

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 3<sup>rd</sup> March, 2016

The House met at 9.30 a.m

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

PRAYERS

QUORUM

**The Deputy Speaker:** Can we have the Quorum Bell rung, please?

*(The Quorum Bell was rung)*

We can now prosecute our business.

PAPERS LAID

**The Deputy Speaker:** Hon. Members, under this Order, we will allow the Liaison Committee to table their Report in the course of business this morning and also to give notice of Motion on the Budget Policy Statement Report. We will give them time in the course of business this morning.

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

**Hon. Deputy Speaker:** What is your point of order, Hon. Washiali?

**Hon. Washiali:** Thank you, Hon. Deputy Speaker. I did not intend to interrupt the business of the House, but I wanted to point out to you, as one of the leadership of this House, that at one point when we were in a workshop in Mombasa, we had proposed that Quorum Bell should be fixed in all the buildings where Members sit.

I am sure we have Members in Continental House who do not know that we have a problem with quorum. Through the Parliamentary Service Commission (PSC) and as a matter of urgency given that Members are now all over, we have quite a number of other facilities where Members sit. We request that the Quorum Bell be fixed in Continental House, Harambee House and all other buildings where Members sit, so that they can know the problems we have in terms of quorum. That is why we have been having a problem of quorum every time especially when we have Special Sittings like this Thursday morning to get Members who could come. Members are there trying to look at the business of the House, so that they come in when they are required. I just wish this is notified to the PSC, so that we do not get hitches every time we have such sittings.

**Hon. Deputy Speaker:** It is a valid point and was raised in the leadership meeting in Mombasa. I believe it is being taken up by the PSC. Clearly, it is an issue. We keep mentioning

this quorum issue all the time particularly on Special Sittings which we agreed on, such as the sitting on Thursday mornings. Nonetheless, we have worked hard enough and we are now properly constituted. So we will proceed.

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

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

**Hon. Gikaria:** Thank you, Hon. Deputy Speaker. I am requesting that you give us a ruling regarding the General Oversight Committee. This is the Committee that we submit our Questions to. The Committee in turn tells us to wait for Cabinet Secretaries (CSs) to come and answer our Questions. I am raising this issue because I have asked some Questions this week, but I have been told that my Questions will be on the queue. You need to rule that CSs give us written answers instead of us waiting because some of the issues are urgent. I hope it is possible for CSs to give us written answers and where we are not satisfied with the responses given, we can ask for further clarification and go to the General Oversight Committee. I was wondering whether in your position you can give a ruling that Members can now get their answers in written form from CSs.

**Hon. Deputy Speaker:** Okay, that will be captured by the HANSARD and it will be further discussed. It is a long mechanism that we suggested and agreed on. Initially, we did not have CSs coming to answer Questions. Later on, we agreed that we can do it in Committee and take turns. If some matters are urgent, we also have that mechanism of them coming to the Floor. We need to add that the CS does not need to appear in person on certain matters. They just need to give a written response. That can also be considered. You will be informed whether that can be decided by the leadership within the House Business Committee (HBC) or the Liaison Committee.

Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Chairlady (Hon. (Dr.) Laboso) took the Chair]*

### THE LEGAL AID BILL

*(Clauses 3, 4 and 5 agreed to)*

#### Clause 6

**Hon. Chairlady:** Hon. Neto has an amendment on this clause, but he is not in. Hon. Kenneth Okoth, prosecute yours.

*(Proposed amendment by Hon. Oyugi dropped)*

**Hon. Okoth:** Hon. Chairlady, I beg to move:-

THAT, the Bill be amended by deleting Clause 6 and substituting therefore the following new clause—

Headquarters 6. The headquarters of the Service shall be in the capital city but the Service shall establish branches in every county in Kenya to ensure reasonable access of its services.

*(Question of the amendment proposed)*

**Hon. (Ms.) Kanyua:** Hon. Chairlady, the Committee would not oppose that particular amendment, but will seek to further amend it, so that instead of having the word “shall” we have the word “may” to read “The headquarters of the Service shall be in the capital city, but the Service may establish branches in every county in Kenya to ensure reasonable access to its services.”

Hon. Chairlady, you know that in this country, because of the resources that we have in the justice system, it may not be possible at this particular point in time to establish all the branches at the same time. Using the word “may” allows us to progressively establish branches in the counties. The word “may” is ideal. If the Member insists on the word “shall”, the Committee will be forced to oppose the particular amendment because this is a new body with no sufficient resources. An amendment requiring commitment for establishment of branches across all the counties will need to go to the Budget and Appropriations Committee for the purposes of finding out whether the resources are available. If the Member is minded to use the word “may”, we would be okay.

**Hon. Chairlady:** Hon. Okoth!

**Hon. Okoth:** Hon. Chairlady, I have heard the Vice Chair of the Departmental Committee. Legal aid needs to be available in all the counties without difficulty, especially because the people who are going to be served are poor, be they in Nyeri, Nairobi or Marsabit, they cannot afford to travel to Nairobi for legal aid. While I am sensitive to the value of using “may” in the second part about establishing offices in the county headquarters, it will be imperative for Parliament and the Office of the Attorney-General (AG) to roll out this progressively, as she has suggested, but it should not take 50 years. It should be done progressively over a period of five years.

**Hon. Chairlady:** Do you agree with her?

**Hon. Okoth:** Yes, Hon. Chairlady.

**Hon. Chairlady:** Hon. Dan Manzo, do you want to make some contribution on this one? Let us hear Hon. Kanyua first.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Chairlady. I just wanted to properly move a further amendment to his amendment.

I beg to move:-

THAT, Clause 6 be further amended by deleting the word “shall” and substituting therefor the word “may”.

*(Question of the further 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)*

**Hon. Chairlady:** Now you contribute to the clause as amended. Hon. Daniel Maanzo.

**Hon. Maanzo:** Thank you, Hon. Chairlady. The amendment is very good and I support it, but we have to have a policy where the AG's Office acts with expediency, now that we have substituted "shall" with "may", so that he does not also take forever. It is the responsibility of all of us, beginning with Parliament to ensure that this happens because legal aid is a very important aspect in the country. It is already happening especially for people charged with murder or robbery with violence. Sometimes the AG's Office provides that person with a counsel, but it is good when it is restructured as it is being done in this Bill. We need to move with speed, so that we do not take a long time having the headquarters in Nairobi and nothing happening in Mombasa, Kisumu, Mandera or other parts of the country. We need to come up with a policy on budgetary allocation to make sure that this section is brought into effect.

I support.

**Hon. ole Lemein:** Thank you, Hon. Chairlady. I also rise to support the clause as amended. This amendment is very important because in as much as we want to say that these services should be available only in the capital city some areas are very far from the city. You can imagine someone from a place like Marsabit or Wajir travelling all the way to Nairobi. It is, indeed, far. However, if done progressively, it is going to be of benefit to the people of Kenya.

I support.

**Hon. Bowen:** Thank you, Hon. Chairlady. I want to support the amendment by the Vice-Chair of the Departmental Committee on Justice and Legal Affairs. It is impossible to establish branches in every county given that the country is already struggling with a huge wage bill. It is also important that access to legal aid be taken closer to the people because that is one of the reasons for devolution. Given the fact that the Vice-Chair has talked of progressive establishment of offices in the counties, there should be a policy where some regions can access the services at certain points without necessarily saying that every county should have an office. The service must be accessible. The Member for Narok South has given the example of people from North Eastern and pastoralist areas. For instance, it is very far for someone to travel all the way from North Horr to Meru. They need to come up with a policy for easy access to this service.

**Hon. Njuki:** Thank you, Hon. Chairlady. I stand to oppose this amendment. I would have supported what my friend, Hon. Ken, had suggested. We have only 47 counties in this country and we are talking about the availability of legal aid services to the people who cannot afford it. Maybe some counties have more than one court, but providing one legal aid officer per county cannot be that expensive. If we leave the clause as amended, it means we leave the establishment of branches at the prerogative of the Judicial Service Commission (JSC) to decide where to put them. What criteria are they going to use? It would depend on how well people go and lobby. Then places like Turkana will stay without an office while places like Machakos, which is close to Nairobi, will have legal aid officers because they will have lobbied. It is critical that we have branches in all the 47 counties. Therefore, I oppose that amendment. I would have preferred branches for all the counties.

**Hon. Chairlady:** Hon. Members, I think we have prosecuted this point enough. We just need to put it to vote. It is very interesting that some Members are opposing.

Hon. Korir, what is your point?

**Hon. Korir:** Hon. Chairlady, I think when you put the Question we were still synthesising the idea. That is why we prefer to discuss before the Question is put; we get to change our minds as we listen to people contribute and we get a clear idea of what we are dealing with.

I stand to oppose the amendment, too. I support the original amendment by Hon. Okoth because it is a right for every Kenyan to get legal aid. The Vice-Chair said that it is expensive, but I wonder what expense it is because we already have the courts and everything set up. As one Member said, we are already giving out legal aid to people charged with murder, but cannot afford to hire lawyers. It should be a right and not a favour. The country should give priority to giving people what is their rights. We should not give leeway to the AG's Office. We live in a country where we know that if we say "may", it will never happen. So, we should remain with "shall" and give the AG's Office the responsibility to set aside money to establish these offices because this is a right and not a favour.

**Hon. Chairlady:** Let us be clear on the procedure. I already put the Question on the amendment and it was passed. So, we are no longer dealing with the amendment of "may" or "shall". That has already been passed by the House. What I want us to deal with is the full clause to be part of the Bill as amended. The points that are coming up now should have been raised before I put the Question on whether it is "shall" or "may". So, I want to proceed to put the Question.

**Hon. Gikaria:** On a point of order, Hon. Chairlady.

**Hon. Chairlady:** Hon. Gikaria, what is your point of order?

**Hon. Gikaria:** For us to be guided properly, now that the Question on the further amendment brought by the Chair was put, when we vote "Nay" does it mean it cannot be part of the Bill or what does it mean? We need to understand.

**Hon. Chairlady:** That is what it means. It means the whole clause will not be part of the Bill. That is what it means, Hon. Members. That is why I put the Question of the further amendment first.

**Hon. Gikaria:** I think we need some refresher courses, so that we can get it.

**Hon. Chairlady:** Hon. Members, let us hear the Mover of the amendment. The Mover of the amendment himself already accepted the position.

Hon. Okoth.

**Hon. Okoth:** Hon. Chairlady, in terms of the process, would it be possible to recommit it?

**Hon. Chairlady:** No, we have already passed that stage.

**Hon. Okoth:** In that sense, therefore, I would like to propose to the Members after listening to their concerns that a further amendment be brought that says "within five or ten years". So the "may" does not become a "may" that shows forever, but within five years. It cannot be open-ended.

**Hon. Chairlady:** I am sure there will be guidelines and regulations, Hon. Okoth.

**Hon. Okoth:** In the spirit of it, I beg the Members to support and pass it as has been amended by the Chairperson of the Committee and we will make sure that we oversee carefully

the implementation in all the counties. Please, Hon. Members, support it. We better have this than lose it all.

*(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 6 as amended agreed to)*

**Hon. Chairlady:** Hon. Neto is not even in the House, but the passage of Hon. Okoth's amendment negates Hon. Aghostinho Neto's amendment.

*Clause 7*

**Hon. Chairlady:** Hon. Aghostinho Neto is not in.

*(Proposed amendment by Hon. Oyugi dropped)*

*(Clause 7 agreed to)*

*(Clause 8 agreed to)*

*Clause 9*

**Hon. Chairlady:** We have three amendments. We will start with Kenneth Okoth's amendment. His amendment is to remove Clause 1(c) only. If his amendment to Clause 1(c) is carried, then the Committee's amendment will fall.

**Hon. Gikaria:** The Committee has priority.

**Hon. Chairlady:** It is true the Committee has priority, but Hon. Okoth's amendment is deleting. So, if it is carried, we cannot prosecute the Committee's amendment.

**Hon. Okoth:** Thank you, Hon. Chairlady. Clause 1(c) says the Principal Secretary in the Ministry for the time being responsible for matters relating to legal aid. I want that deleted.

**Hon. Chairlady:** Please, say the right amendment for the HANSARD.

**Hon. Okoth:** Hon. Chairlady, I beg to move:-

THAT, clause 9 of the Bill be amended-

(a) in sub-clause (1)—

(i) by deleting paragraph (c);

The reason behind this is that the membership of the board already includes in (f), the AG or his representative. If you go back to Clause (c), it is the Principal Secretary in the Ministry for the time being responsible for matters relating to legal aid and justice issues, which is the Office of the AG. So, the Office of the AG is represented doubly here and it serves no purpose. Let us stick with it or they will be overrepresented. That is why I ask for the deletion of Clause 1(c) since the AG or his representative is already on the board.

*(Question of the amendment proposed)*

**Hon. (Ms.) Kanyua:** Thank you, Hon. Chairlady. We get the proposal and the amendment proposed by the Member to delete the Principal Secretary in the Ministry for the time being responsible for matters relating to legal aid. The Committee had already proposed an amendment to change “legal aid” to “justice”. We think that the Principal Secretary in the Ministry for the time being responsible for matters relating to justice should be a member.

As you know, different governments have different ways of arranging government matters and affairs, but at any point in time, there would be an Accounting Officer for matters that relate to justice and who would be in charge of budgeting and putting together guidelines and measures that are required to implement the legal aid.

So, I would be inclined to oppose the deletion and instead urge the Member that when the Committee is moving the amendment from “legal aid” to “matters relating to justice”, that should clarify the issues that he was raising.

**Hon. Chairlady:** Is Hon. Abdul Dawood on this one?

**Hon. Dawood:** No.

**Hon. Chairlady:** What about Hon. Gikaria?

**Hon. Gikaria:** Hon. Chairlady, it is just a matter of procedure. The Mover of the amendment, Hon. Okoth, wants to move yet the Committee has an amendment on the same. I have been participating so much in this Committee of the whole House and normally, the Committee is given an upper hand in all amendments, so that the Mover can agree with the Committee and drop his amendments.

**Hon. Chairlady:** Hon. Gikaria, it is true that we all have an equal opportunity to bring in our amendments. If a Member brings in an amendment to delete, even if the Committee went and prosecuted and we accepted its amendments and he still went ahead and prosecuted his own and it is deleted, we will have negated everything. So, he is given priority for Members to agree or disagree with him. If it is not deleted, then the process of the Committee can come in. That is the procedure we have been following.

**Hon. Gikaria:** Hon. Chairlady, it happened sometime back when we were in the Committee of the whole House. The House agreed with both and we were unable to agree on the one that carried the day. Somebody moved and the House agreed. Again, the Committee moved and we agreed and both were of different nature.

This is why we are asking that the Committee be given first priority and the other one can be dropped. If we prosecute what Hon. Okoth is saying and agree with it, then go back and listen to the Chairperson of the Departmental Committee on Justice and Legal Affairs and again, agree, which one will carry the day? I think the Committee needs to be given priority. Of course, every other Member has a right, but if the Mover can agree with the Committee, then he will need to drop his amendment because I do not think it is just about representation.

