

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

### SPECIAL SITTING

Tuesday, 26<sup>th</sup> May, 2015

The House met at 9.30 a.m.

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

### PRAYERS

### QUORUM

**Hon. Deputy Speaker:** We do not have a quorum. Can the bell be rung?

*(The Quorum Bell was rung)*

Hon. Members, we are now properly constituted. Let us get seated.

### COMMUNICATION FROM THE CHAIR

#### BUSINESS FOR SPECIAL SITTING

Hon. Members, can you settle down; I have a communication.

Hon. Members, as you may recall, our long recess commenced on May 1, 2015, with resumption of the Session scheduled for Tuesday June 9, 2015. Prior to the recess, the Leader of the Majority Party did indicate that he may request the Speaker to convene Special Sittings of the House to consider urgent Bills with constitutional timelines and other business related to the Budget. Thereafter, the Speaker received a formal request from the Leader of the Majority Party requesting the House to be convened for the purpose of considering the aforementioned business.

Hon. Members, in this respect and pursuant to Standing Order No. 29(3), the Speaker of the National Assembly, vide Gazette Notice No. 3704 of May 21, 2015, notified that four special sittings of the National Assembly would be held in the National Assembly Chamber at the main Parliament Buildings, Nairobi on Tuesday 26<sup>th</sup> May, 2015 at 9.30 a.m. and 2.30 p.m. and on Wednesday 27<sup>th</sup> May, 2015 at 9.30 a.m. and 2.30 p.m. to consider the following business:-

1. the mediated version of the Environmental Management and Co-ordination (Amendment) Bill, 2014;
2. Senate amendments to the Public Audit Bill, 2014;

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3. Senate amendments to the Public Procurement and Asset Disposal Bill, 2014;
4. Senate amendments to the Fair Administrative Action Bill, 2015; and,
5. the Budget and Appropriations Committee Report on the Estimates of Revenue and Expenditure of the National Government, Parliamentary Service Commission and Judiciary for the Financial Year 2015/2016.

In his letter to the Speaker, the Leader of the Majority Party also requested that the House considers, in all stages, the Supplementary Appropriation Bill, 2015.

Hon. Members, in this regard, I wish to confirm that the special sittings are properly constituted and welcome you to the House. I also convey my gratitude to you all for making time to attend the sittings despite the short notice.

I thank you.

## MESSAGE

### SENATE PASSAGE OF NATIONAL ASSEMBLY BILLS

**Hon. Deputy Speaker:** Hon. Members at the door, please get seated.

Standing Order No. 41(5) relating to Messages from the Senate provides that “If a message is received from the Senate at a time when the House is not in session, the Speaker shall forthwith cause the message to be transmitted to every Member and shall report the message to the House on the day the House next sits.”

In this regard hon. Members, I wish to report that I have received a Message from the Senate vide a letter dated 22<sup>nd</sup> May, 2015 conveying the Senate passage of the following three National Assembly Bills on Wednesday 20<sup>th</sup> May, 2015 with amendments: -

1. Public Audit Bill (National Assembly Bill No. 38 of 2014);
2. the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015); and,
3. the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014).

Hon. Members, the Message states and I quote,

“THAT, the Public Audit Bill (National Assembly Bill No. 38 of 2014), the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015), and the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) as published in the *Kenya Gazette* Supplement Nos. 162, 26 and 164 of 8<sup>th</sup> December, 2014, 13<sup>th</sup> March, 2015 and 8<sup>th</sup> December, 2014 respectively and passed with amendments by the National Assembly on 2<sup>nd</sup> April, 2015, 23<sup>rd</sup> April, 2015 and 30<sup>th</sup> April, 2015 respectively, were passed by the Senate on Wednesday, 20<sup>th</sup> May, 2015 with amendments.”

Consequently, the Senate now seeks the concurrence of the National Assembly to the amendments made to the three Bills.

Hon. Members, I am aware that the Clerk of the National Assembly has already circulated the Senate amendments to the three Bills, pursuant to Standing Order No.145 to Members, including the two respective committees. It is important to note that the Senate has proposed amendments to nine clauses of the Public Audit Bill, 2014 which

has a total of 74 clauses. The Senate also proposed amendments to 10 clauses of the Fair Administrative Action Bill, 2015, which has a total of 14 clauses. On the Public Procurement and Asset Disposal Bill, 2014, which has a total of 184 clauses, the Senate proposed amendments to five clauses.

