(Clauses 97 and 98 agreed to)*

*New Clause 17A*

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

THAT, the following new Clause be inserted immediately after Clause 17—

Interpretation of Part. 17A. In this Part, “marriage officer” means a licensed church minister appointed by the Registrar under section 51.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

*(The new clause was read a Second Time)*

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

*New Clauses*

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

THAT, the following new clauses be inserted immediately after clause

31—

Notice of  
Intention to  
marry for  
civil  
marriages

31A (1) Where a man and a woman intend to marry under this Part, they shall give to the Registrar and the person in charge of the place where they intend to celebrate the marriage a written notice of not less than twenty-one days and not more than three months of their intention to marry.

(2) A notice given under this section shall include—

- (a) the names and ages of the parties to the intended marriage and the places where they ordinarily reside;
- (b) the names of the parents of the parties, if known and alive, and the places where they ordinarily reside;
- (c) a declaration that the parties are not within a prohibited relationship;
- (d) the marital status of each party and, where a party is—
  - (i) divorced, a copy of the relevant decree; or
  - (ii) widowed widow or a widower, a copy of the death certificate; and
- (e) the date and venue of the marriage ceremony.

(3) The notice under subsection (1) shall be signed by both parties.

Publication  
of notice of  
intention to  
marry.

31B. After receiving a notice under section 30A the Registrar shall publish such notice in the prescribed manner in the place where the marriage is to be celebrated.

Objection to  
a notice of  
intention to  
marry

31C. (1) A person who knows of an impediment to an intended marriage may give a written notice of objection to the Registrar or person in charge of the place where a notice of an intended marriage has been posted in accordance with section 30B.

(2) A notice of objection shall include the name of the person giving the notice of objection and the person's relationship with either of the intended parties and shall state the reasons for the objection to the intended marriage.

(3) A person who has given notice of objection may, at any time, withdraw the objection in writing.

Obligations of the person in charge of a place where is to be celebrated in relation to objections 31D. (1) Upon receiving the notice of objection, the person in charge of a place where the marriage is to be celebrated shall hear the objection forthwith and if the person in charge of a place where the marriage is to be celebrated considers that the objection requires further hearing, he or she shall postpone the marriage ceremony until such time as the objections will be determined in accordance with the church regulations

(2) The person in charge of a place where the marriage is to be celebrated shall determine an objection within a reasonable period which shall not be more than seven days after hearing the objection.

(3) Upon determination of an objection, the person in charge of a place where the marriage is to be celebrated shall prepare and submit a report of the process of determination of the objection in the prescribed form to the parties and the Registrar within seven days of the determination.

(4) Any party dissatisfied with the decision of the person in charge of a place where the marriage is to be celebrated may appeal to the court within fourteen days of the decision.

Determination of objection 31E. (1) The Registrar shall hear an objection under section 30D within seven days of the Registrar receiving the notice of objection.

(2) The Registrar shall determine an objection under section 30E within a reasonable period but in any case not more than seven days after the hearing under subsection (1).

(3) Any party dissatisfied with the decision of the Registrar may appeal to the court within seven days of the decision by the Registrar.

(4) A person who makes a frivolous, malicious or fraudulent objection commits an offence and upon conviction is liable to imprisonment for a term not exceeding five years or a fine not exceeding one million shillings or to both.

Effects of an appeal to an objection 31F. A marriage ceremony may not be performed until any appeal that has been made against a decision of the Registrar to permit the marriage ceremony to be performed is heard and determined.

Appeal proceedings 31G. (1) The court shall hear and determine any appeal expeditiously.

(2) The court may hear and determine an appeal despite the failure

of any party or other person to appear before it.

Certificate of no impediment 31H. (1) Where a person does not object to the celebration of a marriage, the Registrar shall issue the persons intending to marry with a certificate of no impediment

(2) Where a Kenyan wishes to celebrate a marriage outside Kenya and where that Kenyan is required to obtain a certificate of no impediment from the Registrar, such Kenyan shall apply for such a certificate and the Registrar shall issue the certificate if no person objects to the intended marriage.