**Hon. (Ms.) Kanyua:** Hon. Chairlady, I just wanted to add as you make your decision on this matter that this Clause 9 is the one that covers the establishment and Constitution of the Legal Aid Board. So, the Committee has taken time in deciding the relevant persons to put into that Committee and who are covered in Clause 9. So, I would be on the same line with Hon. Gikaria that the Committee first prosecutes the matter of membership before another Member seeks to amend either to remove somebody or add another person.

The proposals by Hon. Okoth is changing the original membership and the Committee spent a lot of time worrying about this question. This is the heart of the Legal Aid Service Board. So, I would prefer and I would urge that the Committee first prosecutes its own views and if any other Member has a different view, they can do so later.

**Hon. Chairlady:** I believe we are all saying the right things. The only problem is that you can look at it from this perspective. Somebody is proposing to delete a member from the ones you have indicated. If you prosecuted your own amendment and we passed the Committee's and we also go ahead and agree with him that he deletes one of them, the way the clerking has been done is that any person who is proposing to delete goes first. It is a very simple matter. Refuse to delete, so that we can prosecute the Committee's amendments. You could do it by convincing Members not to agree with Hon. Okoth and then give reasons why the Committee went in the direction it did. This will allow Members to listen to your views and, therefore, not agree with Hon. Okoth. We will then dispense with the deletion and then you can prosecute your own amendment. That is the process. Let us have Hon. Kangongo.

**Hon. Bowen:** Thank you, Hon. Chairlady. You have pronounced yourself well on the matter.

The Constitution is very clear on the functions of the Cabinet Secretary and the Attorney-General. In this case, the Cabinet Secretary is also responsible for policy making. At the time of registration and verification, there is a process and policy which should be followed. The Cabinet Secretary is the person responsible for coming up with those policies. The Attorney-General cannot assume the roles of a Cabinet Secretary. Deleting the Cabinet Secretary is wrong.

I oppose the amendment by Hon. Ken Okoth.

**Hon. Chairlady:** Let us have Hon. Lemein.

**Hon. ole Lemein:** Thank you, Hon. Chairlady. I listened to the first Chair of the Departmental Committee on Justice and Legal Affairs. My brother, Hon. Okoth, proposed his amendment prior to looking at what the Committee on Justice and Legal Affairs had done. They replaced the term "legal aid" with the term "justice". Now that they have done that, the proposal by Hon. Okoth does not hold any water. I oppose the amendment.

**Hon. Chairlady:** Let us have Hon. Nyokabi.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Chairlady. In view of the proposals raised by the Member and looking at the amount of time that the Committee spent on this matter, I would urge that the Member considers dropping the amendment. He never appeared before the Committee and never had any deliberations with the Committee. We are at pains, as a Committee, to ask the House to defeat the Member's deletions. That particular body has already been amended sufficiently by the Committee and might carry some of his concerns.

Kindly, Members, help us to oppose the amendments proposed because the Committee has already looked at that matter.

**Hon. Chairlady:** Hon. Okoth.

**Hon. Okoth:** Thank you, Hon. Chairlady. Members are all allowed to contribute to making laws in this country and that is why we are Members of Parliament. While I did not get the chance to present this to the Committee, saying that the Committee spent a lot of time on this is not a good enough reason. Just convince us on the merit of the argument and why it is good. I urge Members to support my deletion.

While we look at the deletion of Clause 9(c), the set of amendments that I proposed on the constitution of the board apply to the whole section. The amendment to Clause 9(c) does not



hang by itself. It is a set of amendments that I have proposed that talk about the whole board. There is the principle of the two-thirds gender representation, inclusivity of people with disability and issues like that are also a set of amendments that go together in the same spirit. I am not just proposing the deletion of the Cabinet Secretary as presented, but I am also, in the subsequent amendments that are related to Clause 9, presenting a vision of what this new board, as constituted, would be. Majority of it would be good. My thoughts add to what the Committee spent a lot of time doing, but to argue that because the Committee spent a lot of time doing things is enough reason for other ideas not to be brought in is unacceptable.

I beg Members to look and consume, not just amendments proposed to Clause 9(c), but the whole set of amendments. For instance, the other amendments talk about other qualifications, the composition, how the nominees of the civil society and public benefit organisations are selected. It is in the same spirit of adding to the work of the Committee. I do not dismiss the good work they have done and the amount of time they have spent. We are also spending time adding on to it and that is why we have the process.

**Hon. Chairlady:** Hon. Cheboi.

**Hon. Cheboi:** Thank you, Hon. Chairlady. It is clear that Hon. Okoth spent a lot of time on this. He is also very good in his constituency, being one of the best working CDF in the country. I oppose his proposal.

First, he has only proposed a deletion. He has not even proposed a substitution for that particular office. He says that he is going to do it later which is surprising. He does not tell us what the harm is in having that particular office. If he had proposed removing that office and replacing it with another, it would have made some sense.

With regard to the issue of Committees spending time, Hon. Okoth himself is a Member of particular Committees and they spend quite a lot of time on issues. The Departmental Committee on Justice and Legal Affairs spent a lot of time agonising on this. That is not something that you can just dismiss.

I oppose his amendment.

**Hon. Chairlady:** Members, you have ventilated on this. You need to do what is required for us to proceed.

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

*(Proposed amendment to 9(1)(c) negatived)*

**Hon. Chairlady:** We, therefore, now move to the amendment by the Committee.

**Hon. (Ms.) Kanyua:** Hon. Chairlady, I beg to move:-

THAT, Clause 9 of the Bill be amended—

(a) in sub-clause (1)—

(i) in paragraph (a) by inserting the words “from among persons qualified to be appointed as a judge of the High Court” immediately after the word “President”;

(ii) in paragraph (c) by deleting the words “legal aid” appearing immediately after the words “relating to” and substituting therefor the word “justice”;

- (iii) by deleting paragraph (f);
- (iv) in paragraph (j) by deleting the words “public universities that have established legal aid clinics” appearing immediately after the words “nominated by the” and substituting therefor the words “Council for Legal Education”;
- (v) by deleting paragraph (l);
- (vi) by deleting paragraph (n);
- (b) by deleting subclause (2);
- (c) In subclause (3) by deleting the expression “1(f)” appearing immediately after the word “sub-section” and substituting therefor the expression “(1) (h)”.

*[The Chairlady (Hon.(Dr.) Laboso) left the Chair]*

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

Hon. Temporary Deputy Chairman, the proposal seeks to require higher qualifications for the person who would be appointed as a chairperson because legal aid matters sometimes need a judicial mind.

In Clause 9(c), the Committee seeks to substitute the words “matters relating to legal aid” with “matters relating to justice”. At any point in time, in the organisation of Government, there is a Principal Secretary or Accounting Officer for matters relating to justice. The Legal Aid Bill and legal aid issues are going to fall in matters relating to justice.

We also have amendments relating to public universities that have legal aid clinics. We are looking to have the Council for Legal Education also playing a role in this legal aid board. A lot of the legal aid schools and public universities that have law schools provide legal aid services. It would be good if the Council for Legal Education nominates a member to sit on this board.

I urge the House to agree with the Committee in improving the constitution of the board as established in Clause 9.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will only give two Members an opportunity to contribute. We will proceed. As we move on, I urge Members who will be moving amendments to be very brief. Let us start with Hon. Kathuri Murungi.

**Hon. Murungi:** Thank you, Hon. Temporary Deputy Chairman for this opportunity. I support the amendments by the Committee especially the amendment to Clause 9(1)(a). We need a person who is well qualified to head this institution. Therefore, having somebody who is worthy of appointment as a judge of the High Court is a worthy amendment. Those who are not in the legal practice sometimes fail to understand who really qualifies to be appointed as a judge of the High Court. In future, for the benefit of those who are not learned friends, they should tell us the number of years of service for one to be an advocate.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, we should not open debate on this. Hon. (Ms.) Tiya Galgalo, do you want to speak to this one?

**Hon. (Ms.) T.G. Ali:** Yes, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Briefly do so.

**Hon. (Ms.) T.G. Ali:** Hon. Temporary Deputy Chairman, I stand to support the amendment on Clause 9 especially on (a)(ii) on legal aid.

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

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Okoth, would you like to move your other amendments?

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

THAT, Clause 9 of the Bill be amended-

(a) in sub-clause (1)—

(ii) by deleting the word ‘public’ appearing in paragraph (j);

(iii) by deleting paragraph (k) and substituting therefor the following new paragraph —

“(k) three persons nominated by a joint forum of Public Benefit Organisations offering legal aid to the public, including women, youth and children;”

b) by deleting sub-clause (4) and substituting therefor the following new sub-clause—

“(4) The nomination of board members shall take into account the principles of equality, non-discrimination, regional balance and in so doing shall ensure that not more than two-thirds of the members of the Board shall be of the same gender.”

(c) in sub-clause (5) by inserting the following three new paragraphs immediately after paragraph (b)—

“(cc) possesses a university degree from a university recognised in Kenya;”

(dd) has knowledge and experience of not less than seven years in the relevant field;

(ee) is a person or professional of good standing in the society or respective professional body.”

(d) in sub-clause (6) by deleting paragraph (a).

Paragraph (j) talks about one person nominated by public universities that have established legal aid clinics. It would be discriminative to restrict that to public universities. It would be fair to just say universities that have established legal aid clinics. We now have universities such as Riara and Strathmore Law Schools also training young lawyers and providing legal aid clinics. It will be discriminatory to limit it to public universities when we have bright minds and young people committed to public service studying law at many different universities within the country.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Okoth, for clarity, you are moving your amendments minus Paragraph (j) which has been covered by the Departmental Committee on Justice and Legal Affairs. Move the rest of your amendments wholesome.

**Hon. Okoth:** I beg to move:-

THAT, Clause 9 of the Bill be amended-

(a) in sub-clause (1)—

(iii) by deleting paragraph (k) and substituting therefor the following new paragraph-

“(k) three persons nominated by a joint forum of Public Benefit Organisations offering legal aid to the public, including women, youth and children;”

The purpose of this is to make sure that the Public Benefit Organisations have a say on who is nominated to represent them rather than have that to be determined by some Government bureaucrats somewhere.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Okoth, you have done your bit. Hon. Okoth, you had more. You have done the first one, so proceed to the next one.

**Hon. Okoth:** Hon. Temporary Deputy Chairman, this is the second amendment that I would like to ask the Members to consider.

I beg to move:-

THAT, Clause 9 of the Bill be amended-

(b) by deleting sub-clause (4) and substituting therefor the following new sub-clause—

“(4) The nomination of board members shall take into account the principles of equality, non-discrimination, regional balance and in so doing shall ensure that not more than two-thirds of the members of the Board shall be of the same gender.”

This reflects the constitutional principles that we have been talking about. Having this clause as I propose, would help to make sure that this board represents the face of Kenya and the principles of our Constitution.

The last two parts of the amendment are in sub-clauses (5) and (6).

I beg to move:

THAT, Clause 9 of the Bill be amended-

(c) in sub-clause (5) by inserting the following three new paragraphs immediately after paragraph (b)—

“(cc) possesses a university degree from a university recognised in Kenya;”

(dd) has knowledge and experience of not less than seven years in the relevant field;

(ee) is a person or professional of good standing in the society or respective professional body.”

(d) in sub-clause (6) by deleting paragraph (a).

I appreciate a lot of work that has been done by the Committee and my amendments are meant to help improve and make a good Bill and a good law for the country. The Bill came for Second Reading very quickly and within seven days, it had been slated for the Third Reading. So, to come up with these amendments and to get a chance to go to the Committee was

impossible. In fact, when it was supposed to be debated last week in Third Reading Committee stage, we implored the Speaker to allow us time for Members to submit their amendments and meet the procedures of Parliament. If I did not make it to the Committee, it is not disrespect to the Committee. I was once a Member of the Committee and I know it comprises of people who are patriotic, professional and very committed to do the best for Kenyans.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the first opportunity to Hon. (Ms.) Nyokabi. What do you have to say on this?

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. After voting, the proposals remaining to be considered for Hon. Okoth was Clause (k), which he has properly prosecuted. I want to bring to his attention the difficulty in a clause like this. The Public Benefits Organisations that offer legal aid do not have a joint forum at all. They would have networking sessions among themselves, but not a joint forum identified by law and not one that the law can work with.

Let me speak as somebody with experience because I was the Executive Director at Kituo Cha Sheria, which is a legal aid organization. In the National Legal Aid and Awareness Programme (NALEAP) which was the precursor to this Bill, we had a similar clause that three persons would be nominated by a joint forum. For the three years that the programme ran, we were never able to get this joint forum to nominate three persons.

We have then thought that we need to propose a further amendment to his amendment, that in paragraph (k), we have one person elected by a joint forum of Public Benefit Organisations offering legal aid to the public including women, youth and children. That they elect the person as opposed to nominating a person. They should only elect one person among themselves, so that the Attorney-General or the relevant office would call them into a forum and they would elect one among themselves to represent them on the board. The nomination of three in an unregulated environment would be a bit difficult. So, I will probably be moving the amendment.

On Sub-clause (4), we do not oppose it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Nyokabi, you have ambushed the Chairman. I was not aware that you were going to move a further amendment. If you have done so, the only thing I can do for you at this point in time is to quickly dispose that particular one. Let me do that, but in any future endeavour, we should know first, so that we can prepare ourselves also here.

*(Question of the further amendment proposed)*

Hon. Members, Hon. Nyokabi is proposing to change. Rather than nomination of three persons by the Public Benefit Organisations offering legal aid, she is proposing that only one is elected. This is something that we need to quickly dispose of. The Public Benefit Organisations will elect one person and not nominate and not three persons. I will give an opportunity to only two Members to speak on this further amendment. Let us start with Hon. M'eruaki. We are now dealing with the further amendment.

**Hon. M'uthari:** Hon. Temporary Deputy Chairman, I support the further amendment by Hon. Nyokabi following the amendment by Hon. Okoth. It is important to have the participation of non-profit organisations in this. The Public Benefit Organisations have played a critical role in terms of reforms in this country. They provide legal aid training.

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

**Hon. Dawood:** Hon. Temporary Deputy Chairman, I oppose Hon. Nyokabi's amendment. It should not be only one person. They should be three persons as proposed by Hon. Okoth, but maybe elected and not nominated. It should not be one person.

**The Temporary Deputy Chairman** (Hon. Cheboi): Do not bring suggestions at this point in time.

**Hon. Dawood:** I oppose. I agree with Hon. Okoth's amendment because three is better than one. Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. Lastly, let us have Hon. Gichigi.