Hon. Members, you will agree with me that the Senate has expedited its consideration of the three Bills, especially given the short period availed to them. I, therefore, wish to commend our colleagues for the speedy action on the said Bills. Due to the urgency of the three Bills on account of their constitutional timelines, I wish to guide the House as follows:-

(1) The Senate amendments to the Public Procurement and Asset Disposal Bill, 2014, and the amendments to the Public Audit Bill, 2014 shall stand committed to the Departmental Committee on Finance, Planning and Trade for consideration;

(2) The Senate amendments to the Fair Administrative Action Bill, 2015 will stand committed to the Departmental Committee on Justice and Legal Affairs for consideration; and,

(3) The two committees are hereby required to sit from 10.30 a.m. today to consider the said amendments and table their reports in the House this afternoon. Their reports will guide debate on the consideration of the Senate amendments to the three Bills.

I thank you.

### PAPER LAID

**Hon.(Ms.) Abdalla:** Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House today, Tuesday, 26<sup>th</sup> May, 2015:-

The Report of the Mediation Committee on the Environmental Management and Co-ordination (Amendment) Bill, National Assembly Bill No.31 of 2014.

### NOTICE OF MOTION

#### ADOPTION OF MEDIATION COMMITTEE REPORT ON EMC BILL

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

THAT this House adopts the Report of the Mediation Committee on the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014) laid on the Table of the House today, Tuesday, 26<sup>th</sup> May, 2015.

### MOTION

#### APPROVAL OF MEDIATED VERSION OF ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (AMENDMENT) BILL

**Hon. (Ms.) Abdalla:** Hon. Deputy Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150(3), this House approves the Report of the Mediation Committee on the Environmental Management and Co-ordination (Amendment) Bill, (National Assembly Bill No. 31 of 2014).

**Hon. Deputy Speaker:** Hon. Amina, there is a point of order by Hon. (Dr.) Eseli. What is your point of order?

**Hon. (Dr.) Simiyu:** On a point of order, hon. Deputy Speaker. This House is guided by the Standing Orders and procedure. As the hon. Member starts debating this Motion, we have not seen her table the Report. She said that she was tabling, but she did not table it.

**Hon. Deputy Speaker:** Hon. Amina Abdalla, have you tabled the Report? Some of your Members are sticklers for rules. Therefore, we must abide by our rules.

*(Hon. (Ms.) Abdalla laid the Report on the Table)*

**Hon. (Ms.) Abdalla:** Thank you, hon. Deputy Speaker. I am glad that hon. Eseli is awake and making sure that I am alert.

Hon. Deputy Speaker, I beg to explain the resolutions of the Mediation Committee. The Senate passed the Environmental Management and Co-ordination Bill with nine amendments. As a Committee, we rejected four of the amendments. Consequently---

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Members! We need to hear the Chairperson. What is it, hon. Chris Wamalwa? Are you rising on a point of order?

**Hon. Wakhungu:** On a point of order, hon. Deputy Speaker. As hon. (Dr.) Eseli clearly put it, the Report has just been tabled. Will it be in order for you to order the Serjeant-at-Arms to give us copies of the Report? We do not have them and we have not had a chance to look at them. If possible, order for us to have copies, so that we can go through the recommendations by the Mediation Committee.

**Hon. Deputy Speaker:** Yes, Clerks-at-the Table, could we avail copies of the Report to the Members? It looks like a fairly short Report. As they prepare the copies for our Members, I would request that because of the urgency of the matter, hon. Amina Abdalla continues moving the Motion, so that we continue with the debate on it.

**Hon. (Ms.) Abdalla:** Hon. Deputy Speaker, as I was saying, consequently the Speaker of the National Assembly, pursuant to Standing Order No. 149 (2), and the Speaker of the Senate, pursuant to their own Standing Orders, on 6<sup>th</sup> May respectively appointed hon. Sen. Lenny Kivuti, Hon. Amina Abdalla, hon. Sen. George Khaniri, Hon. Ronald Tonui, hon. Sen. Liza Chelule and Hon. William Kamoti to sit in the Mediation Committee and mediate on the disputed clauses.

