

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 17th May 2022

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Hon Members, there is no quorum. Please ring the Quorum Bell.

(The Quorum Bell was rung)

Very well. We now have quorum. We can now stop the Quorum Bell.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Legal Notice No.31 of 2022 relating to the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2022 and the Explanatory Memorandum from the Ministry of Interior and Coordination of National Government.

Board Report of the National Government-Constituencies Development Fund on Project Proposals Approvals, Disbursement Status and Restrictions imposed on the Constituency Account for the period 1st January 2022 to 31st March 2022.

Quarterly Economic and Budgetary Review for the Third Quarter for the Financial Year 2021/2022 from the National Treasury.

Report of the Auditor-General and Financial Statements in respect of the Ol'Lessos Technical Training Institute for the year ended 30th June 2018 and the certificate therein.

Hon. Speaker: Chairman, Departmental Committee on Administration and National Security. Hon. Peter Mwangi Mwathi or his Deputy Chairperson? They are absent, let us have the Chairman of the Public Accounts Committee, Hon. Opiyo Wandayi.

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report on the Examination of the Report of the Auditor-General on the Financial Statements for the National Government for Financial Year 2018/2019 Volume I and II.

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Hon. Speaker: I hope Members can have a look at what Hon. Opiyo Wandayi is tabling. That voluminous document is for the Financial Year 2018/2019. There is still one for 2019/2020 and I think 2020/2021 financial years. Hon. Opiyo.

Hon. Opiyo Wandayi (Ugunja, ODM): This is for the 2018/2019 Financial Year. There is still 2019/2020 which we hope to table before we adjourn. We will not be able to table the one for 2020/2021 because they are yet to fully examine.

Hon. Speaker: Very well, I think you have made a good progress, Hon. Wandayi. Your Committee has done very well to bring to speed these reports.
Next Order.

NOTICES OF MOTIONS

ADOPTION OF PUBLIC ACCOUNTS COMMITTEE REPORT

Hon. Speaker: Hon. Opiyo Wandayi.

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House Adopts the Report of the Public Accounts Committee on the examination of the Report of the Auditor-General on the Financial Statements for the National Government for the Financial Year 2018/2019.

Thank you.

Hon. Speaker: Very well. Next Order.

QUESTIONS AND STATEMENTS

Hon. Speaker: There are no requests for Statements, there is only a Question by the Member for Yatta, Hon. Charles Kilonzo.

ORDINARY QUESTIONS

Question No.121/2022

MERGER OF STATE CORPORATIONS UNDER MINISTRY OF TOURISM AND WILDLIFE

Hon. Charles Kilonzo (Yatta, Independent): Hon. Speaker, I beg to ask the Cabinet Secretary for Tourism and Wildlife the following Question:

- (i) Could the Cabinet Secretary explain the rationale behind the merger of various State corporations under the Ministry of Tourism and Wildlife and indicate whether they were carried in accordance with the legislation in place?
- (ii) Could the Cabinet Secretary confirm whether public participation was undertaken prior to the said merger of the State corporations including the Kenya Tourism Board (KTB), the Kenya Export Promotion and Branding Agency (KEPROBA), the Kenya National Convention Bureau (KNCB) and the Tourism Research Institute (TRI).

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Sports, Culture and Tourism.

Hon. Patrick Makau (Mavoko, WDM-K): *(Off record)*

Hon. Speaker: No, you are not being asked to answer the Question now. Do you have the answer, Hon. Makau?

Hon. Patrick Makau (Mavoko, WDM-K): Thank you, Hon. Speaker. In regard to the Question that Hon. Charles Kilonzo has asked, the issue of the merger of those assets came to our Committee. We summoned the Cabinet Secretary in charge of National Treasury and the Cabinet Secretary in charge of Tourism, but they did not show up to answer those Questions. So, it is still pending in the Committee's business. I request your indulgence on the same so that we can first-track the appearance of the Cabinet Secretaries in charge of the National Treasury and Tourism.

Hon. Speaker: Let them appear before your Committee and respond to the Questions raised by Hon. Charles Kilonzo

The next Question is by the Member for Ruiru, Hon. Simon King'ara, who has written to request that the Question be deferred to tomorrow. His request was acceded to. Therefore, the Question is deferred.

Question No.122/2022

ROAD ACCIDENTS ON RUIRU-UPLANDS ROAD

(Question deferred)

Hon. Owen Baya: On a point of order!

Hon. Speaker: What is it?

Hon. Owen Baya (Kilifi North, ODM): I rise on a point of order to ask you to give us a ruling whether the Member for Kisumu West, Senior Hon. Olago Aluoch, is properly dressed in this House. He seems to be wearing some strange things which we do not understand. Is he properly dressed?

Hon. Speaker: Hon. Olago Aluoch, maybe you could be upstanding.

(Hon. Olago Aluoch stood in his place)

The Member for Kisumu Town West should actually be congratulated. He is donning an insignia for the Chief of the Order of the Burning Spear (CBS). It is something that he should be congratulated for by the House. It is proper. Since he received it today, it is only fair that the Member be allowed to... Hon. Murugara, are you following up on that?

Hon. George Gitonga (Tharaka, DP): Yes, Hon. Speaker. That is a good ruling which will guide the House, especially when it comes to insignias such as what my learned friend and senior is donning. He is a learned gentleman and a ranking Member. He has been here for many years. It is worth every moment that today he has been recognised and awarded that particular award of CBS. Congratulations, Senior. It is well deserved. You have been here long enough and have done a lot for this country.

Hon. Speaker: Member for Kiminini, you are in the House and I see you also want to weigh in.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker. I take this opportunity to congratulate Hon. Olago Aluoch. I also had an opportunity to get that medal. It is a

very nice achievement. Hon. Olago Aluoch has been a very serious legislator. In fact, some of us who joined after him have learned so much from him. Many times, when it comes to matters of debate, you will find that he is very objective. He is not skewed maybe because of political affiliations or whatever case. He is not. He will encourage other Members that can learn from him. Despite the fact that he is older, he is always committed on the Floor of the House. He does not leave. He is such a serious legislator. How I wish the great people of his constituency could vote him back to the House, so that they continue enjoying the benefits.

I really want to thank you. God bless you.

Hon. Speaker: Let us have the Member for Endebess.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. The Member rose for us to notice that Hon. Olago Aluoch has been awarded the CBS. I take this opportunity to congratulate him. I know Hon. Olago Aluoch, who is here on a FORD-K ticket in Kisumu West, will be re-elected to this House.

Hon. Olago Aluoch, congratulations for the award. This House will be looking at merit and contributions of Members on the Floor because in the past, we have seen Members who have never even made a maiden speech being awarded. This is a good example and it should be emulated.

Congratulations, Hon. Olago Aluoch. I wish you all the best.

Hon. Speaker: Let us have the Member for Kabuchai.

Hon. Majimbo Kalasinga (Kabuchai, FORD-K): Thank you very much, Hon. Speaker. I also join my friends to congratulate Hon. Olago Aluoch. I also thank the President for choosing this very humble man whom I had been watching on television while at home. Not only does he fare well in the House, but he also chooses smaller parties, which do not work well in his area, and wins seats for them. I congratulate him. He does not come with the wind. He comes with his brains, which have given him this honour.

I join my people of Kabuchai to congratulate him. He is an outgoing Member of Parliament on a FORD-K ticket. Congratulations.

Hon. Speaker: Let us have the Member for Homa Bay Town.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. My voice is a bit hoarse. We were celebrating Martha Karua yesterday. When I came to Parliament, I joined the Departmental Committee on Justice and Legal Affairs and have remained there to date under the mentorship of Hon. Olago Aluoch. He is a ranking Member of that Committee. He has consistently served for over 10 years in that Committee.

What I like about Hon. Olago Aluoch is that even where he disagrees with you, he does it with a lot of respect and dignity. Because of that, his good work has not just been noticed in the Committee, but also on the Floor of the House. Whenever we need to be sobered up by wisdom and real leadership, Hon. Olago always steps up. I congratulate him and hope that this CBS honour will also land upon us. I know he is facing an election, but I wish him well.

(Laughter)

Hon. Speaker: Let us have the Member for Igembe Central.

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Speaker. Let me join my colleagues in congratulating our ranking Member, Hon. Olago Aluoch, for the commendation. I thank the Head of State for recognising this son of the soil. When I joined Parliament, I met Hon. Olago Aluoch. In my observation, he does not just contribute to anything that comes by. He researches well and has been very instrumental in guiding us in this House, especially where legal

issues are concerned. He chips in on very complicated issues. Sometimes he comes in handy to help you, Hon. Speaker, as you make some of your rulings.

Congratulations, Hon. Olago Aluoch. I wish you all the best.

Hon. Speaker: I hope the Member for Kilifi North does not intend to say something beyond that.

Hon. Owen Baya (Kilifi North, ODM): Now that I know Hon. Olago Aluoch is properly dressed in the House, I also wish to take this opportunity to congratulate him very sincerely. When I came to this House as a young Member, I met this gentleman. He is one of the people I can describe as very good friends who have helped me in many ways. Even when I am indecisive about something, Hon. Olago has always been there to say: "Yes, young man, move on."

I thank you and congratulate you, Sir, for the greatness you have achieved. *Asante sana.*

Hon. Speaker: Very well. Maybe many of you will need to keep looking at your Constitution in Article 132 which defines the functions of the President. Among them, there is that function in Article 132(4)(c) which is conferment and award of honours in the name of the Republic. It is the exclusive function of the President. Therefore, it is in that recognition that Hon. Alago Oluoch finds himself donning those colours.

Next Order.

BILL

PROGRESS REPORTED

THE CHILDREN BILL

(The Speaker consulted with the Clerks-at-the-Table)

Hon. Speaker: Let us have the Chairman.

Hon. Patrick Mariru (Laikipia West, JP): Hon. Speaker, I beg to report that the Committee of the whole House considered the Children Bill (National Assembly Bill No.38 of 2021) up to Clause 129, approved the same with amendments and seeks leave to sit again.

Hon. Speaker: Let us have the Mover.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move that the House agrees with the Committee in the said Report. I also request Hon. Jude Njomo to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Speaker: Let us have Hon. Jude Njomo.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Speaker, I second.

Hon. Speaker: Member for Kitui South, could you take a seat? The Member who is whispering to the Member for Tharaka, please, take your seat.

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: I confirm that we have quorum.

(Question put and agreed to)

For those who may have been whispering to one another and do not know what we have agreed with, the Committee has considered the Children Bill up to Clause 129, passed it with amendments, but seeks leave of the House to sit again. That is what we have approved. So, when you go out there, you can explain what you have passed.

Next Order!

SPECIAL MOTION

CONSIDERATION OF NOMINEES FOR APPOINTMENT TO THE ETHICS AND ANTI-CORRUPTION COMMISSION

Hon. Speaker: The Chairperson of the Departmental Committee on Justice and Legal Affairs or a Member thereof. The Chairman? Leader of the Majority Party, this is a fairly straightforward matter. Hon. Jennifer Shamalla

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Speaker. I am a Member of the Departmental Committee on Justice and Legal Affairs and wish to move the Special Motion:

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in its Report on its consideration of Nominees for Appointment as Members of the Ethics and Anti-Corruption Commission (EACC), laid on the Table of the House on Thursday, 12th May 2022 and pursuant to the provisions of Section 10(3) of the Ethics and Anti-Corruption Commission Act, 2011 and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Dr. Cecilia Mbinya Mutuku and Mr. John Ogallo as Members of the Ethics and Anti-Corruption Commission.

I beg to move.

Hon. (Dr.) Robert Pukose (Endebess, JP): Defend, give us justification.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): These two nominees appeared before the Departmental Committee on Justice and Legal Affairs and they were thoroughly vetted and interviewed. The Committee confirmed that, indeed, they suit and meet the requirements of the Ethics and Anti-Corruption Commission Act and the Public Appointments (Parliamentary Approval) Act. Also, they demonstrated wide experience in the fields they practise in.

With those few remarks, I beg to move and ask the Leader of the Majority Party to second.

Hon. Speaker: Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. I want to thank Hon. Shamalla for rising to the occasion. Indeed, we were discussing whether this Report is already here. I know she is a very hardened Member of the Committee and could move even without the benefit of forewarning.

As Members are aware, we received notification from His Excellency the President on these two Kenyans, namely, Dr. Cecilia Mbinya Mutuku and Mr. John Ogallo as candidates for appointment to the EACC to replace the two who retired ahead of their time. The names were then committed to the Committee in accordance of our Standing Orders and the law.

Indeed, the House was magnanimous to even extend the time for reporting back because they were supposed to report when we were on break. Obviously, the Committee prepared a Report which was tabled on 12th May 2022. I am sure Members have had an occasion to look

through it. It is a straightforward Report if you avoid all the preliminaries and issues to do with who qualified because it is within the public domain and something that was done by this House.

Looking through the Report, the Committee has indicated they were satisfied with the match between the qualifications of the nominees, the requirements of the Constitution, the Acts and in terms of all the requirements. Most importantly is the procedure that was used in arriving at the nominees from filling of the vacancy, in terms of doing what was supposed to be done and conformity with the gender rules. You will notice we have a male and a female coming in, if this House approves. We have three members who are already in place, namely, Archbishop Eliud Wabukala, Colonel Alfred Mshimba, who are males, and Dr. Monica Wanjiru Muiro who is female. If these two, Dr. Cecilia Mutuku and Mr. John Ogallo are appointed, then out of the five, we will have three men and two women which will satisfy the gender requirement.

In terms of regional and ethnic diversity, which is one of the issues that keeps on popping here, the Committee's Report has looked into this and limits the number of commissioners to five. First of all, we know we cannot have representation from all over Kenya. The beauty of this is that the various people here represent diversity having come from five different regions of Kenya. Whereas we cannot have 47 people, the five have been evenly spread from over five diverse regions of Kenya.

The issue of youth has also been looked at. Obviously, the other issue was determining their integrity which came pursuant to a memorandum that was used in terms of knowing if they were cleared by the Higher Education Loans Board (HELB) and did not owe them any amounts. It was very clear they had sorted out their issues with HELB.