This is as a consequence of deletion from the Christian marriage. In Clause 31 which had been deleted, it had imported Clauses 18 through to Clause 26 to apply to the civil marriage *mutatis mutandis*. That was deleted for purposes of being transferred from the Christian marriages because the proper location for these Clauses was civil marriage.

*(Question of the new clauses proposed)*

*(New clauses read the First Time)*

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

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

*(The new clauses were read a Second Time)*

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

*(Schedule agreed to)*

## Clause 2

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 2 of the Bill be amended—

(a) by deleting the definition of the word “Director” and substituting therefor the following new definition—

“Director” means the director of marriages appointed under section 49;

(b) by inserting the following new definitions in the proper alphabetical sequence -

“Islamic marriage” means a marriage between a man and a woman who



profess Islam and which is conducted in accordance with Islamic Law;  
 “mahr” in relation to an Islamic marriage means a mandatory gift given by  
 a bridegroom to the bride in consideration for marriage; and  
 “marriage officer” means an officer appointed under section 49 (3);

*(Question of the amendment proposed)*

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

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

*(Clause 2 as amended agreed to)*

*(Clause 1 agreed to)*

*(Title agreed to)*

**Hon. Chepkonga:** I beg to move that the Committee doth report to the House its consideration of the Marriage Bill (National Assembly Bill No.13 of 2013) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**The Temporary Deputy Speaker** (Hon. Kajwang'): May you resume your seats.  
 The Chairperson or hon. Rasso

## REPORT, CONSIDERATION OF REPORT AND THIRD READING

### THE MARRIAGE BILL

**Hon. Dido:** Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Marriage Bill (National Assembly Bill No.13 of 2013) and approved the same with amendments.

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

**Hon. Waiganjo** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, before I move, may I take this opportunity to sincerely thank the House for being very alert. The Eleventh Parliament has made history. The Tenth Parliament tried but it did not succeed in passing the Marriage Bill. In fact, with the passage of the Marriage Bill, seven Bills have gone to history today.

Secondly, this Government has succeeded in passing the Marriage Bill. In 1967, the former President, the late *Mzee* Jomo Kenyatta came up with a committee and a taskforce. They tried to come up with a Marriage Bill that was acceptable to Kenyans, but they failed. However, this House has succeeded.

With those few remarks, I would like to thank you for your patience.

Hon. Temporary Deputy Speaker, I beg to move that the Marriage Bill (National Assembly Bill No.13 of 2013) be now read the Third Time.

Thank you.

**Hon. (Ms.) Muhia** seconded.

*(Question proposed)*

**Hon. Nuh:** Thank you very much, hon. Temporary Deputy Speaker. I would like to congratulate the Committee for the good work it has done. I also congratulate the Members and the House for the time they have put today in this matter, which is very important for this country. This is one law that will make the lives of Kenyans easier, comfortable and conducive in their homes.

Kenyans were living in a jungle way in marriages. There were marriages of “come we stay” and marriages which have many problems. However, today we have a law that will guide people on how they will live in their marriages. This is a milestone and I would like to congratulate the House for the good work it has done. I also thank the House for the effort it has put in for scrutinizing this Bill in a way that it has not done in any other Bill. I think some of the Members have got problems in their marriages. That is because of the concern they have shown in this Bill.

*(Laughter)*

I request hon. Members to show the same concern of high magnitude to other Bills that are very important for this country. Those who have had fear and have been hiding people in the bush should come out now because they have a law that will protect them. Come in the open and tell Kenyans how many wives, concubines and “come we stays” you have.

Hon. Temporary Deputy Speaker, with those few remarks, I support.

**Hon. (Ms.) Muhia:** Thank you, hon. Temporary Deputy Speaker. I wish to appreciate the Committee and all the Members. Actually, it is 8.00 O'clock but you can

see that there is a good number of Members in the House. That means that they are expressing the need for this Bill. It is a good day for Kenyans, particularly women who normally go through customary marriage. That is because every woman expects to wed in a church but we find ourselves married through customary law because of circumstances.