I would like to mention that we had a successful meeting and we agreed with the Senate on most of the clauses. The first contentious clause was Clause 10, which speaks to the membership of the Board of the National Environment Management Authority (NEMA). The amendment by the Senate suggested that we remove the representative of

the Attorney-General on this Board and replace the same with a representative of the Council of Governors. The Committee and this House rejected that amendment based on the fact that NEMA is a policy and co-ordinating arm of the Government of Kenya, and it is performing a national Government function. As such, we did not feel that there was any legal or constitutional justification for having a member of the Council of Governors on this Board.

I am glad to report that during the mediation, the Members from the Senate and the National Assembly agreed that the replacement of the Attorney-General with the representative of the Council of Governors was not the right thing to do because:-

1. the expertise that would be given by the Attorney-General cannot be provided by the representative of the Council of Governors;
2. under Schedule Four, policy development and co-ordination are national Government functions that should not be micromanaged through a representative of the Council of Governors.

Having agreed to that, the amended clause now retains the Attorney-General under this clause and does not include a representative of the Council of Governors.

The second clause that was in contention was Clause 20, in which the Council of Governors had recommended to reduce the two persons that were to be nominated by the Cabinet Secretary for Environment, Water and Natural Resources in the Public Complaints Committee. This is a body to which members of the public can complain either against the National Environment Management Authority (NEMA), any public body or anyone who is infringing on their environmental right. They recommended that one of those slots should be given to the Council of Governors. Our contention was that we did not want the Council of Governors in a nationally constituted committee that intends to perform national duties.

However, having looked at the membership of that committee, we agreed that it should include members from the private sector and Non-Governmental organisations (NGOs).

Our argument was not as strong. If we wanted the governors to have representation, that would have been a better idea. We then proposed to include a representative of the Council of Governors to replace the civil society representation and not the Cabinet Secretary's nominees. This is a significant change in that the Bill did not provide a mechanism for choosing the civil society representative. It is a give and take. In that Bill, there is a clause that talks about the County Environmental Committees, whose secretary is the NEMA officer in the county. We thought that this would be a good give and take to the Council of Governors, because as the national Government, we are represented in committees in the different counties.

The next clause in contention was the timelines required for the preparation of national environmental action plans and their reports. The Senate amendment had drastically reduced the time it takes to produce and to report on the plan. Their amendments were to reduce our recommendation of preparation of a plan from three years to one year and the time it takes to do a report from five years to two years, in the case of the county government and from six years to three years in the case of the national Government.

I am glad to report that the basis of that amendment, especially on the reports, was a misunderstanding in one of the clauses regarding a review of a plan and the production of a brand new plan. I am happy to report that we have now come to a middle ground on the time it takes for the counties to do their action plans and for the national Government to do its action plan. We have conceded to move from three years to two years.

I am happy to also report that the Senate has appreciated that environmental reports cannot be done annually because things in the environment do not change that fast. They have agreed that the time it takes to do action plans be retained as per the recommendation of the National Assembly; each county must produce one plan in five years. The national Government should collate the plans from the counties and do the national plan in six years. This negotiated version takes into account the extensive experience of the Members of the committee, who work in the environment sector, and who know that it has been impossible for any government to produce a state of the environment report annually for the simple reason that it takes too long to do that.

Clause 23 has been amended to provide that after two years from the commencement of this Act there should be an Environmental Action Plan and every six years after that for the national Government. In Clause 25, the counties will then do theirs in one year, and do a new plan every five years to coincide with giving the national Government one year to collate and come up with their national plans. That is the gist of the negotiated versions of Clauses 23 and 25. Those were the four contentious clauses and that is what was agreed.

I want to take this opportunity to thank the Members of the National Assembly who were with me in that negotiation, namely Hon. Tonui and Hon. William Kamoti, for their active participation and Senators for being a very agreeable group that appreciated that we, as Parliament, the National Assembly and the Senate, must safeguard constitutional principles and should not set precedents that are going to jeopardise the separation of functions as stipulated in Schedule Four of the Constitution.

With those remarks, I wish to request Hon. ole Kenta to second.

**Hon. Deputy Speaker:** Hon. Kenta, we are not seeing you on the intervention list. Do you have your card with you? Your name is not appearing; may be you have somebody else's card.

