

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 9th August 2016

The House met at 2.30 p.m.

[The Speaker (Hon. Muturi) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

DELEGATION FROM PARLIAMENT OF NAMIBIA

Hon. Members, I wish to introduce to you a delegation from the Parliament of Namibia, who are staff attached to various high level offices in that institution seated at the Speaker's Gallery. The delegation comprises the following:-

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| 1. Ms. Mirjam Katezerue Karongee | - | Senior Private Secretary, Clerk of Parliament and head of delegation |
| 2. Ms. TjeripoveKaujeua | - | Senior Private Secretary, Chief Legal Counsel |
| 3. Ms. Theresia Miquel | - | Senior Private Secretary, Deputy Clerk of Parliament |
| 4. Ms. Moringa Johanna Gaogoses | - | Private Secretary, Director - Specialized Services |
| 5. Ms. Rosa Ligola Iteta | - | Private Secretary, Director-General Services |
| 6. Ms. Sonia Heita | - | Private Secretary: SWAPO Office (Ruling Party) |

The delegation is in the country for an attachment programme to the Parliament of Kenya. They have been here since Monday, 8th August 2016 and will depart on Friday, 12th August 2016. I wish to welcome them to the National Assembly of the Republic of Kenya and wish them fruitful engagements.

I thank you.

(Applause)

PETITION

Hon. Speaker: Member for Kiharu.

(Hon. Kang'ata walked in)

You cannot be walking in. You ought to have been here. If you have a Petition, what are you doing there?

Hon. Kang'ata: I have no card.

Hon. Speaker: You cannot walk in without a card. How will you present your Petition? We better be serious.

(Hon. Kang'ata walked to the Dispatch Box)

Nobody is allowed to speak from there. Bring your card tomorrow when you remember. Next Order.

PAPERS LAID

Hon. Speaker: Hon. Members, this is just to encourage you to know that the cards that you have are not like those other gadgets that you may leave in your various places where you congregate either in mosques, churches or in---

Hon. Member: Bars!

Hon. Speaker: Now you get it.

(Laughter)

Please, make sure that the card is kept safely so that at no time should you come to the House without it. The Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Tuesday 9th August 2016:-

The Reports of the Auditor-General on the Financial Statements of the Constituencies Development Fund (CDF) in respect of the following constituencies for the year ended 30th June, 2015 and the Certificate therein:-

- (i) Wundanyi Constituency;
- (ii) Matuga Constituency;
- (iii) Lamu West Constituency;
- (iv) Rabai Constituency;
- (v) Keiyo North Constituency;
- (vi) Masinga Constituency;
- (vii) Mwatate Constituency;
- (viii) Nyali Constituency;
- (ix) Kilifi South Constituency; and,
- (x) Taveta Constituency.

Hon. Speaker, since last year, I have tabled reports of more than 200 constituencies. I hope Members are going to the Table Office to check what the Auditor-General is saying about their respective constituencies. It is very important.

Secondly, I have tabled several audited accounts of political parties. I do not know whether the Public Accounts Committee (PAC) has called and interrogated any of those political parties on their usage of the Political Parties Fund. It is important for the House to know that. Members of Parliament, please pick the audited accounts of your CDF from the Table Office so that you can apprise yourselves on what the Auditor-General is saying about the usage of funds.

NOTICE OF MOTION

ESTABLISHMENT OF POLICY ON ALCOHOL AND DRUG ABUSE REHABILITATION

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

THAT, aware that the use of illicit alcohol and abuse of drugs has reached alarming levels and caused untold suffering to individuals and families throughout the country; further aware that consumption of illicit brew has claimed over 7,000 lives in the last four years; alarmed that the long term impact is detrimental to the socio-economic development of the state; concerned that most rehabilitation centres are in private hands and thus quite expensive for the common Kenyan to afford, particularly the recovering former alcoholics who have benefitted from the recent crackdowns on illicit brews; noting that there is no specific policy that ensures that victims are offered affordable and accessible psychosocial support, rehabilitation and treatment for addiction; this House resolves that the Government immediately establishes a policy that would promote regional level public rehabilitation facilities accessible to both urban and rural citizens.

Hon. Speaker: Very well. Hon. Members, as we progress, allow me to recognize the presence of students and pupils from the following institutions: St. Mary's Sportsview Academy, Kasarani Constituency, Nairobi County; Holy Angels, Galole Constituency, Tana River County and Kithirune Primary School Central Imenti Constituency, Meru County. In the Public Gallery there is St. Jeniffer HSQS Primary School, Rangwe Constituency, Homa Bay County; Our Lady of Help of Christ School, Tigania West Constituency, Meru County; Holy Family Ol'Lesos Academy, Nandi Hills Constituency, Nandi County; Soka University from Japan and Tabaka Girls Primary School, South Mugirango, Kisii County.

They are all welcome to observe the proceedings of the National Assembly.

Hon. Speaker: Do I see an intervention from the Member for Malava?

Hon. Injendi: Sorry, I wanted to rise on Order No.7.

STATEMENT

STATUS OF LAND CONTROL BOARDS

Hon. Injendi: Thank you, Hon. Speaker. On 22nd June 2016, I raised a Question to the Cabinet Secretary (CS) of Lands regarding the status of land control boards in the country. This has not been listed from that time up to now. I am just wondering what could be happening with this statement.

Hon. Speaker: Is there any CS? I have never desired to be a CS even of lands. So what do you want me to do since I am not the CS? If you look at the relevant Standing Order, Questions are listed for responses by CSs every Tuesday. The persons who chair those sessions are the respective chairs of committees and the vice-chairs. Your Question should be directed to the Chairperson of the Departmental Committee on Lands so that you can discuss with them and find out whether it has been listed in the recent past. If so, find out what became of the response.

Hon. Injendi: Thank you for your guidance. I then direct this to the Chairman of Departmental Committee on Lands if he is here.

Hon. Speaker: In this particular instance, you and I can claim to have eyes to see. Can you see the Chair of that Committee or the Vice-Chair, Hon. ole Sakuda? It appears both of them have decided to take leave of absence. The matter would be directed to the Committee by the Clerk's Office. Clerk's Office, pursue the matter on behalf of the Member for Malava. Robert Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Speaker. I just wanted to bring to your attention an issue about the medical cover for Members of Parliament. For the last few---

Hon. Speaker: Hon. Pukose, please, that is not a matter for the plenary.

Hon. (Dr.) Pukose: It is a serious matter---

Hon. Speaker: Hon. Pukose, there are matters which the plenary can discuss, either in a *Kamukunji* or in a closed door meeting. However, do not make a matter of that nature one for the plenary to discuss. More importantly, I am aware of the administrative hitches that surround the issue. Perhaps, I could best explain it in a *Kamukunji*, but not in the plenary.

Let us move to the next Order.

BILL

First Reading

THE CONTEMPT OF COURT BILL

(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)

MOTIONS

ESTABLISHMENT OF SELECT COMMITTEE ON BETTING AND GAMBLING INDUSTRY

THAT, aware that the betting and gambling industry in Kenya has attracted a lot of public interest in the recent past, leading to its exponential growth; further aware that the services of betting companies like *Sportpesa*, *Elibet*, *Betway*, *Betin Kenya* and *mCHEZA*, among many others are now easily accessible via online and mobile platforms; deeply concerned that the industry is facing a myriad of challenges such as weak and insufficient regulatory and institutional frameworks, proliferation of betting and gambling activities and attendant negative societal impacts; also cognizant of claims of malpractices in some of the betting, gaming and casino businesses in form of tax evasion, tax avoidance, money laundering, manipulated disclosures and misrepresentation of information; appreciating the fact that the Government has a role in strengthening the licensing and collection of tax revenues from the industry while ensuring its sustainability; further noting that while the Fourth Schedule of the Constitution has devolved the functions of betting and gambling to the county governments, Articles 95(2), 189(2) and 191(1) and (2) of the Constitution obligate the national Government, through Parliament, to resolve issues of concern to the people and pass law to ensure uniformity of action across the country; mindful of the fact that

in several developed jurisdictions, betting and gaming activities are regulated in the same manner as other financial sectors such as insurance, banking and stock exchange with regard to disclosures of information, conflict of interest, enforcement of age limits of participants, audit, regular financial reporting, licensing and taxation; this House resolves to:

- (i) establish a Select Committee to inquire into all the activities of the betting, gaming and gambling industry with regard to tax compliance, claims of financial impropriety, identifying the common irregularities and lacunas in regulation, benefits to the society and the country; identify best practices from other jurisdictions on the management of proceeds from betting activities; and report its recommendations to the House, including and proposals for remedial measures and legislation, within a period of fourteen (14) days; and,
- (ii) approve the appointment of the following Members to the Select Committee:-
 1. The Hon. JakoyoMidiwo, MP - Co-Chairperson (Deputy Leader of the Minority Party)
 2. The Hon. Aden Duale, EGH, MP - Co-Chairperson (Leader of the Majority Party)
 3. The Hon. Thomas Mwadeghu, MP;
 4. The Hon. Kanini Kega, MP;
 5. The Hon. Roselinda SoipanTuya, MP;
 6. The Hon. Samuel K. Gichigi, MP;
 7. The Hon. Samuel Chepkong'a, MP;
 8. The Hon. Dorcas Kedogo, MP;
 9. The Hon. Daniel K. Maanzo, MP;
 10. The Hon. Benjamin Langat, MP; and,
 11. The Hon. Mary Keraa, MP.
 12. The Hon. Mohamed Bady Twalib, MP; and
 13. The Hon. Asman Kamama, MP.

(Hon. Midiwo on 4.8.2016)

(Debate concluded on 4.8.2016)

(Loud consultations)

Hon. Speaker: Could the two Members who have chosen to be in a meeting allow us to transact business? Hon. Kangogo, please take your seat.

Hon. Members, debate on this Motion was concluded on Thursday last week. It is on the establishment of a select committee to inquire into the betting and gambling industry in Kenya. This Motion was moved by Hon. JakoyoMidiwo.

Hon. Member, I told you that you are in the National Assembly and not the other place. I will put the Question. It is fair that Members listen.

(Question put and negatived)

Let us have the Deputy Leader of the Minority Party.

(Loud consultations)

Order Members! There will be order in the House.

Hon. Midiwo: Hon. Speaker, the House does not know what it has just done. I want to speak from my heart so that it is seen what it is. If we do not control or act on this issue of gambling, the House has already had its way. On a point of order, Hon. Speaker, it is good to hear me. I beg that you hear me as my colleagues.

(Loud consultations)

Hon. Speaker: Order, Members! It is fair that we respect the right of every Member to be heard.

Hon. Midiwo: Hon. Speaker, corruption is an interesting animal. How sad am I that this House does not want to deal with this animal! Fortunately for us, tonight in the House Business Committee (HBC), we will introduce the Bill sponsored by the Government of Kenya. I urge Members to propose amendments. Those people will not have a chance. We will abolish the issue of gambling. There is a Bill before the House and we will deal with it. The Bill did not adequately address the issues which were in this Motion. We will soon propose amendments to the Bill. You can see what it is. I hope Kenyans can see. There will be amendments tomorrow. I am sure those who are not for the amendments will also talk to whomever they are talking to, to kill them.

(Hon. Simba spoke off the microphone)

Hon. Simba Arati, I beg you to be a proper Member of Parliament. I am happy that it has gone the way it has because Members of Parliament have had their way. The country knows why and how.

Hon. Speaker: Hon. Members, I allowed Hon. Midiwo to make his statement because he was the Mover of the Motion. We do not need to debate that.

As you are aware, what Hon. Midiwo has said is true. Before the House, there is a Bill sponsored by the Leader of the Majority Party, which was published on 11th June, 2015, which seeks to address these issues. If you recall the genesis of this, Hon. Midiwo moved that the Bill be shelved so that the House could address itself on the many issues that he raised in this Motion. Hon. Midiwo has just said that the Bill will be tabled, which is the proper way.

There is nothing we can debate. We do not need to debate the sentiments. We cannot debate sentiments, Hon. Peter Kaluma. Let us just proceed with the business before the House.

APPROVAL OF THE MEDIATED VERSION OF THE WATER BILL, 2015

Hon. Speaker: The Vice-Chairperson of the Mediation Committee was Hon. Amina Abdalla.

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

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on the Water Bill (National Assembly Bill No.8 of 2014), laid on the

Table of the House on Thursday, 28th July 2016, and approves the Mediated Version of the Water Bill (National Assembly Bill No.8 of 2014).

This House passed the Water Bill on 7th July, 2015, after which the Senate passed the same with amendments on 31st March, 2016. The Committee of the National Assembly considered the Senate's amendments to the Bill on 7th June, 2016 and disagreed with the Senate on certain clauses.

A Mediation Committee was established and mediation took place on 22nd July, 2016. The following are the decisions that have been agreed to with regard to the contentious clause: The first contentious clause was the fact that the Senate had added a definition to the word "wetlands" yet that word does not appear in the Bill. As a Mediation Committee, we have agreed not to have the word "wetlands" defined in the Bill.

Secondly, on Clause 8, the Mediation Committee agreed that water for domestic use should be given priority under water works.

In Clause 8(b), the Mediation Committee agreed with the National Assembly that the review of the water strategy should remain at every three years and the overall change at every five years.

The Mediation Committee also agreed with the National Assembly that the powers to make regulations should remain with the Cabinet Secretary as stipulated in Clause 140 of the Bill.

In Clause 64, the National Assembly agreed and expanded the proposals from the Senate that members of the board of water works agencies should come from the basin that the water work is located.

In Clause 75, we disagreed with the Senate on forming monopolies of water services providers. The mediated version is that every county should establish as many water services providers as they wish.

In Clause 102, the Mediation Committee agreed with the National Assembly that we should not replace the word "licensee" with the word "water user" because it would prejudice the rights of the licensee.

In Clause 114, the Mediation Committee noted and agreed with the Senate. The Committee only added the words "registered community organisation". This is the clause that stipulates who the Water Trust Fund can loan money to. In the past, the loanees disappeared because they were not registered community groups. This version ensures that any group that is lent money by the Water Trust Fund is a registered community group so that the organisation does not lose money.

Hon. Speaker, I am very happy and proud of the mediated version of Clause 115. This is the clause in which the Senate had declined to have the Equalisation Fund and the county governments contributing to projects that are implemented by the Water Trust Fund. The mediated version retains that the Equalisation Fund money and county government money can be used to do joint ventures in the respective counties but with a rider that it can only be done when it has been only agreed between the respective recipient county or constituency that is to receive the Equalisation Fund. I am truly happy about this mediated version. Those were the contentious clauses and we finally agreed on everything. This is going to be the mediated version of the Bill. If passed today by my colleagues, it will be signed by the President.

I therefore, ask Hon. Njogu Barua who was the other Member of the Mediation Committee to second.