However, I will not stop putting a rider where the promised article has gone without our success as women. I appreciate and comment that all the Members from Nyandarua County are in the House for this Bill. This solidarity shows that the county is one which wants to practise good marriages.

Thank you.

**Hon. Kang'ata:** Hon. Temporary Deputy Speaker, if you want to know the importance of the marriage institution, I would like to draw the attention of this country and Members to the black people of America. Presently, when you look at the black community of America, they have the best roads, the best healthcare and the best everything. But because the institution of marriage has collapsed in Black America, you will find that 80 per cent of all the children who are being born by black Americans do not have fathers. They do not even have mothers, sometimes. The collapse of the marriage institution in America has made the black people to be the poorest. They are the people who are in jail and the people who are behind--- I have heard an argument that has been advanced by some people that they do not know why we are trying to legislate on issues of morality and bring issues of marriage to the fore.

But the point is that research has shown, in very clear terms, that married people live longer and children who are in a marriage set up tend to perform better in schools. Therefore, the marriage institution is so important to the extent that our Constitution and international conventions have provided that marriage is the key essence of a society.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Thank you. Leader of Minority Party.

**Hon. Midiwo:** Hon. Temporary Deputy Speaker, very briefly, after having sat here all afternoon, I feel happy and want to thank the Committee for a job well done. Only yesterday, we were castigating the Chairmen of Committees. I want to thank this particular one--- This one left the Communications Commission of Kenya (CCK) intact and now, he is doing a good job. He should just stay away from the controversial ones. We thought he was going to make our marriages collapse, but he has done a good job. I wish to thank him. I wish to thank my colleagues. I realize that this is not the time for debate. I do not think you should let us go back into the substance of the Bill. We need to thank ourselves. I am proud that we are on a good journey. I support.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, first, I want to thank the able Chair of the Committee on Justice and Legal Affairs, his members and the whole House. The passage of this Marriage Bill is the biggest gift to a party that I belong to. The republican parties always believe in family values and the institution of marriage. So, today, I am sure, wherever you are, if you are a Member of the United Republic Party, this is the best gift you will get. The URP believes in family values. It believes in procreation and giving birth to many Kenyans and the tyranny of numbers.

But, more fundamentally, the people I represent; the Muslim community, do not believe in promises. They do not believe in staying at Wabera Street and in the malls

making promises. The Muslim community believes in serious marriages and engagements and you pay dowry.

Hon. Temporary Deputy Speaker, Article 170(5) of the Constitution is what made us to vote for it then. Today, I want to thank the Chairman of the Departmental Committee and the House for the amendments they have made to Clause 46. If anything, if this Bill contradicts the Islamic teachings, it is null and void for Muslims. As a country, we used to have seven different laws dealing with marriages. Today, we have only one. To those friends of mine who give promises, on the day the President will assent to this Bill, I will go live on an FM radio station and tell them that their days are numbered. The days of making promises are gone. More fundamentally, this law is important to the Chairman of *Maendeleo ya Wanaume*. He will save those amongst us, who have problems at night and who have no recourse. We are saying that such men have some damages to claim. The burden of proof is on the great lawyers like hon. Chepkong'a and hon. Kaluma.

Hon. Temporary Deputy Speaker, we have been sitting here from 2.30 p.m. Therefore, I want to thank my colleagues. This is a serious legislation. I am sure that those of us who are not here, if they are asked over the weekend what happened to the Marriage Bill, they will say: "It is coming up for debate on Tuesday and Thursday." These are great men and women who really felt that they must undertake serious legislation. I want to thank them all for their commitment.

Thank you, hon. Temporary Deputy Speaker.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Members, having concluded the business appearing under Order No.9, this House stands adjourned until Tuesday, 25<sup>th</sup> March, 2014, at 2.30 pm.

The House rose at 8.10 pm