**Hon. ole Kenta:** Thank you, hon. Deputy Speaker. I would like to second the Chairlady's Motion.

From the outset, the work that was done by this Mediation Committee was commendable. This should be the norm rather than the exception. When the two Houses agree, that makes the work easier for everybody rather than having an unnecessary tug of war that brings problems. The National Assembly did a good job as far as this Motion was concerned. There was an attempt to emasculate and even take over the powers of the Attorney General and bestow them on a representative of the Council of Governors, which was unconstitutional and was rejected from the outset. This House should always be vigilant and ensure that the constitutional tenets that are the foundation of this country are at all times protected.

Without belabouring the point, I beg to second.

*(Question proposed)*

**Hon. Wakhungu:** Thank you, hon. Deputy Speaker. I rise to support this Motion.

First, I want to thank the Mediation Committee for coming up with informed resolutions. In the spirit of teamwork and mediation, it is not just about going to the Mediation Committee and you stick to your stand. Mediation is supposed to be a win-win, or a give and take, arrangement. I thank both the Members of the National Assembly and the Senators for coming up with this agreeable way forward.

Hon. Deputy Speaker, looking at those amendments, particularly the one on representation of the Council of Governors (CoG) at the expense of the Attorney-General--- When you look at the Fourth Schedule to the Constitution, some of the functions at the county level--- It is important for Governors and Senators to also understand that policy development is still at the national level. It does not mean that when a function has been devolved a county government has all the powers. It is, indeed, important that if we realise this, we will avoid the issue of having mediations now and then.

We should see how we can amend our Standing Orders, especially when it comes to these constitutional timeframe Bills, so that we do not waste so much time. It is like everything has to go to the Senate. Once it goes to the Senate, we have amendments and we have to go to a mediation committee. Indeed, it is a waste of time and resources. Maybe we should look for a way for the two committees to come together. I can give the example of how the Inspector-General of Police (IG) was vetted; it took a short time. It was the time we had Members from the Senate and the National Assembly sitting together. We can save on time. In future, we need to look at the Standing Orders and see how we can work together for purposes of moving forward together and shortening timeframes.

When you look at the amendments on civil society representation--- I want the Chair to listen because the civil society plays a very critical role when it comes to environmental matters. There is so much donor funding coming to this country that helps in environmental matters. However, it is a big concern when you remove the representation of the civil society in favour of somebody from the CoG. Matters of the environment have been in the Millennium Development Goals (MDGs). Even the MDGs that are yet to be launched, matters of the environment are critical. When it comes to the issue of the MDGs, the civil society plays a critical role.

So, it was not proper for us to delete the representation of the civil society and say that there is no clear framework of nominating these people. The National Governing Council of NGOs has a clear framework on how to nominate people. Civil society groups are categorised. We have civil society organisations for education, healthcare and environmental matters. So, for the Chair to come and tell us that the reason was that there was no clear framework for nominating a person from the civil society was misleading this House. However, for purposes of the constitutional timeframe, I support.

Thank you.

**Hon. Deputy Speaker:** Hon. Njogu Barua.

**Hon. Barua:** Thank you, hon. Deputy Speaker. At the outset, I would like to support this Report of the Mediation Committee on the Bill. As I support, I would like to

first of all commend the team that established a middle ground and came up with acceptable decisions.

Clause 10, which was asking the CoG to nominate a representative to replace the one who was supposed to be appointed by the AG, was one of the biggest issues that the team had to address. This was because what the Senate had proposed implied that the advice given by the AG can be given, at the same level, by the CoG. So, I am happy that this has been agreed upon and the AG remains with an opportunity to appoint a representative to the National Environment Management Authority (NEMA) Board.

Policy making, as the previous speakers have said, is a function of the national Government. If the CoG seriously feels that they need to be part and parcel of decision-making at national institutions, the time has come for them to also accept that representatives of the national Government have an active role to play in the management and running of the county governments. As it is now, there is a movement by the CoG, which I think this House must note, in which they want to entrench themselves in all national institutions. This must be monitored and resisted objectively. If they want to join these institutions, let them also open up the county governments. If they open up the running of the county governments for the input of the Members of this honourable House, the county governments will run in a more efficient manner.

The other issue is on the appointee of the civil society to the Public Complaints Committee (PCC). I support the feelings of Hon. Chris Wamalwa that in future it will be necessary for us to bring an amendment to this House, so that the civil society can be represented. Civil society organisations in this country are getting a lot of donor funding for environmental programmes. They are implementing very many environmental programmes in this country. What is important is not to remove the civil society organisations from the management of institutions. What is important is for us, as a country and Government, to ensure that there is co-ordination and improved functioning of the NGO Co-ordination Board and the National Council of NGOs, so that in future they may be more efficient in appointing people to represent the common man and woman in various institutions.