Hon. Speaker: Hon. Member for Gichugu.

Hon. Barua: Thank you, Hon. Speaker for this opportunity to second this Bill. This is a mediated version of the Water Bill, 2014. As the Chair of the Departmental Committee on Environmental and Natural Resources has stipulated, the Water Bill was passed by this House in July, 2015 and passed to the Senate for concurrence and a few issues emerged. We did not have major differences with the Senate for the first time. The differences between National Assembly and the Senate were not really major. Water is very important for life. In fact, there is a saying that: “Water is life.” Both animals and plants cannot actually survive without water.

Hon. Speaker, this Bill is very important because even internationally, if you look at the Sustainable Development Goals (SDGs) which have been passed by the United Nations, goal number six is clean water and sanitation by 2030. That is when the SDGs will expire and we hope we shall have achieved the initiative to supply clean water and clean sanitation to majority of Kenyans.

Hon. Speaker, some of the issues were just on definitions. One of the issues that were clarified very easily was the fact that some terminologies like “wetlands” were used yet they were not defined. We made an attempt to have them defined so that the body of the Bill and page on definitions were consistent. So, that was clarified and there were no major difficulties between us and the Senate.

There was also an element of consistency. For instance, there was reference to Environmental Management and Co-ordination Act of 2015. In essence, what was referred to was Environmental Management and Co-ordination Act of 1999 because it is the one which was applicable. These are some of the things that we ironed out very quickly and the Bill is now okay.

Hon. Speaker, it is very important to note that one of the issues which our Committee had a problem with was monopolies of water providers in counties. The Senate had proposed that we have single water services providers per county. We did not feel it was necessary and we thought it was actually restrictive and we wanted to open up opportunities to everybody who has capacity to supply water in a competent manner to do it. This was clearly and easily solved and the issue of monopoly was removed. Right now, many more players can actually participate in water service provision.

Hon. Speaker, there was a very important issue of the Water Trust Fund. Previously it could extend their loans or grants to non-registered organisations. This is what was clarified in the Mediation Committee. It is important to say that right now, the current version of the Mediated Bill, the Water Trust Fund can only deal with registered community organisations. What does it imply? It implies that in case of loans, there would be actually a higher repayment rate and somebody would be taken to account in case of defaulting. Previously, this was not happening and money used to be loaned to non-registered organisations and follow up was actually a problem. I would like to support this mediated version and I would like to second it.

Before I wind up, I would like to make a comment. This morning I was seated with Hon. Chrisantus Wamalwa who is actually in the House. There was something going round in the social media saying that he is in Rio enjoying himself. I want to confirm to the world that he is in Kenya and he is here with us.

I second.

(Loud consultations)

Hon. Speaker: Hon. Wanga, just remain where you are. The two Members from Homa Bay County, you have forgotten these things very fast.

(Question proposed)

Hon. Maanzo: Thank you, Hon. Speaker for giving me an opportunity to contribute to this very important matter in relation to water.

Hon. Speaker, legislation on water in this country has been wanting. The management of water generally in the country has serious issues from the national level up to the county level. The laws we have are unclear as far as how management of water is to serve the people as per the Constitution. As per the new Constitution, part of water management is done at the county level and part of it is at the national level. There is great need for the House to balance what is happening in the counties and nationally.

In Makueni Constituency which I serve and represent, water is still a very serious issue despite devolution and efforts by the national Government to supply clean water for that matter. Severally, in this House we have talked about the cleanliness of Athi River which passes through several constituencies in Kenya from Nairobi to Malindi. It also goes through my constituency and at times we have issues when the water is polluted. These are some of the issues which need to come out clearly so that Kenyans, animals and any other users are provided with clean water. I really want to support the Chair on this matter of mediation so that we can get the best law to serve the people of Kenya in water related matters.

Thank you.

Hon. Speaker: Member for Chuka/Igambang'ombe.

Hon. Njuki: Thank you, Hon. Speaker. I wish to support this mediation version of the Water Bill.

Hon. Speaker, matters of water in Kenya today are very pertinent. The issue that was raised in the mediated version and previous Bills was not really a hindrance as such. It is just a question of agreeing on a few things. I think it is only fair we support this mediated version.

Hon. Speaker, some areas that are not covered by the Water Trust Fund have also been taken care of in this mediated version.

Hon. Speaker, I wish to support.

Hon. Speaker: Leader of the Minority Party.

Hon. Nyenze: I want to congratulate the Mediation Committee. This Report was prepared in line with Article 115 of the Constitution read together with the National Assembly Standing Order No. 149 and the Senate Standing Order No. 154.

Hon. Speaker, it is good that the Committee accepted the several amendments that introduced geo-referencing of water resources which are used in monitoring and evaluation. As per the Constitution, every Kenyan is entitled to enough clean water. I am very happy that this Committee considered Clauses 73 and 74 which used the word "licensed" instead of "accredited." "Licensed" is a common word in the statutes and, therefore, more appropriate instead of "accredited".

Hon. Speaker, what does right to water and sanitation mean? The right to water guarantees everybody adequate clean water. That is what we lack in most parts of the country especially those of us who come from the dry parts or arid and semi-arid areas of this country, for example, Northern Eastern, Lower Eastern, some parts of the Coast and Rift Valley. These are areas where in my opinion, the county governments should provide a lot of water for

drinking, their livestock and irrigation. The right to water and sanitation is guided by a set of common principles that are grounded in widely ratified human rights treaties. There should never be discrimination. I am surprised when people talk about misuse of public funds. In many counties, we have noted that benchmarking trips consume so much money which should be channelled to provision of water to citizens of those counties. These are good points that this Mediation Committee has come up with and because there are not many differences, I support.

Thank you.

Hon. Speaker: Member of Parliament for Njoro.

Hon. J.K. Ng'ang'a: Thank you, Hon. Speaker. I rise to support this Motion. As we try to find solutions to water crises in our major towns, I hope you will agree with me that the Government spends a lot of money to construct dams and drilling boreholes. It would be much easier to revisit this issue and find a long-lasting solution through our water catchment areas. If our water catchment areas are well managed and protected, we will save a lot of money we use to provide water to *wananchi*. Water catchment areas are not well protected. Our water catchment areas are diminishing and those left are not well protected. How much money should be spent in drilling boreholes and constructing dams? We should find a long-lasting solution by making sure that Kenyans have enough water so that areas like Ukambani and North Eastern can have enough water for irrigation. We should think about our future generations.

I support.

Hon. Speaker: Hon. Members, I want to remind the House that if you have not looked at the mediated version of this Bill, you may find yourself discussing the things that you debated before the Bill went to the Senate. We are not discussing general things. We are dealing with the mediated version. If you have not seen the mediated version, you are unlikely to add value to the debate. I will be keenly listening and if I find you discussing things such as water is life, I might have to stop you. You will not be adding any value. It is true that water is life and it is a good thing to say but we are only concerned with the mediated version of the Bill.

I want to recognise, in the Speaker's Gallery, pupils and teachers from Tabaka Primary School from South Mugirango Constituency, Kisii County. You are welcome to observe proceedings of the National Assembly.

Hon. Speaker: Member for Kiminini.

Hon. Wakhungu: Thank you, Hon. Speaker. As I rise to support the mediated version of the Water Bill, I want to confirm that I am not in Rio but in Kenya. I never went to Rio. During the weekend, I was in Kitale with my constituents during the circumcision ceremonies in line with the Bukusu culture. There are allegations that we were bought tickets by Parliament with money meant for athletics to go and enjoy in Rio. This is the work of my political detractors and enemies. They will not succeed. I am a family person with values and more importantly, I am a practising catholic.

It is true that in line with our Standing Orders, we can only debate on matters that were mediated. The mediation was on consistency and to have it aligned with the Environmental Management and Coordination Act. There was also clarification of some definitions. This is because the original version did not define the terminologies used. I want to thank the Senate for adding value as far as this Bill is concerned.

I support the Motion. I am in Kenya.

Hon. Speaker: Member for Turkana, Hon. (Ms.) Joyce Akai.

Hon. (Ms.) Emanikor: Thank you, Hon. Speaker. I rise to support the mediated version of the Water Bill, 2015. As a Member of the Committee, I understand how widely consultative

the process was. The mediation has synchronised the Bill with the Constitution. It is a long awaited Bill which has taken close to two years. There is a lot of anxiety in the water industry among the stakeholders, the Ministry and other people. We are happy that we are finally there.

Hon. Speaker: Member of Parliament for Shinyalu.

Hon. Anami: Thank you, Hon. Speaker. At the outset, I would like to support the mediated version of the Water Bill. Through the mediation, we have been able to safeguard major reforms undertaken in the water sector during the 2003 reforms. The mediated version also enhances public participation which is an important safeguard.

Partnership and the process of managing water resources is very critical especially through the devolved system because in the devolved arrangement of Government, we have water resources shared between counties. The mediated version of the Water Bill safeguards this, which is a good reason for us to support it.

It is important for us to fast track this Motion because as we speak, the principle of equitable distribution of resources affects this sector. For a long time, we have talked about distributing water to every home, and with the enactment of this law, the Government should spearhead and fast track its implementation to ensure that is done.

With those few remarks, I support.

Hon. Speaker: Member of Parliament for Seme.

Hon. (Dr.) Nyikal: Thank you, Hon. Speaker for giving the opportunity to contribute to this Motion. I support the mediated version because it recognises devolution.

Clause 8 of the mediated version introduces a consultation process between the national Government and the county governments because as much as the national Government will put up the water works, they must eventually be distributed and consumed at the county level. There is now a provision for that.

If you look at Clause 8(b) where we are talking of the national strategy, there is provision under Clause 3(c) that there is consultation between the national Government and the county governments. Throughout the system, it realises we have a devolved system. I like this because people tend to think that there are certain functions that cannot work if devolved. The truth is that we have not gone in a systematic manner to link the national with the county systems. That is what the mediation has, in my view, intended to do. It carefully looks at the impact at the county level. That is even if it is storage works or strategy. That is extremely important. If we could do that with all other functions that are devolved, we would go a long way.

I must take this opportunity to appreciate, like everybody has said, that the Senate seems to be doing an extremely good work now. I know you did not want us to talk about “water is life,” but you know for me and with the students at the gallery, I must explain why water is life. All living things, plants and animals including human beings, are alive because of biochemical reactions that occur in the body. All those reactions can only occur in aqueous solutions, in water solutions. That is because they do not take place in a dry form. It is important to know that the human body is 70 per cent water.

With that digression, I support this mediated version of the Water Bill.

Hon. Speaker: Hon. Member for Muhoroni, there is some little water and sugarcane. Maybe that helps you to support the mediated version of the Water Bill, 2015.

Hon. Oyoo: Thank you so much, Hon. Speaker for recognising me.

From the outset, I thank the Departmental Committee on Environment and Natural Resources that deliberated this issue after the Senate went through it. They have looked at the Bill. I thank the Senate for coming up with clarity. They have given clarity to some aspects of the

Bill, like the appointment of the Director-General and where they have commented about the community people. It is a Bill that will go a long way to improve its intended purpose; addressing the plight of the common people.

Because water is now a devolved function, I urge the local authorities or county governments to wake up. After the national Government has done well in making sure electricity is provided to schools, the devolved governments should try and compete to make sure they augment by providing water in every school and public amenities where the Jubilee Government has provided electricity. This will go a long way to improve the plight of the many disturbed and downtrodden members of the public.

I support. Thank you, Hon. Speaker.

Hon. Speaker: The Mover to reply.

Hon. (Ms.) Abdalla: Thank you, Hon. Speaker.

I thank all my colleagues who supported this mediated version of the Water Bill. The process that this Bill has gone through is such that devolution has been very well respected. Even the institutions you could have had doubts on have been really streamlined to ensure that we respect the fact that water services and sanitation have been devolved.

I take this opportunity to thank your office for the support it has given to my committee on this by providing us with technical assistance. I would like to thank the Ministry of Environment, Water and Natural Resources and its former Cabinet Secretary, Prof. Judy Wakhungu. Let me also thank the current Cabinet Secretary and his team for all the support offered, I am really happy today.

I beg to reply.

Hon. Speaker: Can somebody fish out the Leader of the Majority Party as we move to the next Order?

For reasons well understood both in our rules and clearly provided for in Article 121 of the Constitution, we will move to the next Order without putting the Question.

(Putting of the Question deferred)

THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

Hon. A.B. Duale: Sorry, Hon. Speaker. I thought the Chairman of the Departmental Committee on Energy, Communication and Information was to move.

I beg to move the following Motion:-

THAT, the Senate Amendments to the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) be now considered.

I concur with the Senate amendments to Clauses 2, 5, 6, 10, 12(3) and (4), 15, 16, 17 1(e)(ii), 45, 50, 51, 53, 58, 67, 60, 77, 86, 89, 100 and 107 and the Second Schedule of the Bill.

Following the Report of the Departmental Committee on Energy, Communication and Information, I rejected amendments to Clauses 12(1), 17(1)(e)(i) and 48 of the Bill.

The definitions of “local community” in Clause 2 are similar in both versions of the Bill. The effect of the Senate’s amendment is that it refers to people living in a sub-county as the “local community”. The definition as passed by the National Assembly refers to the local community and their geographical location as being a sub-county.

Clause 5 of the amendment seeks to provide specificity as to the timelines and the

medium through which a Cabinet Secretary shall publish a national policy on---(*inaudible*) petroleum operations. Of course, on Clauses 6, 10, 12, 15, 16 and 17 the Committee has given its reservations in concurring with the Senate.

If I go to where the Committee has differed, particularly in the Second Schedule, the effect of that amendment is to reword “best petroleum practices” so as to provide what these practices are. It should be intended at conserving petroleum by minimising and not maximising recovery of petroleum in a technically and economically sustainable manner.

Further, this amendment reduces the notification period from 48 to 24 hours within which a contractor shall be required to notify the authority, in writing, in the event of any emergency or major accident. The amendment places an obligation on the contractors to ensure that training and employment of marginalised groups is considered.

This amendment also seeks to remove the provisions of the occupation of a community land before the land is set apart. The areas which the House through the Committee rejects are not minor. They have agreed on the major amendments together. On the clauses where the Committee has disagreed with the Senate, we have no option but to form a mediation process. That is so that a more cohesive leaner group of both the Committee of the National Assembly and that of the Senate can later on relook at the amendments and agree and develop a common position for the House to approve a more mediated and agreed position.

I beg to move and ask the Chair of Departmental Committee on Energy, Communication and Information, Hon. Jamleck Kamau, to second.

Hon. Kamau: Hon. Speaker, I rise to second the Motion that the Senate amendments to the Petroleum (Exploration, Development and Production) Bill, National Assembly Bill No.44 of 2015 be now considered.