The EACC confirmed that the two are compliant and are not officials of any registered political party. I believe we are looking at two Kenyans who have been vetted. The Committee's recommendations have clearly spelt out that they have no objection in recommending the House to approve the nomination of these two. I ask that we agree with the Committee. The EACC is an integral part of the realisation of the aspirations of Chapter Six of the Constitution. We know corruption and integrity issues are at the heart of derailing our development agenda. When these two Kenyans join the Commission, I hope that one of their responsibility would be to give fresh energy into that organisation, and look back at what it was initially set up to do.

In my view, and I believe it was the view of many people at the beginning, this organisation was to be a catalyst, and not a body to perpetuate. It was supposed to catalyse the fight against corruption so that when that is sorted, people can go back to default and normal institutions that are supposed to fight theft and all other public institutions like the Directorate of Criminal Investigation (DCI) and others, could do their jobs. However, because of how badly we were doing, we needed these catalyst institutions to help people behave. This includes being ethical which again is not something that we should be legislating because that should be part of our upbringing, and moral acceptance or values as a nation. Unfortunately, we do not have that and so we have to legislate. We need to have people who can look at who is ethical, and who is not. Even as we head towards the elections and the process of coming up with new leaders, the debate currently is whether we are living to our moral persuasion while we are still bringing people to power whose background have always been challenged, some through the courts and impeachments. Yet we are still saying that they are eligible for office.

These are issues that we need to look at. I hope that when the said nominees get to the said office, they will not only be filling vacant position, but will also contribute to how Kenyans can be more ethical, how leaders can have integrity, and the new things that need to be done innovatively so that we can realise the dreams of our people. By putting some of the requirements

within Chapter Six, it was not only for the purposes of vetting officers, but was also for people to live in accordance with those aspirations or the principles that are captured under Chapter Six. As we aspire to make a great Republic, we should know that our foundation is leaders who have integrity.

Hon. Speaker, you will occasionally hear us giving examples of development taking place in Rwanda, but if you look back, you will see that most of their experience is captured in the fact that they have inculcated the culture of integrity, all the way from their schools. They cannot cheat in exams or do anything that is questionable. Children, therefore, get to know what is morally right or wrong. When people live with such morals, we do not even need to have special bodies to go looking for those who have gone wayward. We can give examples of several other countries that have gone through that route because people believe that there is something that is moral, and what is obviously not acceptable.

Hon. Speaker, I could go on and on, but I can see the Chair here. We hope he will add more voice when making his contribution.

With those few remarks, I once again thank the Committee for probing the new members and once approved by this House to take on the challenge, turn the Ethics and Anti-corruption Commission into a body that it is supposed to be, and never let it be allowed to be used for witch-hunting or for political machinations. It should be the one that will return Kenya into a nation where integrity is upheld, where corruption becomes hampered, and create a situation where people will believe that taking what is not theirs or what belongs to the public is the worst they can do to the current and future generations. When we get there, we then say that the commissioners we put in place were worth it. I, therefore, hope that these people will rise up to that challenge.

With those remarks, I beg to second.

(Loud consultations)

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: The Vice-Chair of the Departmental Committee on Justice and Legal Affairs has also suddenly, showed up. Hon. T.J. Kajwang’.

Hon. T.J. Kajwang’ (Ruaraka, ODM): Hon. Speaker, my salutations to you.

Those who are crying that we put the Question should know that we are dealing with serious matters concerning the EACC. If there is anything that has exerted our minds, it is the situation of ethics and corruption in this country. When this matter is brought to leaders as assembled, it requires a proper conscientious debate, and a full expression of the House so that we know that we have an instrument by which we can fight corruption in this country. As for the Members who would want us to go to the next Order, they can kindly, bear with us so that we are able to examine this matter properly, and put it to rest.

I want to support the Motion for consideration of these two Kenyans. We have to set the law and jurisdiction of this House in approval hearings. I heard somewhere that some nominees are complaining that we ask them some embarrassing questions when they come before us.

One day, a nominee was asked whether she or he attended funerals, and if she or he contributed to the same. That is a very legitimate concern of the country, and of the leaders assembled because we want to know their community network, and how they are able to push

community interests when given public jobs. We are not conveyor belts such that because you have a degree, or you profess this or that, then you think you are good for the job you have.

As representatives of the people, Articles 94 and 95 say that we are here to represent the interests or the concern of our people. A concern includes how much you donate when you go to a funeral, how many people you have taken to school or how you are supporting philanthropic issues. So, when you hear some of us ask such philanthropic issues, it is not because we want to, but my Ruaraka constituents, for example, are asking me to ask such issues. Specifically, these nominees have been put to a lot of scrutiny by the bodies that did the interviews. Our duty is now to approve by looking at their general governance suitability under Section 7 of the Act.

One of the things that you may want to note is that the EACC as constituted has a man and a woman. If the nominees are then appointed, the Commission will have two women and three men. This is in fulfilment of Article 27(8) of the Constitution which talks about the big problem that we call two-thirds gender rule in our Constitution. It almost sent us home, but by the grace of God, we are still in this House. The two-thirds gender rule is a principle that we must see implemented. The Commission must move to be seen as the driver of that thing called anti-corruption.

According to the Constitution, it is the chairperson and the commissioners. The secretariat is just the body that helps this thing to move. We can see that we have a Commission being driven by the secretariat more than the commissioners. When this is done, it creates a lacuna and it is a big problem in the fight against corruption.

We hope that with addition of these people, the Commission will take its place and will fight as a Commission and not as a secretariat. The ordinary *wananchi* are expecting to see some people being investigated, but they are not being investigated. We are finishing the first 10 years of devolution in this country. If you ask businesspeople from Homa Bay and Migori, they know the people who should be investigated. You just wonder how it is so difficult to get investigations underway. The people who bear great political and governance responsibility are not investigated for things which are apparently clear in the face of the common people. We hope that the addition of these two people will give the Commission the impetus they require to do their job.

Hon. Speaker, a few days ago, this Parliament discussed the Estimates. At least, the policy and the estimates are underway. We are putting a lot of money to this Commission. The other time we did the supplementary the EACC cried that they were given very little that went to their recurrent expenditure for salaries. If you do not convince Kenyans that you are doing your job for which you need public money, you are not very honest to come and cry that we are not giving you money. We hope that this printed estimates that are going to come and the money that Parliament is going to push to these people, will change the way in which the Commission has done its infrastructure in investigating crime and making decisions on who or how these things can be taken to the Director of Public Prosecutions for prosecution.

There is a blame game between the DPP's office and the Commission. I think that is very unhealthy. We, as the people who are consuming this information, do not care what happens. We just want investigations and prosecutions to be done. They must find a meeting point between the Commission and the DPP on how they are going to investigate and prosecute.

We have reinvigorated this office, and there will be no excuse at all from the Commission on how crimes concerning corruption will be investigated and ultimately prosecuted.

I support this and thank you, Hon. Speaker, for entertaining this Motion before the Floor. Thank you very much.

Hon. Speaker: The Member for Kiminini.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Speaker, for this opportunity.

I want to thank the Justice and Legal Affairs Committee for the good work. I have quickly gone through the Report and realised that there are some critical issues they managed to bring out. First, I want to speak about the candidates as per the Report. We have been told that 30 per cent of the national revenue goes into wastage because of corruption. It is, indeed, important that whoever was vetted meets the threshold.

Having gone through the Report, I am a bit disappointed first, by nominee Mr. John Ogallo. The Report shows that Mr. John Ogallo is not tax compliant. He does not have the Tax Compliance Certificate. We, as Members of Parliament, must have Tax Compliance Certificate as we go for elective seats. You must get a Tax Compliance Certificate. It is very wrong for this House to approve somebody like Mr. John Ogallo and yet it has been demonstrated that he is not tax compliant.

Secondly, this is a gentleman who lives in the United States of America. He was not even available physically for purposes of vetting. He has been away for 25 years and, therefore, does not understand how critical these issues are.

Hon. Members: Where?

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): It is here in the Report. I have gone through it. Let me finish. You will get your chance to speak. Please, I am debating. This is a House of debate and not for making noise. I am entitled to my opinion because I have read the Report. The gentleman is not tax compliant. How do we approve somebody who is not tax compliant to go and sit on the Board of the EACC? It has been demonstrated that 30 per cent of the national revenue has gone to wastage in this country. If we entertain and bring people who are not tax compliant, we will be opening a Pandora's box.

The gentleman has been away for 25 years. He left during Moi's regime. He is not aware of what has happened during Kibaki's and Uhuru Kenyatta's regime. I totally oppose this nominee, Mr. John Ogallo, because he has not been around and is not tax compliant. The Report shows that he has been evasive in paying taxes on his rental income.

(Hon. T.J. Kajwang' stood on a point of order)

Hon. Speaker: Press the intervention button.

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Speaker, I do not want to interfere with the Member from doing what he must and to press his point. However, on the issue of tax, I just want to ask the Member to go through his Report properly and he will see the annexures. There is a page there from the Kenya Revenue Authority which shows that the person is tax compliant. Let him go through this Report slowly to the end in the annexures, and he will see a report from KRA. The rest is his opinion. He is free to debate.

Thank you, Hon. Speaker.

Hon. Speaker: Very well.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Speaker. I have gone to school properly. When you look at Page 24(i) of the Report, it is clearly showing the Kenya Revenue Authority, vide a letter dated 19th April 2022, submitted that the nominee was not tax compliant. It is very clear. It is simple English and I know I have gone to school properly.

I am going as per the Report on Page 24(i) as we move on. Those are annexures, I will come to that, but I am reading from the Report. This is what is here. You are the Chair of the

Committee. This is what you have submitted. That is why I am saying I am a good student. I am going through your own submissions.

The gentleman has been away for 25 years. Every Kenyan must be given an opportunity. The gentleman has been away for 25 years. As a matter of fact, he did not even find time to come and attend the interview on the vetting. We have so many Kenyans in this country who are looking for jobs. There are people who are tax compliant and are people of integrity who can do this job as opposed to fishing somebody from Washington or wherever it is, who is not tax compliant.

When it comes to Dr. Cecilia, she has very good academic credentials. She has been the head of Human Resource (HR) at the Kenya Bureau of Standards (KEBS). However, in her submission, she said clearly that at KEBS, there were elements of corruption by some unscrupulous businesspeople in partnership with the people who work there. As a HR person, she was responsible for hiring and firing. She has not demonstrated any competence or any role played in finding out who was facilitating corruption at KEBS with the businesspeople, so that we can see that maybe, she fired them. She had the powers. She was the Head of HR. This is a big problem in this country about fighting corruption.

I am not convinced that the two nominees have what it takes to fight corruption in this country. I am humbly requesting this House to reject these two nominees if we really want to continue with the fight against corruption. We can get qualified Kenyans who can do this work for purposes of helping this country to fight corruption

Thank you, Hon. Speaker, I oppose.

Hon. Speaker: Member for Kilifi North.

Hon. Owen Baya (Kilifi North, ODM): Hon. Speaker, in line with our Standing Orders, I would like to raise the quorum issue. This House does not have quorum and I think we should not continue with this debate. Thank you, Hon. Speaker.

Hon. Speaker: Very well. Serjeant-at-Arms, just check for me. It is true that there is no quorum. Ring the Quorum Bell.

(The Quorum Bell was rung)

(Loud consultations)

Hon. Owen Baya, you cannot raise the issue of quorum and then walk out.

Hon. Members, remember the rules are that it is only the Whips who are allowed to go out and whip Members. Serjeant-at-Arms, of the two Members walking out, one of them must be Hon. Rehema Jaldesa. It is never done that way. That is out of order.

Hon. Speaker: Very well. We may now commence. Who was on the Floor? Nobody? I give the Floor to Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker for giving me this opportunity to contribute to this Motion. The fight against corruption will remain the cornerstone that will save this country. This country has innumerable resources, but we have been unable to take-off because of ethics and corruption issues.

Before I make general comments on this matter, I want to draw the attention of the House and support the sentiments raised by the incoming Governor of Trans Nzoia County, *Inshallah*. The Report is very clear in respect of the nominee Mr. John Ogallo. When you read page 20 it clearly states that Kenya Revenue Authority confirmed *vide* a letter dated 19th April 2022, that Mr. John Ogallo was non-compliant as at that date.

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They have provided attachments, annexures and a letter from KRA dated 12th May 2022 which is very clear. They confirmed that John Ogallo had settled the tax arrears in relation to monthly rental income, by making payment of Kshs108,500 by way of Real-Time Gross Settlement (RTGS) dated 11th May, 2022. Then he applied for a payment plan to clear the balance of Kshs302,913.

Hon Speaker, the import of this letter is to show that the nominee simply cleared the tax arrears because he wanted to attend the interview. He had no intention at all in his life to pay taxes yet, he received rental income. He misfiled deliberately so to speak and later declared the income that was due to the country. Indeed, this brings out an integrity issue. How can we have somebody who will sit in an integrity related Commission yet, he declined to pay taxes? He only paid taxes because he had been offered the job. In any sense it beats logic.

We are talking about the EACC yet, the nominee we are proposing to the Commission has integrity issues. Failure to pay taxes might not be corruption, but it is an integrity issue. This needs common sense; how do we proceed in light of this arrangement? We will become a laughing stock. How can we send somebody who has integrity issues to preside over the same? If the Standing Orders and law allow probably, we can isolate and drop John Ogallo then proceed with the other nominee.

Hon. Speaker, this is a gentleman who has never lived in Kenya and did not have the courtesy of travelling back to attend the interview, but attended virtually. So, we are creating another case like that of West Pokot County where the Deputy Governor has lived in the United States of America for five years earning public funds yet, not working for the people of Kenya. This has nothing to do with politics but these are core issues in respect of this matter.

Hon. Speaker, the gentleman says that he will return to Kenya on 22nd May; and that is only if he is assured that he will be given the job. Honestly speaking, is he Kenyan enough?

The only thing he knows about Kenya, as having been away for too long, is through theory and literature. However, he does not have the hard facts about Kenya. He does not even understand Kenya. If you live away for 20 years and so, you surely, cannot purport to understand the issues of integrity and everything.

Hon. Speaker, he is not a suitable nominee for the position that is being tabled here. We must find a mechanism of how we can isolate, and drop his name so that the appointing authority can go back to ask further details and research, and get us a qualified and competent person who understands the fight at hand.

Secondly, the other nominee, Dr. Cecilia has impressive curriculum vitae but when she was at KEBS, she did nothing to solve integrity issues there. There could have been a systematic problem and probably, we can excuse her for that matter. However, I urge Members of this House, and the public that Mr. Ogallo is a wrong nominee for that particular post.