**Hon. Gichigi:** Hon. Temporary Deputy Chairman, I support the further amendment. We need clarity in application of law. If we reject this particular further amendment by the Vice-Chair, we will have challenges with the amendment that we will be dealing with from Hon. Okoth because of ambiguity. Please, the business of putting so many people in these public bodies is going to finish this country. We are moving towards reducing and not adding numbers.

I will be supporting the other proposals by Hon. Okoth, but I oppose this one.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give you an opportunity to support at that point in time. So, we will dispose this.

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

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

**The Temporary Deputy Chairman** (Hon. Cheboi): So, proceed, Hon. Nyokabi, with the other ones quickly, so that we can finalise. We have a long raft of amendments.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, the proposal that now remains on the table for Hon. Okoth is Sub-clause 4, which allows the two-thirds gender rule to be applied. Naturally, I would never oppose that one. I support it and we should carry it on board.

There are other couple of proposals on the qualifications of members; that they possess a university degree from a recognised university; that they have knowledge of not more than seven years and they are persons of good professional standing in the society. Because we are dealing with a small board, I would also be inclined to support those further amendments and to allow that we increase the qualifications that are required for persons who will serve on that board.

On the last Sub-clause (5) on the proposal by Hon. Okoth to delete (5)(a); that a person will not be qualified for appointment as a member of the board if such a person is a member of a governing body of a political party or an employee of a political party, I will be opposing that particular amendment for the reason that when we come to the public service, we want members who are non-partisan and members whose political affiliation is not known, so that they can serve all Kenyans. So, allowing members of governing bodies of political parties or employees

of political parties to be members of the Legal Aid Board would not be ideal. This qualification is usually not just in the Legal Aid Board, but in many other public service matters. If you are going to serve in the public service in a country as ethnically divided as our own, we would prefer that persons who come to serve are non-partisan. There is nobody in this country that carries or embodies partisanship than members of governing bodies and members who are employees of political parties. So, I urge Hon. Okoth to drop that particular amendment. If he does not drop it, as a Committee, we will be inclined to oppose it.

Thank you, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, Hon. Members, I really want to put the Question on Clause (b) and (c) by Hon. Okoth, and on the issue of Sub-clause (4) and Sub-clause (5) as per the Order Paper. Then we will go to the last one, (5) on deletion.

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

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

**The Temporary Deputy Chairman** (Hon. Cheboi): We are now on Sub-clause (6). This is the one Hon. Okoth is proposing to delete. I understand that Hon. Nyokabi had even spoken to it but for purposes of neatness, I thought we better dispose of it first. Then we can talk on the issue of deletion.

Hon. Ken Okoth, you have the Floor again, briefly on deletion. Just for Members to---

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

THAT, Clause 9 of the Bill be amended-

(a) in Sub-clause (6) by deleting paragraph (a).

It says that a person shall not be qualified for appointment as a member of the board if such a person is a member of a governing body of a political party or an employee of a political party. It is not really necessary to exclude them. There is no justification for excluding them. We should be silent on that and let us go to the more substantial ones for instance, the grounds for disqualification or ineligibility. I read (b), (c) and (d) and they sound to me to be more on constitutional issues of bankruptcy, criminal history and contravention of the Constitution and other issues.

**The Temporary Deputy Chairman** (Hon. Cheboi): You have to be that brief because you had spoken to it anyway.

*(Question of the amendment proposed)*

I will give Hon. Macharia.

**Hon. Macharia:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment by Hon. Okoth. I do not see the reason why we should demonise political parties. They are key stakeholders in this country. As Hon. Okoth has put it, it should be silent. Belonging to a political party should not demonise and stop you from sitting in the board.

Thank you.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, as you see the “Nays” were a bit more organised in their voice projection, but the “Ayes” generally had it. Let us proceed.

*(Clause 9 as amended agreed to)*

*Clause 10*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Ken Okoth, you have an amendment. It has to be very brief now. We have to move very quickly.

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

THAT, Clause 10 of the Bill be amended—

(a) in paragraph (g) by deleting the word “and” appearing after the phrase “such departments”;

(b) inserting the following new paragraph immediately after paragraph (g)—

“(gg) submit annual reports to the National Assembly; and,”

This gives us oversight. It is the duty of the board and such departments to report to the National Assembly for their oversight. By deleting (g), it cleans it up. So, I leave it at that.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give two Members then we will put the Question. Do we have the Member for Nakuru Town East? Do you want to speak to this one?

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, I seek your guidance before any Member contributes. You have been there for quite a while giving us guidance. We give the Committee an opportunity and then we can ventilate. We may agree with the Committee.

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, I gave the Floor, but if you are not prepared I will, of course, give the Chair. I was so sure that I was going to give the Vice-Chair. But let us have her.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, let me also express my disappointment at today’s proceedings. I do not know why the Committee is not being regarded even on a matter like this, where we would want to agree with views introduced by the Member.

We do not oppose this particular one. It gives the National Assembly an oversight role. Let me ask that because Hon. Okoth never really allowed the Committee to have a chance to look at his amendments, that the Committee has the first chance to speak to his amendments. I find that most of his amendments actually improve the law but, in all courtesy and fairness, it would be good if a Member brings to the attention of the Committee his amendments before he brings them to the Floor.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. The better way of doing it is, once in a while, to be consulting you but if that does not happen, we have no choice but to put the decision of the House.



The Vice-Chair of the Committee, you have really had your say this morning, including a further amendment that you have just moved without informing the Chair. It is actually the Chair who is supposed to be a bit more disappointed with you because, sometimes, you ambush us. However, let us not go in that direction. We will proceed and transact the House business because we have the opportunity.

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

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

*(Clause 10 as amended agreed to)*

*(Clause 11 agreed to)*

#### *Clause 12*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 12 of the Bill be amended in Sub-clause (2) by deleting the expression “(f)” appearing immediately after the expression “9 (1) (c), (d), (e)”.

The Committee is of the view that this proposed deletion cleans up that section. So, it is really a matter of clean up on Clause 12. I urge the House to support that.

*(Question of the amendment proposed)*

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

*(Clause 12 as amended agreed to)*

*(Clause 13 agreed to)*

#### *Clause 14*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Okoth, you have an amendment to that clause. Please be brief.

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

THAT, the Bill be amended by deleting Clause 14 and substituting therefor the following new clause—

Proceedings of  
the Board.

14. (1) The quorum for the conduct of the business of the Board shall be seven members, including the chairperson or the person presiding.
- (2) The Board may, where necessary, invite experts who are not Board members on issues relevant to the functions of the Service, to make presentations during a meeting of the Board, provided that such persons shall not vote during such meetings.
- (3) The participation in a meeting of a non-Board member invited under Sub-section (2) shall not invalidate the proceedings of the Board

My amendment just tries to do this in a clearer fashion. It brings clarity and explains some of the things that were being covered here in a vague manner.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give two members a chance, starting with Hon. Priscilla Nyokabi and then Hon. Gichigi.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. I oppose the deletion of Clause 14 because it gives validity to decisions of the board in the event that there is a vacancy. There are many things that happen to some of these boards. For one reason or the other, there could be a vacancy in the membership of the board. So, it is always good legal mechanism to protect the decisions that are made by such a board when it has such a vacancy.

On the other proposals around the quorum and the board inviting experts and other persons who might add value, these are matters that usually go into regulations as opposed to being in the body of the legislation. They are useful additions but they should not be in the body of the legislation. These are matters that should go to regulations. Experts should be invited when the need arises. I oppose the additions.

**Hon. Gichigi:** I also rise to oppose the proposed amendment. Hon. Okoth has some good intentions. The mischief is in deleting what is there. What he has given is not an alternative to what has already been given. The current provision says that in case a board member is appointed irregularly or there is a problem, the proceedings of that board should not be nullified merely by that. That is not what he is addressing. He should have brought a different clause and not delete this particular one. His problem is solved by Schedule 5 which says: "The Board shall determine rules of procedure for the conduct of its business and keep minutes of its proceedings and decisions." So, we have no problem even if we reject this. I oppose.

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

*(Clause 14 agreed to)*

*(Clauses 15, 16, 17, 18, 19, 20 and 21 agreed to)*

*Clause 22*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 22 of the Bill be amended by deleting the expression “15” appearing immediately after the word “section” and substituting therefor the expression “21”.

On Clause 22, the amendment by the Committee is a correction of a cross-referencing. We are cross-referencing with Section 21 and not Section 15. It is an editorial amendment to clean up the Bill and the cross-referencing.

*(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 22 as amended agreed to)*

*(Clause 23 agreed to)*

#### Clause 24

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 24 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “and appointed by the Cabinet Secretary” appearing immediately after the word “Board”.

(b) in sub-clause (3)—

(i) in paragraph (b) by deleting the words “and has experience in matters relating to legal aid” appearing immediately after the word “years”;

(ii) by deleting paragraph (c);

(c) by deleting sub-clause (6) and substituting therefor the following sub-clause—

“(6) The Director shall hold office for a term of three years, but shall be eligible for reappointment for one further term.”

The justification relates to making the director directly answerable to the board and reducing the qualifications applicable for the appointment of a director of the service and reducing the term of service for the director from five to three years. This is meant to ensure efficiency and ensure that they work in terms of performance contracting, which is the new way of delivering in Government. So, the proposals are as contained in the Order Paper towards making the director a lot more accountable.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to Hon. Macharia.

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

*(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 24 as amended agreed to)*

*(Hon. (Ms.) S.W. Chege crossed the Floor without bowing to the Chair)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Member for Murang'a! You have to go to the Bar and do the necessary. We do not do things in that manner in this House. We do them in a different manner.

Proceed, Hon. (Ms.) Kinyua. Do not be misled by the Member for Molo.

*Clause 25*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 25 of the Bill be amended—

(a) in sub clause (1)—

(i) in paragraph (a) by deleting the word “director” appearing immediately after the words “office of” and substituting therefor the word “Director”;

(ii) in paragraph (b) by deleting the words “or misbehaviour”;

(iii) by deleting paragraph (e);

(b) in sub clause (2) by deleting the words “principle of fair administrative action prescribed under Article 47 of the Constitution” appearing immediately after the words “with the” and substituting therefor the words “provisions of the Fair Administrative Action Act, 2015”.

The first deletion relates to grammatical errors of capitalising the word “director”. So, it is editorial. We are removing arbitrary grounds for the removal of the director of the service. We are also underlining the cross-reference to Fair Administration Act which was enacted by this House to codify the right to fair administrative action under Article 47 of the Constitution. The changes that we seek in Clause 25 are to achieve these objectives. It is just capitalising or correcting the grammatical errors.

*(Question of the amendment proposed)*

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

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

*(Clause 25 as amended agreed to)*

*(Clause 26 agreed to)*

*Clause 27*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 27 of the Bill be amended in sub-clause (3) by deleting the words “Public Service” appearing immediately after the words “with the” and substituting therefor the words “Salaries and Remuneration”.

We now have a new terminology which was introduced by the Constitution on the salaries and remuneration matter. That is what the committee seeks to comply with in the amendment to Clause 27.

Thank you, Hon. Temporary Deputy Chairman.

*(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 27 as amended agreed to)*

*(Clauses 28 and 29 agreed to)*

*Clause 30*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 30 of the Bill be amended in the prefatory statement by deleting the word “moneys” appearing immediately after the words “use the” and substituting therefor the word “monies”.

This is another grammatical error in Clause 30. We are changing the word “moneys” with consonant “y” to the word “monies” with vowels “ies”. This is the sort of amendment that relates to where you went to school. The Committee is of the view that the English word is “monies” but not “moneys”.

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)*

*(Question, that the word to be inserted in place thereof be inserted,*

*put and agreed to)*

*(Clause 30 as amended agreed to)*

*(Clauses 31, 32, 33 and 34 agreed to)*

*Clause 35*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 35 of the Bill be amended in sub-clause (2) by inserting the following paragraph immediately after paragraph (b)—

“(ba) children matters;”.

Children matters are among the services that shall be provided in the legal aid service. There are many issues which affect our children in this country. Sometimes, they need lawyers. The state should be compelled to provide lawyers to children who may need them. As a Committee, children matters would be our introduction.

Thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kangongo, do you want to contribute to this clause?

**Hon. Bowen:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment because we have seen so many children in this country who have undergone serious problems like mistreatment. It is important to provide legal aid to children.

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

*(Clause 35 as amended agreed to)*

*Clause 36*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 36 of the Bill be amended—

(a) in-sub clause (1) by—

(i) deleting paragraph (c);

(ii) deleting paragraph (d);

(iii) deleting paragraph (f);

(b) in sub-clause (2) by deleting the words “the prescribed manner” appearing immediately after the words “Service in” and substituting therefor the word “writing”;

(c) sub-clause (4) by—

(i) deleting paragraph (e);

(ii) deleting paragraph (f);

- (iii) deleting paragraph (g);
- (iv) deleting paragraph (h);
- (v) deleting paragraph (i);
- (vi) deleting paragraph (j);
- (vii) deleting paragraph (k).

The Committee looked at this clause and the persons eligible to receive legal aid and services. Those persons must be indigent in our society. They must also be residents in Kenya. In cleaning up the particular section so that the limited resources can go to those who need them, the Committee looked at the groups which are eligible to legal aid and services. It has proposed deletions of some of the persons who are covered because resources might not be sufficient to extend the service to certain categories, including refugees. The legal aid service scheme is limited to indigenous persons who are resident in Kenya. The justification is to limit the categories of persons who should get legal aid service and give it to children, internally displaced persons and indigenous citizens.

The law also seeks to provide that they apply in writing and remove unnecessary pre-conditions for granting of legal aid to eligible persons. Once the categories covered are identified, there are no conditions to their getting legal aid services. So, those are the proposals that the Committee has in Clause 36.

Thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**Hon. Okoth:** Hon. Temporary Deputy Chairman, I rise to oppose the amendments that Hon. Nyokabi has proposed. Under the Refugees Act, refugees are stateless persons. They are as vulnerable as any child in Kenya. I come from Kibra Constituency where we have the Nubian Community. They have been considered stateless for a long time. If they cannot get legal aid when they have a case, who will take care of them?

Think about communities like the Makonde people in Kwale and Kilifi counties, who have no other recourse. We should not use the excuse of limited resources because refugees are the most vulnerable people. It is our international obligation to take care of refugees, under the Refugees Act. Hon. Nyokabi knows that. Even the *Kituo cha Sheria*, which she used to lead, used to provide services and support to stateless persons. Think of an innocent refugee arrested and taken to Kasarani during police operation that was intended to enhance national security. Nobody can defend or help him to navigate through our legal systems. It harms nothing to keep those two categories of people in the Bill, together with the citizens of Kenya. These are principles that are recognised in our Constitution.

So, I beg to differ and ask the House to oppose these amendments. Let us protect refugees and stateless persons.