We sat as a Committee and considered the Senate amendments during the various sittings we had. The Committee’s decision was to accept and recommend rejections to some amendments based on some constitutional requirements and provisions of the National Assembly Standing Orders. As the Mover has enumerated, we recommended to the House to reject quite a number of clauses and we concurred with others.

In a nutshell, out of all the clauses we had, the Committee recommended to the House to reject four clauses: Clause 12(1), 17(1)(e)(i) Clause 48 and Clause 49. I will be explaining further the details of these clauses when we come to the Committee of the whole House.

I beg to second.

(Question proposed)

Hon. Speaker: Hon. Benson Makali Mulu.

Hon. Mulu: Thank you, Hon. Speaker. I rise also to support consideration of the Senate amendments. Listening to the Chair of the Committee and the Mover of the Motion, I must appreciate the input of the Senate to this important Bill. Just as the Chair said, the amendments were quite a number and only four were not agreed to by the Committee implying that there was value addition in terms of the Senate’s input. This is the spirit we want to encourage for both Chambers to adopt in looking at Bills. That we have only four clauses which will be presented to the Mediation Committee is important for this House. I support and request that those who will be Members of the Mediation Committee to help both Houses to resolve the four clauses so that this important Bill is passed.

Looking at what the Committee has rejected, they are important clauses. Once the Mediation Committee is formed, it should sort them out for the benefit of Kenyans.

I support consideration of the Senate amendments.

Hon. Barua: Thank you, Hon. Speaker. I want to take this opportunity to commend the Senate for the input, the National Assembly Committee for passing this Bill in this House and the comments that have arisen. The differences between the National Assembly and the Senate are few. That means that as we move on, there is more and greater concurrence between the Senate and the National Assembly.

With those few remarks, I support the Bill.

Hon. (Ms.) T.G. Ali: Thank you, Hon. Speaker. I also stand to support the Bill. The Bill on petroleum exploration and development is very important. I would also want to thank the Senate for their input.

Exploration of oil in this country is the in-thing now because there is quite a lot of information that many parts of this country have some petroleum deposits. It is important that we have a legislation that will ensure Kenyans benefit.

I stand to support.

Hon. Chanzu: Thank you, Hon. Speaker. I stand to support the way the amendments have been done. The Constitution we have in place now allows for consultations at all levels. This is one of the aspects where the working between the Senate and the National Assembly comes in handy because whatever we are trying to derive like the issue of exploration, development and production of petroleum is a national resource which is going to benefit all Kenyans irrespective of where they come from or wherever their role or status. So it is very important that this has been done the way it has been done. We commend the effort that has been put in.

Thank you, Hon. Speaker. I support.

Hon. Njuki: Thank you, Hon. Speaker, for the opportunity to contribute to the Senate amendments to the Petroleum (Exploration, Development and Production) Bill. The fact that these two Houses disagreed is not a show of non-consistence in the work of legislation. The Departmental Committee on Energy, Communication and Information which I serve saw it fit to have change in these four clauses that had issues. I believe that it is for the best of this nation because energy issues, as it were, are one of the biggest things that are going to be happening in Kenya for the next few years considering the fact that we have the target of 5,000 megawatts of energy. Therefore, there is need to ensure that legislation is well aligned to make sure that we serve Kenyans in the best capacity in this industry without opening loopholes that can bring inconsistencies in delivery of service to the people.

With those few remarks, I support the Senate amendments.

Hon. Speaker: I do not know which Member is called Temporary Card No.9. who is the next to contribute. Is that Hon. Kaluma? It is indicated as Temporary Card No.9

Hon. Kaluma: Hon. Speaker, I am shocked, but I had indicated before that this card has a problem.

I want to favourably agree with the mediated version of this particular Bill. If you look at Clause 12---

Hon. Speaker: Sorry, Hon. Kaluma. It is not yet mediated. It is likely to go to mediation. It is Senate amendments to the Bill which are being considered but of course, you may be right in the sense that after this, it will go to mediation.

Hon. Kaluma: Hon. Speaker, if you look at what we have in Clause 12, this body called Kenya Private Sector Alliance (KEPSA) is not statutory. It has no obligation to the public that is anchored in law. We have this tendency in our country of leaving important matters on national governance to these amorphous bodies called umbrella bodies. We have the Kenya Private Sector Alliance (KEPSA) and Association of Professionals for East Africa. Such bodies which ultimately if they do not perform properly, we have a situation where nobody can fall back on them.

So I agree with the Committee on the proposal that the kind of privilege or latitude being given to these bodies in the organisation and systems of these bodies be removed.

I am not satisfied with the proposed definition of “local community” in Clause 2. A constituency such as North Horr is just too big.

When you talk about a local community in terms of a sub-county within which the petroleum resource is to be found, you take it a bit too wide. I believe that when the matter goes to mediation, as it is likely to go that direction, these matters will be considered properly. The issue of sharing, which necessitates our definition of “local community”, should be thought through and answered by way of a proper legislative proposal. I am very happy with the Committee’s proposal in Clause 48. Petroleum, as a resource, is found both at the county and the national Government and they all have a stake in terms of its sharing. The minerals we are talking about, whether it is petroleum or otherwise, are in some land in a county somewhere. So, the interest of the county cannot be ignored. There is concern that when you have such an interface between the levels of governance the Cabinet Secretary can appoint so many people because they are the face of the entire system and processes. I pray that these thoughts go into mediation, as they are likely to, so that we can refine this matter. The issue of petroleum, which is very crucial, should have a proper legislative framework to anchor it. I am told that we will soon have some oil in Kisumu County. In South Nyanza where I come from, we mainly have gold and not petroleum products. We have a lot of it.

With those very many comments, I support.

Hon. Speaker: Member for Kiambu.

Hon. Njomo: Thank you, Hon. Speaker. I would like to support the amendments by the Senate on this Bill. These amendments seek to create an atmosphere where this business will be done transparently and where all the parties involved will have an opportunity to give their views. The inclusion of the Kenya Private Sector Alliance in this group will ensure that the views of businesspeople in Kenya are accommodated in whatever decisions are made in this petroleum industry. There has been no light in the way this business has been conducted in the past. By including other people who are not necessarily working for the Government, this area will be seen to have transparency. That is why I support this Motion. The inclusion of academicians from the country and people who are well versed in the matters of the petroleum industry will bring light into whatever is going to be discussed.

With those few remarks, I support.

Hon. Speaker: Let us have the mover, the Leader of the Majority Party, to reply.

Hon. A.B. Duale: Thank you, Hon. Speaker. As I reply, I wish to remind members that the four areas which the Committee has disagreed with the Senate are Clauses 12 (1), 17(1) (e) (i), 48 and 49 of the Bill. The Committee has agreed with the rest of the other Senate amendments. I beg to reply.

Hon. Speaker: Hon. Members, I have confirmed that I can put the Question.

(Question put and agreed to)

Hon. Speaker: Next Order!

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL

THAT, the Senate Amendments to Fisheries Management and Development Bill (National Assembly Bill No. 20 of 2014) be now considered.

Hon. A.B. Duale: Thank you, Hon. Speaker. I do not see the Chair of the Departmental Committee on Agriculture, Livestock and Cooperatives.

Hon. Speaker: I thought I saw the Vice-Chair. There are members who find it very difficult to be in the Chamber for more than 15 minutes.

Hon. A.B. Duale: I am told he is also in Rio, like Hon. Chris Wamalwa.

(Laughter)

It is only the Committee Report that can help us on the amendments to this Bill because the Chair is supposed to second and tell us whether the Committee agrees or not.

Hon. Speaker, with your indulgence, maybe we can put this for tomorrow.

Hon. Speaker: That will mean that Order No.13 (ii) might also not happen. Can I get an indication about Order No.13 (i)?

Hon. A.B. Duale: Hon. Speaker, I beg you that we step down Order Nos.12 and 13 (ii). For Order No.13 (i), the Committee Chair is around.

Hon. Speaker: Hon. Members, I recognise students from Cheptalal Girls Secondary School from Konoin Constituency, Bomet County, and Tengecha Boys High School from Kericho County, who are seated in the Speaker's Gallery.

You are all welcome to observe the proceedings of the National Assembly.

Hon. Members, while the House goes into Committee of the whole House, the business appearing as Order No.13 (ii), which relates to the business under Order No.12, are both stepped down for proceeding tomorrow or any other day.

*(Motion on the Fisheries Management and Development Bill
and consideration of the same in Committee of the whole House deferred)*

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Speaker (Hon. Muturi) left the Chair]

IN THE COMMITTEE

(The Temporary Deputy Chairlady)

(Hon. (Ms.) Mbalu) took the Chair]

CONSIDERATION OF THE SENATE AMENDMENTS TO PETROLEUM
(EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Members, we are in the Committee of the whole House to consider the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015).

*Clause 2
Senate Amendment*

THAT, Clause 2 of the Bill be amended by deleting the definition of the words “local community” and substituting therefor the following new definition—
“local community” means a people living in a sub-county within which a petroleum resource under this Act is situated and are affected by the exploitation of that petroleum resource.”

Hon. Kamau: Hon. Temporary Deputy Chairlady, the justification for this amendment is simple. It refers to a people living in a sub-county which is connoted from the definition of the term “local community”.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me give the opportunity to the Member for Kitui Central.

Hon. Mulu: Hon. Temporary Deputy Chairlady, I support this amendment because as the Departmental Committee Chair has said, it is important to define the term “local community” to avoid a situation where people come from other communities to take advantage of the minerals.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Richard Tong’i, you have the Floor.

Hon. Tong’i: Hon. Temporary Deputy Chairlady, I support the amendment. I wanted to say what my Chairman has already said. I do not want to repeat it.

*(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)*

(Senate Amendment to Clause 2 agreed to)

*Clause 5
Senate Amendment*

THAT, Clause 5 of the Bill be amended in—
(a) sub-clause (1) by inserting the words “once in” immediately after the words “at least”;

(b) sub-clause (3) by inserting the words “on its website and in at least two newspapers of national circulation” immediately after the words “and publish”.

Hon. Kamau: Hon. Temporary Deputy Chairlady, Clause 5 of the original Bill that went to the Senate says the Cabinet Secretary (CS) shall develop and publish a national policy on upstream petroleum operations which shall be reviewed. We are adding the words “once in every five years”.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Chairman, please indicate to the House whether you are supporting or opposing the amendment.

Hon. Kamau: As a Committee, we are supporting this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us now have Hon. James Murgor.

Hon. Murgor: Thank you, Hon. Temporary Deputy Chairlady. I rise to support this amendment because the addition of the words “once in five years” gives a timeline.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Annah Nyokabi, you have the Floor.

Hon. (Ms.) Gathecha: Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendment. It is streamlining and simplifying the Bill to ensure that there is no confusion. I support.

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

(Senate Amendment to Clause 5 agreed to)

Clause 6

Senate Amendment

THAT, Clause 6 of the Bill be amended in sub-clause (1) by inserting the words “a national” immediately after the words “and review”.

(Question of the amendment proposed)

Hon. Kamau: Hon. Temporary Deputy Chairlady, I support this Senate amendment. The justification to this amendment is that it seeks to provide clarity that a national upstream petroleum strategy plan is supposed to be developed, published and reviewed by the CS.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Do you support the amendment?

Hon. Kamau: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me get one or two more Members to contribute on this amendment.

Member for North Horr, you have the Floor.

Hon. Ganya: Hon. Temporary Deputy Chairlady, I support the amendment. The Chair has given the necessary clarity we required.

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

(Senate Amendment to Clause 6 agreed to)

*Clause 10
Senate Amendment*

THAT, Clause 10 of the Bill be amended in sub-clause (1) by—

(a) inserting the following new paragraph immediately after paragraph (k)—

(ka) may, by order in writing and upon the recommendation by the Authority, order the cessation of any upstream petroleum operations where there has been a breach of any provision of this Act;

(b) inserting the words “on the recommendation of the Authority” immediately after the word “may” in the opening clause of paragraph (l);

Hon. Kamau: Hon. Temporary Deputy Chairlady, I support this Senate amendment. The amendment seeks to provide an additional function for the CS to include ordering in writing and upon recommendation of the Authority, the association of any upstream petroleum operations where there has been a breach of any provision of this Act. It further provides for the need for the CS to act on the recommendations of the upstream Petroleum Regulatory Authority.

Therefore, I support the amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Turkana, you have the Floor.

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendment because the addition enriches the clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, Hon. Nyikal.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairlady, I support this amendment because exploration of petroleum is important. Many countries have problems because they do not know what the people who are exploring are doing. Therefore, giving the CS authority over this function is extremely important.

I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us now have the Member for Kitui Central.

Hon. Mulu: Hon. Temporary Deputy Chairlady, I support the amendment. I am impressed with the demand that the Authority is the one to recommend to the CS before action is taken.

Thank you.

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

(Senate Amendment to Clause 10 agreed to)

*Clause 12
Senate Amendment*

THAT, Clause 12 of the Bill be amended—

(a) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (i)—

(j) one person nominated by the Kenya Private Sector Alliance (KEPSA) from their member organizations who has demonstrated competence and capacity in matters related to the petroleum sector.

(b) in sub-clause (3) by inserting the words “of the Authority” immediately after the words “the Director-General”;

(c) by inserting the following new sub-clause immediately after sub-clause (4)—

(5) The Advisory Committee shall, in co-opting members to sit in the Committee, ensure that the persons co-opted have the necessary knowledge and experience in the matters under consideration by the Committee.

Hon. Kamau: Hon. Temporary Deputy Chairlady, the Committee rejected this amendment and recommended to the House to reject it. The amendment seeks to create clarity by providing that the Director-General or the Authority be the secretary for the Advisory Committee. The amendment also seeks to include a representative of KEPSA in the Advisory Committee, and to ensure that the persons to be co-opted have the necessary expertise. However, noting that the Advisory Committee is an inter-ministerial Committee, KEPSA membership would create conflict of interest. In any case, there is a provision for co-option as and when need arises. Therefore, there will be no need for creating an extra clause to care for co-option.

As a Departmental Committee, we reject this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, Hon. Nyikal.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairlady, I concur with the decision of the Committee. It is also important to know that as much as we would like inclusion of stakeholders, KEPSA is a private organisation registered as an association. Therefore, to put it in law where there is the possibility that sooner or later other organisations may come and demand to be included would expose this law to unnecessary controversy.

Therefore, I support the Committee’s decision.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Keiyo North.

Hon. Murgor: Thank you, Hon. Temporary Deputy Chairlady. I rise to support the Committee on this matter because bringing in amorphous organisations into the Bill dilutes its functions.

I oppose the amendment.

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

(Senate Amendment to Clause 12 negatived)

*Clause 15
Senate Amendment*

THAT, Clause 15 of the Bill be amended in paragraph (o) by inserting the words “in consultation with the Competition Authority established under the Competition Act” immediately after the word “monitor”

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us hear from the Chair of the Committee.