Hon. Speaker, the fight against corruption must be intensified. The friction between Ethics and Anti-Corruption Commission and the Office of the Director of Public Prosecutions (DPP) is a matter that needs to be settled. In the next Parliament, I hope the Departmental Committee on Justice and Legal Affairs will find a way to solve their animosity. This is where EACC investigates and submits files, and the DPP for obvious reasons, does not prosecute. This is why you find people who are so corrupt, and with integrity issues being cleared to hold public offices. They are going to sit in this House and obviously be at the forefront to curtail or even slow down the fight against corruption. That is why as a country, it is important we integrate integrity issues in our training system and education system; and must be of value amongst the children and the people of Kenya.

We purport to be Christians and to some, they profess the Muslim faith, yet what is wrong and right is very clear. It beats the essence why we wake up in the morning carrying the Bible, sit solemnly in Church and when we go back home or after church, we commit crimes: we steal public funds and simply, do things that do not add up. It is a matter that we need to address as a society.

Hon. Speaker, I go to many places. I was in Singapore the other day, courtesy of Parliament. There, they have few policemen and do not have an anti-corruption authority. This is simply because the culture of good moral values has been inculcated into the people to an extent that they do not need to be policed. A typical Kenyan is, however in a rush to make money. That is why the buzz around town when devolution came was that we devolved corruption into the villages and everywhere. Nowadays, you will see village millionaires and billionaires wherever you go. Young people no longer want to work or study. They simply know that all they need to do is become tenderpreneurs, and they will make money. That is why many of them are unable to work. They believe that you just sit there, and things will drop like *manna* from heaven.

Hon. Speaker: There is a point of order.

What is it Hon. Otiende Amollo?

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker.

It is not my wish to interrupt Hon. (Dr.) Oundo. However, he is repeating what has already been said with authority. We therefore, need your guidance.

When one states as a matter of fact that a nominee is not tax compliant, it should be consistent with the documents. I have Annexure 9 with me. It bears a letter from Kenya Revenue Authority in respect to Mr. John Ogallo, dated 12th May 2022. The ultimate paragraph says:

“Therefore, we wish to advise the Departmental Committee on Justice and Legal Affairs that Mr. John Ogallo is now tax compliant pending the determination of the private ruling.”

Hon. Speaker, this letter says, and is a subsequent document, that Mr. Ogallo is tax compliant. When a Member submits his views and states as a matter of fact that he is not tax compliant, yet he has been certified by the body that should, is that in order?

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Speaker, the nominees were presented to this House on 12th April and committed to the Departmental Committee on Justice and Legal Affairs. They got their tax compliance on 19th or 12th May, a month, or several months later after applying for the job.

The question we are asking is, how then do you fail to pay taxes which in turn becomes an integrity issue? Thereafter, you rush to go get a compliance certificate which you even pay half, a quarter of the amount due, then claim to want to sit on an integrity committee? It is about morals and has nothing to do with the law.

(Loud consultations)

Hon. Speaker: I will add you a minute which was taken away by Hon. Otiende when raising his point of order.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): It is a moral and integrity issue, Hon. Speaker.

You refuse to pay taxes then you apply to become a Speaker hopefully, in the next Parliament; and when we say you do not qualify because you have not paid taxes, in the morning,

you rush to go and get a Tax Compliance Certificate; and because there is “tyranny of numbers” in the House, we then vote you in, in the afternoon as a Speaker.

What message are you sending to the people and the children of Kenya? What are you saying? For once, let Parliament be serious with the matter of integrity.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Oundo, you however, gave my example.

(Laughter)

That I rush to obtain a Tax Compliance Certificate, then come here to get “tyranny of numbers” to vote me in. Anyhow, you have your point of view while Hon. T.J. Kajwang’ and Hon. Otiende have their own interpretations of the documents. Let us allow everybody to make their contributions.

Who was next in my list? It is Hon. Majimbo Kalasinga.

Hon. Majimbo Kalasinga (Kabuchai, FORD-K): Thank you very much, Hon. Speaker. We must reject these names in totality. I was looking at Dr. Cecilia; a lady who was the head of Human Resources in KEBS. There were ills and issues on how Kenyans drank unsafe water during her tenure. The market was flooded with contaminated water which was as a result of her department’s failure. However, she did nothing nor fired anyone in that regard. If we get leaders who can distribute contaminated water to the market, and Kenyans in turn drink it while they watch and take no issue with it... I say so because nobody was sacked, and no report was written on the matter. She is the same person who now wants to come and do oversight, to make Kenya good. If you fed us with contaminated water, what makes you not feed us with dirty information when you get into this office?

With all these information, we want for once to make this House to bring sanity in Kenya. Our sons and daughters are watching us; they are watching how we choose leaders in this country. If we pick leaders from wrong departments using corrupt deals, they would also want to go the same way so that in future, they come up... We must pick leaders from the right departments, if we want to have a better Kenya. Kenya is not short of clean and good people who have not done bad things. Kenya is not short of the right people.

Looking at this document, the one who fed Kenyans with wrong water is the one who is seeking the oversight role. I totally disagree. Let us reject these two names in totality.

I thank you, Hon. Speaker.

Hon. Speaker: Member for Igembe Central.

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Report, which I reject from the outset. Without much ado, we should not be dwelling on this issue, if it has been proven that Mr. John Ogallo is not tax compliant. He was made aware that he was to be appointed for this position. It therefore means, that if he would not have been nominated, he would not have filed his tax returns. He decided to file his tax returns so that he can qualify for the job. If it was a matter of integrity, why was he not filing his tax returns regularly? If he was not filing his tax returns regularly, personally I would propose that he should be disqualified from the appointment to this position.

Hon. Speaker, Mr. John Ogallo did his interview virtually. For an interview of this magnitude where you are going to be the Commissioner in the EACC, you must be there in person. Your presence is very important so that, at least, you can face the panellists.

Hon. Speaker, when you go for other interviews such as in the Teachers Service Commission (TSC) or any other institution, they award marks for your physical appearance. For instance, the interviewers award marks on how you are dressed, your mannerism and the way you respond to questions. When you do an interview of this magnitude and you are about 12,000 kilometres away, then you are said to be compliant...

I oppose, Hon. Speaker. If he was patriotic enough he would have come directly to Kenya and faced the panellists. Apparently, he is yet to come to Kenya. He is waiting for us to approve his name here so that he can fly back to Kenya.

We have many Kenyans who are qualified for this job, who are patriotic, who are within the country and are ready to diligently work for this country. So let Mr. Ogallo stay wherever he is and let us pick another Kenyan who is ready to serve the country from within.

Hon. Speaker, I oppose the Report.

Hon. Speaker: Member for Kwanza.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Speaker, please let me draw your attention to the fact that as we are debating today, people are watching and hearing each one of us make their contributions. This House has some respect; it makes laws and we must live by the law. This is not a personal issue as I do not know who this John Ogallo is. Most of us do not know him, but the fact that there is an integrity question on him, I ask this House, as the previous speakers have said, to reject the Report. We have too many Kenyans who are qualified, therefore, let us get someone else by re-advertising.

It is not fair for us to approve someone with such a questionable integrity issue. By the way, they are getting appointed to the EACC of Kenya. Hon. Speaker, I think because none of us knows this gentleman and the name does not suggest anything, all we are saying is that he does not qualify. We cannot go back and forth. I want us to agree, suspend this particular application and since it is not the end of the world, let it be re-advertised. We have many Kenyans who have gone to school. There are those in America who do not even know anything about Kenya; I can confirm that because I have been to America about four times. I even did my training in Rochester when I became the regional sales and marketing manager for Kodak. I met Kenyans who have no idea about Kenya. It is not right bringing such a person back to EACC, 25 years later. We have many other Kenyans who are able to do that job and it is fair that we reject this particular debate and move on, so that we can do other businesses of the House.

I oppose.

Hon. Speaker: Member for Laisamis.

Hon. Marselino Arbelle (Laisamis, JP): Thank you Hon. Speaker for giving me this opportunity. In regard to the nominees who have been proposed by the Justice and Legal Affairs Committee for the appointment to the EACC, I gathered information that Dr. Cecilia Mbinya Mutuku and Mr. John Ogallo did their interviews virtually.

In this country, I have come across members of the armed forces who are very senior in the rank of Major Generals, who have retired. Some are still very young, very vibrant and can be useful to the growth and prosperity of this country. They have actually acquired all the knowledge while they were still in the institution, yet such people are just left without track of what they are doing back at home. You can imagine people whom the Kenya Government has invested in to take care of the security of the country and upon some of them reaching retirement age, they are left to go home. After all, not everybody can become a Major General of the Kenya Defence Forces. The same applies in the public service and police service.

Hon. Speaker, that is why you would realise somebody like Mr. Mohammed Ali who left the Kenya Defence Forces to come and transform the police service actually did an exemplary job. We need these kinds of personalities to take over running of the affairs of institutions such as EACC. It is unfortunate if we come across people like Mr. Ogallo, and the other nominee, who have questionable integrity issues. They are unable to file their tax returns and yet they are the ones who are being given powers to manage the EACC. This is a laughable matter. I am assuming that John Ogallo is the same gentleman who was chased out of the Kenya Prison Service as a commissioner. If that is the case, we are trying to recycle the same kind of people.

With those few remarks, it is good that we try to bring on board some of the people who have no integrity issues for this kind of appointment.

Last, but not the least, many a times we tend to promote minority tribes including people with disability and women in this country for such appointments. I come from a tribe called Rendille which is one of the minority tribes in Kenya and I am yet to come across a Rendille who is being appointed to such positions since I got elected into this Parliament. Are we not equal to other Kenyans? Does it mean Rendilles do not have an equal opportunity as other Kenyans? What is the problem? Why do we have a provision in the Constitution which says that the minority have a say?

Hon. Speaker, next time such appointments happen, they better be, to seek redress from this House so that we deliberate on who should be brought, and who should not, rather than people forwarding names of people whom we do not even know; they just throw them through the window and door.

With those few remarks, thank you, and God bless you.

(Laughter)

Hon. Speaker: Hon. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker.

(Loud consultations)

This is an august House and these proceedings are on record. There are certain things that we should be careful about, and especially, when we say things about people who cannot defend themselves on the Floor of this House.

The first point to note, and the Report is clear on Page 21 is that the objections were invited in respect of these two nominees, but not a single person, including all the Members now speaking so eloquently in this House, appeared to raise an issue. When you do not raise an issue against someone, in the only Committee where he or she can defend himself or herself, you cannot therefore, come here and lecture us at length about the various objections that you have because they cannot come here. The rule of natural justice requires that everyone must have a right of rebuttal. When you deny them that and then you come and raise the issue on the Floor of this House when clearly, you know they cannot come here, it is not fair.

Secondly, Hon. Members must be cognizant of our rules, and your many rulings, Hon. Speaker. You cannot stand and say that there are two nominees, and suggest that we reject one and approve the other. It has always been very clear that you either reject all, or accept all. However, when you stand here

(Loud consultations)

Hon. Speaker, could the hecklers behind me allow me to finish my contribution please? I did not say anything

(Loud consultations)

Yes, when you were making your points I did not interrupt you.

One cannot come here, on such a fundamental matter and say that he thinks that the former Commissioner of Prisons is the same person being nominated. Seriously!

(Hon. (Dr.) Chris Wamalwa rose on a point of order)

Hon. Speaker: Hon. Wamalwa, what is your point of order?

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Speaker. Is Hon. Otiende Amollo, whom I respect very much, in order to refer to other Hon. Members as hecklers? This is a House of debate, and everybody is entitled to his or her opinion?

(Loud consultations)

No! No! This is a House of debate, Hon. Speaker.

Hon. Speaker: You are right, Hon. Wamalwa. It is not in order to refer to other Hon. Members as hecklers, Hon. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): That is true, Hon. Speaker. I however, want you, to give me a proper word to describe the Members who speak without being given the opportunity by the Speaker. What word should that be? I would then be happy to replace it as it may be appropriate.

(Laughter)

The third point is that when you use certain words like “a person lacking integrity” it then becomes fundamental. In this bundle of the Report, we have a letter from the EACC dated 24th April. It clearly states that as far as the EACC is concerned, they have no integrity issues with these two nominees. Who are you then, to come on the Floor of this House, and say that a nominee has an integrity issue when the body that is concerned does not?

More importantly, I have just been drawn to attention of the letter from KRA of 12th May 2022. It is important to note that in terms of the Act, the clearance from KRA is not a legal requirement. It is a procedural requirement that is imposed by the Committee. So, you cannot use such a procedural requirement as an impediment to approval. It is also important to know that there is nowhere in the procedural requirement that says that the nominee must get clearance before or at the time of applying. It is sufficient that at the time of consideration by the Committee, they are satisfied that you have been cleared, and that is what happened here.

Members have also not taken time to even read the said letter. If you look at the Reports, you will see that the question of tax compliance on Page 24 is an issue that arose when the nominee on his own volition approached the KRA. That is when KRA said that there is some rental income which he had earned abroad, which in their view is taxable. How can that be an integrity issue?

(Loud consultations)

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Hon. Speaker: Hon. Members, those are points of argument and not points of order, please. Each of you has read the letters being referred to, and you should interpret it as you wish. Finally, it is for you to make a decision. So, allow him to also advance his position.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Hon. Speaker, the issue is a question of rental income earned abroad. Any Kenyan who is living abroad or has lived abroad knows that these tax regimes can be very complex. There is income that you can earn abroad, and you do not have to pay tax; and there is income in respect to which you are obligated to. When the KRA determined that this nominee needed to pay tax, he proceeded to comply. How can that be an integrity issue?

The fourth point is that Members are taking an issue with the question of virtual appearance. Our own Standing Orders allow virtual appearance. As recent as a month or two ago, we were debating – including the Senate – virtually. How can you then fault a Kenyan who cannot travel because of COVID-19 restrictions, and who chooses to appear before the Committee within the rules of our own Standing Orders? You cannot hold them against that.

Members are saying that you cannot give a Kenyan who has been away a job. Our Constitution allows Kenyans to have dual citizenship. You cannot discriminate against a Kenyan because they live somewhere, else. In fact, this Kenyan is shown to have worked at the World Bank in the Department of Governance for many years. Who else do you need to fight corruption other than him? We have brought Kenyans including the former Auditor-General who has been abroad for almost 20 years to work here. When he however, came back, he put proper audit systems and we are all in agreement that Auditor-General, Ouko did a good job: We should be very careful.