Finally on the issue of reporting, I am happy this was agreed upon as a committee of this House had proposed. It was a misunderstanding in the process. I would like to inform this House that the reason why there is a difference of one year between the county governments and the national Government is because the national Government's report is going to be a collation of the reports from the 47 counties in this country. So, the one year difference will enable NEMA and the Ministry to put together reports from various counties and come up with a national environmental report and action plans.

I support.

**Hon. Deputy Speaker:** Hon. Chachu Ganya.

**Hon. Ganya:** Thank you, hon. Deputy Speaker, for this opportunity to support this mediation Report. From the outset, I want to compliment the Members from both Houses for having agreed on this Report, and given us a way forward.

The Constitution provides clear functions for the membership of both Houses. The Senate has a role to play. As Members of the National Assembly, we also have a role to play to ensure that we safeguard the Constitution. Our duty is to look at the national functions while the Senate ensures that the constitutional provisions in the Fourth



Schedule for the county governments are well safeguarded. As the Chair of the Departmental Committee on Environment and Natural Resources has clearly stated, policy formulation and development is clearly a national function. Environmental issues are cross-cutting and are equally shared responsibilities at the two levels of Government. That is why I feel the membership from the Senate provided some very good insights and improved on this Bill.

I am a member of the Departmental Committee on Environment and Natural Resources; we spent over a whole year ensuring we have a good Bill to overhaul NEMA. Having done that, the membership from this House was able to share with the Senate and the Senators were able to appreciate where we were coming from. They were able to appreciate the kind of provisions we put into the Bill.

Also, one good outcome of this mediation process was to ensure that as a country we will have a state-of-the-environment report, which will be done by all the 47 counties. Eventually, that report will feed into and be part and parcel of the report of our nation. This is the good practice all over the world. In many countries, there are state-of-the-environment reports every a few years. This is a very good thing for this country.

I support the contribution from the Senate, in particular when they felt that the CoG should also have a role when it comes to the issues of the Complaints Committee. This is a shared function. The environment affects our counties as it affects our nation. Because of this, the CoG, being one major governance structure in our country today, should have a role to play when there are complaints. That is why I strongly support the recommendation by the Senate that when it comes to complaints about the environment, all the sectors of our society, especially the governance structures, should be well represented. This is a step in the right direction. It will ensure that as a nation we have dialogue to find ways and means of resolving issues instead of making it a political problem. That is why we get leaders from both Houses. We should be able to sit together, have a good mediation and come up with a solution which will serve this country for a long time to come.

This is a very important Bill. If it is well implemented the country will never be the same again in terms of its environmental governance.

I fully support.

**Hon. Deputy Speaker:** Hon. David Kangongo.

**Hon. Bowen:** Thank you, hon. Deputy Speaker. I stand to support the Report by the Departmental Committee on Environment and Natural Resources. This is the way forward. We have had contention in committees over issues, for example, the discussion on the Division of Revenue Bill. I am happy that this Committee was able to reach an agreed position, and now we can move this country forward.

I want to support, especially Clause 10, over which there were a lot of contentious issues. There is no way a Government institution can proceed without legal advice from the chief Government legal advisor, that is the Attorney-General. There is need for NEMA to have an action plan. I am of the opinion that this body called NEMA is not doing anything for this country. As much as we appropriate a lot of money to NEMA, they have failed. We saw what happened in the lead factory in Mombasa, where young children died. We saw so many graves of people who died as a result of the lead factory.

Another case that shows the failure of NEMA was the recent floods in Nairobi. If you go around Nairobi County, you will see buildings which have been built on waterways. You will be shocked that those buildings have been approved by NEMA. So, as much as we want to see that our environment is safeguarded, NEMA has really done a lot of disservice to this country. They are drawing huge taxpayers' amounts but their performance is actually below par.

The Committee also went an extra mile to agree with the Senate proposals. Given that the passage of this Bill has the deadline of 27<sup>th</sup> May 2015, we need to support the recommendations of the Committee, so that we beat the constitutional deadline for these Bills. I support what the Committee has done and still ask the Chairperson of the Departmental Committee in charge of the environment to revisit the work of NEMA. If possible, they need to recommend that we repeal the NEMA Act and return its functions to the Ministry of Water, Environment and Natural Resources. This is because NEMA is doing nothing.