Hon. Kamau: Hon. Temporary Deputy Chairlady, the amendment seeks to provide that the Authority should consult with the Competition Authority established under the Competition Act to monitor the trade practices of the contractors. We found this to be useful and therefore supported the Senate Amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I will give three other Members a chance to contribute. Let us start with the Member for Kwanza, Hon. Ferdinand Wanyonyi.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairlady, I support what the Committee has come up with. I think it is important for us to go with their recommendation.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Rose Mitaru, I cannot see your card. Let us have Hon. Wambui, the Member for Othaya.

Hon. (Ms.) Munene: Hon. Temporary Deputy Chairlady, I rise to support and agree with what the Committee has recommended because we know what is happening in this country.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Mitaru seems to be ready now. Press the intervention button. I do not know what has happened to your card.

Hon. (Ms.) Mitaru: Hon. Temporary Deputy Chairlady, I thank you for recognizing me. I support this amendment because our nation needs this law in order to help counties, families and children.

Therefore, we need to support it.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Unless, there is a Member who has a different opinion, I will now put the Question.

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

(Senate Amendment to Clause 15 agreed to)

*Clause 16
Senate Amendment*

THAT, Clause 16 of the Bill be amended in sub-clause (1) by inserting the words “the environment” immediately after the words “and to protect” appearing in paragraph (g).

Hon. Kamau: Hon. Temporary Deputy Chairlady, this amendment from the Senate seeks to include the protection of the environment. We saw this to be proper and agreed with it.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Please pronounce yourself.

Hon. Kamau: We support the amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Kitui Central, what is your take on this.

Hon. Mulu: Hon. Temporary Deputy Chairlady, I also support this amendment because it provides clarity to this particular clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Stephen Manoti, the Member for Bobasi.

Hon. Manoti: Hon. Temporary Deputy Chairlady, I also rise to support the amendment as proposed by the Committee.

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

(Senate Amendment to Clause 16 agreed to)

Clause 17

Senate Amendment

THAT, Clause 17 of the Bill be amended in sub-clause (1) by deleting paragraph (e) and substituting therefor the following new paragraph –

(e) five other members appointed by the Cabinet Secretary out of whom –

(i) one person shall be nominated by the Kenya Private Sector Alliance;

(ii) one person with knowledge and experience in matters relating to the petroleum from an institution of higher education.

Hon. Kamau: Hon. Temporary Deputy Chairlady, this particular clause deals with the appointment of the members of the board. However, the KEPSA membership as we had said earlier will create conflict of interest as the Authority is a regulator. Hence it will be regulating activities of the same members. Therefore, we found this to be a conflict of interest and rejected the amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I give the Member for Westlands, Hon. Timothy Wanyonyi the Floor.

Hon. Wetangula: Hon. Temporary Deputy Chairlady, I wanted to support the

amendment from the Chair's explanation. I also find that the inclusion of KEPSA will create conflict of interest. I feel this is not necessary.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): You feel it should be rejected. The Member for Turkana, Hon. Joyce Akai, what is your position on this?

Hon. (Ms.) Emanikor: Hon. Temporary Deputy Chairlady, I want to join the Chair in rejecting the representation from KEPSA. I am wondering what will happen to the representation from the institution of higher learning. I seek clarification from the Chair.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Chair, can you clarify that before I put the Question.

Hon. Kamau: Hon. Temporary Deputy Chairlady, looking at the Bill as presented to the Senate, it clearly stipulates the way the Board of Directors will be appointed. It says that the management of the Authority shall vest in a Board of Directors which shall consist of a Chairperson appointed by the President; the Principal Secretary in the Ministry for the time being responsible for Petroleum; the Principal Secretary, the National Treasury; the Director-General appointed under Section 23 of this Act and five other Members appointed by the Cabinet Secretary. So, that will remain.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): It will remain. I am sure the Member has understood your clarification. Hon. Members, please pronounce yourselves.

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

(Senate Amendment to Clause 17 negatived)

Clause 45

Senate Amendment

THAT, Clause 45 of the Bill be amended –

(a) in sub-clause (4) by inserting the words “on the website of the Ministry,” immediately after the words “of thirty days”;

(b) by inserting the following new sub-clause immediately after sub-clause (4) –

(4A) The Cabinet Secretary shall, in the notice published under subsection (4) –

(a) set out a statement of the details of the contractor with whom the Cabinet Secretary intends to enter into direct negotiations;

(b) invite any objections that a person may have with respect to the intended negotiations; and

(c) invite any interested party who may have an interest in the block to submit a bid with respect to that block.

(c) by inserting the following new sub-clauses immediately after sub-clause (5) –

(5A) The Cabinet Secretary shall inform all the bidders of the bidder to whom a block has been awarded.

(5B) The Cabinet Secretary shall, upon concluding negotiations

under this section, publish a notice on the website of the Ministry, in the *Gazette* and in at least two newspapers of national circulation, information with respect to the contractor to whom the Cabinet Secretary has awarded a block and the outcome of such negotiations.

Hon. Kamau: Hon. Temporary Deputy Chairlady, this amendment seeks to allow for transparency and access of information on negotiations between the Cabinet Secretary and contractors as regards petroleum agreements. The amendment also seeks to require the Cabinet Secretary to also publish the notice on the website of the Ministry in addition to Gazette and in, at least, two newspapers of national circulation.

We agreed and concurred with the Senate and therefore, we support this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Committee supports. Let me just give one Member this chance. He is Hon. James, the Member for Keiyo North.

Hon. Murgor: Hon. Temporary Deputy Chairlady, I rise to support this amendment because it brings in clarity on the publishing of a notice in the website or any other media. It is good.

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

(Senate Amendment to Clause 45 agreed to)

Clause 48

Senate Amendment

THAT, Clause 48 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “with the approval of the Cabinet Secretary” immediately after the words “contractor shall appoint”;
- (b) in sub-clause (2) by deleting the words “with the approval of the Cabinet Secretary” immediately after the words “another operator”;
- (c) by deleting sub-clause (3).

Hon. Kamau: Hon. Temporary Deputy Chairlady, the effect of the Senate Amendment to this Clause is to remove the need for approval by the Cabinet Secretary when a contractor is engaging an operator. A contractual relationship is only between the contractor and the operator.

We feel that there is need to retain the requirement for approval by the Cabinet Secretary for purposes of ensuring accountability and compliance with the requirements of the Act by the operator. In other words, if the amendment by the Senate goes through it means that a contractor can engage in any operation in disregard of whether the operator is qualified or not and the Cabinet Secretary can do nothing. Therefore, we rejected this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): You rejected as a Committee. I

now give Hon. Makali, the Member for Kitui Central a chance. Do you have a different opinion?

Hon. Mulu: Hon. Temporary Deputy Chairlady, I support the recommendation to reject the amendments as the Chair has said because I think it is important that even as we do these things, we ensure that there is accountability and transparency. So, I support the rejection as recommended by the Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Without any contrary opinion, I will put the Question.

(Loud consultations)

Order, Members! I want you to be clear in the House. You know what it takes to vote. I, therefore, put the Question again.

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

(Senate Amendment to Clause 48 negatived)

Clause 49

Senate Amendment

THAT, Clause 49 of the Bill be amended in sub-clause (6) by deleting the word “ten” appearing immediately after the words “not less than” and substituting therefor the word “two”.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Chair.

Hon. Kamau: Hon. Temporary Deputy Chairlady, this amendment was a little bit interesting because it was very ambiguous. If you may allow me, Clause 49(6) reads as follows:-

“A person who conducts a non-exclusive exploration survey without being issued with a non-exclusive exploration permit by the Authority commits an offence and upon conviction shall be liable to a fine of not less than ten million shillings or to a term of imprisonment of not less than ten year or to both.”

Since it was not clear from the Senate amendment whether the amendment was to relate to the Kshs10 million or to the 10 years, we rejected it.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, Hon. Joyce Akai.

Hon. (Ms.) Emanikor: I support the Committee in rejecting the amendment because it is not clear.

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

(Senate Amendment to Clause 49 negatived)

Clause 50

Senate Amendment

THAT, Clause 50 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause –

(2) The Authority shall give access to information relating to non-exclusive exploration permits that have been issued under this Act to an applicant for such information and shall, for this purpose, avail such information–

- (a) for inspection by a person applying to inspect such information free of charge;
- (b) by supplying a copy to an applicant or, where such information is held by the Authority in electronic form, by submitting such information through electronic means upon payment of a reasonable fee to cover the costs of supplying the information; and
- (c) by publishing the information on its website and in such other manner as it may consider appropriate.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Chair.

Hon. Kamau: Hon. Temporary Deputy Chairlady, the effect of the amendment to Clause 50 is to further espouse provisions on access to information by persons applying to inspect information relating to non-exclusive exploration permits issued by the Authority. We found this to be a necessary and valuable amendment and, therefore, we concurred with the Senate. We support it.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Kwanza, do you support the Committee's decision?

Hon. F.K. Wanyonyi: In its wisdom, the Committee agreed with the amendment and, therefore, I support.

*(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)*

(Senate Amendment to Clause 50 agreed to)

*Clause 51**Senate Amendment*

THAT, Clause 51 of the Bill be amended –

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

(1) -

(1A) The provisions of section 50(2) shall apply with respect to operational permits under subsection (1).

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

(7) –

(7A) The Authority shall, in carrying out public participation under subsection (7)–

(a) be guided by the principles of citizen participation in counties set out under section 87 of the County Governments Act; and

(b) conduct the public participation through such means as may be necessary to ensure that the citizens within the respective county and the relevant stakeholders–

(i) are informed of any decision to be undertaken under this Act which affects them;

(ii) have sufficient notice of any decisions to be made or permits to be issued which may affect them; and

(iii) have an opportunity to obtain information with respect to any permit issued or decision made under sub-paragraph

(i) or to submit their concerns or any information that they may have with respect to the issue under consideration;

(c) conduct the public participation through such for a as may be necessary for effective public participation under paragraph (b) including the structures for citizen participation established by a county government pursuant to section 91 of the County Governments Act;

(d) publish any notices required for the purpose of informing the public through such forums including at least one newspaper of local circulation within the local community which is to be affected by the issue under consideration.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, Hon. Jamleck Kamau.

Hon. Kamau: Hon. Temporary Deputy Chairlady, this Senate amendment seeks to enhance the provisions on access to information and public participation by local communities in the process of reviewing and awarding permits to contractors. Indeed, this is very valuable. Therefore, the Committee agreed to support this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Kilome.

Hon. (Ms.) Muia: I support the Committee.

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

(Senate Amendment to Clause 51 agreed to)

Clause 53

Senate Amendment

THAT, Clause 53 of the Bill be amended –

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

(d) the taxes payable with respect to the transaction have been assessed.

(b) in sub-clause (9) by deleting the words “an exploration” appearing immediately after the words “or control of” and substituting therefor the word “a”;

(c) by inserting the following new sub-clause immediately after sub-clause (11) –

(12) A person who contravenes the provisions of this section commits an offence and on conviction, shall be liable to a fine of not less than ten million shillings or to imprisonment for a term of two years or to both.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Chair, you have the Floor.

Hon. Kamau: Hon. Temporary Deputy Chairlady, the Senate amendment to Clause 53 seeks to provide that the CS may permit a transfer by a contractor of an interest in a petroleum agreement where the taxes payable with respect to the transaction have been assessed. Further, it creates an offence for a person who contravenes the provisions of this section. Therefore, we found it necessary and the Committee supports this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Turkana, do you concur with the Committee or do you have a different opinion from the Chair’s position?

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Chairlady. I concur.

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

(Senate Amendment to Clause 53 agreed to)

*Clause 58
Senate Amendment*

THAT, Clause 58 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)–

(2A) Parliament shall, in carrying out its obligation under sub-section (2), undertake public participation.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, Hon. Chair.

Hon. Kamau: Hon. Temporary Deputy Chairlady, again this is a matter touching on public participation. The Senate amendment seeks to enhance the provisions on public

participation in the ratification process of the production sharing agreements by Parliament in line with the provisions of Article 118 of the Constitution. Indeed, we also found this to be valuable. As a Committee, we concurred with the Senate and, therefore, we support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Is there any Member with a different opinion? The Member for Kilome, you have the Floor.

Hon. (Ms.) Muia: I do not have a different opinion. I rise to support this amendment because of public participation.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us now have the Member for Mount Elgon.

Hon. Serut: Hon. Temporary Deputy Chairlady, on this issue of public participation, I think it is not defined how far the public should participate and how. In some of these pieces of legislation, it is good to qualify whether the participation is in writing or any other form.

Anybody can go to court and say there was no public participation and maybe one or two people attended. It becomes a contest. I do not know what the Chair has to say about this issue of public participation.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me give a minute to the Chair to clarify.

Hon. Kamau: Hon. Temporary Deputy Chairlady, indeed the provisions of the Constitution are clear on public participation. The essence of this amendment from the Senate is that once Parliament starts the process of ratification of a production sharing agreement, the public needs to be notified. If there is anybody with issues with people who will be given those agreements, they can raise them and Parliament will listen to them. I think it is a normal process of public participation undertaken by Parliament through Committees, which is quite in order.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you for the clarification to the Member.

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

(Senate amendment to Clause 58 agreed to)

Clause 60

Senate Amendment

THAT, Clause 60 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) –

(3) A person who contravenes the provisions of this section commits an offence and on conviction, shall be liable to a penalty of not less than ten million shillings or to imprisonment for a term of two years or to both.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Chair.

Hon. Kamau: Hon. Temporary Deputy Chairlady, this amendment from the Senate seeks to create an offence for a person who contravenes the provisions of this section relating to the need for a contractor to inform the Authority of any significant deviation or alteration of the terms and conditions under which a Field Development Plan has been submitted or approved as well as any significant alteration of facilities or use of facilities. This is a clean-up of the

provision. It is making it an offence for a contractor not to report any deviations. Therefore, the Committee found it good and supported it.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Westlands.

Hon. Wetangula: Hon. Temporary Deputy Chairlady, I support the amendment because when somebody contravenes the terms of the agreement or contract, there must be some penalties for that.

I support the amendment.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Order, Members! Hon. Members, you know the procedures of the House, especially the Members of the Committee.

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

(Senate Amendments to Clause 60 agreed to)

*Clause 77
Senate Amendment*

THAT, Clause 77 of the Bill be amended in sub-clause (1) by deleting the words “not be higher than at any other place” appearing immediately after the words “local content shall” in the proviso and substituting therefor the words “be at the prevailing market rate”.

Hon. Kamau: Hon. Temporary Deputy Chairlady, this amendment from the Senate provides that the cost of local content shall be at the prevailing market rate. The Bill that went to the Senate was ambiguous from our side because it talked about the cost not being higher than at any other place. Therefore, the Senate cleaned it up to ensure that the cost of the local content shall be at the prevailing market rate.