Clearly, the composition of EACC once we approve the two nominees will meet the regional and ethnic balance. I am not quite sure why my honourable brothers from the western circuit, have an issue with this particular nominee?

(Loud consultations)

I also come from the western circuit. As I said earlier, I need a proper name to call the Members interrupting me. The Chair of EACC is from that circuit.

(Applause)

We need other people, for example, from Makueni and Migori as they are represented here. You should not oppose for the sake of it.

Lastly, there is a question on Page 23 where, this nominee was asked his views on electing people with an integrity question. His response was clear that he does not support anyone to be elected to any office, if facing charges. There is a soft resistance to constituting, and enabling the EACC by people who do not like the word “integrity” and who do not want the Commission to work. They want to kill EACC through the back door because the Commissioners are at the moment only three. If one is unable to come, then, there would be no Commission. Who will benefit when there is no EACC? We must approve these nominees, empower the EACC and move on.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, remember that all of you have contributed.

(An Hon. Member spoke off-record)

No, I am talking about matters of what is in the Report. You ought to have done it. In any event, you only spoke for three minutes, yet you had 10 minutes. You therefore, squandered your opportunity to contribute. You have 10 minutes on this general debate. However, when you speak for two or one-and-a-half minutes and later on, you want to raise a point of order that is becoming clever by an inch. Please, from my list, the only person who appears to have not contributed is Hon. Millie Odhiambo. Do you want to contribute to this debate?

(Hon. (Ms.) Odhiambo-Mabona spoke off-record)

Hon. Speaker: You want to contribute to this or the other? Very well.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker. At the outset, I support this Motion. I declare that I do not know any of the nominees. I have had to clarify when I heard a Member referring to Mr. John Ogallo as the person who was the Commissioner-General of Prisons Service; and I am told he is not. As Members of the House, we also need to refrain from whipping up emotions and speak factually. If it was the Mr. Ogallo of the Kenya Prisons, perhaps, there may have been an issue raised about him. There is no issue that has been raised about this Mr. John Ogallo in relation to the Kenya Prisons.

I am actually perturbed, listening to very progressive Members of the House, who are using digital processes to communicate, saying that they have a problem with a virtual interview. I wish that our main problem was something else. We cannot sit here in this era, time and age like cavemen and cavewomen, saying that a person must appear before us in person. This is not a court of law where we want to look at your demeanour. Even in a court of law, we can assess your demeanour virtually. I do not understand this story of someone being interviewed virtually. So, what if you are interviewed virtually? For those who want to be interviewed elsewhere in different ways, it is up to them. In this age and time in this country, that is the direction that everyone is going. We are going digital. Why would you want to take us back to the stone-age era? It is embarrassing even for Members of Parliament...

Hon. Speaker: Hon. Millie, you have spoken very well on that point but, maybe, you just needed to make the point which Hon. Otiende Amollo almost alluded to. In 2020, this House, in its collective wisdom, amended the Standing Orders to provide for virtual transaction of business; and even during that period, interviewed many Kenyans virtually. It is a moot point.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): Thank you, Hon. Speaker, for emphasising that. I did not want to speak to it because I heard Hon. Otiende alluding to it. If we really want to oppose this list, let us have cogent reasons but not that someone has not been interviewed virtually.

The other matter that I take issue with is that a number of Members have been complaining about tax compliance. I have said this on the Floor of the House before, and I will say it again. Even I, at one point, had a tax issue with Kenya Revenue Authority. One day, I was sitting here, and they sent me a letter saying that I owe them Kshs3 million, and I wondered what it was for. When I went there, I discovered that there was a woman who was trading in maize as Millicent Odhiambo and yet, my official name is Millie Odhiambo. I was even taken to court for trading in maize and not paying Kshs3 million in taxes on maize. I am sure you know that when I am here, I hardly have time to trade in maize. I am innocent. Every lawyer here will tell you that before it is

sorted out, it will be an ongoing matter that will hold me back on any issue. It does not make me guilty, neither does it make me complicit.

I will give you live examples that have happened in this House. One time, Hon. Catherine Muma appeared before us, as the Constitutional Implementation Oversight Committee. We had a bit more powers then to make appointments during the transitional period. I remember that Hon. Martha Karua, whose appointment as our Deputy Presidential candidate has made me very happy, raised an issue about Hon. Catherine after she appeared before us, as a Committee. The issue was a civil matter of non-payment of some money, but Hon. Catherine had already appeared before us, as a Committee. The Committee had to call Hon. Catherine back and question her again on that issue. She was cleared and got the job. This is a civil matter, not a criminal one. The Committee is disputing tax matters. Once the tribunal is done, you may clear him. You cannot hold somebody accountable for an ongoing civil matter. Even if it was of a criminal nature, one is not guilty until he or she is convicted. Everybody is presumed innocent until proven guilty. This is a civil matter and so, you cannot hold somebody to account because he or she has a dispute with KRA on tax.

People who stay abroad will always have issues of double taxation. It will not come up only in this case, but also in others. This is a fairly young House where majority of you actually look like you are in your forties and fifties. Your children will not stay here in Kenya. Let us quit this issue that we seem to have with people who are out of the country. They are our children, brothers and sisters. I saw it when we were coming up with the Constitution, where people were opposing those who have dual citizenship. People cannot get jobs in Kenya. I am sure that all of you can see it, even as you go to campaign. Kenyans are desperate and hungry because there are no jobs. If they can get jobs outside the country, why begrudge them when they could not get them here? If the job has run its course and he qualifies, please let us get better reasons for opposing people.

To my brother from Rendille, I understand you. Minorities need to be added. I will support you next time on any commission appointment that comes to the Floor of the House because I am also a minority. I am a Suba. I am not only saying it for today. I am actually a great champion of minority rights because I am a minority myself. My father is a Suba and my mother is a Luo. Perhaps, that is one thing that people do not know. Because of that, I push a minority agenda.

What we agreed on – and the Hon. Speaker made a ruling on it – is that when looking at issues of diversity, we look at all the commissions in totality. If it is a commission where we are replacing two or three people, how do we represent the face of Kenya with her 43 tribes? Now we even have the Zimbabwean ones that we added recently. They are my in-laws. They have not even been given the post of the chairman of a cattle dip. Do you now want to add my Zimbabwean relatives? Let us be honest, as Members of the House. If we want to attack somebody, let us do it with good reasons.

Remember what you are doing to someone will one day be done to you or your child. Let us not behave as though the people who are brought here are like chairs or stools! They are human beings. They are Kenyans who also have families and have needs like us. The way that I will one day be happy for your children if they get a position, is the same way that we should be happy for this John Ogallo, if he gets a position. If there was a serious issue on integrity, I do not care where he comes from. I would be the first person to oppose his appointment because I am very strong on governance issues.

Having listened to Members, I was almost tempted at some point to even infer that the problem was that his name begins with an 'O', but because no Member made that inference, I will not say it. I hope that we dispel any such thought from our minds and think Kenya. That is because

we are all Kenyans. If somebody qualifies and has no governance blot in his curriculum vitae let them get what they deserve.

My brother, I am sure that the next time there is a Rendille being considered for appointment, I will support him or her.

I support the Motion.

Hon. Speaker: Well spoken, Hon Millie. The only person, who has not spoken on this but still appears on my list, even though I see that he is out of the Chamber, is Hon. John Bunyasi, the Member for Nambale. His name appears here, but I know that he normally sits up there. He is not here and so, even if I give him a chance to speak, I do not know whether his card is there or not. His name is showing here.

Hon. Members, for obvious reasons, we can now only call the Mover to reply. Hon. Shamalla, proceed.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Speaker. I wish to thank Members for this very robust debate and discussion. Special thanks go to Hon. Otiende Amollo, for standing up for the rights of people who are not here to defend themselves and have no right of reply.

I do not wish to reopen debate, but to say something that has not been said here. We must never forget the billions of shillings that Kenyans in the diaspora are contributing to the economy of this country. In fact, during the COVID pandemic, were it not for them sending money home, we know how incredibly terrible the situation would have been. To disrespect Kenyans in the diaspora as being lesser Kenyans is absolutely a negative act of anti-patriotism. You cannot say a Kenyan working in the diaspora is not fit for a job in this country.

With those few remarks, I beg to reply.

Hon. Speaker: Thank you, very much. This should conclude that bit, and what remains is for the Question to be put, which will be done when the House next sits, whenever that may be.

(Putting of the Question deferred)

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE CHILDREN BILL

The Temporary Deputy Chairman (Hon. Christopher Omulele): Order! Order! Hon. Members, we are now in the Committee of the whole House to consider the Children Bill (National

Assembly Bill No.38 of 2021). We had partially considered this Bill up to Clause 129. So, we will now start with Clause 130.

My understanding is that Hon. Koske is representing the Chair of the Departmental Committee on Labour and Social Welfare. So, for purposes of this session, he will be referred to as the Chair. Hon. Millie who has substantial proposals to amend is also present. Therefore, these two will be featuring prominently in these proceedings.

(Resumption of consideration in Committee interrupted on 12.5.2022)

Clause 130

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie you have an amendment. Proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, JP): Hon. Temporary Deputy Chairman, I am embarrassed because I have just told Members about being Information and Communications Technology (ICT) compliant, but I cannot open my computer. I am concerned because we need the support of the legal team, since we had a harmonization meeting. I can see Doreen is here, and I hope Sydney is coming as well, so that we can move faster.

Hon. Temporary Deputy Chairman, I beg to move Clause 130, but with a further amendment:

THAT, Clause 130 of the Bill be amended in sub-clause (6) by inserting the following new paragraph immediately after paragraph (c)—

“(d) an interested person.”

I am proposing we insert a new paragraph immediately after paragraph (c), in the Order Paper... I have paused because I am proposing a further amendment and you are a bit distracted.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes, proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, JP): I am proposing a further amendment which we agreed with the Chair of the Committee. I had introduced the concept of an interested person, but we have agreed to adopt a different meaning. So, I am doing a further amendment to my own amendment. Instead of saying “an interested person”, I will use the term “a person acting on behalf and in the best interest of a child”.

This means we have persons identified in the Bill as authorised people, who include police officers, children’s officers and others. You may have a situation where a neighbour sees something bad happening to a child. So, we want to ensure that such a person can also take action. So, that is a person acting on behalf and in the best interest of a child.

I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, you have something to say? You agree. Very well!

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

(Clause 130 as amended agreed to)

Clause 131

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, you have a proposal to amend this. Proceed.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 131 of the Bill be amended in sub-clause (2) by deleting the word “Director” and substituting therefor the word “Secretary”

This is just to align with nomenclature changes as the Directorate of Children Services is now headed by the Secretary of Children Services.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie you have a further amendment to this, which I had not seen. Proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 131 of the Bill be amended in sub-clause (2) by inserting the words “an interested person” immediately after the word “Director”.

I have a further amendment instead of “an interested person” we use the words “a person acting on and in the best interest of a child” just like in the previous amendment.

Thank you. I move.

(Question of the amendment proposed)

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

(Clause 131 as amended agreed to)

Clause 132

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair you have a proposal to amend this, proceed.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 132 of the Bill be amended by inserting the following words “and 129B” immediately after the words “Section 126”

The amendment is to provide for recognition of a guardianship appointed under customary law.

(Question of the amendment proposed)

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

(Clause 132 as amended agreed to)

(Clause 133 agreed to)

Clause 134

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT Clause 134 of the Bill be amended in sub-clause (1)—

(a) by deleting the word “and” appearing immediately after the word “receive” in paragraph (a) and substituting therefor the word “or”;

(b) by inserting the words “or misleading” immediately after the word “false” in paragraph (c)

(c) by deleting the word “exceeding” appearing immediately after the word “fine not” and substituting therefor the words “of not less than”

Hon. Temporary Deputy Chairman, I am moving my amendment with a further amendment to sub-clause (c). I am going to explain why. The other ones are really simple amendments. In the first one, we are removing “and” after the word “receive” because then we are dealing with a disjunctive and not a conjunctive issue. We are also adding the word “misleading” so that it is not just false but also misleading in the Bill. However, I was proposing that we delete the word “exceeding” appearing after the word “fine” and substitute it with the words “of not less than”. Let me just refer to the Bill because I am proposing a further amendment there.

Hon. Temporary Deputy Chairman, I am sorry because we were actually looking at this earlier. I am proposing that, instead of the way I have worded it right now, the only thing we do is to say a fine not exceeding Kshs5 million and not Kshs1 million.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, there is going to be a problem following the text of your proposal to that.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Let me explain myself. I think the reason why it might be a problem is because I am allowed to do a further amendment to my own amendment... Let me take them one by one.

My first proposal in Clause 134 of the Bill is that it be amended in sub-clause (1) by deleting the word “and” after the word “receive”. Hon. Temporary Deputy Chairman, I hope you are following me on that one because it would give it a totally different meaning. Then by inserting the words “or misleading” immediately after the word “false” in paragraph (c).

The Temporary Deputy Chairman (Hon. Christopher Omulele): That is in order.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, then I am going to the offences. My proposal was to delete the word “exceeding”. I have actually

been helped because we had a meeting earlier. What I am doing is to drop the word... I think this is confusing me further. Let me just go the way I was going. What I had proposed earlier in the last one because we have agreed on the first two, my original proposal was to delete the word "exceeding" after the words "fine not" and substitute with the words "of not less than". What I am saying is that I drop that specific amendment and instead delete the word "one" and replace with "five". So my proposal in that paragraph is delete "one" and replace with "five". That is all. That is my further amendment. Are you following me? I can read it out. So it becomes:

"Commits an office and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding Kshs5 million, or to both."

The reason I am doing a further amendment - after consultations - is that it gives great latitude but still gives discretion to the magistrate or judge.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, we have got you.

(Question of the amendment proposed)

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

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

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

(Clause 134 as amended agreed to)

(Clause 135 agreed to)

Clause 136

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Millie and the Chair have amendments to this. We will start with the Chair.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 136 of the Bill be amended by deleting the word "Director" and substituting therefor the word "Secretary"

This is to align with the nomenclature changes as the Directorate of Children Services is now headed by the Secretary of Children Services.