**Hon. Gichigi:** Thank you, hon. Deputy Speaker. I also rise to support this particular Report. I am happy that the Committee members exhibited competence during mediation. Indeed, they have set a good precedent on what is going to be the trend whenever issues arise between the National Assembly and the Senate.

I am also happy that they were able to comply with the timelines that the law has set. I hope others that are going through the same process will borrow from what this Committee has done.

I would also want to tell the Senate, and similarly this House, that it is not necessary to amend laws just for the sake of appearing to be doing something. If you look at some of the proposals that the Senate made, and which were dropped at mediation level, you will see that some of those proposals were not well thought out, and that the Senate did not bother to consult experts, especially when it came to issues like the timelines for preparation of the action plans at the county and national levels. It is important that both Houses do not hurry when reviewing proposals.

Hon. Deputy Speaker, I am looking at the proposed amendments in relation to the civil society. We also need to start looking at the representatives that we bring into these organizations. It is important that we bring in competence, rather than just saying that a certain sector or body needs representatives on committees. We need to put certain qualifications and criteria.

I have seen the proposed amendment that the representative of the Council of Governors becomes the secretary to the Public Complaints Committee. The only qualification that the Mediation Committee gave was, I think, experience in environmental matters. That alone does not make somebody a good secretary. Perhaps, it is too late to move a further amendment. I am hoping that when it comes to implementation, the person brought in by the CoG will have secretarial competencies. That is important and it can be done. Indeed, a suggestion or proposal of that nature can be made by our committee.

The other issues have been dealt with here, and I am supportive of them. Both the national Government and county governments need to create more forums where we will resolve our issues and create structures for interaction. This is because both levels of Government need each other. We do not have to meet only when there are disputes. We

should create forums where we meet for the sake of improving our relationship, and co-ordination of the shared functions.

I support.

**Hon. Deputy Speaker:** Hon. Nyikal, the Floor is yours. As he gives his contribution, please remember my earlier Communication about the three committees. It is now 10.30 p.m.

**Hon. (Prof.) Nyikal:** Thank you, hon. Deputy Speaker for giving me the opportunity to contribute to this Report. I stand to support this Report. I start by appreciating the work of the Committee, particularly the hardworking Chairperson who always gives very clear and articulate presentations.

There is no doubt that we need to preserve our environment, particularly in countries in Africa which are developing. Africa has a lot of resources that could be tapped and protected from other people who may actually misuse them. There is, therefore, need to have a co-ordinating mechanism. This Bill is really appropriate. I am most grateful that the Mediation Committee worked so hard and displayed a lot of tolerance as is required. This is really the relationship we expect between the National Assembly and the Senate.

There has been tension between the two Houses of Parliament, which is absolutely unnecessary particularly at the time we are implementing devolution. In a way, there has been competition that I see no basis for. There has been push and pull, but what has been exhibited is what we need. In fact, it is that push, pull and competition that, in my view, has affected the devolution process. There have been situations when it has been very clear what we needed to do, but basically because we were competing, we did not see it.

Take, for example, the devolution of health care. There has been a lot of issues and some of us thinking that health care should not be devolved. I think it should be devolved. We have failed to sit down, as we need to, and look at the details of the complex nature of the sector, so that we look at it step by step as has been done in this negotiation; we should look at every aspect of it that we can agree on and just be guided by logic and not party positions.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order! Order, Members! Please, those retreating, do it silently.

**Hon. (Prof.) Nyikal:** We should not be driven by mere competition between the Senate and the National Assembly. We should do what is good for this country. On that account, I really appreciate what the Mediation Committee has done.

I have looked at the clauses that they have agreed on. For instance, if you are talking of the membership of a board, I do not see how you can replace the Attorney-General with a representative from the Council of Governors. The functions and role of the Attorney-General in this are absolutely different from that of the Council of Governors. Again, as other Members have said we must appreciate that policy and standards still remain with the national Government. Many times you hear people saying that a certain function has been devolved and the national Government has nothing to do

with it, but we must remember that whereas we have the county governments and the national Government, we have one nation and we keep the same standards. Therefore, it is important that policy and standards are universal. That will be the criteria and the standards that we apply when we check how our devolved functions are going on. I am very happy that they looked at the representation in the committee. Committees need not be very large. Therefore, having one person representing an organization, or an authority is adequate, so that we can have minimum membership. This will reduce their expenses.