As a Committee, we agreed and we support the amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me get the position of the Member for Kwanza.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairlady, the clause was ambiguous. This was just to clean up the text. Given that there is a lot of corruption in this country, it is better to have the whole thing levelled out so that we do not have variations.

I support the amendment by the Committee.

*(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)*

(Senate Amendment to Clause 77 agreed to)

*Clause 86
Senate Amendment*

THAT, Clause 86 of the Bill be amended in sub-clause (2) by inserting the words “sea, forest, wildlife and marine” immediately after the words “lake, reservoir” appearing in paragraph (h).

Hon. Kamau: Hon. Temporary Deputy Chairlady, this clause deals with environmental compliance. The Senate amendment to Clause 86 seeks to provide that a contractor shall also prevent the pollution of sea, forest, wildlife and marine. In essence, there is an insertion of the words “sea, forest, wildlife and marine” in the Bill. The Committee found it to be quite in order and we support the amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Member for Othaya. Do you support or reject the Committee’s position?

Hon. (Ms.) Munene: Hon. Temporary Deputy Chairlady, I would like to support the amendment. It is good because our people will not get sick because of pollution.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I can see no one has a different opinion from the Committee’s.

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

(Senate Amendment to Clause 86 agreed to)

*Clause 89
Senate Amendment*

THAT, Clause 89 of the Bill be amended –

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clauses–

(1) A contractor shall not vent or flare natural gas in the course of the conduct of upstream petroleum operations except with the prior authorization of the Authority in consultation with the National Government agency responsible for environment and safety and any other National Government entity.

(1A) A contractor under sub-section (1) shall carry out the venting or flaring in accordance with the terms and conditions of the consent, existing laws and best petroleum industry practices.

(1B) Notwithstanding sub-section (1), the prior consent of the Authority shall not be required in the case of an emergency and where such venting or flaring is necessary to avert a disaster.

(1C) Where a contractor vents or flares under this section, such contractor shall –

- (a) ensure that the gas venting or flaring is kept at the lowest possible level;
- (b) inform the Authority of the carrying out of such venting or flaring and the circumstances requiring such action; and
- (c) submit to the Authority such information as the Authority may require with respect to such venting or flaring.

(b) in sub-clause (4) by deleting the word “five” appearing immediately after the words “not less than” and substituting therefor the word “ten”;

Hon. Kamau: Hon. Temporary Deputy Chairlady, Clause 89 deals with venting and flaring of natural gas. The Senate amendment seeks to provide that prior consent of the authority in consultation with the national Government agency responsible for the environment shall not be required in the case of an emergency and where such venting or flaring is necessary to avert a disaster.

The amendment also seeks to increase the penalty for a contractor who contravenes, fails or neglects to comply with the requirements of the section from a jail term of not less than five years to a jail term of not less than 10 years.

We concurred with this amendment. We support the Senate amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Seme, register your position either in support or rejection of the Committee’s position. You can use the Dispatch Box. There seems to be a problem with your microphone.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairlady, I support the position of the Committee. It is extremely important that we have very close monitoring and regulation because other countries have experienced grievous harm for ignoring that.

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

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

(Senate Amendment to Clause 89 agreed to)

*Clause 100
Senate Amendment*

THAT, Clause 100 of the Bill be amended in the proviso appearing immediately after sub-clause (2) (b) by –

(a) deleting the word “fifteen” appearing immediately after the words “applicant shall give” in the proviso and substituting therefor the word “thirty”;

(b) inserting the words “and through such other appropriate forum so as to ensure that the information is widely publicized within the local community in which the land exists” immediately after the words “nationwide circulation”.

Hon. Kamau: Hon. Temporary Deputy Chairlady, Clause 100 deals with the powers of entry to inspect land. The Senate amendment seeks to increase the period for which an applicant is required to give notice from 15 to 30 days. The notice can also be issued through other appropriate fora so as to ensure that the information is widely published within the local community in which the land exists. We also found this to be necessary. We concur and support the amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Member for Westlands.

Hon. Wetangula: Hon. Temporary Deputy Chairlady, the amendment is important because it provides a wider platform for people to express themselves or to access information. It is important that we support this amendment.

*(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)*

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

(Senate Amendment to Clause 100 agreed to)

Clause 102

Senate Amendment

THAT, Clause 102 of the Bill be amended in sub-clause (1) –

(a) by deleting the word “may” appearing immediately after the words “under section 100” in the introductory phrase and substituting therefor the word “shall”;

(b) by inserting the following new paragraph immediately after paragraph (b)–

(c) that any compensation payable under paragraph (a) or (b) shall be paid within a period of four months from the date of issuance of the consent and in full to the person entitled to such compensation.

Hon. Kamau: Hon. Temporary Deputy Chairlady, the Senate amendment to Clause 102 seeks to make it a requirement for an owner to consent in writing to the development of upstream petroleum operations. The amendment also makes it a requirement for compensation to be made within a period of four months from the date of issuance of the consent and in full to the person entitled to such compensation.

Given the fact that these are issues that we have had in Kenya with regard to compensation, we thought it was good to make it clear the duration in which somebody has to be compensated. We concurred with this and support the Senate amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me get a different opinion in support of the same from the Member for Mount Elgon. Let us have Hon. Serut.

Hon. Serut: Hon. Temporary Deputy Chairlady, I support that amendment. Previously, we had the compulsory acquisition. As Kenyans, we are moving away from compulsory acquisition to a situation where there must be negotiations between the owners of the land and the Government on the price at which the owner has to be compensated. I support this amendment because it gives the owner an upper hand before his or her land is acquired for any purpose.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Member for Kwanza.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairlady, I support this wholeheartedly. We had a lot of problems in the past where people would come to your land, you agree on the terms, conditions and design but it is open ended. The Committee has done well because we have a specific period in which this should be implemented. We have had cases where people complain that they have not been compensated for years. These cases go to court. It is good that you have now come up with a specific period. *Heko* to our team for coming up with this specific timeline.

*(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)*

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

(Senate Amendment to Clause 102 agreed to)

Clause 107

Senate Amendment

THAT, Clause 107 of the Bill be amended in Sub-Clause (1) by deleting the words “including forests, national parks, reserves and heritage sites” appearing immediately after the words “National Government Property”.

Hon. Kamau: Hon. Temporary Deputy Chairlady, Clause 107 of the Bill deals with upstream petroleum infrastructure along roads and railways. The import of this amendment is to exclude installation of upstream petroleum infrastructure in forests, national parks, reserves and heritage sites because they are of great importance to the country. We agreed with the Senate on this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Member of Parliament for Othaya.

Hon. (Ms.) Munene: Hon. Temporary Deputy Chairlady, I support.

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

(Senate Amendment to Clause 107 agreed to)

*Second Schedule
Senate Amendment*

THAT, the Model Production Sharing Contract set out in the Second Schedule to the Bill be amended in –

(a) Clause 2 in the definition of the term “best petroleum industry practices” by deleting the word “maximising” appearing immediately after the words “environment by” in paragraph (c) and substituting therefor the word “minimising”;

(b) Clause 16 by –

(i) deleting the word “material” appearing immediately after the words “any adverse” in Paragraph (6);

(ii) deleting the words “forty eight (48)” appearing immediately after the words “Authority within” in Paragraph (8) and substituting therefor the words “twenty four”;

(c) Clause 20 by inserting the following new paragraph immediately after Paragraph (3) –

(4) The contractor shall, in employing and providing training for Kenyans under this clause take into account the need to employ and train marginalised groups.

(d) Clause 26 by –

(i) deleting Paragraph (3);

(ii) in Paragraph (4) by inserting the words “in accordance with the Land Act” immediately after the words “the Government shall”;

Hon. Kamau: Hon. Temporary Deputy Chairlady, the amendment seeks to reword the definition of “best petroleum industry practices” to protect the environment by minimising the impact of upstream operations.

The amendment seeks to remove material test requirement so that all contractors are required to take reasonable measures to minimise any adverse impact and not adverse material impact.

Further, the amendment reduces the notification period from 48 hours to 24 hours within which a contractor shall be required to notify the Authority in writing in the event of any emergency or a major accident.

The amendment places an obligation on contractors to ensure the training of employment of marginalised groups. The amendment also seeks to remove the provision for occupation of community land before it is set apart.

The amendment provides that the Government shall in accordance with the Land Act grant or cause to be granted to the contractor, its contractors and sub-contractors such wayleaves, easements, temporary occupation or other permission. After careful considerations by the Committee, we concurred with the Senate.

(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)*

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

(Senate Amendment to the Second Schedule agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I now call upon the Mover to reply.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Senate Amendments to the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No.44 of 2015) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

SENATE AMENDMENTS TO THE PETROLEUM (EXPLORATION,

DEVELOPMENT AND PRODUCTION) BILL

Hon. (Ms.) Mbalu: Hon. Speaker, I beg to report that a Committee of the whole House has considered the Senate Amendments to the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No.44 of 2015) and approved the same with amendments.

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

I request Hon. Kamau to second.

Hon. Kamau: I graciously second the Motion for agreement.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): Let us have Hon. Wanyonyi.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, I participated in this amendment. We have rejected a number of proposals from the Senate. Are we going back to mediation? Some things were so obvious and I do not know why the Senate came up with wrong amendments. We will waste a lot of time if we go back to mediation. Does this Bill have a constitutional timeline?

The Temporary Deputy Speaker (Hon. Cheboi): Of course, when there is any difficulty, mediation is always the surest option.

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Speaker. We agreed with most Senate amendments because they added value in terms of aligning the Bill to the Constitution, access to information, improving areas on public participation and local content. The amendments seek to tame unscrupulous contractors who would otherwise abuse the provisions that were there before. The emotive issue of compensation has been dealt with well.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Wanyonyi, you have the Floor.

Hon. Wetangula: These amendments are very important because they address and clarify certain issues that might have escaped our attention, especially on public participation, which is a constitutional requirement. I think these amendments add value to this Bill.

I support these amendments.

The Temporary Deputy Speaker (Hon. Cheboi): Yes, Hon. Jamleck Kamau.

Hon. Kamau: I would like to thank Members for supporting the Committee's position. The Committee spent a number of hours looking at this, and I am happy that Members have concurred with our decisions and recommendations.

It is also important for me to thank the Senate. They have put a lot of value to the Water Bill, 2015. That includes some clean ups that had been left out. I am indebted to the Senate for their input into this Bill.

I also recognise that we only have a few more days before 27th August 2016. This is one of the constitutional Bills that require to be passed by this House and the Senate. I hope we will move with speed so that we finalise on it and make progress before 27th August.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. That should be the last. I would like to be sympathetic to Hon. Serut's case, by allowing him to contribute to this Bill.

Let us hear Hon. Serut.

Hon. Serut: Thank you, Hon. Temporary Deputy Speaker.

Allow me to thank the Senate and this House, especially the Chairman of the Departmental Committee on Energy, Communication and Information, for working very hard to ensure that the amendments made by Senate were agreed upon.

I urge those who will be nominated to the Select Committee to move with speed because of the number of days remaining to 27th August, 2016. Let them ensure the mediated version of the Bill is brought to this House next week or so and passed before 27th August, 2016.

Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. Since there is only one last request from Hon. (Dr.) Nyikal, I could give him an opportunity.

Hon. (Dr.) Nyikal, I realise you were a bit unfortunate this afternoon because your machine was not working well.

Hon. (Dr.) Nyikal: Yes. Thank you, Hon. Temporary Deputy Speaker for realising that.

I also must appreciate the work that has gone on in the Senate. Exploration and exploitation of petroleum has brought a lot of grief to many countries. If you look at the Senate amendments, you will find that they were really protecting the environment. You know what happened in Ogoniland. We are all aware of that. There has to be transparency in contracts and operations. We know countries have lost millions and billions of shillings, dollars or whatever because of that.

They were also looking at proper processes of acquisition. Many land owners have suffered for many years. That has been put in place. Generally, there has been very strict control. This is important at the time we are starting to utilise oil in our country and exploring for more. I hope the forthcoming negotiations will equally carry the sense of responsibility that we have seen here.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. That marks the end of that Motion.

I will not put the Question for obvious reasons. Therefore, that will be done at a later date.

(Putting of the Question deferred)

However, I will recognise pupils from Nduta Primary School in Homa Bay Town Constituency ably represented in this House by Hon. Kaluma.

They should feel welcome in the Gallery.

(Applause)

We will move on to the next Order.

BILL

Second Reading

THE PROCEEDS OF CRIME AND ANTI-MONEY
LAUNDERING (AMENDMENT) BILL

(Hon. A. B. Duale on 2.8.2016)

(Resumption of Debate interrupted on 2.8.2016)

The Temporary Deputy Speaker (Hon. Cheboi): On that one, the Hon. Leader of the Majority Party had done 15 minutes. So, you have the balance of your minutes.

Hon. A.B. Duale: *Off-record.*

The Temporary Deputy Speaker (Hon. Cheboi): I thought I was here. I thought you had 15 more minutes. I will check the records. You have 30 minutes.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker.

I started debate on the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No.64 of 2015) last week. The Government continues to enhance measures to curb and combat money laundering.

In that case, it is on December, 2009 when the Proceeds of Crime and Anti-Money Laundering Act was enacted. It came into effect in 28th June, 2010. This Act is the country's sole primary legal regime for combating money laundering and proceeds of crime. So, this Act provides a comprehensive legal framework for dealing with the vice. It concerns how to deal with the proceeds of crime and money laundering.

Money laundering, as you may be aware, is the process through which criminals disguise the origin of proceeds and legitimise their ill-gotten benefits of crime. The goal of many criminal acts is to generate profit for individuals or groups that carry out criminal activity; whether it is through corruption, terrorism, drug trafficking and, of course, through betting and lottery.

It was very unfortunate that my colleague, Hon. Jakoyo Midiwo lost the Party Sponsored Motion. But, I want to tell those institutions and individuals involved in betting and money laundering that your days are numbered. We will reintroduce the Bill and regulations. The death of that Motion should not make you celebrate. We will deal with you, whether you own billions of shillings. I am sure Members have their rights within the Standing Orders.

To the criminals, money laundering is a critical and important item that enables them to enjoy the profits they derive from their criminal activity without jeopardising their source. They hide the source, the trail and how they acquire that wealth. That is what we call "money laundering". Illegal movement of huge sums of resources within the financial sector globally is what we call "money laundering".

For this and other reasons, money laundering is considered a close cousin of corruption. If you are talking about friends and relatives, money laundering is a friend and cousin to corruption. It is a brother to terrorism. It is a nephew to drug trafficking and all those bad things.

(Applause)

That is why I am happy with the Kenya Revenue Authority (KRA) which is seeking to have a role in the management of the Integrated Financial Management Information System (IFMIS). I read this morning that they must be allowed to use IFMIS so that they can track the movement of money within the IFMIS of Government.