(Question of the amendment proposed)

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

(Question, that the word to be inserted in place

thereof be inserted, put and agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, you may move yours.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT Clause 136 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (e)—

“(f) an interested person”.

Hon. Temporary Deputy Chairman, I propose to move my amendment again with a further amendment. It is similar to the previous ones I had moved where I had proposed an amendment by putting an interested person but, instead, we are using the terminology “a person acting on behalf and in the best interest of the child”. I will be handing over this just to help the technical team follow.

(Question of the amendment proposed)

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

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

(Clause 136 as amended agreed to)

Clause 137

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT Clause 137 of the Bill be amended by inserting the expression “(1)” immediately after the number “137”.

Hon. Temporary Deputy Chairman, the reason is to correct the numbering by inserting “one” immediately after the number “137”. The other justification is the word “fit” is limiting. The amendment seeks to empower the court to issue the non-interference order referred to under paragraph (i) against any person and not just a fit person. This is an order given to prevent a person from interfering with the life of a child.

(Question of the amendment proposed)

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

(Clause 137 as amended agreed to)

(Clauses 138 and 139 agreed to)

Clause 140

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman,
I beg to move:

THAT, Clause 140 of the Bill be amended in sub-clause (1) by inserting the following new paragraph immediately after paragraph (d)—

“(e) a person acting on behalf and in the interest of the child”

I am amending my amendment.

(Question of the amendment proposed)

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

(Clause 140 as amended agreed to)

(Clause 141 agreed to)

Clause 142

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman,
I beg to move:

THAT, Clause 142 of the Bill be amended by deleting the words “hundred thousand” appearing immediately after the word “two” and substituting therefor the words “one million”

This amendment enhances the sentence, but still gives latitude and discretion to the magistrate.

Thank you.

(Question of the amendment proposed)

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

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

(Clause 142 as amended agreed to)

(Clause 143 agreed to)

Clause 144

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 144 of the Bill be amended in the definition of the term “street child” by deleting the term “street child” and substituting therefor the term “a child living on or off the streets”.

The reason is that using the word “street child” stigmatises the child. So, I suggest that we call the child “a child living on or off the streets”.

(Question of the amendment proposed)

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

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

(Clause 144 as amended agreed to)

(Clause 145 agreed to)

Clause 146

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two proposed amendments in this clause. We will start with the Hon. Chairman’s amendment, and then we will deal with Hon. Millie’s amendment.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 146 of the Bill be amended—

(a) in paragraph (k) by inserting the words “intersex genital mutilation” immediately after the words “female genital mutilation”;

(b) in paragraph (r) by inserting the words “mentally ill” immediately after the words “guardian is”;

(c) in paragraph (u) by deleting the words “non-violent”.

Give me a minute, Hon. Temporary Deputy Chairman.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I want to help Hon. Chairman, because we had earlier consultations.

Hon. Gideon Koske (Chepalungu, CCM): Yes. We need to move fast.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): If he moves the amendment one by one, it might help him.

The Temporary Deputy Chairman (Hon. Christopher Omulele): That is in order. He may proceed in that manner.

Hon. Gideon Koske (Chepalungu, CCM): I withdraw the proposed amendment (a) and (c) in Clause 146. I remain with (b), which protects children whose parents have mental illness in Clause 146(r) of the Bill.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): You are missing an important one. It is okay.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chairman, can you retake it so that we are exactly clear on what you are withdrawing and remaining with?

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I withdraw my amendments in this clause, so that Hon. Millie can move her amendment.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairman. Sorry, this is a bit unique, because we had a discussion earlier. The Committee has very good amendments. Because this Bill is very big, there may be a bit of confusion. We agreed that the Committee should withdraw paragraph (u) of the Bill. They can move their amendment in paragraph (k) by inserting the words “intersex genital mutilation” immediately after the words “female genital mutilation”. They can also move the amendment in (b), in paragraph (r) by inserting the words “mentally ill” immediately after the words “guardian is”. We agreed that they would withdraw the amendment in paragraph (u) and then I pick it. I do not know whether Hon. Chairman is following what I am saying.

Hon. Gideon Koske (Chepalungu, CCM): Yes, I am following.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman should move the first two amendments.

Hon. Gideon Koske (Chepalungu, CCM): Correct.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chairman, you need to restate that you are not withdrawing your amendments. The record is that you have withdrawn them.

Hon. Gideon Koske (Chepalungu, CCM): There is a slight correction, Hon. Temporary Deputy Chairman. Sorry.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Proceed.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 146 of the Bill be amended—

(a) in paragraph (k) by inserting the words “intersex genital mutilation” immediately after the words “female genital mutilation”;

(b) in paragraph (r) by inserting the words “mentally ill” immediately after the words “guardian is”;

The justification in (a) is to protect children who may undergo intersex genital mutilation. It will benefit them. The amendment in (b) protects children whose parents have mental illnesses in paragraph (r). I withdraw the proposed amendment in (c).

The Temporary Deputy Chairman (Hon. Christopher Omulele): That is clear.

(Proposed amendment to paragraph (c) by Hon. Gideon Koske withdrawn)

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 146 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraphs —

(a) Who is an orphan and has no guardian;

(aa) who has been abandoned by their parents or guardians;

(b) deleting paragraph (u) and substituting therefor the following new paragraph—

(u) Who engages in sexual conduct of any kind;

(c) by deleting paragraph (u) and substituting therefor the following new paragraph—

“(y) who is intersex and is subjected to or likely to be subjected to discriminatory treatment or abuse,”

(d) in paragraph (ff) by deleting the word “differential” and substituting therefor the word “discriminatory”;

(e) by inserting the following new paragraphs immediately after paragraph (gg)—

“(hh) who is suffering from a terminal, debilitating or chronic illness and whose parents are unable to exercise proper care of the child; or

(ii) who is in need of medical treatment but denied access thereto by the parents or guardians on religious grounds”

In (a) and (aa), we are being very clear about children who need care and protection. We are also adding some categories that have been left out. For instance, children who engage in sexual conduct of any kind. I am deleting Clause 146(u) of the Bill, which implies that children can engage in sexual conduct at some level, which is actually considered a criminal offence. And those children who are intersex and are likely to be subjected to discriminatory treatment. And then in Paragraph (ff), by deleting the word “differential” and substituting it with “discriminatory.” The reason is that the word, “discriminatory” is negative, but “differential” is not necessarily negative. It is more of an affirmative action initiative.

Inserting new instances where a child may be in need of care and protection after (gg) which would include (hh), children from terminal or debilitating or chronic illnesses whose parents are not able to take care or children in need of medical care, but are denied access for religious purposes.

(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)

(Clause 146 as amended agreed to)

Clause 147

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 147 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”

This is to align it with nomenclature changes as the Directorate of Children Services is now headed by the Secretary of Children Services.

(Question of the amendment proposed)

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

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

(Clause 147 as amended agreed to)

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, what is out of order?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I had an amendment to Clause 148. I just want to go on record that we have agreed that I withdraw it.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clauses 148, 149 and 150 agreed to)

Clause 151

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 151 of the Bill be amended by deleting the term “Attorney-General or” wherever it appears.

The Attorney-General is no longer concerned with issues of prosecution, but it is the Directorate of Public Prosecutions (DPP).

Thank you.

(Question of the amendment proposed)

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

(Clause 151 as amended agreed to)

Clause 152

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two proposed amendments to this clause. Chair, you will go first.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 152 of the Bill be amended –

(a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;

(b) in sub-clause (7) by deleting the expression “(5)” appearing immediately after the word “subsection” and substituting therefor the expression “(6)”.

The reason is to align it with nomenclature changes as the Directorate of Children Services is now headed by the Secretary of Children Services, and to correct mis-referencing.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Hon. Millie Odhiambo, proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 152 of the Bill be amended in sub-clause (2) —

(a) by inserting the words “or fathers’ immediately after the word “mothers’ appearing in paragraph (j) (ii);

(b) by deleting the word “four” appearing in paragraph (j)(iii) and substituting therefor the word “two”

Sometimes, we forget that children belong both to mothers and fathers. Sometimes, we discriminate against fathers. So, in this instance, we are talking about instances where only mothers are imprisoned. What about if it is the father who was taking care of the children and not the mother? So, I just wanted to add the fathers.

I withdraw my proposed amendment to sub-paragraph (b). It is only the first one that I have moved.

Thank you.

(Proposed amendment to paragraph (b) withdrawn)

(Question of the amendment proposed)

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

(Clause 152 as amended agreed to)

Clause 153

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman,
I beg to move:

THAT, Clause 152 of the Bill be amended in sub-clause (3) by deleting the word “exceeding” immediately after the word “fine not” and substituting therefor the words “less than.”

I withdraw the proposal “deleting the word, “exceeding” and “substitute the words, “less than” and instead propose to delete the words, “one hundred thousand” and replace it with, “one million”. The only amendment I have is deleting “one hundred thousand” and replacing it with, “one million”.

(Question of the amendment proposed)

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

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

(Clause 153 as amended agreed to)

Clause 154

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman,
I beg to move:

THAT, Clause 154 of the Bill be amended by deleting sub-clause (6).
It basically allows any person aggrieved by a care order to appeal to the court.

(Question of the amendment proposed)

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

(Clause 154 as amended agreed to)

Clause 155

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two proposed amendments to this. Chair.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 155 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

The reason is to align with nomenclature changes as the Directorate of Children Services is now headed by the Secretary of Children Services.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 155 be amended by inserting the following new sub-clause after sub-clause 6—

(6A) a person who is aggrieved by a care order may appeal to the Court.

I want to clarify that I gave the wrong reasons for Clause 154, even though I still support the deletion, which we have done. The reason for Clause 154 has to do with discipline of children which parents have. But if we put it as proviso, it is actually negative. But now the reason I gave for Clause 154 is actually for Clause 155, that a person who is aggrieved by a care order may appeal to court. The reasoning is different, but the proposal remains the same that we have deleted 154, and I am proposing (a) to replace with a person who is aggrieved by a care order or a new (6A), a person who is aggrieved by a care order to appeal to court.

Thank you.

(Question of the amendment proposed)

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

(Clause 155 as amended agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair.

Clause 156

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Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT, Clause 156 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

It is on the same note, to align with nomenclature changes because the Directorate of Children Services is now headed by a Secretary of Children Services.

(Question of the amendment proposed)

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

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

(Clause 156 as amended agreed to)

(Clause 157 agreed to)

Clause 158

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two proposals to this. Hon. Chair.

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT, Clause 158 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

It also is on the same issue, to align with nomenclature changes. The Directorate of Children Services is now headed by a Secretary of Children Services.

(Question of the amendment proposed)

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

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

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I beg to move:

THAT, Clause 158 be amended—

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

“(1) a care order or interim order may be discharged—

(a) by the making of an adoption order in respect of the child;

(b) in any case where the care order was not made in respect of the child by reason of the child having been found guilty of a criminal offence under Part XIV;

(c) by the making of a residence order in respect of the child.”

(b) in sub-clause (2) by inserting the following new paragraph immediately after paragraph (d)—

“(e) an interested person”.

The first part of my proposed amendment is to sort out grammatical issues so that the sentence makes sense. The last part proposes a new sub-paragraph (e) to include an interested person. Going by the earlier amendments, we will use the wording “a person acting on behalf and in the best interest of a child”.

(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)

(Clause 158 as amended agreed to)

(Clauses 159, 160, 161 and 162 agreed to)

Clause 163

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I beg to move:

THAT, Clause 163 be amended by inserting the following new sub-clause immediately after sub-clause (4)—

“(5) The court shall consider the views of the child before making an order under this section”.

This clause deals with a child who escapes from an institution. All I am seeking is that the courts, before making any order, get the views of the child. Sometimes, children run away from institutions because of abuse. It would be good for the courts to know why a child is running from an institution.

(Question of the amendment proposed)

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

(Clause 163 as amended agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Clause 164

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I beg to move:

THAT, Clause 164 of the Bill be amended —

- (1) in sub-clause (1) by deleting the words “one month” in sub-clause (b) and substituting therefor the words “fourteen days”.
- (2) in sub-clause (2) by deleting the words “not exceeding” appearing immediately after the words “fine” and substituting therefor the words “of not less than”.

I will move my amendments with a further amendment. First, it is by dropping the first proposed amendment. Secondly, it is by replacing “one hundred” with “one million”. I am dropping the earlier proposed amendments. Instead, I am deleting “one hundred” and replacing with “one million”, in sub-clause (2).

(Proposed amendment to paragraph (1) withdrawn)

(Question of the amendment proposed)

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

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

(Clause 164 as amended agreed to)

(Clauses 165, 166 and 167 agreed to)

Clause 168

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I beg to move:

THAT, Clause 168 of the Bill be amended —

- (a) by deleting sub-clause (2);
- (b) by deleting sub-clause (3) and substituting therefor the following
 - (3) The age presumed or declared by the court under subsection (1) to be the age of any person appearing before it shall, for purposes of this Act, be deemed to be the person’s age unless the contrary proof is adduced before Court.

Before I give the reason and because of how big this Bill is, I just want to notice that we might miss out some items. We might have missed out something in sub-clause (1). I hope the Chair will, at some point; look at it either through a re-committal or in a further amendment. We do not refer to children as “accused persons”. We refer to them as “subject” to avoid stigmatisation. It is something that we had discussed. Perhaps, the Committee Chair may consider a re-committal when we will be doing re-committal of Clause 168(1). I do not have the power to do that amendment so that we use the word “subject” and not “accused”.

My amendment here deals with presumptions about age. My worry was that if you have a situation where a child appears in court, he or she is accused yet the child is 14 years but the court does not know the age, they are charged as an adult of 18 years old. Then later, it appears to the court that it was a child, and the court should reverse that decision. Even in terms of where the

child is put, it would mean that they will be jailed with adults and treated like adults when they are children. The court should be able to reverse that order. As it is currently worded, it will be tying the hands of the courts.

(Question of the amendment proposed)

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

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

(Clause 168 as amended agreed to)

(Clauses 169, 170 and 171 agreed to)

Clause 172

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two proposed amendments to this clause. We will start with the one by the Chairman.