The issue of the civil society should have been looked at differently. The civil society is very important in reminding people in authority, namely the Executive, the Legislature and even the Judiciary, that things need to be done in a certain way, particularly with regard to timelines in our new Constitution. That should have been dealt with separately. We need to find out how we can get the civil society into the law. If it has been passed, we can still do it administratively.

I also appreciate the fact that they have agreed on the action plans and the way the action plans are to be prepared. This is probably the most important thing in anything that we do. We can pass laws and policies, but if we do not have action plans, or reports to tell us what has happened, then all of it comes to nil. I dare say that even the big problem that we are having in security has something to do with action plan and co-ordination.

*(Loud consultations)*

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

**Hon. (Prof.) Nyikal:** Hon. Deputy Speaker, if they have looked at the two areas of action and co-ordination, they have done a good job.

With that, I support the Report.

**Hon. Deputy Speaker:** Hon. Members, please confine yourselves to the four clauses. Let us not go back to debating the Bill. We did that. You just debate the four mediated clauses. We need numbers so as to put the Question. Do we have a Member who is opposing? We are all in agreement. In this long list of 117 Members, if we have one Member who is opposing, we should hear those views.

Let me give this chance to Hon. ole Metito, the Chief Whip.

**Hon. Katoo:** Thank you, hon. Deputy Speaker. As you have correctly said, we debated this Bill in details and we are supposed to confine our debate to the four clauses that were committed to the Mediation Committee. I will only talk about two clauses, namely clauses 23 and 25.

Before I do that, let me appreciate the efforts of the Mediation Committee of Members of both Houses that has given us an agreed version.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Members! Members, the level of consultations is too high and we have too many of you standing on the isles. Members, please, let us listen to one another.

Continue, Hon. Katoo.

**Hon. Katoo:** Hon. Deputy Speaker, I appreciate the efforts made by the Mediation Committee of Members of both Houses of Parliament. They agreed and gave us a new version of the Bill.

On Clause 23, which is one of the clauses that were committed to the Committee, the issue of public participation at the national and county levels is critical. It is good that they have agreed on that clause, that public participation, which is a constitutional right of the citizens of this country, must be done at both levels of the Government when drawing up environmental plans. As much as we endeavour, as a country, to protect our environment and we must do it, it is also good that we take the views of the communities that live around environmental sensitive areas.

If I recall well, in this Session of the Eleventh Parliament, we have received very many petitions from communities petitioning this House that forests that they use for grazing and wetlands that support their livelihoods have been gazetted as environmentally protected areas without taking their views into account. To minimise these petitions, both levels of Government should take into account the views of the communities living around those areas before they are declared environmentally protected areas. Clause 23 as mediated by the Mediation Committee, takes that into account.

I also want to talk about Clause 25; many Members who have contributed have talked about it. I agree with Hon. Bowen that NEMA has failed to some extent. The flooding incidents in Narok and Nairobi were all as a result of failure by NEMA. People have constructed buildings along the river beds and all the constructions have NEMA approval. I saw a very good Estate in Kericho County, which is earmarked for demolition after the public had been allowed to incur a lot of expenses. A lot of money has been put into that estate, and then NEMA has come out saying that it is built along a river bed. The owners have come out clearly saying that they got approval from NEMA before they constructed the estate.

People are also farming on the riverbeds when NEMA is supposed to tell the public that they should be, at least, 50 metres away from river beds and wetlands. Those are NEMA failures. It is another form of corruption within some of our agencies. Clause 25 says that there should be county plans of environment. I appreciate that this clause provides for county assembly approval. Elected leaders in our counties will be looking at urban plans. They will also involve the communities at the grassroots as they come up with county approvals. This aims at protecting the environment.

We need to agree with those four clauses, as mediated by the representatives of the two Houses of Parliament.

With those remarks, I beg to support.

**Hon. Deputy Speaker:** Hon. Makali Mulu!

**Hon. Mulu:** Thank you, hon. Deputy Speaker, for giving me the chance to also support this Motion.

I start by appreciating the work of the Chair of our Departmental Committee on Environment and Natural Resources. I also appreciate the work of the Mediation Committee. It is not always the case that when the Mediation Committee meets, it agrees on matters. I must appreciate the team for agreeing and seeing the need to have this law in place.