**The Temporary Deputy Chairman (Hon. Cheboi):** Okay. Let us have the Hon. Member for Westlands.

**Hon. Wetangula:** Thank you, Hon. Temporary Deputy Chairman. The other vulnerable group that is not included is the People Living with Disabilities (PLWDs). Legal aid must be extended to them. Lack of resources is not a good excuse for us to deny people support. We need to look into it. These are rare cases. It is not a normal occurrence. So, we must find a way to give support to any vulnerable group of people.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. Let me first transact Hon. Nyokabi's amendments and then we will see if we are able to do Hon. Aghostinho Neto's amendment.

*(Question, that the words 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. Cheboi): Hon. Okoth, that is gone, but you have another opportunity to change. Is Hon. Neto present? He is absent? So, his proposed amendment is dropped.

*(Proposed amendment by Hon. Oyugi dropped)*

*(Loud consultations)*

Hon. Members, I am trying to consult because I can see you are going to make another decision here and I want to know what effect it will have if it goes one way or the other. So, please, be patient.

Let me guide Members so that you know what you are about to vote on. As we put the Question on whether Clause 36 as amended will be part of the Bill, if the "Ayes" take it, it means the amendment will have been carried. But if the "Noes" have it, then it means we will go back to the *status quo* as is in the Bill. So, I hope the Members understand because I heard the Hon. Member for Kibra saying that I should check. I intend to check at this point. We are now going to the last bit.

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

*(Clause 36 agreed to)*

The effect of this, and I explained before, is that we are going back to the status quo. I am a bit impressed Members that you have captured how things are done. I would have thought that, probably, the second one might have brought confusion.

Okay. Let us move to the next one.

*Clause 37*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have an amendment by Hon. Nyokabi representing the Committee. Let it be clear that if the amendment by Hon. Nyokabi is carried, then the one by Hon. Okoth will be dropped. So, Hon. Nyokabi, proceed.

**Hon. (Ms.) Kanyua:** Thank you Hon. Temporary Deputy Chairman. I beg to move:-  
THAT, Clause 37 of the Bill be amended by—  
(a) deleting paragraph (c);



(b) deleting paragraph (g).

On Clause 37, the Committee proposes to delete paragraph (c) which relates to non-justifiable matters and (g) relates to recovery of debts.

The Committee's view is that we should not have unnecessary or discriminatory exceptions to the grant of legal aid. By deleting those two, we remove unnecessary and discriminatory exceptions to the grant of legal aid. We urge the House to agree with the Committee that the two grounds in (c) and (g) were bringing in heavy obligations on the part of the person needing to get legal aid. So, by deleting the two, the grant of legal aid to persons who are qualified becomes easier.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Okoth, since yours will be dropped if that goes through, can I give you an opportunity? The next will be the Hon. Member for Molo.

**Hon. Okoth:** Thank you, Hon. Temporary Deputy Chairman. Mine will be dropped with the deletion of (g) which matches with what Hon. Nyokabi has proposed. So, I am glad it is clear that even though I did not get a chance because of time to get to the Committee, we were thinking alike. Great minds working together! So, I am happy to support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Hon. Member for Molo.

**Hon. Macharia:** I support the amendment by Hon. Nyokabi and the Committee.

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

*(Clause 37 as amended agreed to)*

*(Proposed amendment by Hon. Okoth dropped)*

Clause 38

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. I beg to move:-  
THAT, Clause 38 of the Bill be amended by deleting Sub-clause (2).

The justification for the deletion by the Committee is to remove the unnecessary and discriminatory exceptions to the granting of legal aid.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I give the only opportunity to the Member for Luanda.

**Hon. Omulele:** Thank you. I wish to support this. We should not have any discrimination in offering legal aid to our people. I support

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

*put and agreed to)*

*(Clause 38 as amended agreed to)*

*Clause 39*

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

THAT, clause 39 of the Bill be amended in sub-clause (2) by deleting the words “a person or institution” appearing in paragraph (b) and substituting therefor the words “an accredited legal aid provider.”

This makes it clearer.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the first and the only opportunity to Hon. Nyokabi.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. This particular proposal covers a person or an institution with expertise in the area of alternative dispute resolution (ADR) engaged by the service to specifically conduct an ADR. What Hon. Okoth may not know is that we have accredited ADR system in this country, be they arbitrators, mediators or members of the chartered institute of arbitration. Those are the persons who are intended by this provision as opposed to legal service aid providers. The legal aid service providers would be Non-Governmental Organizations (NGOs). On matters of arbitration and alternative dispute resolution, we have other persons in the legal profession who are allowed to serve as arbitrators and mediators. Those are the ones who are intended by this particular section. The amendment by Hon. Okoth will, therefore, not be adding value to what was envisaged by the Bill – which was to bring in the ADR experts. The country has increasingly had very qualified arbitrators, mediators and conciliators. I would urge Hon. Okoth to drop the amendment. If he does not drop it, the Committee will be opposing it because legal aid service providers already have many other roles provided for them in this law.

I would also wish to quickly alert Hon. Okoth that, sometimes, alternative dispute resolution is much cheaper and gives you a resolution faster than going through the entire court process with the legal aid service provider who would be the NGO.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, you will make a decision one way or the other. I see no other Member interested in speaking to this amendment.

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

*(Clause 39 agreed to)*

*Clause 40*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, we have two amendments to this clause; one by Hon. Nyokabi and another one by Hon. Aghostino Neto. Let us start with the one by Hon. Nyokabi.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairperson, I beg to move:-

THAT, clause 40 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “the prescribed manner” appearing immediately after the words “Service in” and substituting therefor the word “writing”;

(b) in sub-clause (3) by deleting the words “the prescribed procedures” appearing immediately after the words “accordance with” and substituting therefor the words “this Act”;

(c) by deleting sub-clause (4).

I would just like to point out that Hon. Aghostino Neto is a Member of the Justice and Legal Affairs Committee. Most of his amendments should have been processed during the Committee proceedings.

Clause 40 proposes some amendments, some in sub-clause (a) deleting the words “the prescribed manner” and one in sub-clause (3) by deleting the prescribed procedures and in sub-clause (4) as well.

The justification by the Committee is to provide for an application for legal aid to be done in writing and to remove penal consequences for submission of an inaccurate application. The legal aid persons would already have too many obligations around their lives. The Committee is of the view that putting penal consequences for submission of inaccurate application would be too much for the lower ones. We, therefore, propose the deletions to allow for applications in writing and to remove the penal consequences in Clause 40.

Thank you, Hon. Temporary Deputy Chairperson.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Aghostino Neto’s amendment is dropped because he is absent.

*(Proposed amendment by Hon. Oyugi dropped)*

*(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 40 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, you cannot just walk into the House and make decisions with very good sopranos.

Let us proceed to the next one.

*Clause 41*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairperson, I beg to move:-

THAT, clause 41 of the Bill be amended—

- (a) in paragraph (b) by inserting the words “in writing” immediately after the word “applicant”;
- (b) in paragraph (c) (i) by inserting the words “in writing” immediately after the word “applicant”;
- (c) in paragraph (c) (ii) by inserting the words “due to physical or mental incapacity” immediately after the word “obtained”.

The amendments by the Committee are minimal to the extent of requiring that the applications for legal aid be made in writing and to allow other persons who, sometimes, may not be affected to apply for legal aid on behalf of the person who is unable to do so, either because of physical or mental incapacity. This is a new introduction by the Constitution. A person who may not be in need of legal aid may apply to support a person who may be in need of legal aid. In the past, the law has been so strict that only the affected person could apply. But since the introduction of the current Constitution, a person in close proximity with an affected person can also apply on their behalf. Legal aid is going to be no exception. A person can apply for legal aid on behalf of another person who may not be able to do so because of physical or mental incapacity. Those are the amendments that we seek to introduce and ask the House to agree with the Committee.

Thank you.

*(Question of the amendment proposed)*

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

*(Clause 41 as amended agreed to)*

*Clause 42*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 42 of the Bill be amended—

- (a) in sub-clause (1)—
  - (i) in the prefatory statement by inserting the words “remand homes for children” immediately after the word “station”;
  - (ii) by deleting paragraph (c);
  - (iii) in paragraph (d) by deleting the words “properly completed” appearing immediately after the words “form is” and substituting therefor the word “made”;
- (b) in sub-clause (2) by deleting the words “making an application” appearing immediately after the words “custody from” and substituting therefor the word “applying”.

The amendment sought in Clause 42 is covered in the Order Paper. The Committee is of the view that it requires persons in charge of remand homes to inform children that they have a right to legal aid. When children are incarcerated in remand homes, the officers in charge of the remand homes should inform the children that they are entitled to legal aid, as we have already covered children matters in the previous amendment.

The proposals for amendment here also remove the requirement for a standard form for applying for legal aid as long as the application is made in writing. We see that as covering that particular aspect. We are guided by the difficulties that people sometimes encounter when they try to get official papers like the P3 Form from the police in some of our rural areas. As long as the application is made in writing, that should suffice.

Lastly, it is just to correct the grammatical errors contained therein. Those are the amendments proposed on Clause 42. We urge the House to agree with the Committee.

Thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

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

*(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 42 as amended agreed to)*

### *Clause 43*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have two amendments on this clause; one is deletion of sub-clause (3) while the other one is an insertion in sub-clause (5). For good order, we should start with the amendment by Hon. Ken Okoth. It is first before the other one.

**Hon. Okoth:** Thank you, Hon. Temporary Deputy Chairman. On Sub-Clause 43, I beg to move:-

THAT, Clause 43 of the Bill be amended in sub-clause (3) by deleting the word “may” and substituting therefor the word “shall.”

Children are some of the most vulnerable groups. This section of the law deals with the rights of the children and the necessary protection. In the original Bill, the sub-clause says:-

“Where a child is brought before a court in proceedings under the Children Act or any other written law, the court may, where the child is unrepresented, order the Service to provide legal representation for the child.”

In my amendment, the court must order the Service to provide legal representation for the child. That is why we are changing the word from “may” to “shall” to make sure children are represented.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): That is fairly clear and so, Hon. Members, make your decision. I will only give an opportunity to Hon. (Ms.) Nyokabi.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. The only issue is that it is, indeed, true that the country does not have sufficient resources. One of the other things the law avoids to do is to give promises it cannot fulfil. That is why the word used is “may”, so that in an appropriate case, as far as the resources go and as far as a magistrate can make such an order, the magistrate would then require that the child is represented.

In some particular instances, despite the best wishes of law of the country and of the court, it may not be possible. So, using the word “shall” is going to introduce a fairly onerous standard that the country may not be able to meet. I urge that the House retains the word “may” as we continue to look for resources and ask the country to move to some of these instances. We will be opposing the amendment by Hon. Okoth.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, make your decision.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us proceed with the amendment by Hon. Nyokabi.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

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

“(6) Despite the provisions of this section, lack of legal representation shall not be a bar to the continuation of proceedings against a person.”

Even in instances where the country, the board and the Service may not be able to provide you with legal services or a lawyer, the proceedings will continue, nonetheless. This is based on looking at the thousands of criminal trials that we have in this country, for example. Sometimes, it may not be possible to assign a lawyer to each and every one of those trials. Those trials would commence nonetheless. I am just adding the rider that as far as possible, this House will do its best to provide the funding and necessary resources. But where those resources do not cover all the trials, the trials will proceed and they are not nullified just by the fact that legal representation was not available.

We urge the House to agree with the Committee on this proposal.

Thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give an opportunity to Hon. Mwaaura.

**Hon. Mwaura:** Thank you, Hon. Temporary Deputy Chairman. I rise to oppose this amendment by the Committee for very simple reasons. I think we are trying to over-protect the State. It goes to negate almost all the other five provisions of that clause.

If we say that proceedings can go on when there is no legal representation, what comes in mind is this: If an injustice were to occur because you have no representation, then it is double-speak. On one hand, you are saying you want to protect the children and, on the other hand, you are saying you can proceed or you want to protect the criminals. This provision makes the other five provisions of that clause null and void. So, I oppose.

**The Temporary Deputy Chairman (Hon. Cheboi):** Are you on a point of order, Hon. Nyokabi? Let me hear what you are saying.

**Hon. (Ms.) Kanyua:** I just want to give some information to the Member.

**The Temporary Deputy Chairman (Hon. Cheboi):** The problem with a point of information is that Hon. Mwaura has to accept that he needs to be informed. Graciously, Hon. Mwaura can accept. I see a nod from him and so, you can proceed.

**Hon. (Ms.) Kanyua:** Thank you. The information is about having the proceedings commence on time. If we say that proceedings will never commence until everybody has a lawyer, we are going to injure the poor and the children more because they will have to remain in prison and remand homes for many more months. It is prudent that speed is also important in trials. Sometimes, when somebody is poor, you want the trial to be done speedily. We have already established the Small Claims Courts for speedy resolution of some of those small cases and matters.

In the interest of that, Hon. Mwaura, given the two balances, it is better that the law accepts that trials can proceed whether you have legal aid or not, so that we also do not put people in incarceration for too long.

Thank you.

**The Temporary Deputy Chairman (Hon. Cheboi):** Let us see if it was convincing one way or the other.

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

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

I am willing to allow a division if Members get the sufficient numbers. Let me see. Well, even Hon. Mwaura himself is seated.

*(Clause 43 as amended agreed to)*

*Clause 44*

**The Temporary Deputy Chairman (Hon. Cheboi):** We have two amendments to this clause: a deletion and an insertion. We will start with the amendment by Hon. Nyokabi.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. I beg to move:-  
THAT, Clause 44 of the Bill be amended—

(a) in sub-clause (3) by deleting the words “fourteen days” appearing immediately after the words “not later than” and substituting therefor the words “forty-eight hours”;

(b) by deleting sub-clause (5);

(c) by deleting sub-clause (6).

The Committee is of the view that we need to reduce the period within which the Service can make a decision on an application for legal aid - from 14 days to 48 hours. This is because some of these cases are fairly urgent. We do not see the reason the Service should take 14 days to make a decision. Forty-eight hours from when the application is lodged are enough.

In the second proposed deletion, we are deleting to remove duplication because Clause 44(5) is similar to Clause 44(2)(c) and Clause 44(6) is also similar to Clause 44(3). That is meant to clean up the clause.

We urge the House to agree with the Committee. Thank you, Hon. Temporary Deputy Chairman.

*(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)*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have an amendment by Hon. Neto.

**Hon. Okoth:** *(Inaudible)*

**The Temporary Deputy Chairman** (Hon. Cheboi): What did you say, Hon. Okoth?

**Hon. Okoth:** Thank you, Hon. Temporary Deputy Chairman. I have just received a copy of the letter Hon. Neto conveyed to the Speaker authorising me to prosecute his amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Who brought it to you?

**Hon. Okoth:** I have a soft copy sent electronically. I can show it to you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, I do not think I am going to accept it.

**Hon. Okoth:** You will not accept that?

**The Temporary Deputy Chairman** (Hon. Cheboi): Just a minute. You do not have to bring it forward.

What is it Hon. Kangogo?