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT Clause 172 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

This is to align the Bill with the nomenclature changes as the Directorate of Children Services will now be headed by the Secretary of Children Services.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 172 of the Bill be amended by in sub clause (1) by—

(a) inserting the words “in need of care and protection” immediately after the word “children” in paragraph (a);

(b) deleting sub clause (1) and substituting therefor the following sub clauses—

(ba) to promote long term parental care, with the goal of family reunification in the first instance; or

(bb) accommodating children in alternative, safe and nurturing family relationships for long periods of time;

(bc) to provide social and economic stability in the life of a child or children who may be denied or unable to have a stable family support system.

I want to bring to your attention that the Order Paper makes reference to sub-clause (2) in paragraph (b) instead of sub-clause (1)(b). I want to make that correction because my amendments relate to sub-clause (1). I have no amendments to sub-clause (2). The amendments are basically to sharpen meanings and make it clear that foster care is for a short time and not a long time. As the provision is currently worded, it would appear that foster care is for long a time. It should be for a short time as a more permanent solution is sought.

I move.

(Question of the amendment proposed)

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

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

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

(Clause 172 as amended agreed to)

(Clause 173 agreed to)

Clause 174

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Koske.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 174 of the Bill be amended by–

(a) deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;

(b) deleting sub clause (2);

(c) deleting sub clause (7).

This is to align the Bill with the nomenclature changes as the Directorate of Children Services will now be headed by the Secretary of Children Services. It is also to delete Sub-clause (2) because foster care refers to placement of children under the care of an individual or spouses and not under an institution. Sub-clause (7) is misplaced. It seems to be describing the roles of managers of rehabilitation schools or charitable children’s institutions – that is, children’s homes, yet this clause deals with foster care placement.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

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

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

(Clause 174 as amended agreed to)

Clause 175

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Koske.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 175 of the Bill be amended—

(a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;

(b) by deleting sub clause (2) and substituting therefor the following new sub clause—

(2) On receipt of the application referred to in subsection (1), the Secretary shall conduct due diligence, including ascertaining the criminal liability of the prospective foster parent, and prepare a report containing information relating to the matters specified in Rules made under this Act.

(c) in sub-clause (4) by inserting the words “for a period not exceeding three months” immediately after the words “temporary foster care over the child”;

d) by inserting the following sub-clause after sub-clause (5)—

(6) the Officer Commanding Station in the local limits of the jurisdiction in which the child is accommodated shall notify the Secretary.

This is to align the Bill to the nomenclature changes as the Directorate of Children Services will now be headed by the Secretary of Children Services.

The amendment to sub-clause (2) is to clarify that the Secretary of Children Services will be responsible to conduct due diligence on an applicant seeking to become a foster parent. The amendment also seeks to stipulate a definite period for temporary foster care under sub-clause (4), which should not exceed three months.

The amendment to sub-clause (5) is to clarify that any person exercising temporary foster care of a child pending reunification with its parents must give a notice to the Secretary of Children Services and not to the Officer Commanding Police Station (OCS) who has no responsibility in foster care placement.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Just a minute, Hon. Millie. Let me propose the Question first.

(Hon. (Ms.) Odhiambo-Mabona spoke off record)

If you are assisting him, then proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I know Hon. Koske is receiving guidance. As I had indicated, we had a meeting earlier. I want to bring to his attention that in paragraph (d) we had said that we should retain the OCS because ordinarily, if you find a lost child, you do not look for the Secretary of Children Services. You go to the police. That is why the OCS is mentioned. He was also to bring a further amendment to provide that the OCS should then notify the Secretary of Children Services within 24 hours. It would be an onerous task on a member of the public, who is just being a good Samaritan, to be expected to look for the Secretary of Children Services if he finds a child outside his home. He is just trying to be helpful. The nearest place to go is a police station. I hope Hon. Koske got me.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us allow Hon. Koske to make his proposals.

Hon. Gideon Koske (Chepalungu, CCM): As per what Hon. Millie has said, the OCS should be notified. I agree with that position. So, I withdraw the amendment to sub-clause (5). We are now in agreement that the OCS should notify the Secretary of Children Services within 24 hours as per the law.

The Temporary Deputy Chairman (Hon. Christopher Omulele): We need the text of the amendment so as to know where it will fit in Clause 175.

Hon. Gideon Koske (Chepalungu, CCM): That is a new sub-clause (5) (a).

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): My understanding is that the Chairman of the Committee is retaining his first three amendments but withdrawing the fourth amendment while introducing a new sub-clause after sub-clause (5) providing that the OCS shall notify the Secretary of Children Services within 24 hours.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Koske, is that the manner in which you wish to move the amendment?

Hon. Gideon Koske (Chepalungu, CCM): Yes, we are retaining the first three amendments and withdrawing the amendment to sub-clause (5) while introducing a new sub-clause requiring the OCS to notify the Secretary of Children Services within 24 hours.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tonui Kiprotich, did you want to say something on the amendment?

Hon. Ronald Tonui (Bomet Central, JP): I wanted to say something, but after that correction I am okay.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well.

(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)

(Clause 175 as amended agreed to)

Clause 176

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 176 of the Bill be amended by inserting the following new sub-clauses immediately after sub clause (2)–

“(2A) A person who is convicted by a Court of competent jurisdiction for any of the offences in the Fourth Schedule or similar offences shall not be appointed to be a foster parent.”

“(2B) Subsection (2) shall not apply to a person who applies to be a foster parent to an intersex child.”

This is to provide for the rights of intersex children to receive foster care and not embed the gender rule thereunder. Further, the amendment seeks to bar criminals or persons of questionable repute such as child traffickers and other criminals stated in the Fourth Schedule from fostering children in order to safeguard the welfare of children.

I thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): I see interest from Hon. Tonui.

Hon. Ronald Tonui (Bomet Central, JP): I support that. I believe that people with criminal records should never be given responsibility over any child and so I support.

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

(Clause 176 as amended agreed to)

Clause 177

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 177 of the Bill be amended–

(a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”

(b) by deleting the word “unless” and substituting therefor the word “if”.

This is to align it with the nomenclature changes as the Directorate of Children’s Service is now headed by the Secretary of Children Services. The second amendment seeks to clarify the provision.

(Question of the amendment proposed)

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

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

(Clause 177 as amended agreed to)

Clause 178

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 178 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary.”

This is to align with the nomenclature changes as the Director of Children Services is now headed by the Secretary of Children Services.

I thank you.

(Question of the amendment proposed)

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

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

(Clause 178 as amended agreed to)

Clause 179

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 179 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”

This clause is just to align it with the nomenclature changes as the Directorate of Children Services is now headed by the Secretary of Children Services.

(Question of the amendment proposed)

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

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

(Clause 179 as amended agreed to)

Clause 180

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 180 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”

This clause is just to align it with the nomenclature changes as the Directorate of Children Services is now headed by the Secretary of Children Services.

(Question of the amendment proposed)

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

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

(Clause 180 as amended agreed to)

Clause 181

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 181 of the Bill be amended—

(a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;

(b) in subclause (2) by —

(i) deleting the word “permanently” in paragraph (c) (ii);

(ii) inserting the word “family” immediately after the word “alternative” in paragraph c (iii)

This is to align it with the nomenclature changes as the Directorate of Children Services is now headed by the Secretary of Children Services.

In sub-clause (2), it is good to clarify that the “foster care” is not a permanent care. It is temporary. This is also to enhance clarity in sub-clause (c) (ii) and (iii).

I thank you.

(Question of the amendment proposed)

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

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

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

(Clause 181 as amended agreed to)

(Clauses 182, 183 and 184 agreed to)

Clause 185

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Millie. **Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 185 of the Bill be amended in sub clause (4) (c) by inserting the following new subparagraphs immediately after subparagraph (ii) —

(iii) the adopting parent or parents are not Kenyan nationals but are biologically related to the child;

(iv) were once Kenyan nationals but have lost their nationality by operation of the law of the host country to which the prospective parent or parents have a nationality.

The reason is that we have many Kenyans living out of the country and who wish to adopt their own blood relatives in Kenya. However, it becomes difficult when we outlaw all international adoptions without taking into account such cases.

We also have people who may be in unique situations like me, such that if I were to have a child and, God forbid, I die and my husband dies, his siblings should be in a position to adopt my children. They will be foreign nationals but would be better placed because that is actually their relative. So, that is the essence of this amendment.

(Question of the amendment proposed)

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

(Clause 185 as amended agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, I really appreciate you for this. This reminds me of when I was in practice years back. There were some two boys whose mother had passed on and the sister was living out of Kenya. We put in papers for her to adopt those children and the case took more than three years to be concluded. It was very sad. By the time we were concluding, the children had actually attained maturity and they had missed this golden opportunity. So this is really a very good proposal and I thank you for it. Let us proceed.

Clause 186

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposal for deletion by the Chairperson and a further proposal by Hon. Millie. If the proposal by the Chair is carried, the one by Hon. Odhiambo will fail. Proceed, Chair.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 186 of the Bill be deleted.

The Committee found it fit for the functions of the proposed National Adoption Committee to be reassigned to the National Council for Children Services.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

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

(Clause 186 deleted)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, yours then fails.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

Clause 187

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, you have a proposal to delete one paragraph. You go first and then the Chair will take it up from there. Proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, we have actually agreed that the Committee's proposal is better than mine. I will go by the Committee's proposals.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, are you dropping yours?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes, I drop mine.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 187 of the Bill be amended —

- (a) by deleting the word "Director" wherever it appears and substituting therefor the word "Secretary";
- (b) in sub clause (1), by deleting the words "National Adoption Committee" appearing immediately before the words "in accordance" under paragraph (a) and substituting therefor the word "Council";
- (c) by deleting sub clause (3) and substituting therefor the following new sub clause—

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- “(3) An applicant shall not preselect a prospective adoptive child except—
- (a) in the case of kinship adoption;
 - (b) where the applicant is a foster parent seeking to adopt a fostered child under the applicant’s care.”

Hon. Temporary Deputy Chairman, one reason is to align with the nomenclature changes as the Directorate of Children Services is now headed by the Secretary of Children Services. Number two is by deleting the reference to the adoption committee as its functions are transferred to the National Council for Children Services and to accommodate kinship adoption and those children transiting from foster care to adoption under the same caregiver.

(Question of the amendment proposed)

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

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

(Clause 187 as amended agreed to)

Clause 188

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 188 of the Bill be amended in sub clause (4) by deleting the word “and” at the end of paragraph (b)

When you put the word “and” at the place where it has been put it means that each of the sub-paragraphs cannot stand alone and that they must all be met for if one is not met then the entire provision fails. So I am just deleting the word “and” so that each of the paragraphs can stand alone. Thank you.

(Question of the amendment proposed)

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

(Clause 188 as amended agreed to)

Clause 189

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two proposals to this. Chair, you go first and if you succeed, then Hon. Millie Odhiambo will move a further amendment without paragraph (a). Proceed, Chair.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

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THAT, Clause 189 of the Bill be amended—

- (a) in sub-clause (2) by deleting the word “one” in subsection (b) and substituting therefor the word “both”;
- (b) in sub-clause (5) by-
 - (i) deleting paragraph (a);
 - (ii) deleting paragraph (c);
- (c) in sub-clause (6) by—
 - (i) deleting the words “charged or” in paragraph (c);
 - (ii) deleting the word “sole” in paragraph (f)

The amendment under Clause 189(2)(b), seeks to ensure that both applicants for adoption are more than 21 years older than the child so that they safeguard a child’s safety. The amendment under sub-clause (5) seeks to delete paragraph (a) to ensure that female applicants are able to adopt children irrespective of the gender as has been the case. Traditionally, male children are more abandoned than the female children. On the other hand, women are the main adopters and are the majority. The other reason is under sub-clause (6)(c). As a constitutional principle, one is innocent until proven guilty. In sub-clause (6)(f), we are deleting the word “sole” so that no adoption orders may be granted in favour of any foreign applicant.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo, you may move your amendment.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 189 of the Bill be amended—

- (a) in sub-clause (5) by deleting paragraph (c);
- (b) in sub-clause (6)—
 - (i) by inserting the words except “where the applicant is a biological relative of the child” in paragraph (e);
 - (ii) by inserting the words except “where the applicant is a biological relative of the child” in paragraph (f);

I wish to move the parts of my amendment which have not been touched by the Committee. It just goes again to kinship adoption for foreign relatives just to make sure that your foreign relatives can adopt your child if you are not there. Thank you.

(Question of the amendment proposed)

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

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

(Clause 189 as amended agreed to)

Clause 190

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two amendments to this also. Chair, you will go first.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 190 of the Bill be amended in sub-clause (2)(a) by deleting the words “ six months; and” and substituting therefor the words “one year”

This is to provide for adequate time for investigations and other interventions before declaring the child is abandoned. That is Clause 190(2)(a) by deleting the word “six months; and” and substituting therefore with the words “one year”. That is giving out enough duration before declaring that the child is abandoned. If we leave it open to six months, we will get more children living in the streets by being abandoned before full investigations and interventions are made.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo, you may move your amendment.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 190 of the Bill be amended in sub clause (2) –

(a) by deleting the words “six months and” and substituting therefor the words “one year” in paragraph (a);

(b) by deleting the words “six months and” and substituting therefor the words “one year” in paragraph (b).

The amendment on sub clause 2 (a) has already been done by the Committee. I am suggesting this because I have dealt with many cases where parents or guardians are presumed to have abandoned their child. There is one case where somebody came to us at the Cradle for adoption of a child. When we were trying to free up the child for adoption, we discovered that we had followed the case of the mother who had died. The parents of the woman were extremely poor. They would not even get fare to come and see the child. She was not free for adoption. However, the Children’s Home that was taking care of her presumed that the guardians had abandoned her because they had not seen her for more than six months. Sometimes it is done out of poverty. We can give it a year before we presume that you have abandoned the child.

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(Question of the amendment proposed)

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

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

(Clause 190 as amended agreed to)

(Clause 191 agreed to)

Clause 192

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two amendments in this Clause. Hon. Chairman, move your amendment first.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 192 of the Bill be amended –

(a) in sub clause (2) by deleting the words “or without” appearing immediately after the words “security bond with”;

(b) in sub clause (4) by inserting the word “the Secretary” immediately after the words “the infant”;

The amendment on Clause 192 (1) (b) (iii) seeks to ensure that a report is made by the Secretary of the Children Services in relation to interim orders on adoption of a child. The other amendment is to align this clause with the nomenclature changes as the Directorate of Children Services is now headed by the Secretary of the Children Services.