This law which was passed in 2009 created two key institutions. One of them is the Financial Reporting Centre and the other one is the Anti-Money Laundering Advisory Board (AMLAB). The amendments contained in this Bill are basically giving more powers to these institutions and strengthening them in their day-to-day operations.

The primary objective of the Financial Reporting Centre which had been created by this law in 2009 is to assist in the identification of the proceeds of crime, combat money laundering and the financing of terrorism. So, the Centre is supposed to monitor and do surveillance, on a 24-hour basis, on the movement of resources and money in all the financial institutions. This is from banks to FOREX bureaus, to Small and Medium-Sized Enterprises (SMEs) and in the stock exchange. That is a key function of the Financial Reporting Centre.

On the other hand, what is the role of the Anti-Money Laundering Advisory Board which is a creation of this law? That board is supposed to advise on a daily basis the Director of the Financial Reporting Centre on the performance on what his powers are under this Act.

Hon. Temporary Deputy Speaker, since this Act was operationalised in 2012, the Financial Reporting Centre is on a daily basis trying to put in place the required legal, regulatory and institutional framework to strengthen this law and make sure that they curb money laundering and financing of terrorism and drug-related financial aspects.

As the Government continues to enhance measures to curb and combat money laundering, there is a corresponding need and urge to strengthen the institutions that are mandated to tackle this vice. Since 2009, the Financial Reporting Centre and the Anti-Money Laundering Advisory Board have realised that the law, institutional framework and the regulatory framework are deficient. They are not adequate. The Government thought that if we do the necessary amendments, we will make sure that those gaps and deficiencies are addressed.

The Financial Action Task Force was created. It is universally recognised as an international standard institution to look at financial reporting centres globally. What is the role of the Financial Reporting Centre? It is charged with the responsibility of regulating and supervising all reporting institutions regarding the application of the law as was passed by Parliament.

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

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

Hon. Temporary Deputy Speaker, let me now go to the in depth of the clauses for Members to follow. The amendment contained under Clause 2 of this Bill seeks to enhance the powers of the Office of the Director of the Financial Reporting Centre. It does this by renaming it; giving it a new title of “Director-General”. The effect of this is to distinguish between the offices of the various directors within the Financial Reporting Centre and their boss. All of them are called “directors”. The Bill says that the person in charge or the CEO of the Financial Reporting Centre henceforth will be called “the Director-General”. This proposal is merely an operational amendment. It is contained in all the clauses, from clauses 2, 3, 6, 7, 9, 10, 12 all the way to Clause 17 of the Bill.

If you look at the amendment contained under Clause 4 of the Bill, fundamentally, it proposes to enhance the Financial Reporting Centre’s power to impose civil monetary penalties or fines to natural persons in the case of a CEO of a bank or in the case of a corporate body that breaches or fails to comply with any instruction, direction or rules issued. The Financial Reporting Centre can detect movement of money in one bank all the way to the Central Bank of Kenya (CBK). If they give instructions, directions or a certain rule and the bank, as a corporate

entity, does not comply with or the CEO of that bank does not comply, then Clause 4 proposes certain penalties and fines to be imposed.

This amendment further proposes to take stern administrative action including issuing of warnings to persons. They can issue a warning to a person or institution requiring the person or the institution to comply with a specific direction given by the Director-General. That is found under Clause 4 of the Bill.

The amendment contained under Clause 5 of this Bill seeks to facilitate consultation between the CS and the Anti-Money Laundering Advisory Board when making determination on the terms and conditions for persons appointed as Director or Deputy Director. So, Clause 5 is basically administrative. It provides for who becomes a Director in certain departments within the Financial Reporting Centre and how the Director-General is appointed. The CS will consult the board in making the determination on the appointment.

The amendment contained under Clause 8 seeks to enhance the responsibilities, functions and powers of the Director-General who is the CEO to include responsibility for the performance of that office.

Clause 11 seeks to enhance the operational independence of this Centre. It must be independent in terms of approving its terms and conditions of service and determination of its own staff by establishing--- The Centre may appoint officers necessary for the discharge. This is a very critical Centre. In fact, we must bring a further amendment that the people who will serve in this Centre must be vetted. They must be vetted because they are the custodians of a lot of information. They check on proceeds of ill-gotten wealth, corruption, terrorism and drug money. So, they must be given security of tenure and must enjoy some independence. They must be give security by our security arm of Government because the information they hold is very critical. We do not want them to lose their lives and leave their loved ones. So, Clause 11 is basically dealing with that. It is removing this institution, as a State institution, from the ambit of the State Corporation Act. It is not a normal parastatal but a very unique one. I am sure that is why this Government brought the amendment.

Clause 18 of the Bill proposes to enhance and provide clarity on the functions of the Anti-Money Laundering Advisory Board. This is basically on the board. The board shall, *inter alia*, advise the CS on policy, best practices that seek--- We expect the board to come up with the best practice globally and advise the CS on the best policies, practices and activities so as to help them identify and combat money laundering activities. The board is also under obligation to act as a forum in which the Centre, the reporting institutions and advisory boards can consult with one another on matters dealing with anti-money laundering issues.

As I conclude, I wish to assure Members that the proposals contained in this Bill and the Anti-Bribery Bill which was introduced last week in the House by the Government are part of the measures the President is taking to ensure that we seal all loopholes. They came up as a result of what happened in the infamous National Youth Service (NYS). How does Kshs791 million move from one bank to another, many law firms and houses being bought without detection? That is why we feel each and every bank must be ready to make full disclosure of the accounts their clients hold. It is not business as usual that you can have Kshs1 billion come into your account today. This is not only for businessmen but also for all of us. If we want Kenya to move in the right direction, you must account for each and every penny that comes into your account. These laws are not made to harass or intimidate genuine Kenyan businesspeople who make good money and enough resources from legitimate businesses. It is for those who want to make quick money through corruption, money laundering, terrorism and drug trafficking. I was shocked

yesterday when a drug trafficker was given a bond just because he is a Briton of a special family descent. We had a Kenyan called “Faisal” who was a poacher. He was jailed for life. All that time he was denied bail. The Akasha family are still in jail. Who is this magistrate who thinks that just because a whiteman who happens to be a son of So and So, and not like me, Hon. Kaluma and Hon. Gumbo, whose fathers and mothers are unknown in this country--- If you ask who Duale is, you might not know who he is because they are many. The father of the President, the father of the Opposition leader and many others can be known, but if you ask who my father is, nobody knows except villagers in Garissa, who may know that he was at one time a pastoralist.

This Bill is very important. We must know how money moves from one account to another. Kenyans who are doing legitimate business will have no problem with this Bill but the days of those who get involved in dirty money, and who use our economy, are numbered with the enactment of this law.

It is very rare for the Bill of the Leader of the Majority Party to be seconded by a member of the Opposition. However, because I sometimes look at expertise, I earlier on talked to the Chair of the Public Accounts Committee (PAC) to second my Bill. He is a very unique man. I served with him in the last Parliament. His IQ is very high. I told him that if he looks at the Memorandum and Objects of the Bill in five minutes, it is like he will have researched on the Bill.

I humbly ask Hon. Gumbo to second the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill 2015.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Before he seconds, allow me to appreciate and welcome students from Dongo Kundu Primary School from Malindi, Kilifi County, who are seated in the Speaker’s Gallery. *Karibuni sana katika Bunge letu la Kenya.*

Hon. Gumbo, you can now proceed and second.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker. I start by thanking my good friend, the Leader of the Majority Party, for giving me the opportunity to second the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill 2015.

This is an important Bill. Hon. Temporary Deputy Speaker, I sit with you in the PAC. You are aware that later this month and the first few days of September, our country will be privileged to host the first annual conference and Annual General Meeting of the African Organisation of Public Accounts Committee. This is an important conference which will bring together all the public accounts committees in the continent and all the sub-regional bodies; the East Africa Association of Public Accounts, the West Africa Association of Public Accounts and the Southern Africa Development Community Association of Public Accounts. The theme of this conference will be on how to curb illicit financial flows.

Why is it very important for us, as a country, a region and as a continent to curb illicit financial flows? It is important because estimates that are available both at the World Bank and at the International Financial Reporting Centre show that up to 50 billion dollars are lost in Africa annually through illicit financial flows and money laundering is a major source of illicit financial flows.

The main aim of this amendment is to give the Financial Reporting Centre operational independence. Why is this important? As it stands now, the Centre is no more than an appendage of the Central Bank of Kenya (CBK). That in itself is a weakness in dealing with money laundering. Why do I say so? If you look at the original Proceeds of Crime and Anti-Money Laundering Act, the so called “POCAMLA law”, you will find that the CBK, in the definitions

of “financial institution” and “reporting institution”, is both a financial and reporting institution. If the Financial Reporting Centre is to tackle money laundering, then it needs to delink itself, to some extent, operationally and in terms of its organisation from the CBK. It cannot be a department within the CBK. It may look like a contradiction to try to suggest that the CBK may, either unknowingly or even knowingly be looped into the money laundering ring. We saw what happened in the Goldenberg scandal.

Hon. Temporary Deputy Speaker, I sit with you in PAC and one of the concerns we have, for example, with the NYS Scandal is the fact that if the controls in the CBK, especially being the originating bank where most of the payments came from, were stringent, the scandal would perhaps not have escalated to the level that it did.

Therefore, we need to delink this Centre and give it operational independence because, unknown to many, money laundering is the major cause of inequality in our society. In fact, anything that breeds social inequity breeds tension within society. Seven years ago, I was invited in Tanzania. I was in the Republic of Tanzania as a member of the CDF Committee to share experiences with our brothers and sisters on the other side. On the sidelines, I was invited to give a talk at an engineering conference which was going on at that time. When I am outside the country, I treat my country with utmost respect. I keep any criticism I need to make of my country; I keep it until I come back to my country.

On that particular day, there was a report which showed that the total number of dollar millionaires in Kenya was twice the number of all the dollar millionaires in the rest of East Africa – Uganda, Tanzania, Rwanda and Burundi. On paper, it looks like it is a good thing until you unpackage it and look at what lies below. So, I made my presentation and termed it as one of the advances that Kenya had made having very many dollar millionaires in our midst. You cannot challenge somebody in their own household. When the master of ceremony, who was a Tanzanian, stood to speak, he said:-

“Yes, Eng. Gumbo, it may be true that Kenya has twice the number of dollar millionaires in East Africa. Indeed, Kenya has many wealthy people but I want to assure you that as we speak today, much as the wealthiest person in East Africa may be residing in Kenya, I could bet my last cent that the poorest person in East Africa also lives in Kenya.”

Hon. Temporary Deputy Speaker, that is not good statistics. Our Gross Domestic Product (GDP) is the largest in the East African region. We have the highest GDP per capita in the whole region. If we have the highest GDP and GDP per capita in East Africa, why do almost 42 per cent of our people live below the poverty line? It has to do with the fact that a lot of the wealth in this country is in the hands of a few people. There is absolutely nothing wrong with the wealth of the nation being in the hands of a few people if it was earned in a proper way. Most of the money in the hands of these few people has not been acquired in the right way.

Both you and I are Members of the Public Accounts Committee (PAC) and have seen what happened with the National Youth Service (NYS) scandal. A small company that was formed two months earlier was given a consultancy contract of Kshs200 million. Sometimes when we talk about these figures, they are just numbers, but I can tell you, as an engineer, that counting from one to a million can take you nothing less than 20 days. A small company was given a consultancy contract under the pretext of youth access to Government procurement. It is a good thing to be awarded a Kshs200 million contract. I have been a consultant for over quarter of a century and I know for a fact that a consultancy contract of US\$1 million and above is something that requires the highest level of technical and professional input. How these young

people came up with these kinds of required professional and technical skills to do a consultancy contract in the name of publicity beats logic.

Did these young people deserve this huge contract? They did not deserve it. Was the effort and skill that these young people expended in the contract commensurate with the reward? It was not. The net effect is that these young people, through conniving with some senior people in the Government who call the shots, were able to take out over Kshs200 million from public use and convert it literally to private use. If that does not contribute to inequality, then what does it do?

This Bill has come at the right time to strengthen the Financial Reporting Centre. Let us deal with all institutions within the financial flow cycle. I have seen the penalty of Kshs5 million being put for somebody who is found culpable of engaging in money laundering. The penalty should be more severe. Unless we stop this menace of money laundering, where a few people connive with some people in the Government to take from the economy money meant for public good and convert it to private use, we will leave more of our people behind. It is a known fact that if we leave more people behind, we will increase their chances of taking us down.

I second the Bill and wish to encourage my colleagues to look at how we can strengthen financial reporting in this country.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let me give you one minute to go on record to say that you second the Bill.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I wish to second the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2015.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The first one on my request list is the Member for Turkana County. So, the Floor goes to her.

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. It is long overdue. This country is suffering in terms of losing a lot of money through corrupt deals. We need to fast-track this Bill in order to salvage what we can. The Bill has created the Anti-Money Laundering Advisory Board in Clause 49 and the Financial Reporting Centre in Clause 21. The mandate of the Anti-Money Laundering Advisory Board is to analyse suspect transactions, monitor and regulate the cash flow. They have also been given the ability to confiscate and impose penalties, compile statistics and maintain databases and publish the information where it is needed. They will generally deal with non-compliance with the law on money laundering and other related crimes.

We know very well that through corruption and fraud, many public servants in Kenya have a lot of ill-gotten money. Some of this money has been siphoned out of Kenya and some is hidden in people's houses. People have dug big safes in their houses to put stolen money. Public servants have acquired a lot of assets within no time. Through devolution, public servants have acquired a lot of assets in less than three years in the counties. A lot of money is being transported by road and there are no checks. It is also being put in banks without any suspicion. I am happy that this Bill will take care of this. The Financial Reporting Centre can send information to law enforcers, intelligence agencies and supervisory agencies on the same.

What worries Kenyans and what has frustrated them is the fact that these criminals in money laundering and other crimes have taken advantage of corrupt individuals in the agencies which have been tasked by the Government to enforce the law. They have taken advantage of

corrupt investigators. This has greatly frustrated Kenyans who know what is happening yet they feel helpless. Reports are taken to these agencies and nothing is done. This is happening because corruption has permeated all these areas. The penalty for failure to comply or giving false information and obstructing inspection should be higher than what we have in the Bill. The Bill provides for either three years imprisonment or a Kshs1 million fine or both, for individuals and Kshs5 million for corporate entities. These penalties should be 10 times more because we are talking of people who are already handling billions of shillings.