**Hon. Bowen:** Thank you, Hon. Temporary Deputy Chairman. I want to seek your direction. Given that Hon. Neto is a member of the Departmental Committee on Justice and Legal Affairs, is it in order for him to purport to bring an amendment in this House when he had an opportunity to prosecute his case at the Committee level?

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, on Hon. Kangogo’s issue, I do not want to say that he is not in order. He is actually in order. He can bring his amendment. It is neater if he went to his Committee and canvassed whatever issues he had, but he could still bring amendments. There is no problem with that.



On the one by Hon. Ken Okoth, we have worked on several amendments. But let me just see what it is that he has indicated for clarity, and then I can make a decision on that. Unfortunately, I cannot confirm that it has gone to the Speaker. It is not written by Hon. Neto to the Speaker, and I cannot confirm that. It is coming too late in time. Unfortunately, we will not accept it. We have already dropped a few of his amendments. Under ordinary circumstances, if we had a letter, we would have accepted that you take his stake. Unfortunately, hon. Member for Kibra, we will have to proceed. In the meantime, I will drop unless I get another real confirmation. I am dropping this particular one.

*(Proposed amendment by Hon. Oyugi dropped)*

*(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 44 as amended agreed to)*

*(Clauses 45, 46 and 47 agreed to)*

#### *Clause 48*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have Hon. Nyokabi on this one.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move that:-

THAT, Clause 48 of the Bill be amended in sub-clause (2) by deleting the word “thirty” appearing immediately after the words “person within” and substituting therefor the word “fifteen”.

The Committee is of the view that we reduce the period within which the Service can make a decision or vary its earlier decision on legal aid from 30 days to 15 days. Thirty days is too long. We think that 15 days are sufficient for this particular role in Clause 48.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): One slot to Hon. Okoth. Do you want to speak to this one?

**Hon. Okoth:** No.

*(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 48 as amended agreed to)*

*Clause 49*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 49 of the Bill be amended in sub-clause (1) by deleting the words “the prescribed manner” appearing immediately after the words “legal aid in” and substituting therefor the words “accordance with this Act”.

The Committee is of the view that we require applications to be in accordance with the provisions of this law as opposed to any prescribed forms that could have been there before. That is just the slight amendment proposed by the Committee.

Thank you.

*(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 49 as amended agreed to)*

*(Clauses 50 and 51 agreed to)*

*Clause 52*

**The Temporary Deputy Chairman** (Hon. Cheboi): On this one, we have two proposed amendments. Hon. Nyokabi, I will give you the first shot. Hon. Member for Kibra, be ready.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 52 of the Bill be amended in sub-clause (4) by deleting the words “immediately notify the aided person and the legal provider” appearing immediately after the words “Service shall” and substituting therefor the words “within seven days notify the aided person, the legal aid provider and the Court.”

This is about withdrawal of legal aid which can happen and the reasons where legal aid can be withdrawn are given. Sometimes, it is good to point out that there are people who present themselves as poor in the first instance. So, they qualify for legal aid but when circumstances are checked, it is found out that they can afford the services of lawyers or legal services. There could be other reasons that necessitate the withdrawal of legal aid in a service like this one. Should that happen, the Committee proposes that there should be a specific period within which to give the notice of withdrawal for any of the legal aid services. The Committee in Clause 52 proposes that the person will be notified immediately, but within seven days if any of the legal aid services are going to be withdrawn.

It is important to note that people, sometimes, misrepresent themselves. Somebody can misrepresent himself sometimes even as a child and it is discovered that he or she is not below

18 years, but actually above 18 years. If any of those circumstances come to the attention of the Legal Aid Board, then the withdrawal of services can happen.

The only protection the Committee proposes is that there is a notice within seven days so that they can be aware that the services are going to be withdrawn.

*(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)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us hear Hon. Ken Okoth, Member for Kibra.

**Hon. Okoth:** Hon. Temporary Deputy Chairman, my amendment does not speak to the issue of timing and notification. It speaks about the right of withdrawal and possible prejudice when in the middle of proceedings, that is when the legal aid service is withdrawn.

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

THAT, clause 52 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) —

“(4A) The Service shall not withdraw legal aid under subsection (1) in the course of civil or criminal proceedings unless the Service is satisfied that the rights of the aided person to fair trial will not be seriously prejudiced or it would be proper for the other persons having the same interest to pay for the proceedings.”

We can combine this if the Vice-Chairperson is amenable to include her element of the timing and space of the notification, but as well address this constitutional bit where we are talking about the right to fair trial and prejudice if there is withdrawal of legal aid midstream.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us hear what Hon. Nyokabi has to say on behalf of the Committee.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. Sometimes, the reasons for the withdrawal of legal aid are caused by the applicants themselves. So, if they are going to suffer any prejudice, then it is prejudice which they have visited on themselves.

Let us take the example of a criminal trial. If you misrepresent yourself as a poor person and it is discovered that you are not a poor person, then the service would have to be withdrawn. If you are going to suffer consequences, it is because of your original reasons that have caused the withdrawal. The Committee would be hard-pressed to support this because if there is any prejudice that results from withdrawal, there would definitely be prejudice resulting from the withdrawal of the legal aid services. But if the legal aid services withdrawal is justified in the section as covered in Clause 52, then that would just be as it is. I urge Hon. Okoth to drop this amendment and agree that where the Service needs to withdraw the legal aid, a sufficient seven-day notice is given for that purpose.

The Committee will not support this particular proposal.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us hear Hon. Njenga.

**Hon. Njenga:** Thank you, Hon. Temporary Deputy Chairman. Circumstances change at times in every situation. What really matters is the underlying spirit that is embraced. For Hon. Okoth, it will be important to also consider that. Circumstances change and when they do, decisions ought to be made to ensure that the whole objective is attained.

I support the Committee.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Member for Trans Nzoia, Hon. Janet Nangabo Wanyama.

**Hon. (Ms.) Wanyama:** Thank you, Hon. Temporary Deputy Chairman. I support the Chairperson of the Committee because of the seven-day notice.

I urge my brother from Kibra to support the Committee.

**The Temporary Deputy Chairman** (Hon. Cheboi): Lastly and briefly, let us have Hon. Mwaura.

**Hon. Mwaura:** Thank you, Hon. Temporary Deputy Chairman. I support Hon. Ken Okoth's amendment. The Committee should also work in the interest of the litigant, the accused or the victim. Sometimes when provided with legal aid services, there could be other intricacies at play that would see powerful people wanting your legal aid to be withdrawn on flimsy grounds. We must protect the weak. This provision by Hon. Ken Okoth helps in that direction. The Committee seems to be preoccupied with protecting the board and the State, which, in my opinion, is not necessarily very good.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members make your decision. Did I see Hon. Ntutu? He has not spoken this morning. Just make a brief comment and then we can make the decision.

**Hon. ole Ntutu:** Thank you, Hon. Temporary Deputy Chairman. I support Hon. Okoth's point of view. It is extremely important that the Committee also listens to what Members are proposing because we are just enriching what they have already done.

I support Hon. Okoth.

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

**Hon. Members:** Division!

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

**The Temporary Deputy Chairman** (Hon. Cheboi): I can see there is call for division by three Members. Unfortunately, it falls. That was a very tricky decision to make but I still had to make it anyway. I am fortified now by the fact that I do not see many Members standing.

Let us put the Question. I know Members want to make their decision on this one. As we put the Question, if you decide that you will vote "Aye" it means that the amendment by Hon. Nyokabi stands and, therefore, it will be part of the Bill. If you vote "Nay" you will take us back to what is in the proposed Bill. That is something important for Members to note. I realise you have come on board on that.

*(Clause 52 as amended agreed to)*

*Clause 53*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 53 of the Bill be amended by inserting the following sub-clause immediately after sub-clause (3)—

“(4) Upon the withdrawal of legal aid, a legal aid provider shall apply for leave of court to cease providing legal aid services in the relevant case.”

This is a consequence of what happens when legal aid services are withdrawn. One has to apply to the court to withdraw legal services or to be allowed not to provide legal services anymore. That should cushion Hon. Okoth’s earlier amendment that it is upon leave of the court. If the court feels that there would be prejudice against somebody, the court can make any other decision. However, for the purpose of this clause, a legal aid service provider should be allowed to apply, with leave of the court, to be allowed to withdraw legal aid services.

*(Question of the amendment proposed)*

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

*(Clause 53 as amended agreed to)*

*Clause 54*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 54 of the Bill be amended in sub-clause (4) by deleting the words “principles of fair administrative action set out in Article 47 of the Constitution” appearing immediately after the words “by the” and substituting therefor the words “Fair Administrative Action Act, 2015”.

This is largely to align this Bill to the Fair Administrative Action Act of 2015, which was enacted by the House to codify the right to fair administrative action in Article 47 of the Constitution. Sometimes there is a very close nexus between legal aid and the need for administration services. Sometimes the problems that arise require poor people to be assisted in the administration sections. The Fair Administrative Action Act covers those particular matters.

We urge the House to agree with the Committee on the amendments proposed.

*(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 54 as amended agreed to)*

*(Clauses 55 and 56 agreed to)*

*Clause 57*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 57 be amended—

(a) by deleting sub-clause (1) and substituting therefor the following sub-clause—

“(1) The Service shall, through regulation, develop and adopt criteria for accreditation of persons and institutions to provide legal aid services.”

(b) in sub-clause (2) by deleting the words “the Cabinet Secretary, the Director of Public Prosecutions, public benefit organizations, faith based organizations” appearing immediately after the words “Attorney General” and substituting therefor the words “the Director of Public Prosecutions, public benefit organizations,”

The Committee’s justification is that we require the Service to develop a criterion for accreditation of legal aid providers and to codify them in the regulations. We want to remove and reduce persons and bodies required to be consulted in the development of an accreditation criteria, in light of the proposed amendments to Clause 9. But we feel very strongly that there needs to be an accreditation process and procedure for legal aid providers to be provided for in the regulations.

I urge the House to support the amendments that the Committee seeks in Clause 57.

*(Question of the amendment proposed)*

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

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

*(Clause 57 as amended agreed to)*

*(Clause 58 agreed to)*

*Clause 59*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 59 of the Bill be amended by deleting sub-clause (2).

The justification is that we do not want to allow the Service to charge for accreditation and monitoring of accreditation services. We do not want a charge to be applied to that Service. So, we propose the deletion in Clause 59(2).

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

*(Clause 59 as amended agreed to)*

*Clause 60*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have two amendments in this particular clause. One is a deletion of sub-clause (1) and the other is a deletion of sub-clause (2). I will give the first priority to sub-clause (1) by Hon. Ken Okoth.

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

THAT, Clause 60 of the Bill be amended in sub-clause (1) —

(a) by deleting the word “and” appearing in paragraph (d);

(b) by inserting the following new paragraph immediately after paragraph (d)-

“(dd) the number of cases being handled by the legal aid provider at any given time; and,”

Hon. Temporary Deputy Chairman, clarifying and adding that section helps us to know because some of these legal aid providers might be overwhelmed and might be accredited to handle too many cases. We need to regulate that and make sure that it is part of the issues that the registrar of accredited legal aid providers can deal with.

On part (c), the nature of the services in respect of which legal aid providers are accredited are interesting to look at that. I would urge Members to think about it because you might find legal aid providers who are only accredited in some aspects of the law and not in others. If we do not monitor and keep a record of what they are accredited to do, we might find quacks pretending to practise and support legal aid in areas they are not accredited to.

*(Question of the amendment proposed)*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, we have no opposition to this particular addition.

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

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

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the next opportunity to Hon. (Ms.) Nyokabi to prosecute deletion of sub-clause (2)

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 60 of the Bill be amended in sub-clause (2) by deleting paragraph (c).

Hon. Temporary Deputy Chairman, the idea is to avoid repetition. The contents of sub-clause (2)(c) are covered under sub-clause (2)(a). This is a clarification and making the law neater.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Okoth, do you want to return or take away the favour?

**Hon. Okoth:** Hon. Temporary Deputy Chairman, I need a clarification from the Chairlady because what she has explained is not what I read when I look at it clearly. She says that sub-clause (c) is a repetition of what is covered under sub-clause (a). Sub-clause (a) states that the personal details and contact addresses of all accredited legal providers will be listed in the register but sub-clause (c) is more specific as it states the nature of services in respect of which the legal aid providers are accredited. For instance, in the practice of law, there are financial, family, divorce and property lawyers. We need to know that as we talk about who is accredited to do what. It does not hurt to keep it there. I would like to understand how she sees that. Sub-clause (a) does not capture what is in sub-clause (c). It will help citizens who benefit from this Bill know the legal aid providers they are approaching and who are available in their areas. Are they really accredited for the issues and matters that they need the legal aid?

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, this is again a consequence of us having not interacted with Hon. Okoth. I wish some of these Members would come to the Committee. If you look at sub-clause (2)(c), you will find that it publicise such places as the Service shall determine and sub-clause (2)(a) is publicised, placed or posted and made available for inspection at no charge by members of the public at police stations, courts, prisons and any other public place as maybe determined by the service. Sub-clause (a) is clearer than sub-clause (c) as it identifies the places where this can be put and allows the Service to do so. That is why we think it is a repetition of the same principle. We propose that sub-clause (c) be deleted for order.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members I will give you an opportunity to make a decision one way or the other.

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

*(Clause 60 as amended agreed to)*

*(Clauses 61 and 62 agreed to)*

*Clause 63*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 63 of the Bill be amended by deleting the word “but” appearing immediately after the words “been granted” and substituting therefor the word “and”.

Hon. Temporary Deputy Chairman, this is a grammatical error. We are changing the words there so that the grammar is better.

*(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)*

*(Clauses 64 and 65 agreed to)*

*Clause 66*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 66 of the Bill be amended in sub-clause (1) by deleting paragraph (a).

The amendment identified there is to delete an unnecessary provision as the contents of sub-clause (1) are adequately covered under the rest of the paragraphs in the sub-clause. So, we do not see the need for the repetition.

*(Question of the amendment proposed)*

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

*(Clause 66 as amended agreed to)*

*(Clause 67 agreed to)*

*Clause 68*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 68 of the Bill be amended in sub-clause (1) by inserting the words “supervised by” immediately after the words “Service, or”.

The justification is to allow paralegals to be supervised by accredited bodies to provide legal aid and assistance. The paralegals in legal aid service scheme will be very important because we may not have sufficient number of lawyers across the whole country to provide the service. Where paralegals offer these services, they must be accredited and get legal advice and assistance where necessary. The legal profession in this law is being pushed towards what we have in medicine where paramedics and other persons support doctors in the provision of medical services.

Thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I see Hon. Nyamai.

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Temporary Deputy Chairman. I rise to support the amendment by the Committee to have paralegals supervised properly to ensure provision of quality services that are required.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members must concentrate and say “Ayes” for “Ayes” and “Nays” for “Nays”.