The amendment in Sub Clause 2 protects the child and ensures that he or she is returned back to Kenya within the period specified by the court. The Secretary, being the custodian of this Act, is a key player in matters relating to adoption of a child. In it should be included persons who may apply for an interim order on specific matters in court.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, move your proposed amendment.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 192 of the Bill be amended in sub clause (4) by deleting the words “not exceeding” appearing immediately after the word “fine” and substituting therefor the words “of not less than”;

I also want to move a further amendment. I withdraw the proposed deletion of the words “not exceeding” and substitute therefor the words “of not less than”.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 192 of the Bill be amended in sub clause (3) by deleting the words “five hundred thousand” appearing immediately after the words “a fine not exceeding” and substituting therefor the words “two million”;

You find a situation where somebody goes with a child outside the jurisdiction of Kenya to another one and then we fine him only Ksh500,000, which is a slap on the wrist. I know of a case that involves a Member of Parliament right now. The court gave custody order to the father. He took off with the child immediately. To date, the child has not been accessed. Giving somebody a little sum of Kshs500,000 is like a joke. People should know that it should be punitive. Let it move to Kshs2 million. It still gives the magistrate latitude because it is the maximum but not the minimum.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tonui, Member for Bomet Central.

Hon. Ronald Tonui (Bomet Central, JP): I thought that a fine of Ksh500,000 was okay. It looks like Hon. Millie is making it exclusive for the rich. If somebody is allowed to go with the child, it means that he has the merit of being with her or him. You want to commercialise it, talk of whoever has more money and raise it to Ksh2 million.

Based on her explanation, I beg to oppose it.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, maybe Hon. Tonui did not understand the context.

(Laughter)

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. Hon. Tonui did not understand me.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Rich people are the ones who take off with children because they are able to pay the fine. If you provide for a fine of Ksh500,000, they will pay immediately. So, it is not punitive to them. I am going for those rich people who run away with the children.

There is the case I told you about, which involves a relative of a Member of Parliament. The court gave an order. However, the guy took off with the child immediately to another country. If you fine him Ksh500,000, what is that? I wish I had even made it higher to Ksh5 million, so that it is more punitive. The proposed fine of Ksh2 million is not the minimum but the maximum. If the case involves a very poor person, the court can give him a fine of Ksh50,000. However, if it is

a rich person, it should give him a fine of Ksh2 million. In any event, we need that money in the country.

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

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

(Clause 192 as amended agreed to)

(Clause 193 agreed to)

Clause 194

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 194 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)–

“(c) persons who were citizens of Kenya by birth but have lost the same status by operation of the law.”

This amendment will allow people who were citizens of Kenya by birth but have lost their status by operation of the law to adopt children. We have Kenyans—like the example of our runners—who get better opportunities. They go to countries that do not allow dual citizenship. So, you will see a Kenyan running and say that he has won for Denmark or another country. However, you know very clearly that Kipchoge cannot be from Denmark. He can only be a Kenyan and Kalenjin from the Rift Valley region. We are covering such people who lose their citizenship by operation of law. To all extents and purposes, we know that they are Kenyans who can take care of their relatives back home.

Thank you.

(Question of the amendment proposed)

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

(Clause 194 as amended agreed to)

(Clause 195 agreed to)

Clause 196

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chairman.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 196 of the Bill be amended in sub clause (1) by deleting the words “National Adoption Committee” appearing in paragraph (h) and substituting therefor the word “Council”.

The amendment seeks to delete the reference to the National Adoption Committee as its functions are transferred to the National Council for Children Services.

Thank you.

(Question of the amendment proposed)

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

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

(Clause 196 as amended agreed to)

(Clauses 197, 198, 199, 200 and 201 agreed to)

Clause 202

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 202 of the Bill be deleted and substituted therefor by inserting the following new clause—

Adopted
Children
Register.

202. (1) The Registrar shall maintain an Adopted Children Register and shall make such entries as the court may direct.

(2) A certified copy of an entry in the Adopted Children Register that is sealed or stamped with the seal of the Registrar shall be admitted as evidence of the adoption to which it relates.

(3) A certified copy of an entry in the Adopted Children Register that contains an entry of a record of the date of the birth or the country of birth of an adopted child shall be admitted as evidence of the date or country of birth as if the copy were a certified copy of an entry in the Register of Births.

(3) The Court shall direct the Registrar to issue a certified copy of an entry in the Adopted Children Register on payment of such fee as the Registrar may prescribe.

(4) The Registrar shall maintain a record that traces the connection between an entry in the Register of Births and an entry that corresponds in the Adopted Children Register.

There is need for clarification on the provisions on Adopted Children Register.

(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)

(Clause 202 as amended agreed to)

(Clause 203 agreed to)

Clause 204

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Hon. Millie. **Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to Move:

THAT, Clause 204 of the Bill be amended in sub clause (1) by deleting the word “parents” appearing immediately after the words “obligations and liabilities of the” and substituting therefor the words “biological parents in case of a first adoption or adoptive parents in case of subsequent adoption”

Clause 204 deals with the rights and duties of parents and capacity to marry for children who are adopted. This amendment seeks to enable parents know that once they give out their child for adoption, they relinquish all rights to that child. They cannot give their child for adoption and still hope that they are a parent to that child. In case of a subsequent adoption, if you are an adoptive parent, you let go of those rights of a child. That is what this amendment seeks to do. We are deleting the word “parents” and being very clear that it is biological parents in case of the first adoption or adoptive parents, in the case of a subsequent adoption, that would lose their right and not all parents or any parent.

(Question of the amendment proposed)

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

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

(Clause 204 as amended agreed to)

(Clause 205 agreed to)

Clause 206

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two amendments to this clause. We will start with the Chair.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 206 of the Bill be amended—

(a) in sub-clause (4) by deleting the words “contribution order” and substituting therefor the words “maintenance order”.

This is just to make it consistent with the provision of the Bill.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 206 of the Bill be amended—

(a) by deleting sub clause (1);

(b) by deleting sub clause (2)

This is because we cannot stratify children. It goes against Article 53 of the Constitution.

(Question of the amendment proposed)

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

(Clause 206 as amended agreed to)

Clause 207

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 207 of the Bill be amended in sub clause (3) by—

(a) deleting the words “unless the contrary intention appears” in paragraph

(a);

(b) deleting the words “unless the contrary intention appears” in paragraph

(a)

I move a further amendment for purposes of consistence so that in sub clause (c) we also delete the words “unless the contrary intention appears”.

The explanation is that a parent cannot be given the mandate to choose when or not when to consider an adopted child a child. Once you have adopted a child, it is your child. So, if you do not want to adopt a child, do not. Once you adopt a child, that is like your biological child. You

cannot say from Monday to Tuesday, this is my child but when this or that happens, it is not my child. It is your child for all purposes.

Thank you.

(Question of the amendment proposed)

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

(Clause 207 as amended agreed to)

Clause 208

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I wish to move my amendment to Clause 208 in an amended form so that I leave it at “by deleting sub clause (2).” I am not substituting because the substitution there has actually erroneously restated what is in the Bill.

The reason is that once you adopt a child, you cannot say that for purposes of this or that, it is your child but for purposes of this or that, it is not your child. What we need to educate the public is that once you adopt a child that child becomes legally your child and has the same status as any biological child. The law gives you different categories under which you can take care of children. You can choose any of the categories but an adoption gives the child legal right as that of a biological child.

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

THAT, Clause 208 of the Bill be amended by deleting sub clause (2)

Thank you.

(Question of the amendment proposed)

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

(Clause 208 as amended agreed to)

(Clause 209 agreed to)

Clause 210

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT, Clause 210 of the Bill be amended—

(a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

- (b) in sub-clause (3) by deleting the words “National Adoption Committee” appearing in the opening statement and substituting therefor the word “Council”.
- (c) in sub-clause (5)
 - (i) by deleting the words “National Adoption Committee”.
 - (ii) by deleting the words “the Committee shall recommend to”.
- (d) in sub-clause (7) by deleting the words “National Adoption Committee” and substituting therefor the word “Council”.

This is to align it with nomenclature changes because the Directorate of Children Services is now headed by the Secretary of Children Services. Two, it is to delete reference to the National Adoption Committee whose duties are proposed to be transferred to the National Council for Children Services.

(Question of the amendment proposed)

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

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

(Clause 210 as amended agreed to)

Clause 211

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT, Clause 211 of the Bill be amended in sub-clause (1) by deleting the words “or otherwise authorized under this Act or other written law”.

It is only a registered adoption society that can undertake the process of adoption.

(Question of the amendment proposed)

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

(Clause 211 as amended agreed to)

Clause 212

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT, Clause 212 of the Bill be amended—

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;
- (b) in sub-clause (1) by inserting the word “adoption” immediately after the words “under the” in paragraph (h);

(c) in sub-clause (2) by deleting the words “National Adoption Committee” appearing in paragraph (d) and substituting therefor the word “Council”.

This is to align it with the nomenclature changes as the Directorate of Children Services is now headed by the Secretary of Children Services. Two, it is to correct a grammatical error in sub-clause (1) by inserting the word “adoption” immediately after the words “under the” in paragraph (h). Three, it is to delete the reference to the National Adoption Committee whose duties are proposed to be transferred to the National Council for Children Services.

(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)*

(Clause 212 as amended agreed to)

Clause 213

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT, Clause 213 of the Bill be amended in sub-clause (2) by deleting the words “National Adoption Committee” appearing in paragraph (a) and substituting therefor the word “Council”.

It is to delete reference to the National Adoption Committee whose duties are proposed to be transferred to the National Council for Children Services.

(Question of the amendment proposed)

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

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

(Clause 213 as amended agreed to)

(Clauses 214, 215 and 216 agreed to)

Clause 217

Hon. Gideon Koske (Chepalungu, CCM): I wish to drop my amendments to Clause 217 of the Bill.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. Amendments to Clause 217 stand dropped.

(Proposed amendment by Hon. Gideon Koske dropped)

(Clause 217 agreed to)

(Clause 218 agreed to)

Clause 219

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, you have proposed to drop this one.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I think I missed it. I know that I was proposing to delete a whole part. I do not know whether that is the one you are talking about.

The Temporary Deputy Chairman (Hon. Christopher Omulele): It is exactly the one. Where it says, “Notwithstanding the provisions of Part II of the Criminal Procedure Court, Children’s Court may try a child for any offence except the offence of murder”.

Hon. Millie, your proposal is to delete a whole part, but procedurally, we have to move clause by clause. I think we are speaking the same language. The new parts will come at the end as part of the new clauses. I will allow you to consult with the Leader of the Majority Party and the Chair so that we can move as one.

*(Hon. (Ms.) Odhiambo-Mabona, Hon. Gideon Koske
and Hon. Amos Kimunya consulted)*

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I now get you. It is just that the process of legislation is sometimes very tedious. I drop my proposed deletion of Clause 219.

The Temporary Deputy Chairman (Hon. Christopher Omulele): It is recorded that the proposal to delete Clause 219 is dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 219 agreed to)

Clause 220

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I beg to withdraw my proposed amendment to Clause 220. Perhaps, I can explain myself for the record.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Please, do.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I have a Bill before the House on children in conflict with the law - the Child Justice Bill - which has more comprehensive provisions than Part XIV of the Bill. To enable us move forward, I have decided to withdraw all my proposed amendments to that Part. I sought to adopt the provisions in the Child Justice Bill. When we get back in September, by God’s grace, I will propose to delete these provisions and move the Child

Justice Bill, so that we take care of children in conflict with the law. The provisions in this Part only give a passing mention of children in conflict with the law. We need to deal with them fairly. We need to either bring more comprehensive amendments to this Bill or bring the Child Justice Bill and delete this Part. For now, to enable us to move forward, I withdraw the proposed amendments.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, I send out a prayer for you so that you be here. You are the guardian angel of children in this country. May your prayers to be here in September be heard by the powers up there!

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Amen. Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): It goes on record that your proposal to delete clause 220 is withdrawn.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

There is a proposed amendment by the Chairman.

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT clause 220 of the Bill be amended—

Assessment of a
child on arrest.

220. (1) A police officer who arrests, serves a summons or issues with a written notice to child shall notify the parent or guardian of the child and the Secretary or an authorized officer within twenty four hours.

(2) A Children's Officer who receives a notification under subsection (1) shall assess and submit a report to the police officer on—

(a) a social inquiry on the child to ascertain the social, economic, personal circumstances, and the needs of the child;

(b) the child's tendency to engage in activities which is in conflict with the law; and

(c) the surrounding facts and circumstances leading to the child's conduct in conflict with the law.

(3) A Children's Officer shall assess a child under subsection (1) in an environment that is secure and is friendly to a child that may include a room in a police station, the children's court or the offices of the Secretary.

(4) A Children's Officer shall assess a child in a manner that is conducive to ease and comfort a child and shall have regard to the best interest of a child.

(5) The assessment of a child for purposes of this section shall be carried out in accordance with the Sixth Schedule.

This is to clarify the manner in which a child may be assessed upon arrest. The amendment is meant to strengthen the Bill. The provision has procedures police officers can follow in assessing each and every arrested child in accordance with the Sixth Schedule.

(Question of the amendment proposed)

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

(Clause 220 as amended agreed to)

Clause 221

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.
Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I withdraw the amendment for the same reason I have given.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 221 agreed to)

Clause 222

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.
Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I withdraw the proposed deletion.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 222 agreed to)

Clause 223

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.
Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I withdraw the proposed deletion.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 223 agreed to)

Clause 224

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.
Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I wish the Committee had put the provisions in Clause 224 into sections. Because I proposed deletion, I did not do that. But I withdraw the proposed deletion.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 224 agreed to)

Clause 225

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.
Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I withdraw my proposed amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 225 agreed to)

Clause 226

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.
Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman,
I withdraw the proposed deletion.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 226 agreed to)

Clause 227

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.
Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I withdraw the proposed deletion.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 227 agreed to)

Clause 228

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.
Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman,
even as I withdraw the amendment, I wish the Committee would include a provision that one of
the purposes of diversion is to reduce repeat offence by children, also known as recidivism. But,
because I withdraw my amendment, I will let it pass. I hope the Chair will take it up.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 228 agreed to)

Clause 229

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.
Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I withdraw the proposed deletion.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 229 agreed to)

Clause 230

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I withdraw my proposed amendment to Clause 230.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 230 agreed to)

Clause 231

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, in the spirit of compromise, I let some things go, but I wish the Committee had put an estimation of age made by a medical practitioner as number one in the clause. I hope we will correct that later. I withdraw my proposed amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 231 agreed to)

Clause 232

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I withdraw my proposed amendment to Clause 232.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposed amendment by the Chairman.