With those few remarks, I wish to support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Member for Kwanza.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, I want to take this opportunity to support the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2015. Criminals in this country have gone scot free and we have been silent. The Seconder of this Motion, Hon. Gumbo, mentioned that this money goes to Tanzania and I agree with him. He gave a notion that Kenya has very few rich yet it is taken as one of the richest countries in the East African region. This is true because we have very hardworking people. We have people who are doing illegal businesses out there. You will find very rich people in Kenya yet the poorest of the poor are in the streets of Nairobi and elsewhere like Kitale.

This Bill is timely and we need to fast-track the process of tapping into the sources of this money. For example, a guy from nowhere becomes a millionaire all over a sudden. Then you find an automatic and fast change in their lifestyles. One wonders what has happened. You cannot run away from the fact that the person is doing illegal business, some of which is very embarrassing. We have had cases where Kenyans have been arrested in the Far East. I know cases where very innocent children have been lured into doing funny kind of business. In China, if one is caught doing money laundering, the sentence is very clear; it is death.

I know a relative who is in a Malaysia prison. We have tried to do everything we can to get her out, but it is impossible. She went there for studies, but because of the desire for money, she got involved in drug trafficking. The penalty is very simple; death. She is on death row. We do not know what to do and the Ministry of Foreign Affairs cannot intervene because that is their law.

In fact, when one is going to the airport, you should not carry a parcel without knowing what is inside. Somebody can request you to take it to a certain destination and innocently you carry it. For example, I may find my friend, Hon. Francis Nyenze, at the airport having been cheated to carry a parcel for someone. You should not take a parcel if you do not know its content. You can find yourself being involved in drug trafficking and then you are told you will get payment later. Those who succeed become rich overnight, but for those who do not, this is a warning. This is one of the Bills we should have passed at the beginning of this Parliament, so that we can sort this out.

People have suffered because of the desire of getting rich quickly. They end up being hanged. We had the Goldenberg scandal which involved money laundering which has been going round in circles. We should pass this Bill, so that those who are responsible for the loss of billions of shillings can be charged and imprisoned. Some of them are ailing, but the law should take its course. This country has had a lot of problems in the past. Recently, a Cabinet Secretary was involved in corrupt deals where money changed hands and we do not know what happened.

People should work hard for their money through sweat and not through the easy way. This Bill will curb corruption. The Financial Reporting Centre should be delinked completely from the Central Bank of Kenya, so that it can work independently and I think there is such a

proposal from the Mover. The staff in these institutions should be vetted, so that they are not corrupt.

Kenyans who are listening to me, please, do not take shortcuts. Let us work for our wealth. If you are paid Kshs10,000 or Kshs20 million, please, live within your means. I can see the composition of the board members and I have no objection. These are people of high caliber and have been vetted in their respective positions. We hope they will do a better job. The only problem I have is with the CEO. The IEBC has had problems with corruption. Some commissioners are alleged to have been involved in the “chickengate” saga and other deals. It hurts me. People should be patriotic and act in the interest of Kenyans when they are given these jobs. The advisory board consists of about 10 people and we can rely on them.

Lastly, I as I have mentioned, the role of the FRC should be de-linked from the CBK because it has its own issues. They might use staff from the CBK, but they should move away from the CBK premises so that they can track down the movement of money right from the source to the end. Nowadays, if one receives Kshs1 million, they should explain how they got it. One should explain whether they have sold a piece of land somewhere. Again, if you get a gift from someone, you should explain particularly from churches abroad.

A pastor came to me and told me that she wanted Kshs20 million. She explained that somebody was sending her the money from the United States of America (USA). Who can give you Kshs20 million just like that? That is money laundering. After getting the money, a man will come over and follow it up and that is how we are crippled. Let us be disciplined.

I support this Bill. I hope it will be passed and fast-tracked. I am in the Committee on Implementation and we should have it implemented before we go on recess.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the next on my request list is the Member for Nakuru Town East.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity. I support the amendments brought by the Leader of the Majority Party regarding the Anti-Money Laundering (Amendment) Bill.

This is an important issue which we need to consider as a country. Kenya is moving towards enhancing its statutes. The direction the Government has taken is important in giving confidence and showing the world that we are a nation, among other nations, which is against this kind of ill gotten money. It is true, as it has been said, that money laundering, if not well taken care of, can led to serious corruption issues which are going to have huge drastic and negative socio-economic effects to this country. As Hon. Duale puts it, the people upon whom responsibility has been bestowed should be vetted and take charge.

One of the issues that have always not been taken into consideration is the vetting process. This Bill intends to change the name from “Director” to “Director-General”. That will not even help so much if the individual is a person with integrity issues or wants to get rich fast. So, besides changing the name, we need to first of all understand that these people will be working in the FRC. They need to be properly vetted so that we can get people of good standing in the society who can protect our money. We have started many other institutions, for example, the National Transport and Safety Authority (NTSA) which has become a nightmare. We were talking of traffic police officers taking bribes, but now officers of the NTSA are the ones who are taking the biggest bribes. Another body was bestowed the responsibility of checking weights and measures on our roads. Again, they have become some of the worst people.

As we create more institutions, it is important that we do not create for the sake of it. We need to ask ourselves, as Parliamentarians, whether hefty fines are going to give us the results that we want or they are just going to enhance the bribes that these people are asking for. If we put a huge fine or penalty, will it result to better services and people wanting to avoid the practice or will it just lead to people asking for more bribes?

We need to have thorough vetting as has been said. You can see what is happening at the EACC. Just the other day, we were talking about the NYS money and the same EACC Chair is alleged to have received some money. Soon, just like our brother, Ngunyi Mutahi, he will say, "I will refund". Is that what we want? We must be very careful with what we are doing. I totally agree with the fines that have been proposed to try and stop this, but caution has been given of seven days to explain. It is also important for us to ensure that those who do clean business are not harassed. The Governor of the CBK needs to put some restrictions that you have to indicate where you have got your money from. If you are withdrawing, you have to indicate where you are taking the money.

People are now putting their money in their houses. This is a better measure. If you have Kshs20 million in your house and you have a house help, we should ask the house help to be very thorough. If you get that kind of money, pick some. If your house help picks a few shillings from your mattress account, where will you go? You have to come and tell us about the money. These people will not come and say that. So, we are asking house helps, wherever they are, if you get a lot of money in your employer's house, just help yourself so that you stop the boss from keeping his money in the house. At the same time, we need to be very careful, so that we do not allow people to keep money underneath their mattresses.

Regarding delinking FRC from the CBK, it might bring some challenges. The CBK is the overseer of commercial banks. If we are not careful, these people may not have enough teeth unless an amendment is done to the law and they can get information. We must be very careful not to deny them the opportunity to access information. Delinking them from CBK might bring some challenges.

With those few remarks, I support the amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Nyenze.

Hon. Nyenze: Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to support this very important Bill, which is very timely. Put simply, money laundering is converting criminal income into assets that cannot be traced. Money laundering is divided into three stages. The first stage is placement. Money that is laundered is placed in a country. The second stage is layering that income by trying to cover it up. The final stage is integration into the national economy. Money laundering and crimes such as terrorism are interconnected. You cannot separate the two because they go hand in hand. Money laundering exists and it has brought many countries to their knees.

This Bill will help us to combat tax evasion by companies. As Hon. Wanyonyi has said, you do not expect someone to send so much money to another person in a country without work done or some goods exchanged. Money cannot just come like that. I support this Bill because it will control those excesses.

Money laundering cripples economies of countries. It also creates artificial demand for housing and excesses. Most of the laundered money gets into real estate as people buy houses. That is the easiest way to convert money and I am not in it. They distort prices. Instead of people paying the real prices, rents are hiked. In other cases, artificial shortage is created. It distorts everything in the real estate sector.

The tiger economies in the Far East whose economies grow very fast have dealt with money laundering. As has been said by my colleagues, the penalty is death sentence because they know what effect it can have on the GDP. It reduces the workforce to nothing. Instead of people having gainful employment, money laundering distorts the picture. If a country wants to access more money, the International Monetary Fund (IMF) and the World Bank are willing to fund the countries that have put in place laws that govern and control money laundering because this is a worldwide threat.

Money laundering promotes corruption at all levels. I want to compare money laundering with betting and gambling. Money laundering, betting and gambling will bring this country down. I opposed the Motion on betting and gambling because of the composition of the Select Committee. I, however, supported it because it was seeking to do the right thing. I only opposed the composition of the Committee because it comprised of the “big boys” in the House and I smelt a rat. Once it is reconstituted, we will work within the framework of the existing law and once we enrich the structures that we have in Parliament, we will cover everything that we wanted to do.

Penalties on gambling and money laundering, especially in South East Asia tigers or the economies that are fast growing, are stiff because it stifles economic growth. If we address it, we can have a growth rate of up to 12 per cent. Money laundering creates inequalities in income. You have few people who are very rich and a majority who are poor because it distorts people’s income. This Bill is timely. It will address problems that we are facing. The FRC should be diligent to prevent all forms of money laundering.

I support the Bill because the Committee has been very careful in addressing all issues concerning money laundering.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Abdinoor.

Hon. Abdinoor: Thank you, Hon. Temporary Deputy Speaker. I want to support this Bill. It is the only Bill that will deal with cartels and corruption in this country.

The main objectives of the Bill seek to enhance the powers of the FRC. It also seeks the independence of the institutions by removing recruitment of staff from the State Corporations Act. The FRC will now recruit its staff directly. The Bill will have serious implications on financial and non-financial institutions such as casinos, real estate agencies, dealers of precious stones and metals, Non-Governmental Organisations (NGOs), accountants and lawyers.

The Bill seeks to deal with unusual and suspicious transactions within our financial institutions. It imposes a fine of Kshs25 million for institutions and revocation of licences. It also gives powers to the FRC. However, I am worried because this Bill does not provide any hearing within the reporting institutions before it imposes revocation of licences and sanctions.

The Bill tends to weaken the autonomy of the FRC because it was initially independent of the Cabinet Secretary, but now we seek to give more powers to the CS. This will weaken the autonomy and professionalism of the FRC. We need to take care of those two issues.

I also wanted to raise the issue of the recruitment of the Director-General (DG) and the Deputy DG. I totally agree with the proposal that their appointments be done by the advisory board in consultation with the CS.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Member for Igembe Central.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this Bill. From the outset, I want to say that the amendments herein are intended to give more teeth to the FRC by having a stronger board with more powers.

Despite the fact that this Bill has been there and has been weak in its own way, we have failed to control money laundering, betting and lotteries that have made our country poorer. We will go out of our way to approve these amendments, but what remains is for the people of Kenya to have integrity and morals which are beyond reproach for us to achieve this.

We have enacted so many laws in this country which can only be implemented by us. If we are not going to live to the expectations of the laws, our efforts will be in futility. Having the DG is good because that gives more powers to the board. However, the integrity of that person must be beyond reproach. Members of the board must be thoroughly vetted and it must be procedural. We should appoint people who have the public interest at heart. We have very effective laws and a very strong Constitution, but we have gone out of our way to break those laws and do things in our own ways. We send people to arrest the suspects of money laundering, but they get into murky waters and proceed to swim in the same dirt. The same money they are following is used to silence them. At the end of the day, we impoverish our country. We end up with a country of a few multi-millionaires while millions of Kenyans are languishing in poverty without access to basic needs.

Our courts of law are also failing us. A person who has stolen a goat, chicken or trespassed on somebody's compound is jailed for seven years, yet since Independence, no person has been jailed for stealing money from the State coffers. Their files remain in court. We should have these laws in place so that they can be the guiding emblem to manage our resources and the Budget. We should have people of integrity who are working for the betterment of this country in these offices.

Kenyans have a culture of worshipping thieves and those who engage in illegal businesses simply because they have money. The poor have to beg the rich yet they could be doing some formal businesses that earn them income, pay taxes to the Government and accumulate some savings for themselves. People go for those behind-the-doors businesses because that is where they get more money. This is quite unfortunate. I pray that these amendments give more clout, teeth and strength to the law. For heaven's sake, let us implement the provisions of the Bill to the letter. With this Bill, we can change this country.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Well spoken. Let us have the Member for Turkana Central Constituency, Hon. John Nakara?

Hon. Nakara: Thank you, Hon. Temporary Deputy Speaker for giving me opportunity to contribute to this Bill. First, I support the amendments because they seek to close the gaps that we have had in the law.

As fellow Members have said, the issue of vetting people who are going to work in this area is good. They should be people who are not after money. People who are after money will not accomplish the reason we have established such a body.

Patriotism is not practised in this nation nowadays. Why should you take your money from this country to another yet this is where you were born, you are working and you are supposed to invest? Many people in this country do not have jobs. It is not patriotic to take money out of this country. People who have done this should be jailed for sabotaging the economy of this country. You are denying people job opportunities and investments by doing this and such people must be jailed.

Another issue is that we have never learned a lesson in terms of keeping out testimonies and being upright in this country. Whenever anybody is caught in a problem, he threatens to go to court or arbitration. We need to have integrity. When you are caught on the wrong path, you

should resign, so that you give people opportunity to go through your lifestyle and investigate the issue you have been accused of. It is an honour to resign to pave way for investigations.

Money laundering is fertile land for corruption. You will get money from here and take it away through corrupt means and nobody follows you. We need to go back to the ages when people started putting their money outside this country and make this law function. We should ask those countries to bring that money whether the people are alive or not. That money belongs to this country. We must return it here to help build this country.

This Bill has addressed the issue of empowering financial institutions despite the fact that we have given power to the CS concerned. This Bill has empowered these institutions to know how the banking industry operates. People deposit millions of shillings yet they do not do any business or investment. You wonder where this money comes from. It is the right time for us to make sure that our financial institutions monitor savings and deposits. All transactions in the banking sector must be monitored. Some nations have realised that Kenya is a path to send money for terrorism to their groups. A lot of money passes through this country. They know that our laws are not that strict or harsh to stop such businesses. So, we want to empower financial institutions to deal with such acts of terrorism.

On the issue of investment, we want to encourage our people. Now that this country has good banking systems and environment for investment, we need to invest money instead of leaving it lying somewhere, such that when you die, even your family members do not know that you had such amounts of money in a far country.

People should understand that this country has a good environment for investment. We encourage them to bring the money they have put outside back to the country. It is good to give a period within which laws are implemented. Our policies are good on paper, but the implementation process is a problem. It is good for us to work with timelines, so that this money can be brought back within a specific period of time. If not, the Government should repossess it and put it in public coffers.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I have two more requests, namely, Hon. Janet Wanyama and Hon. Joseph M'eruaki in that order. Speak to this before I call the Mover to reply.

Hon. (Ms.) Wanyama: Asante Mhe. Naibu Spika wa Muda kwa kunipatia nafasi hii ili nichangie Mswada huu ulioletwa na Mhe. Duale.