*(Clause 68 as amended agreed to)*

*Clause 69*

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, the Bill be amended by deleting clause 69.

The Committee proposes to delete this particular clause. Having allowed the Legal Aid Service to proceed and having allowed other persons who may not be affected apply for legal aid on behalf of the person affected, we do not see the need now for a person called an intermediary. It is going to be very onerous to start discovering who this intermediary is going to be. So, the Committee proposes that this particular clause is deleted. That the Service is established to ensure---

**The Temporary Deputy Chairman** (Hon. Cheboi): Order Members! No Member will be allowed to stand in the alleys therefore confusing the sight of the Chairman. Proceed.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. The Service is established to ensure that the scenario contemplated under the clause does not arise. The Service has been established to ensure that there is provision of legal aid services throughout the country. So, there is really no need for this intermediary. We propose that the same be deleted. We have already allowed paralegals to also work. So, it is difficult to envisage any other intermediaries in a legal aid service or in justice matters.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Okoth, do you have something?

**Hon. Okoth:** Yes, Hon. Temporary Deputy Chairman. If you look at the definition of “intermediary” given in the Bill, you will find that it means a person who has seized a complainant or an accused person, to communicate in the court in accordance with Section 69, whether it is a translator or sign language assistance. It could even be in a situation where we have a victim protection case and the victim’s identity is hidden and the communication has to go through somebody else. I would urge the Vice-Chair of the Committee not to delete this because as Clause 69 says; “where a complainant or an accused person appears in court in a jurisdiction where no legal aid provider is available.” I urge Members to support it, to keep it this way. Earlier on we said that the Service may establish its services and offices in 47 counties instead of “shall”. It envisions that there will be a situation and a gap in which parts of the country will not have these Legal Aid Bills as we progressively move towards enforcing them. This will help us. We can say that the intermediaries, in such a case, should not charge a fee and things like those. I beg that we keep it instead of deleting it.

**The Temporary Deputy Chairman** (Hon. Cheboi): I know that Kibra is really big and so, you cannot be very brief, but you must be brief on this one so that we can move fast.

I will give the last shot to Hon. Nyamai.

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Temporary Deputy Chairman. I rise to support the Committee. After going through the Bill, they found it necessary that instead of having these intermediaries who are not known and whose qualifications are not clear, they have decided to have paralegals who are known and who will be supervised.

I would like to support the Committee.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): The sopranos were almost similar.

*(Clause 69 deleted)*

*(Clause 70 agreed to)*

*Clause 71*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Member for Kibra.

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

THAT, Clause 71 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) —

“(2) Where an aided person has been compensated through an award of damages in any proceedings, such person shall be entitled to the award, provided that the service shall have the right to deduct from the award, the costs it incurred in respect of the proceedings.”

Sometimes you will find that a person has been injured, he or she goes to court, files a claims case and seeks legal aid and assistance. Let me give you an example. Last year, there was a watchman from Kibra who had been mistreated and injured while on duty but the employer dismissed him without benefits. When they went to court, they got awards. This is a person who cannot work now because he was injured. The import of this law, as currently written, means that somebody like that cannot go to court to sue his employer for the injuries, wrongful termination and seek justice. If they use the legal aid service to get assistance and are awarded, let us say Kshs2 million or Kshs5 million to help them for their medical bills and the cost of living, now that they are unemployable, the Service says that the award they got belongs to it. This is a pointless and circular argument.

In protecting their rights, I propose that Clause 71, and I ask Members to support me, be amended. It says where an aided person has been compensated through an award of damages in any proceedings, such person shall be entitled to the award, provided that the Service shall have the right to deduct from the award, the costs it incurred in respect of the proceedings. So, if the watchman from Kibra is awarded Kshs5 million and the legal aid service spent around Kshs1 million in prosecuting his case and wins it on his behalf, the legal aid service should not take the

whole Kshs5 million. It should only take Kshs1 million for its operations and allow the watchman from Kibra to get justice and use the Kshs4 million of that award to lead a normal life.

I beg Members to support the amendment I have proposed. Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the first slot to Hon. Nyokabi.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairman. I do not oppose this particular amendment. It will add value because it is not proposing any deletion. Clause 71 remains as it is in the Bill. It says that the Service can recover the costs it has incurred. If a lawyer or an advocate accredited is refunded for the costs incurred then the aided person surrenders the money incurred in terms of costs to the Service because he or she benefited from legal aid anyway. This particular provision adds value.

I am also happy to note that it is the last. Hon. Okoth has made us work harder than we had envisaged. For the interest of time, I am happy to support this one.

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

*(Clause 71 as amended agreed to)*

*(Clauses 72 and 73 agreed to)*

Clause 74

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 74 of the Bill be amended by deleting the word “a” appearing immediately after the words “specifying that” and substituting therefor the word “an”.

This is a grammatical correction. Thank you.

*(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)*

*(Clause 74 as amended agreed to)*

Clause 75

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 75 of the Bill be amended in sub-clause (2) by deleting the words “for security of” appearing immediately after the words “An order” and substituting therefor the words “of security for”.

This is a grammatical correction.

*(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 75 as amended agreed to)*

#### *Clause 76*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 76 of the Bill be amended—

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

“(d) extending the Service to as many beneficiaries as possible.”

(b) by inserting the following sub-clause immediately after sub-clause (3)—

“(4) the scale fees determined by the Service shall be less than the legal fee applicable to persons not aided by the Service.”

The justification for this amendment is to ensure that the service is extended to as many beneficiaries as possible and also to ensure that the scale of fees applicable to legal aid service is less than that applicable in the ordinary legal cases. This amendment will ensure that the scheme is not in the normal remuneration order but rather that the fees charged are on a lower scale because this is a legal aid service. We urge the House to agree with the Committee on those amendments.

*(Question of the amendment proposed)*

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

*(Clause 76 as amended agreed to)*

*(Clauses 77, 78, 79, 80, 81 and 82 agreed to)*

#### *Clause 83*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 83 of the Bill be amended by inserting the word “personal” immediately after the words “disclose any”.

The justification is to further specify that the information that should not be disclosed must be of a personal nature to the aided person in order to maintain confidentiality.

*(Question of the amendment proposed)*

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

*(Clause 83 as amended agreed to)*

*(Clause 84 agreed to)*

#### Clause 85

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 85 of the Bill be amended in the prefatory statement by deleting the word “two” appearing immediately after the words “in every” and substituting therefor the word “three”.

The justification is to increase the period which the Service is to publish a legal aid guide from two to three years. They might need a little bit more time to publish the legal aid guide.

*(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 85 as amended agreed to)*

*(Clause 86 agreed to)*

#### Clause 87

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 87 of the Bill be amended—

(a) in sub-clause (2) by deleting paragraph (b);

(b) by inserting the following sub-clause immediately after sub-clause (2)—

“(3) For the purposes of Article 94 (6) of the Constitution—

(a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the

better carrying into effect of the provisions of this Act and to enable the Service to discharge its functions effectively;  
 (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section;  
 (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretations and General Provisions Act and the Statutory Instruments Act, 2013.”

The justification is to align the clauses to the proposed deletion of Clause 69 and to align the clause to the requirements of Article 94(6) of the Constitution, which requires that all legislation must specify the purpose and limits of any delegated legislative powers. We want to clarify the extent of delegated powers that the House is giving in this Bill.

*(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 be inserted,  
 put and agreed to)*

*(Clause 87 as amended agreed to)*

*(Clause 88 agreed to)*

*(Schedule agreed to)*

#### *Clause 2*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have three proposed amendments in this Clause. We will start with the one by Hon. Priscilla Nyokabi.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 2 of the Bill be amended—

- (a) in the definition of “accredited paralegal” by inserting the words “or an accredited legal aid provider” immediately after the word “advocate”;
- (b) in the definition of “Cabinet Secretary” by deleting the words “legal aid” appearing immediately after the words “relating to” and substituting therefor the word “justice”;
- (c) in the definition of “legal aid clinic” by inserting the words “or offered by an accredited legal aid provider” immediately after the word “Service”.

The justification for the Committee’s proposals is to, one, allow accredited legal aid providers to supervise paralegals and, two, to specify the functions of the Cabinet Secretary referred to offer legal aid clinics. We think that this particular amendment will bring proper order to the provision of legal aid services. The Committee is particularly interested in allowing paralegals to play a role.

**The Temporary Deputy Chairman** (Hon. Cheboi): As I propose the Question, I want to notify Hon. Members that if this amendment is carried, the proposed amendment by Hon. Okoth will be dropped.

*(Question of the amendment proposed)*

*(Question, that the words 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. Cheboi): Consequently, the proposed amendment by Hon. Okoth has been dropped. Hon. Neto is still absent and so his amendment is also dropped. Therefore, I proceed to put the Question.

*(Proposed amendments by Hon. Okoth and Hon. Oyugi dropped)*

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, we have come to the end of our deliberations on this particular Bill. Therefore I will call on the Mover to move reporting. Proceed, Hon. Washiali.

**Hon. Washiali:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Legal Aid Bill (National Assembly Bill No.35 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORT AND THIRD READING**

### **THE LEGAL AID BILL**



**Hon. Cheboi:** Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Legal Aid Bill (National Assembly Bill No.35 of 2015) and approved the same with amendments.

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

I request the Deputy Chairperson of the Departmental Committee on Justice and Legal Affairs, Hon. Nyokabi, to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. (Ms.) Kanyua:** Hon. Deputy Speaker, I beg to second the Report and thank Members for the work we have done.

*(Question proposed)*

**Hon. Deputy Speaker:** This is not the point at which you can intervene, Hon. Kenneth. I will give you a chance during the Third Reading.

*(Question put and agreed to)*

**Hon. Washiali:** Hon. Deputy Speaker, I beg to move that the Legal Aid Bill (National Assembly Bill No.35 of 2015) be now read the Third Time.

I also request Hon. Nyokabi to second.

**Hon. (Ms.) Kanyua:** Hon. Deputy Speaker, I beg to second the Motion that the Bill be read the Third Time.

The country is on its way towards getting a legal aid service scheme that will enable people who are indigent or poor to have legal aid services. This is a day that has been long in coming. I support this law and the legislative process. I also support the many amendments that have helped clarify and clean up the law and take it to the Executive as an implementation step thereafter.

*(Question proposed)*

**Hon. Deputy Speaker:** Hon. Kenneth Okoth, proceed.

**Hon. Okoth:** Hon. Deputy Speaker, I am delighted to rise and speak up at this moment when the Legal Aid Bill is being read the Third time in the House. The Committee did a fantastic job in putting together the Bill, even though some of us do not have the privilege of serving in that Committee anymore. At the beginning of this Parliament, I served in that Committee. I know the minds in that Committee are committed legislators who want to do the best for this country. This Bill will help us take important steps forward in realizing our constitutional mandate. We have the right to access justice. If you look at the Sustainable Development Goals, you will find that is one of the key goals that have been included. That goal was not in the Millennium Development Goals.

There is also access to justice and legal aid for people who are indigent. These are actually the principles that we talk about leaving no Kenyan behind or the people who need the support. I am excited that even stateless people and refugees will benefit from the provisions of this Bill. I want to thank the Committee for their dedication, all Members who contributed and

especially all the partners outside Parliament, who for a long time, have been providing legal aid in places like Kibra, Mathare and Kiandutu, to the poorest of Kenyan society. I think we have entered a new day where these services will be provided with Government support.

The National Legal Aid and Awareness Programme (NALEAP) was a very key pilot programme that showed the need and the feasibility of this programme and I pray that even though there are sections of the Bill which we passed that say we will establish legal aid offices in every county progressively, that progressively will be in the near future and not in a far distant future; that within actually the next five years the right to access legal aid and to get these services close to all citizens of Kenya in every county and corner.

I thank the Committee Chair especially for her spirited execution of the amendments and elucidation of why the Committee brought some of the amendments they did. It has helped clarify my mind where they were coming from and I look forward to working with the Committee on other important human rights legislations.

Thank you very much and thanks to all the partners like Kituo Cha Sheria which was chaired before by Hon. Priscilla, the International Court of Justice (ICJ), the Kenya Human Rights Commission, International Federation of Women Lawyers (FIDA), CRADLE on the rights of children and the Centre for Rights of Education and Awareness (CREW) on behalf of victims of gender-based violence in places like Kibra. For everyone who has been doing this work now there is law for us to support you. Thank you for the work you have done before.

I am excited that now this House will be able to budget and the Government should put in place as soon as possible the institutions so that even possibly in this year's Budget we can have provisions for this law and by next year it comes into action.

Thank you Hon. Deputy Speaker. With that I support.

**Hon. Aden:** Thank you Hon. Deputy Speaker. I also wish to congratulate the Committee and, indeed, this House for passing this very important piece of legislation. Many Kenyans across the country who unfortunately do not have the privilege to pay for their legal fees often suffer. They get neglected and are unable to seek even their constitutional rights because of the inability to finance legal costs for many issues that need to be argued out in courts of law.

This particular Bill coming into existence will make Kenyans, for the first time, live the true spirit of the new Constitution where access to fair administration of justice will now become a reality in Kenya. I also wish to say that, as a House, we need to make sure that in our subsequent Budgets we make resources available so that progressive implementation of this particular Bill across the 47 counties comes sooner than later.

Indeed, I do not intend to say much but to congratulate the Committee and Members of this House and say that today, I feel honoured that we have given the many Kenyans out there an opportunity for the first time to be happy that they will finance legal costs even for those of us who are not privileged in society or those who cannot afford the ordinary costs of seeking justice.

I thank you Hon. Deputy Speaker.

**Hon. Deputy Speaker:** The Question will be put in the afternoon when we are properly constituted. I want to move to the next Order but before we do that, I can see intervention by Hon. Cheboi.

## PAPER LAID

**Hon. Cheboi:** Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Liaison Committee on the Budget Policy Statement and the Debt Management Strategy for the year 2016/2017 and the Medium Term.

Thank you.

**Hon. Deputy Speaker:** Hon. Members, you will remember that at the beginning of this session, we requested that this would be done at an appropriate time.

Next Order!

## NOTICE OF MOTION

### ADOPTION OF REPORT ON BUDGET POLICY STATEMENT

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

THAT, pursuant to the provisions of Section 25(7) of the Public Finance Management Act and Standing Order No.232, this House adopts the Report of the Liaison Committee on the Budget Policy Statement and the Debt Management Strategy for the Financial Year 2016/2017 and the Medium Term, laid on the Table of the House on Thursday, 3<sup>rd</sup> March, 2016 and approves the Budget ceilings in respect of the various Votes and Programmes in the national Government, the Judiciary and Parliament as contained in the Schedule thereto.