Looking at the four clauses that caused the whole process to be taken to the Mediation Committee, you realise that some of the issues raised are not issues on which people should have disagreed in the first place. For example, the issue in contention in Clause 10 was whether the Attorney-General should be part of the board. We all know that environmental matters are cross-cutting in nature, and have a lot of legal issues. I cannot imagine how a board would discuss environmental matters without consulting the Office of the Attorney-General.

**Hon. Deputy Speaker:** Hon. Ottichilo, are you on a point of order?

**Hon. (Dr.) Ottichilo:** Yes, hon. Deputy Speaker.

On a point of order, hon. Deputy Speaker. Listening to all the Members, I see that we are in agreement that the Mediation Committee has done an excellent job. Would I, therefore, be in order to request you to call upon the Mover to reply?

**Hon. Deputy Speaker:** Hon. Members, is that your feeling?

**Hon. Mulu:** Hon. Deputy Speaker, can you allow me to finish?

**Hon. Deputy Speaker:** Let us allow hon. Makali Mulu to finish and then I will put the Question. We should close debate, so that we can allow the three committees that I have mentioned, to meet.

**Hon. Mulu:** Thank you, hon. Deputy Speaker.

Participation of the Attorney-General in this board is very important. I support and appreciate the fact that the Mediation Committee actually accepted to retain the Attorney-General in the board.

On the issue of the civil society, I would have opposed Clause 20, given the opportunity. It is very unfortunate that while we are all pushing for public participation, we want to leave the civil society out of an important board like this one. Because of the timelines and the constitutional requirements of this Bill, our hands are tied in relation to Clause 20. As we move forward, I will move an amendment to get the civil society participate in this board. The civil society in this country is very active on matters to do with the environment. At the same time, most of the civil society organisations have a lot of expertise and experience in matters of the environment. I do not think we are doing good service to this country by leaving them out of the Public Complaints Committee. As we move forward, it will be important that we amend this Clause to include the civil society on the board.

On the clause on the County Environmental Action Plans, what was under discussion was the issue of timeframes. When I read this proposed amendment, I asked myself whether we have a mechanism in place for consultation with the relevant committee of the National Assembly to just seek clarification before the Senate makes the amendment. To me, this came about as a result of failure to seek clarification from people who had consulted the stakeholders. If there was proper consultation before the Senate made the amendments, some of these things would not have come up, especially the issues to do with timeframes like whether it should take two years to prepare a plan, or it should take three years to review it.

My last point relates to the whole issue of the way we view our environmental matters. It has been said that NEMA, as an organisation, seems to be performing below expectation. However, we must also realise that at the same time, this law is very important to NEMA in terms of their co-ordination and management of environmental

matters. I believe that after this Bill becomes an Act of Parliament, NEMA will use this legal framework and make sure that they do their work as is expected by Kenyans.

Hon. Deputy Speaker, when you drive around this country and more so in Nairobi, you will see things which are not environmentally friendly. Now that NEMA are going to have this law in place, which gives them a very clear legal framework in terms of co-ordination and management, they should take advantage of it and make sure that they do their work as per the expectations of Kenyans. Otherwise, this House will have no business having NEMA in place.

With those remarks, I support.

**Hon. Deputy Speaker:** Hon. Members, as we had agreed, I want to see through the votes that we are in agreement that those who have had an opportunity to contribute have done so on behalf of the rest of us who are supporting the good work of the Mediation Committee. I want to see the response to the proposal that was made by hon. (Dr.) Ottichilo, that we call upon the Mover to reply.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

I, therefore, call upon hon. (Ms.) Abdalla, the Co-Chairperson of the Mediation Committee, to reply.

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

I beg to reply by thanking all the Members who have contributed, and used kind words towards the Committee; they have appreciated that we need a mechanism that will enable us to avoid the mediation by having the originating House speak to the second House that is dealing with a Bill.

Mine will be to recommend to this House that we make sure that we do not get pushed by persons who bring Bills to us late. In this case, we should not have been dealing with an amendment Bill but with a repeal Bill.

With those remarks, I beg to move.

*(Question put and agreed to)*

## ADJOURNMENT

**Hon. Deputy Speaker:** Hon Members, there being no other business, the House stands adjourned until this afternoon, at 2.30 pm.

The House rose at 10.50 a.m.