Kama wanenaji wa kwanza walivyosema, ni kweli kuna ufidiaji katika nchi yetu. Watu wanachukua pesa za umma na kufanya mambo ya kuwafaidi wenyewe. Utakuta mtu amejiriwa leo na kesho amenunua nyumba kubwa ama gari la kifahari. Mswada huu utatusaidia kurekebisha baadhi ya mambo kama haya katika nchi yetu.

Wawekezaji katika nchi yetu hawana imani na Wakenya kwa sababu wanapoleta pesa zao na kuwachagua watu wa kusimamia, watu wetu wanachukua hizo pesa na kuzitumia kujinufaisha. Tukiwa na sheria kama hii, nchi yetu itaendelea mbele.

Katika Idara ya Polisi, haswa polisi katika bararaba zetu, wanachukua pesa kutoka kwa wananchi. Mtu akiwa hajabeba leseni, anaitishwa pesa na polisi ili awachiliwe. Tena, watu wakipelekwa mahakamani, wanahongana ili wawachiliwe.

Vile Mhe. Ferdinand alivyosema hapo awali ni kweli. Katika Kaunti yangu ya Trans Nzoia, utapata afisa wa polisi akichukua pesa za umma na kununua jumba la kifahari ambalo hata mimi kama Mheshimiwa siwezi kununua. Ni kweli watu wengi wanafuja pesa katika nchi

yetu ya Kenya. Mswada huu utabadilisha nchi yetu na watu kutoka nje watatamani kuwekeza hapa nchini. Sisi tutajivunia nchi yetu kwa sababu maisha yetu yatabadilika.

Watakaojiriwa kwa ofisi hizi wanatakikana wawe watu wa nidhamu na watu ambao wamepitia majukumu yao kwa kazi nzuri. Tukiajiri mtu tu kwa sababu heunda ana karatasi zifaazo, mwishowe, hataweza kuzitumia zile karatasi bali atakuwa akiiba pesa za Wakenya. Watakaowekwa katika bodi hii wanatakikana wawe watu walio na nidhamu ya kutosha na watu ambao wataweza kufanya kazi kuendesha nchi yetu mbele.

Tunahitaji kuwa na watu wenye nidhamu. Hata kwa mashule yetu, huenda usimamizi ukawa sio mzuri na ndio maana wanafunzi wanagoma. Hii ni kwa sababu wengine wakishafuja pesa wanatafuta mahali pa kujificha. Ile adhabu imewekwa haitoshi. Juzi, mwana muziki, Koffi Olomide, alipomzaba mtu makofi alifukuzwa. Tunafaa kuweka adhabu kubwa kwa wale ambao wanaiba pesa za umma ili watu wajue kwamba wakitenda kitendo kama hicho, watapatikana na mkono wa sheria.

Kwa hayo machache, ninaunga mkono Mswada huu.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The last one is the Member for Igembe North.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Speaker. I rise to support the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill. It is important that we come up with these kinds of law that can support and make the use of money from proceeds of crime difficult. The most important thing is to make these activities expensive and make it difficult, so that our country can move forward.

We have become a country that glorifies material things at the expense of common good. Common good for the country no longer counts. The sad thing is the tradition and the culture that we have put in place that may even make it difficult to implement whatever laws we come up with. Even the people who are given the responsibility of protecting Kenyans like the Director and the Centre that is supposed to advise and regulate the flow of money and stop these kinds of activities are not doing it. This becomes the Centre where the highest bidders always have their way. As a country, we are coming up with many laws including what is going to come next, but one wonders why with all these good laws nothing seems to work.

I support this kind of development. At least, at one point, we will have people with energy and drive to do what they must do for the good of this Republic, so that Kenyans can live the dream of our founding fathers. Issues of equity and hard work should be respected. Money laundering and proceeds of crime like casinos in every village are destroying communities. We are using money generated from some of these activities. We have even seen from the media how people are dying. I believe these laws will make it difficult for perpetrators of these crimes and we can move forward as a county.

For the sake of time and greater interest, I support this Bill. It is my hope and belief that this law and the people we are going to put in these offices will protect Kenyans and will work for the greater good. They should not go there to use the offices that are meant for oversight and management to enrich themselves. Kenyans do not care where you get money, but all they care is whether you have it or not.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, there being no other request and interest in the Bill, I now call upon the Mover, the Leader of the Majority Party, to reply.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. First, I want to thank my colleagues who have taken time, debated and enriched the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2015.

It is a very important Bill that will deal with corruption, financing of terrorism and proceeds of money laundering. These amendments are in line with international best practices. The role of the Money Laundering Advisory Boards or Councils all over the world is to advise the relevant Minister, in our case the Cabinet Secretary for the National Treasury, on anti-money laundering matters. The present position suggests that the role of the board is merely to advise the Director. I want to assure the Members that the proposal contained in this Bill generally meets global best practices and international standards as prescribed by the Financial Reporting Centre taskforce which is in place globally.

I request the Members to support this Bill, so that we can achieve our shared vision, which is to build a nation free of money laundering and corruption.

I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Hon. Members! We do not have the requisite quorum for us to put the Question. I will, therefore, defer putting the Question on the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill 2015 (National Assembly No.54 of 2015) to the next sitting at the most appropriate time.

Next Order!

(Putting of the Question deferred)

THE BRIBERY BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us have the Leader of the Majority Party to move the Bill.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Bribery Bill 2016 be now read a Second Time.

The House will soon be going on recess. So, I have decided to stay here for long hours to make sure that the business that I am expected to do in this House, namely to facilitate the Government agenda, is done. I want to make sure that all the Government Bills go through the Second and Third Readings. I thank the Members who are in the House until this late and that is why the Parliamentary Service Commission pays them.

The Bill seeks to make provisions specific to offences of bribery in a bid to reduce this vice, which is very rampant. It is small and big and it is enough to cause increased public concern. The Bill that we have just concluded and this Bill are two major Bills that came into place after the President decided to deal with corruption head on. After having several multi-sectoral meetings with the private sector, the Judiciary led by Justice Willy Mutunga, the Legislature where our two Speakers of the two Houses were, Government institutions dealing with corruption like the Ethics and Anti-Corruption Commission (EACC), the Director of Criminal Investigation (DCI), the Director of Public Prosecutions (DPP), the essence of publishing this Bill was mooted. From the outset, I wish to thank the President. The war against corruption will be fought from the Legislature, Judiciary, Executive and in every sphere of Kenya.

This Bill intends to extend the fight against corruption to the private sector. The engine of corruption was assumed to be in the public sector. However, the private sector plays a very big

role. The givers in corrupt practices are from the private sector and the takers are in the public sector. So, corruption originates from the private sector.

The Bribery Bill specifically deals with the fight against corruption in the private sector. It criminalises bribery by persons in the private sector. Offences of bribery and corruption have mainly been targeting the public sector, but the inducement emanates from the private sector. So, this Bill gives specific requirements to the private sector entities to put in place the procedure of prevention of bribery.

Who bribes a police officer? It is private citizens. If a *matatu* driver does not give money to a police officer, no bribery will take place. In fact, an amendment must be brought to the law that the proceeds of bribery must be forfeited to the State. For example, in the United Arab Emirates (UAE), you pay a penalty for every traffic crime you commit. You do not pay the penalty on the spot, but the day you go to renew your driving licence, get an insurance policy or you want to leave the country, at the airport, you are shown the offences you have committed and the amount you will pay. Huge resources can be received by the State. Resources are received by citizens working as public servants. So, we must deal with the source of bribery. This includes the person bribing a police officer, an Immigration Officer and the many procurement officers in our public offices.

In addition, this Bill creates a legal obligation for every person who becomes aware of any incident of bribery to report the matter to the EACC. When the President assents to this law, every citizen who becomes aware of a bribery taking place must report it. It is an obligation. The Bill also intends to provide for an effective coordination and accountability framework in the investigation and prosecution for acts of bribery. So, this is the genesis of this Bill.

Part I of the Bill deals with preliminary issues which is the citation of the Act and the interpretation. Most of these definitions exist. There are a number of definitions in this Bill which already exist in the Anti-Corruption and Economic Crimes Act. Corruption is defined to include bribery, embezzlement and fraud in the provisions of that Act. If somebody is involved in fraud and he wants to marry a beautiful lady, if in the end she goes to Hon. Nyenze through some fraud, I do not know whether that is corruption. We need to define it. I am not saying he is competing with me over a beautiful lady. I know we are not in the same age bracket and so, we do not go to the same places to “hunt”, as we used to call it in the old days.

(Laughter)

Clause 3 of the Bill relates to the implementation of this Act. It provides that the EACC shall be responsible. Let me talk about the EACC. It is getting murky every day. We cannot believe it. I have served in Parliament for a long time and I had the opportunity to participate in the recruitment of Mr. PLO Lumumba, who went after two years. I had the opportunity to participate in the recruitment of Mr. Mumo Matemu, Ms. Irene Keino and Ms. Jane Onsongo, who went after nine months. What we are seeing in the EACC is like a movie. It is like the feeling you get when you are watching a movie. The biggest scandal in Jubilee was the NYS. The man we have sent to hunt the culprits is himself a recipient of the money. It is very clear that the moment you become either a commissioner or a senior staff of the EACC, you must get yourself out of public dominance. You should not have companies, own businesses or run any shop. If you had a shop in Meru selling *miraa*, you should close it. If you were doing some camel trading in a market in Garissa, you must stop being a cattle trader. You are supposed to deal and

investigate corruption that is going on at the Garissa livestock market and in the *miraa* business in Meru.

Today, we are told that the wife of the Chairman of the EACC received over Kshs300 million from the NYS. So, corruption is the theatre of the absurd in our country. Clause 3 relates to the implementation of the Act and provides that the EACC shall be responsible for its enforcement. We are making a law for the EACC. The earlier the better, the Commission should put its house in order because it is also supposed to implement, among other issues, the Anti-corruption and Economic Crimes Act.

Clause 4 relates to the application of the Act and provides that it shall abide to public entities and offices and to private entities. So, it is now both public and private officers and their entities. The clause contains a proviso which empowers the Cabinet Secretary by notice in the Gazette Notice, to limit or extend the application of this Act or parts of it to specific public or private entity. That is food for thought for this august House. The CS, in my opinion, should not have powers to gazette certain or parts of it.

Part II of the Bill deals with general bribery offences. This part creates offences of giving and receiving bribes. It also talks about who receives and gives bribes and how you make a determination as to who carries more offence than the other. For example, if Hon. Nyenze gives me a bribe to influence a decision in this House, do I carry the same penalty as him, the originator? I am not saying Hon. Nyenze wants to bribe me because he is a man of God. I am told he is a pastor's son and he cannot deny it. That is why sometimes he is better than Hon. Jakoyo and me. I am not the son of a Sheikh, but I am a very staunch Muslim. My father was not a Sheikh, but he decided to teach me the good values in the Islamic religion.

Clause 7 sets out the function and activities in relation to which a bribe is given or received. For example, any function of a public office carried out by a State or public officer, a foreign public official or any activity connected with the business or provision among others. If I remember, a public officer cannot take a gift valued at more than Kshs20,000. Colleagues, these days, if you attend a function and you are given a gift, you must open it there to see its value. If you are given a gift which is worth more than Kshs20,000, then somebody can go to court. Of course, what we receive from our people is always less than Kshs20,000.

Clause 8 of the Bill prescribes the offence of bribery involving public officials. This applies where a private or public official from Kenya gives a bribe to officials of foreign countries for any reason. I have seen something very unique happening in this 11th Parliament. I have seen a Committee of Parliament going to carry out due diligence on a Government project. In my honest opinion, that is wrong. As Parliament, we are supposed to oversee. It is the procurement officers who are supposed to carry out due diligence on a Chinese firm constructing a road in any part of Kenya.

Secondly, you will find a Committee of this House being sponsored by an entity which they oversee on a trip outside the country. With the passage of this Bill, if you are a Member of such a Committee, you will be liable to a fine. For example, if I am a Member of the Departmental Committee on Education, Science and Technology, what happens if the United States International University (USIU) finances my trip to the US? That is conflict of interest.

Clause 9 of the Bill prescribes the requirement and procedures of prevention that private entities should put in place. Every private company or entity in this country will be under obligation to put in place procedures on how to detect and stop bribery within it.

Clause 10 of the Bill criminalises failure by a private entity to prevent bribery. If you own a bus company and you allow your conductors and drivers to bribe police officers on the

highway, you are liable of a criminal offence under this law. You must tell your conductors that if they carry excess passengers and bribe police officers, then that entity is liable. They must have a procedure for preventing bribery.

Clause 11 of the Bill expounds on the meaning of “associated persons” with reference to Clause 10 if a person associated with a private entity bribes another person. If you work for General Motors (GM), Coca-Cola, British American Tobacco (BAT) or Microsoft and you get involved in bribery, then your organisation is also liable. You heard when Martha Karua and Moses Wetang’ula decided to “smoke” with BAT. That law is in Britain. Martha Karua and Moses Wetang’ula decided that a cigarette is harmful to your health, but when it is laced with corruption, it is more harmful. None of them smokes. Unfortunately, they decided to eat the proceeds of smoking. When Hon. Savula, Hon. Jamleck and Hon. Sakaja smoke, some people eat the taxes that they pay.

Hon. Ganya: On a point of order, Hon. Temporary Deputy Speaker.

(Loud consultations)

Hon. A.B. Duale: I humbly withdraw.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Members! You cannot be on a point of order when you are already making noise.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, it is like the way I chew *miraa*. It is not an offence.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Duale, let me hear the person you have rattled. He has withdrawn. Hon. Duale, go on the HANSARD and withdraw. You are rattling a snake.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, how do I withdraw the obvious?

(Loud consultations)

It is obvious. I am not going to withdraw. It is not an offence. I have not mentioned Hon. Chachu Ganya. Why is he standing?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let me hear what Hon. Ganya has to say.

Hon. Ganya: On a point of order, Hon. Temporary Deputy Speaker. Is it in order for the Leader of the Majority Party, a leader of this House, to mention names of leaders of this Parliament especially the Leader of the Minority Party in the Senate as having gained from proceeds of tobacco? Can he substantiate or withdraw? This is a House of rules.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Leader of the Majority Party, can you withdraw? Let us hear what he has to say.

(Loud consultations)

Order, Members! You cannot be out of order and expect the Leader of the Majority Party to be. I will actually rule you out of order. Leader of the Majority Party.

Hon. A.B. Duale: You know, just because he is his party leader, if your party leader is naked, we say he is naked.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Leader of the Majority Party, please, withdraw.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I am not going to withdraw. Give me the next opportunity and I am going to talk to the British Broadcasting Corporation (BBC) and get the court case.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Leader of the Majority Party, your time is over. You will have your 27 minutes to continue moving. Of course, I know Members will also have their time.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the time being 6.30 p.m., the House stands adjourned until tomorrow, Wednesday 10th August 2016 at 9.30 a.m.

The House rose at 6.30 p.m.