## SCHEDULE

### BUDGET CEILINGS FOR SPENDING AGENCIES

Vote		Programmes		Budget Ceilings(Kshs. Millions)		
Number	Details	Number	Details	Recurrent	Capital	Total
1011	The Presidency		<b>Total</b>	<b>6,973</b>	<b>1,741</b>	<b>8,714</b>
		0702000	P.2 Cabinet Affairs	1,265	1,109	2,374
		0703000	P.3 Government Advisory Services	314	-	314
		0704000	P.4 State House Affairs	3,010	459	3,469
		0734000	P.6 Deputy President Services	2,384	173	2,557
1021	State Department for Interior		<b>Total</b>	<b>98,002</b>	<b>15,181</b>	<b>113,183</b>
		0601000	P.1 Policing Services	80,485	12,899	93,384
		0602000	P.2 Planning, Policy Coordination and Support Service	12,589	611	13,200
		0603000	P.3 Government Printing Services	727	121	848
		0605000	P.4 Population Management Services	4,201	1,550	5,751
1022	State Department for Coordination of National Government		<b>Total</b>	<b>19,291</b>	<b>1,050</b>	<b>20,341</b>
		0604000	P.1 Correctional services	18,875	1,032	19,907
		0623000	P.2 General Administration, Planning and Support Services	346	18	364
		0624000	P.3 Betting Control, Licensing and Regulation Services	70	-	70
1031	State Department for Planning		<b>Total</b>	<b>18,492</b>	<b>53,633</b>	<b>72,125</b>
		0706000	P.1 Economic Policy and National Planning	1,124	38,141	39,265
		0707000	P.2 National Statistical Information Services	1,818	1,572	3,390
		0708000	P.3 Monitoring and Evaluation Services	43	163	206
		0709000	P.4 General Administration Planning and Support Services	746	144	890

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Vote		Programmes		Budget Ceilings(Kshs. Millions)		
Number	Details	Number	Details	Recurrent	Capital	Total
		0710000	P.5 Public Service Transformation	6,600	910	7,510
		0711000	P.6 Gender & Youth Empowerment	8,161	12,703	20,864
1032	State Department for Devolution		<b>Total</b>	<b>2,242</b>	<b>7,994</b>	<b>10,236</b>
		0732000	P.3 General Administration, Planning and Support Services	269	-	269
		0712000	P.7 Devolution Services	1,029	10	1,039
		0713000	P.8 Special Initiatives	574	1,507	2,081
		0733000	P.9 Accelerated ASAL Development	370	6,477	6,847
1041	Ministry of Defence		<b>Total</b>	<b>96,952</b>	<b>42</b>	<b>96,994</b>
		0801000	P.1 Defence	95,219	42	95,261
		0802000	P.2 Civil Aid	450	-	450
		0803000	P.3 General Administration, Planning and Support Services	1,283	-	1,283
1051	Ministry of Foreign Affairs and International Trade		<b>Total</b>	<b>13,232</b>	<b>1,000</b>	<b>14,232</b>
		0715000	P.2 Foreign Relation and Diplomacy	9,310	402	9,712
		0714000	P.1 General Administration Planning and Support Services	3,172	598	3,770
		0716000	P.3 International Trade and Investments Promotion	750	-	750
1061	State Department for Education		<b>Total</b>	<b>59,412</b>	<b>22,074</b>	<b>81,486</b>
		0501000	P.1 Primary Education	17,225	18,986	36,211
		0502000	P.2 Secondary Education	33,681	1,443	35,124
		0503000	P.3 Quality Assurance and Standards	4,978	903	5,881
		0508000	P.8 General Administration, Planning and Support Services	3,528	742	4,270
1062	State Department of Science and Technology		<b>Total</b>	<b>60,260</b>	<b>13,531</b>	<b>73,791</b>
		0504000	P.4 University Education	55,990	7,567	63,557
		0505000	P.5 Technical Vocational Education and Training	2,004	5,363	7,367
		0506000	P.6 Research, Science, Technology and Innovation	872	601	1,473
		0507000	P.7 Youth Training and Development	-	-	-
		0508000	P.8 General Administration, Planning and Support Services	1,394	-	1,394
1071	The National Treasury		<b>Total</b>	<b>46,732</b>	<b>44,712</b>	<b>91,444</b>
		0717000	P.1 General Administration Planning and Support Services	39,816	4,804	44,620
		0718000	P.2 Public Financial Management	5,422	37,994	43,416
		0719000	P.3 Economic and Financial Policy Formulation and Management	1,174	1,859	3,033
		0720000	P.4 Market Competition	320	55	375
1081	1081 Ministry of Health		<b>Total</b>	<b>28,940</b>	<b>30,635</b>	<b>59,575</b>
		0401000	P.1 Preventive & Promotive Health Services	1,736	13,845	15,581
		0402000	National Referral and Specialized Services	14,079	10,829	24,908
		0403000	P.3 Health Research and Development	5,025	624	5,649
		0404000	P.4 General Administration, Planning & Support Services	6,100	81	6,181
			Health Policy, Standards and Regulations	2,000	5,256	7,256
1091	State Department for Infrastructure		<b>Total</b>	<b>31,596</b>	<b>102,949</b>	<b>134,545</b>
		0202000	P.2 Road Transport	31,596	102,949	134,545
1092	State Department for Transport		<b>Total</b>	<b>5,793</b>	<b>124,960</b>	<b>130,753</b>
		0201000	P.1 General Administration, Planning and Support Services	397	5	402
		0203000	P.3 Rail Transport	-	109,170	109,170
		0204000	P.4 Marine Transport	502	11,500	12,002
		0205000	P.5 Air Transport	4,378	3,985	8,363

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Vote		Programmes		Budget Ceilings(Kshs. Millions)		
Number	Details	Number	Details	Recurrent	Capital	Total
		0206000	P.6 Government Clearing Services	65	-	65
		0216000	P.7 Road Safety	451	300	751
1101	State Department for Environment and Natural Resources		<b>Total</b>	<b>14,616</b>	<b>11,680</b>	<b>26,296</b>
		1010000	P.1 General Administration, Planning and Support Services	586	25	611
		1011000	P.2 Environment and Natural Resources Management and Protection	12,214	7,435	19,649
		1012000	P.3 Meteorological Services	1,157	1,101	2,258
		1005000	P.5 Integrated Regional Development	659	3,119	3,778
1102	Ministry for Water and Regional Authorities		<b>Total</b>	<b>4,162</b>	<b>42,122</b>	<b>46,284</b>
		1001000	P.1 General Administration, Planning and Support Services	616	190	806
		1004000	P.4 Water Resources Management	2,692	29,429	32,121
			P.3 Irrigation and Land Reclamation	854	12,503	13,357
1111	Ministry of Lands, Housing and Urban Development		<b>Total</b>	<b>4,269</b>	<b>25,172</b>	<b>29,441</b>
		0101000	P.1 Land Policy and Planning	2,602	4,772	7,374
		0102000	P.2 Housing Development and Human Settlement	458	8,259	8,717
		0103000	P.3 Government Buildings	328	1,232	1,560
		0104000	P.4 Coastline Infrastructure and Pedestrian Access	59	41	100
		0105000	P.5 Urban and Metropolitan Development	297	10,868	11,165
		0106000	P.6 General Administration Planning and Support Services	525	-	525
1121	Ministry of Information, Communication and Technology		<b>Total</b>	<b>2,930</b>	<b>8,288</b>	<b>11,218</b>
		0207000	P.1 General Administration Planning and Support Services	723	619	1,342
		0208000	P.2 Information And Communication Services	1,060	110	1,170
		0209000	P.3 Mass Media Skills Development	215	135	350
		0210000	P.4 ICT Infrastructure Development	932	7,424	8,356
1131	Ministry of Sports Culture and Arts		<b>Total</b>	<b>4,550</b>	<b>2,896</b>	<b>7,446</b>
		0901000	P.1 Sports	2,037	1,545	3,582
		0902000	P.2 Culture	1,016	608	1,624
		0903000	P.3 The Arts	630	130	760
		0904000	P.4 Library Services	555	590	1,145
		0905000	P.5 General Administration, Planning and Support Services	312	23	335
1141	Ministry of Labour Social Security and Services		<b>Total</b>	<b>9,321</b>	<b>15,583</b>	<b>24,904</b>
		0906000	P.1 Promotion of the Best Labour Practice	489	235	724
		0907000	P.2 Manpower Development, Employment and Productivity Management	633	421	1,054
		0908000	P.3 Social Development and Children Services	2,641	842	3,483
		0909000	P.4 National Social Safety Net	5,067	14,070	19,137
		0910000	P.5 General Administration Planning and Support Services	491	15	506
1151	Ministry of Energy and Petroleum		<b>Total</b>	<b>1,973</b>	<b>89,108</b>	<b>91,081</b>
		0211000	P.1 General Administration Planning and Support Services	289	300	589
		0212000	P.2 Power Generation	741	26,950	27,691
		0213000	P.3 Power Transmission and Distribution	766	59,073	59,839
		0214000	P.4 Alternative Energy Technologies	157	827	984
		0215000	P.5 Exploration and Distribution of Oil and Gas	20	1,958	1,978
1161	State Department for Agriculture		<b>Total</b>	<b>7,199</b>	<b>16,127</b>	<b>23,326</b>
		0107000	P.1 General Administration Planning and	1,307	1,900	3,207

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Vote		Programmes		Budget Ceilings(Kshs. Millions)		
Number	Details	Number	Details	Recurrent	Capital	Total
			Support Services			
		0108000	P.2 Crop Development and Management	5,715	14,227	19,942
		0109000	P.3 Agribusiness and Information Management	177	-	177
1162	State Department for Livestock		<b>Total</b>	<b>1,968</b>	<b>4,868</b>	<b>6,836</b>
		0112000	P.6 Livestock Resources Management and Development	1,968	4,868	6,836
1163	State Department for Fisheries		<b>Total</b>	<b>1,576</b>	<b>3,119</b>	<b>4,695</b>
		0111000	P.5 Fisheries Development and Management	1,576	3,119	4,695
1171	Ministry of Industrialization and Enterprise Development		<b>Total</b>	<b>2,487</b>	<b>5,261</b>	<b>7,748</b>
		0301000	P.1 General Administration Planning and Support Services	509	-	509
		0302000	P.2 Industrial Development and Investments	1,744	5,101	6,845
		0304000	P.4 Cooperative Development and Management	234	160	394
1181	State Department for Commerce and Tourism		<b>Total</b>	<b>2,683</b>	<b>3,267</b>	<b>5,950</b>
		0306000	P.2 Tourism Development and Promotion	1,246	1,091	2,337
		0307000	P.3 Trade Development and Promotion	809	455	1,264
		0308000	P.4 General Administration, Planning and Support Services	628	1,721	2,349
1182	State Department for East African Affairs		<b>Total</b>	<b>1,598</b>	<b>65</b>	<b>1,663</b>
		0305000	P.1 East African Affairs and Regional Integration	1,598	65	1,663
1191	Ministry of Mining		<b>Total</b>	<b>760</b>	<b>1,215</b>	<b>1,975</b>
		1007000	P.1 General Administration Planning and Support Services	341	100	441
		1008000	P.2 Resources Surveys and Remote Sensing	208	406	614
		1009000	P.3 Mineral Resources Management	211	709	920
1251	Office of the Attorney General and Department of Justice		<b>Total</b>	<b>4,011</b>	<b>494</b>	<b>4,505</b>
		0606000	P.1 Legal Services	1,558	45	1,603
		0607000	P.2 Governance, Legal Training and Constitutional Affairs	1,776	140	1,916
		0609000	P.4 General Administration, Planning and Support Services	677	309	986
1261	<b>The Judiciary</b>		<b>Total</b>	<b>12,860</b>	<b>4,449</b>	<b>17,309</b>
		0610000	P.1 Dispensation of Justice	12,860	4,449	17,309
1271	<b>Ethics and Anti-Corruption Commission</b>		<b>Total</b>	<b>2,691</b>	<b>100</b>	<b>2,791</b>
		0611000	P.1 Ethics and Anti-Corruption	2,691	100	2,791
1281	National Intelligence Service		<b>Total</b>	<b>23,846</b>	<b>-</b>	<b>23,846</b>
		0804000	P.1 National Security Intelligence	23,846	-	23,846
1291	<b>Office of the Director of Public Prosecutions</b>		<b>Total</b>	<b>1,953</b>	<b>150</b>	<b>2,103</b>
		0612000	P.1 Public Prosecution Services	1,953	150	2,103
1301	<b>Commission for the Implementation of the Constitution</b>		<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>
		0613000	P.1 Implementation of the Constitution	-	-	-
1311	Office of the Registrar of Political Parties		<b>Total</b>	<b>507</b>	<b>-</b>	<b>507</b>
		0614000	P.1 Registration, Regulation and Funding of Political Parties	507	-	507
1321	Witness Protection Agency		<b>Total</b>	<b>360</b>	<b>-</b>	<b>360</b>
		0615000	P.1 Witness Protection	360	-	360
2011	<b>Kenya National Human Rights Commission</b>		<b>Total</b>	<b>454</b>	<b>-</b>	<b>454</b>
		0616000	P.1 Protection and Promotion of Human Rights	454	-	454
2021	<b>National Land Commission</b>		<b>Total</b>	<b>781</b>	<b>300</b>	<b>1,081</b>
		0113000	P.1 General Administration, Planning and Support Services	300	250	550
			P.13 Land Administration and Management	164		164

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Vote		Programmes		Budget Ceilings(Kshs. Millions)		
Number	Details	Number	Details	Recurrent	Capital	Total
			P.14 National Land Management Information System	40	50	90
			P. 15 Land Disputes and Conflict Management	277	-	277
2031	Independent Electoral and Boundaries Commission		<b>Total</b>	<b>19,321</b>	<b>103</b>	<b>19,424</b>
		0617000	P.1 Management of Electoral Processes	19,321	103	19,424
		0618000	P.2 Delimitation of electoral boundaries	-	-	-
2041	Parliamentary Service Commission		<b>Total</b>	<b>10,258</b>	<b>3,200</b>	<b>13,458</b>
		0721000	P.1 National Legislation, Representation and Oversight	-	-	-
		0722000	P.2 Senate Affairs	6,532	-	6,532
		0723000	P.3 General Administration, Planning and Support Services	3,726	3,200	6,926
2042	The National Assembly		<b>Total</b>	<b>15,948</b>	<b>-</b>	<b>15,948</b>
		0721000	P.1 National Legislation, Representation and Oversight	15,948	-	15,948
2051	Judicial Service Commission		<b>Total</b>	<b>450</b>	<b>-</b>	<b>450</b>
		0619000	P.1 General Administration, Planning and Support Services	450	-	450
2061	The Commission on Revenue Allocation		<b>Total</b>	<b>341</b>	<b>-</b>	<b>341</b>
		0724000	P.1 Inter-Governmental Revenue and Financial Matters	341	-	341
2071	Public Service Commission		<b>Total</b>	<b>1,114</b>	<b>50</b>	<b>1,164</b>
		0725000	P.1 General Administration, Planning and Support Services	805	50	855
		0726000	P.2 Human Resource management and Development	187	-	187
		0727000	P.3 Governance and National Values	122	-	122
2081	Salaries and Remuneration Commission		<b>Total</b>	<b>543</b>	<b>-</b>	<b>543</b>
		0728000	P.1 Salaries and Remuneration Management	543	-	543
2091	Teachers Service Commission		<b>Total</b>	<b>191,194</b>	<b>100</b>	<b>191,294</b>
		0509000	P.1 Teacher Resource Management	185,754	-	185,754
		0510000	P.2 Governance and Standards	199	-	199
		0511000	P.3 General Administration, Planning and Support Services	5,241	100	5,341
2101	National Police Service Commission		<b>Total</b>	<b>430</b>	<b>-</b>	<b>430</b>
		0620000	P.1 National Police Service Human Resource Management	430	-	430
2111	Auditor General		<b>Total</b>	<b>3,850</b>	<b>300</b>	<b>4,150</b>
		0729000	P.1 Audit Services	3,850	300	4,150
2121	Controller of Budget		<b>Total</b>	<b>573</b>	<b>-</b>	<b>573</b>
		0730000	P.1 Control and Management of Public finances	573	-	573
2131	The Commission on Administrative Justice		<b>Total</b>	<b>474</b>	<b>-</b>	<b>474</b>
		0731000	P.1 Promotion of Administrative Justice	474	-	474
2141	National Gender and Equality Commission		<b>Total</b>	<b>458</b>	<b>-</b>	<b>458</b>
		0621000	P.1 Promotion of Gender Equality and Freedom from Discrimination	458	-	458
2151	Independent Police Oversight Authority		<b>Total</b>	<b>416</b>	<b>-</b>	<b>416</b>
		0622000	P.1 Policing Oversight Services	416	-	416
<b>Total Ministerial, Department and Agencies Expenditures</b>				<b>840,842</b>	<b>657,519</b>	<b>1,498,361</b>

Thank you.

**Hon. Deputy Speaker:** With the laying of that Report, I would like to order that a Supplementary Order Paper be prepared for this afternoon, incorporating the new changes.

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Next Order!

## BILL

### *Second Reading*

#### THE COMMUNITY LAND BILL, 2015

*(Hon. A.B. Duale on 1.3.2016)*

*(Resumption of Debate interrupted on 2.3.2016)*

**Hon. Deputy Speaker:** Hon. Twalib had a balance of a few minutes but he is not in. The first Member on my list is Hon. Nyokabi.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Deputy Speaker. I am happy to contribute to the Community Land Bill. I am happy because I have been given the opportunity to contribute after the Legal Aid Bill.

Mine is really to thank the House because we have come to a position where the National Assembly is considering the Community Land Bill. It has been a law long incoming in this country. We have waited for many days. There has been a lot of deliberation on the subject until it was elevated to a constitutional matter.

When we were writing the Constitution, 2010, there were many questions on land. Many questions on land have been asked since Independence. We may not have all the answers on questions on land but increasingly, the country has acknowledged that matters of land are difficult. There are matters we have to answer one after the other. There are matters that we have to consider as democracy deepens and as our country grows.

Land is a very important resource in our country. It determines who is poor, who is a supplier, who is a provider and who is going to be economically engaged in our country. During the discussions on this Bill, issues of adjudication of land came to the Floor. It is important for the country to continue to adjudicate parcels of land. Any person in this country who owns land should get a title for it, be it ancestral land, community land or whatever form of land. There ought to be a title that supports land ownership.

In these days of investment in land, I will bring an amendment to the Land Registration Act so that any person seeking to register land in their name should disclose how they bought that land.

Hon. Deputy Speaker, if you acquire land by buying it, it would be important to declare the sources of funding. There are many questions of land that are yet to be answered but today the country and House gets to answer the question on community land through the Bill that we are discussing.

There is a question of county governments being allowed by the Bill to own land on behalf of persons in their counties. A lot of trust is going to be put on county governments and politicians. It is important to point out that our history is not rosy. It is one of those in leadership taking land that belongs to the masses and appropriating it for himself or herself. We have a history in this country where community land has been identified as free or idle land awaiting a land grabber or a leader to go and identify it .



As we go on with the Community Land Bill, the trust that has been put in county governments is a new thinking by the country that county governments are elected. Our governors are elected in trust and they are going to hold land in trust for the persons who live in their counties. It is a very heavy and onerous duty. As we consider this Bill, we will be looking at the penalties that are going to be put in law for infringement of trust like what is going to be given to the county governments.

The history of the local governments that we had before has not been very good. I grew up in an estate that had fields where children could play some games that require a lot of space. By the time I was leaving secondary school, those fields were no longer available. Councilors then had acquired the fields and put up stone houses, apartments and residential areas. Nothing could be sadder than you taking up community land and use it for individual purposes. We will be saying that the law corrects some of those earlier injustices.

The chapter on offences is going to be important. Offences that relate to customary land practices where a community owns land need to be modernised. They need to be applied to the extent applicable under the new Constitution. Customs that do not allow women to own land, that community land ownership will have to be brought under the constitutional purview. All the laws that we pass now have to be in accordance with the Constitution. So, even as we say “community land,” we do not mean community men go and own the land. We mean that the community includes both men and women. Many issues that arise in community land affect both gender and we urge that the law applies to both gender. Most importantly as we look at customary practices, the new Constitution applies to those as well. Any person who commits offences within the community land tenure system is punished appropriately.

Let me conclude with an idea that we have had for a long time and which I hope Hon. Okoth will be willing to support.

While working at Kituo cha Sheria, where we represented poor people, including slum dwellers who were sometimes at the risk of being evicted, we held the view that instead of getting a title for land measuring 0.1 acres – sometimes of even 0.001 acreage – it would be better in the interest of economics moving the country forward, in an area as productive and as rich as Kibra, that people get a community land title. When they get a community land title, they are able to develop that land collectively. In this law, we will be willing to move an amendment that allows a slum such as the one we have in Nyeri, or even colonial villages, to have land that they have occupied over time. Instead of getting individual titles, they could get a community land title that allows them to develop that land.

In Kibra and many other urban slums, we found out that people do not refuse to build good houses for themselves. If people have security of tenure, they would build their own houses. Nobody loves to live in a shack or house with a leaking roof or house without a roof at all, or live on un-cemented floor. It is lack of land tenure and lack of predictability that affects them.

Hon. Deputy Speaker, I knew of a university student from Kibra who would carry his certificates in his bag every day. He would carry the little possession he had in life in a bag and walk around with it in the City, because it was not known when an eviction would be done by the people who own the land. The answer we thought would be applicable then was to allow communities to get land titles under the Community Land Bill. We will be looking to see whether the Community Land Bill, as drafted now, will allow communities like those ones to own a common title to begin to develop that land for economic purposes.

With those remarks, I beg to support this Bill and urge this House to pass it.

**Hon. Deputy Speaker:** I will use my discretion to allow Hon. Twalib to finish his five minutes though I had bypassed him. As you know, there are many issues related to land in his area. I will give him that latitude to air his views on this matter.

**Hon. Bady:** Ahsante sana, Mhe. Naibu wa Spika. Kama nilivyoeleza jana, jambo la ardhi likitajwa, takribani watu asilimia 80, watu wa Pwani tukiwemo, huguswa kwa njia moja au nyingine. Kipengee cha 31 kinaweka haki sawa ya kutambua akina mama na jamii za watu wanyonge tunaowaita kwa lugha ya kimombo “marginalized communities”.

Mhe. Naibu wa Spika, siku zinazofuata, wakati tutakapokua tukiupiga msasa Mswada huu, tutataka kurekebisha Vipengele vya 35 na 46 kwa sababu vinatoa mwanya kwa mabwenyenye kunyemelea ardhi ambazo ni za jamii inayokaa katika sehemu hizo.

Tumefurahishwa na Mswada huu, lakini pia nikiangalia, sisi tulipitisha Katiba ya Kenya, 2010 tukiihusisha Tume ya National Land Commission (NLC) na masuala ya ardhi. Kutoka kwenye ukurasa wa kwanza hadi wa mwisho wa Mswada huu, sijaona NLC ikihusishwa. Ni muhimu mchango wa tume hiyo uonekane ili waweze kutusaidia.

Mhe. Naibu wa Spika, kule kwetu Pwani, watu wanakaa miaka mingi, na ukimuuliza mtu anaishi wapi, atakuonyesha kaburi ya babu aliyemzaa babu yake. Kwa hivyo, Mswada huu utatufanya sisi kama viongozi kuwa daraja ya watu wetu na Serikali, na tutahakikisha kwamba Serikali imewapatia hati miliki.

Kama ulivyozungumza hapo awali, kule kwetu Pwani kuna sehemu inayoitwa Maganda. Kwa sasa wakazi katika sehemu hiyo wako na *allotment letter*, lakini watu hawajapatiwa hati miliki ilhali mradi mkubwa wa Serikali unapita huko. Watu hao wanaambiwa kwamba wanafanyiwa hesabu kulingana na nyumba zao, lakini si kulingana na ardhi ambayo wanamiliki pale. Kuidhinishwa kwa Mswada huu kutawapatia wenyeji hao fursa ya kusikika na waweze kumiliki ardhi hiyo.

Vile vile, tukiangalia sehemu za Aldina, Ganahola na sehemu nyingi za eneo Bunge langu, tutapata kwamba kuna matatizo kama hayo. Jambo zuri ambalo ningependa kulisema ni kuyataja yale mambo ambayo ndugu yangu Mhe. Wesley Korir aliyazungumzia jana. Wengi wa mabwenyenye wanahamia kwenye sehemu wanakoishi jamii. Unamwona mtu ako na karatasi ya hati miliki lakini ukimuliza mahali anakuja kumiliki hata hajui. Kwa hivyo, Mswada huu ukipita utapeana haki sawa na utapeana haki za zile jamii ambazo zinaishi katika sehemu zao zisikizwe kwa jambo lolote ambalo litafanyika. Ninasema hivi kwa sababu katika eneo langu la Jomvu na Pwani nzima, shida za ardhi zimekithiri. Ukiangalia kama Aldina, Tume ya Ardhi iliwaita wenyeji. Bw. Swazuri alisema ni lazima yule anayedai ardhi ni yake ajitokeze. Alishindwa mtu yule kujitokeza na mpaka sasa watu wale hawajapata hati miliki za ardhi. Kupitishwa kwa Mswada huu ni muhimu kwao ili wapate hati miliki za ardhi.

**Hon. Deputy Speaker:** Your time is up.

**Hon. Bady:** Mwisho kabisa, ninapongeza Kamati ambayo imefanya kazi hii. Wametutoa katika lindi la shida na waliokuwa wanajiita walala hoi sasa watakuwa walala hai.

Kwa hayo machache, Mhe. Naibu Spika, ninakushukuru kwa kunipatia nafasi hii ambayo ilikuwa imenipita lakini ukanirudisha kwa amri zako nimalize yale ambayo sikuwa nimemaliza jana.

Asante, Mhe. Naibu Spika.

**Hon. Deputy Speaker:** Let us have Hon. Janet Wanyama.

**Hon. (Ms.) Wanyama:** Asante sana, Mhe. Naibu Spika. Mimi pia ninaunga mkono Mswada huu kwa sababu ni wa maana sana, haswa kwa sehemu yangu ya Trans Nzoia. Tumekuwa na shida kwa sababu ya maskuota katika eneo hili. Vile mwenzangu amesema, tunao watu wanaosema kwamba mzazi wangu alizikwa hapa na hakuna ukweli kwamba hilo shamba linahusu mzazi wake au jamii yake. Kuna watu wengi ambao wanapata taabu katika nchi yetu ya Kenya. Mwenzangu Mhe. Wesley alipoongea jana, alitaja kwamba kuna shida katika Cherangany, eneo la Trans Nzoia. Watu wanakaa mahali ambapo walipelekwa na viongozi waliotaka kupita uchaguzi. Baada ya kupita, wanawaacha hapo wakiwa hawana mahali pa kukaa.

Mswada huu utasaidia watu wengi, wakiwemo watu kutoka jamii maskini na wanyonge. Ninakumbuka wakati moja kuna jamii ambazo zilihamishwa kutoka sehemu za Kiboroa kule Trans Nzoia na wengine hawana makao mpaka wakati huu. Tunataka haki itendeke kwa Wakenya wote. Wakiwa na makao yao, hawatabaki kuhangaika na usalama katika nchi yetu ya Kenya utakuwa mzuri. Sisi katika Bunge hili tumekuja hapa kwa ajili ya kuhudumia watu wetu kule nyumbani. Tukishirikiana pamoja na tuupitishie huu Mswada, utatusaidia katika mashinani na hatutatumia watu wetu kwa njia mbaya.

Wengine wameongea kuhusu vitambulisho. Lazima uwe na kitambulisho ndiposa upewe hati miliki ya ardhi. Kitambulisho chako kikiwa na dosari huenda ukaambiwa hawajui mahali unatoka. Sasa unaona kwamba lazima hawa watu wawe na vyeti kamili vya mashamba yao au shamba la jamii.

Inafaa wakati huu wa kutengeneza Bajeti tihakikishe kwamba Serikali imepata pesa ndiposa ishughulikie haya mambo ya mashamba ya jamii. Serikali ikitenga pesa fulani za kuhakikisha kwamba inakamilisha shida hizi, itatusaidia sisi kama jamii.

Pia, tuna wakimbizi wa ndani ambao walitolewa kutoka kwa mashamba yao. Iwapo huu Mswada utapitishwa, hata wao pia watapata haki zao. Watu wanauliza; iwapo tuko na wakimbizi wa ndani, nani alichukua mashamba yao? Hii ndio sababu tukipitisha Mswada huu, utatupatia nafasi nzuri ya kuhakikisha kwamba kila mtu anapata haki katika nchi yetu ya Kenya.

Kwa hayo machache, asante sana. Ninaunga mkono Mswada huu.

**Hon. (Ms.) Munene:** Thank you, Hon. Deputy Speaker, for giving me this opportunity to speak about the Community Land Bill. I support this Bill is because there are some people who are living in towns. They were born there, for example, *Majengo* people. When their fathers died they buried them in public cemetery. These people have nowhere to go. So, it is good that they are going to be given a title deed for community land so that they can build small huts on that land.

We have colonial villages in this country. We have them even in our place. These people live as a community, but there are some people who go there and threaten them that they are going to be evicted so that grabbers can take that land. We see that in towns and schools. The people in schools---

## ADJOURNMENT

**Hon. Deputy Speaker:** Hon. Mary Wambui, you will have a balance of nine minutes when this Motion next comes on the Floor. Hon. Anami and Hon. Mwadeghu, you will not have time now because each of you needs, at least, 10 minutes to prosecute what you need to say. This is still on. You can make your contribution when the Bill appears on the Order Paper.

Hon Members, we have come to the end of this sitting. Therefore, the House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.