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT, Clause 232 of the Bill be amended in sub-clause (2) by deleting the words “for a not” and replacing therefor with “for a period not” paragraph (b)(ii)

This is to correct a grammatical error.

(Question of the amendment proposed)

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

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

(Clause 232 as amended agreed to)

Clause 233

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The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I wish to withdraw the amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 233 agreed to)

Clause 234

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I withdraw the proposed amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is another proposed amendment to this clause by the Chairman.

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT, Clause 234 of the Bill be amended in sub-clause (3) by inserting the following new paragraph immediately after paragraph (c)–

“(d) a counsellor or psychologist.”

This is to include a counsellor or a psychologist as one of the persons who may attend a family group conference. A trained professional may assist, communicate or attend the call of the family group conference. The goal is discussion of the offence committed by a child and to convey to the child the impact of their offence and propose a reform strategy.

I thank you Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

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

(Clause 234 as amended agreed to)

Clause 235

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I propose that my proposed amendment be withdrawn.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 235 agreed to)

Clause 236

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman. I withdraw the amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 236 agreed to)

Clause 237

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I withdraw the proposed amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chairman, you have a proposal to this one?

Hon. Gideon Koske (Chepalungu, CCM): Thank you, Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 237 of the Bill be amended in paragraph (b) by deleting the words “if he or she is charged with an offence under the Seventh Schedule”

This is to ensure that all children in conflict to the law receive legal representation irrespective of the kind of offence committed by the child. This is as per the Seventh Schedule of our Constitution.

(Question of the amendment proposed)

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

(Clause 237 as amended agreed to)

Clause 238

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I wish to withdraw my proposed amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 238 agreed to)

Clause 239

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I do not know if it is allowable to do a further amendment by not doing a deletion but by adding the word “accused” after the word “the words” in 239 (i), so that the words “accused, conviction, and sentence” shall not be used in relation to a child being dealt with in the Children’s Court.

So, I wish to withdraw my proposed deletion but do a further amendment as stated.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, I do not think it is tenable.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, is that not a further amendment? This is because I had an amendment to delete but I instead added the words “accused, conviction and sentence”. Does that not qualify for a further amendment? However, if they have a problem, I will retain this one. I will move my amendment and delete.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, if you are deleting, you are basically taking it all out. You are not amending.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): A deletion is a substantial amendment. Maybe, you can guide us whether a deletion is an amendment so that instead of deleting, we put the words “accused, conviction and sentence.” This is because no child should be called accused in court. I have not yet dropped.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, my understanding is this: When you delete, it means you are clearing and there is nothing remaining there. So, when your proposal is to delete expressly, then there is nothing remaining there that you may add to. However, if you are proposing to delete and substitute, then whatever it is that you are going to substitute with, you can now do a further amendment to. That is my understanding.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I think the Leader of the Majority Party is a *misleader*. However, that aside, I will let it pass but I would want to encourage the Chair that, that is something they need to pick up because I see in that regard, this Bill is regressing. You cannot call children who are in conflict with the law accused. I saw somewhere where they are being called accused and now the words which we are excluding is conviction and sentence and we are not adding the word “accused”. A child who is in conflict with the law is a subject and not an accused person. I want the Chair to pick it up and should we want to bring some back, maybe that is one of the ones that you would want to pick up. Thank you. Otherwise, I drop my proposed amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes, Chair.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, what Hon. Millie is saying is correct. Hon. Millie, you are correct because you cannot refer to a child as accused to make him/her as a subject. That is what Hon. Millie is saying. You are correct. We have to look at it from the Committee side and see what we can do. You are correct. We need to insert what you are saying.

The Temporary Deputy Chairman (Hon. Christopher Omulele): That re-committal can be undertaken by the owner of the Bill who is here.

(Clause 239 agreed to)

Clause 240

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I wish to drop my proposed amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

Clause 240 agreed to)

Clause 241

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo. **Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, before I drop my amendment, I want the Committee to look at Clause 241(1)(k) whether it should actually be in the Bill, especially dealing with children under the Prisons Act. However, because I had agreed to drop the amendments, I will drop my amendment to Clause 241. Thank you.

(Proposed amendment by Hon.(Ms.) Odhiambo-Mabona withdrawn)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, do you have a proposal to this?

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 241 of the Bill be amended in sub-clause (1) by inserting the words “or psychologist” immediately after the word “counsellor” in paragraph (h).

Hon. Temporary Deputy Chairman, this is to include a psychologist alongside a counsellor as one of the persons to whom a child in conflict with the law may be placed for care.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): *off record.*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Give Hon. Koske the microphone.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Millie Odhiambo, I wish that we delete Clause 241(1)(k) because it does not make sense that we put a child under youth corrective training centres, or prisons.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 241 be amended by deleting Clause 1(k).

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. That is okay.

(Question of the amendment proposed)

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

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

(Clause 241 as amended agreed to)

Clause 242

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I withdraw my proposed deletion in Clause 242.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 242 agreed to)

Clause 243

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie. Give her the microphone.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I wish to withdraw my proposed amendment to Clause 243.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 243 agreed to)

Clause 244

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I want to make an observation since I will not move amendments now. The marginal notes have Special Police Unit. It should be Special Child Police Unit. However, we can correct that because it is not fatal.

I withdraw my proposed amendment to Clause 244.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 244 agreed to)

Clause 245

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I withdraw my proposed amendment to Clause 245.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 245 agreed to)

(Clauses 246, 247, 248 and 249 agreed to)

Clause 250

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chairman, you have a proposed amendment in this Clause.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 250 of the Bill be amended —

(a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

The amendment seeks to change the title of “Director” to that of “Secretary”.

Thank you.

(Question of the amendment proposed)

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

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

(Clause 250 as amended agreed to)

(Clause 251 agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chairman, move the amendment to new clause 3A.

(An Hon. Member spoke off-record)

Chair, you may now move Second Reading of New Clause 3A.

New Clause 3A

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 3 —

Conflict
of laws.

3A. (1) This Act shall prevail in the case of any inconsistency between this Act and any other legislation on children matters.

(2) Despite subsection (1), a provision in another legislation on children matters may prevail if it offers a greater benefit in law to a child.

(3) A judicial or administrative institution or any person making an interpretation as to conflict of any provision or laws shall have regard to the best interests of a child.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Give us some meat on it.

Hon. Gideon Koske (Chepalungu, CCM): This amendment, Hon. Temporary Deputy Chairman, seeks to cure inconsistencies within the Children Act and other laws. An interpretation will prevail where it is in the best interest of the child. For instance, the Penal Code on the age of criminal responsibility.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I support this one. However, I would have hoped that the persons bringing this amendment, instead of making reference like my brother from Chepalungu has made, would bring an amendment to delete those provisions or amend the provisions of the Penal Code at the same time or, at least, in the near future. It is so that we do not say that this one offers a better provision than the other. If we do not do that, it is likely to create a lot of confusion because sometimes the courts are very busy and lawyers too when it comes to making those references. It creates confusion. It would be better if he brought amendments. Otherwise, it is good that in every consideration, the best interest of the child is primary. I support.

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 35A

The Temporary Deputy Chairman (Hon. Christopher Omulele): We shall have a retake on that so that we move in an orderly way.

New Clause 19A

The Temporary Deputy Chairman (Hon. Christopher Omulele): I now call upon the Mover to move Second Reading of New Clause 19A.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 19—

Rights of intersex children.

19A. An intersex child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education, training and consideration as a special need category in social protection services.

The justification is that the term, “intersex child” is defined in Clause 2 of the Bill. The legislative intent appears to be to make provision for intersex children. However, the intent is not carried out to completion in the rest of the Bill. The Bill lacks any substantive provisions on intersex children. To cure this, the Committee proposed substantive provisions in the body of the Bill such as this Clause that seeks to express the rights of an intersex child.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I wish to strongly support this New Clause 19A. I know civil society organisations, I think it was the Christian Relief and Development Organisation (CREDO) and the Kenya Human Rights Commission (KHRC), or the Kenya National Commission on Human Rights (KNCHR) - I cannot remember - went to court sometime in the last few years because of the case of Baby X. The courts asked us to legislate around the issue of intersex children because it creates a lot of discrimination and mistreatment. I congratulate the Committee for thinking about intersex children.

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 35A

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

THAT, the Bill be amended by inserting the following new clause—

Office of the Secretary. 35A. (1) There is established the Office of the Secretary for Children Services which shall be an office in the public service.

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(2) The Secretary shall be recruited through a competitive process and appointed by the Public Service Commission.

(3) A person may be appointed as the Secretary of Children Services if the person—

- (a) is a citizen of Kenya;
- (b) holds a relevant bachelors and masters' degree in social sciences from a university recognized in Kenya;
- (c) has at least ten years' experience in social work, education, administration and management, public administration, human resource or finance management; and,
- (d) meets the requirements of Chapter Six of the Constitution.

The justification is that this clause seeks to provide for the appointment of the Secretary of Children Services.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 35B

Hon. Gideon Koske (Chepalungu, CCM): I beg to move:

That the Bill be amended by inserting the following new clause—

Functions
of the
Secretary

35B. The Secretary shall—

- (a) regulate, coordinate, manage, and supervise children's officers in delivery of the welfare and administration of children services;
- (b) be responsible for establishing, administering and maintaining child protection centres, rehabilitation schools and a remand homes in every county;
- (c) maintain up-to-date records and data on management of children services including access to welfare amenities for children;
- (d) investigate, monitor and report cases of children facing hardship;

- (e) identify, formulate and develop programmes to mitigate children facing hardship for the consideration of the Council;
- (f) assist children in hardship, including children with disabilities, children living in the street, orphaned and destitute children, children who abuse drugs, children who are sexually abused and children who are affected by domestic violence;
- (g) inquire, investigate, assess and prepare reports in accordance with this Act or any other written law in accordance with any direction of a court;
- (h) implement any direction of court including providing social or administrative support;
- (i) safeguard the welfare of a child placed under care by virtue of a care order or interim order;
- (j) procure accommodation for a child who is abandoned, in need of refuge, safety or appropriate custody;
- (k) provide services to trace, reintegrate or restore a lost or an abandoned child with parent or a guardian;
- (l) intervene and secure the removal of a child in need of care and protection to a place of safety;
- (m) promote family reconciliation and mediate in disputes involving children, parents, guardians or persons who have parental responsibility in the manner provided under this Act;
- (n) provide services to assess a child placed under care and support services to counsel, and guide children and families;
- (o) facilitate medical treatment for a child in police custody or in a children's remand home;
- (p) provide guidance and assistance for a child during a proceeding in court;
- (q) supervise administration of children institutions including children's rehabilitation centres, charitable children's institutions and remand homes in order to safeguard and promote the welfare of a children;
- (r) provide quarterly reports relating to management of children's rehabilitation centres, charitable children's institutions and remand homes;
- (s) safeguard the welfare of children in foster care; and
- (t) perform any other function as may be prescribed under this Act.

This clause seeks to provide for clear functions of the Secretary of Children Services.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause
be read a Second Time, proposed)*

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Oduol Adhiambo, do you have something to say to this?

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Chairman.

It is just some clarification with regard to the Office of the Secretary of Children Services and the amendment that is clarifying the responsibility. I seek clarification from the Committee on how this is connecting. The Office of the Director already had very clear regulations and duties. If we dropped the Office of the Director and incorporated it in the Office of the Secretary for Children Affairs, it would need some degree of clarification so that we do not have confusion and overlap. It would be good if I could just get some clarification with regard to this matter.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Just hold on, Hon. Koske, so that you clear up all these. I will let Hon. Millie Odhiambo go first.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): We had some consultations with the Committee. Unfortunately, I did not have the opportunity to consult with them in relation to the issue of structure. The children sector has been facing a lot of challenges in conflict of laws and all that. What I see is that they are trying to bring some harmonisation. Perhaps, even as he is responding, maybe, he could just give an overview. In his view, what is the hierarchy? Apparently, you are removing the Director. What are the transitional arrangements for the current Director? What are the kinds of hierarchical arrangements that you are considering? It would be good to know. I hope the stakeholders are in agreement with this so that they do not say Parliament went beyond what they recommended, so that we do not create a crisis. I hope you have consulted with the stakeholders.

I do not oppose the amendment, because, unfortunately, I did not have the benefit of having sat with the Committee when they were conducting public participation. However, it would be good to be informed. Hon. (Prof.) Jacqueline Oduol was a Secretary of Children Services and I have also been involved in the children's sector. Whenever there was an issue, the stakeholders would come to the two of us to ask: Where were you when this was happening? So, since I was not in the public participation meetings, I hope the Committee took that into account. It will make the sector better and reduce conflict.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Koske Kimutai, Member for Chepalungu.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I wish to inform Prof. Oduol and Members that the title 'Director' has changed to 'Secretary'. Nothing else has changed. The roles and tasks are the same. It is just like the way we used to have Vice-President, and now we have Deputy President. It is only the title which has changed. We were informed by the Ministry of Labour that the person above a Director is called Secretary.

The Temporary Deputy Chairman (Hon. Christopher Omulele): I do not know whether the explanation satisfies the former holder of the Directorate, Prof. Oduol.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Hon. Temporary Deputy Chairman, as much as I appreciate the effort to ensure that we manage and harmonise the conflicts that arise in the children sector because of different offices, it is not accurate to indicate that the only thing we are doing is changing the title. As Hon. Millie has indicated, I served as the Secretary of Children Services and there was still a Director. So, it is important that we harmonise the roles because there are areas that had conflicts. We should not mislead the House by saying that all we

have done is to change the title. If that is all we are doing, we will create more problems than we sought to solve.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Koske.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Temporary Deputy Chairman, as we are talking, there is no Director. There is a Secretary who heads the Directorate and the Secretariat.

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause
be added to the Bill, put and agreed to)*

PROGRESS REPORTED

THE CHILDREN BILL

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, we will now move to report progress because of time.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Children Bill (National Assembly Bill No. 38 of 2021) up to New Clause 35B and its approval thereof with amendments, and seek leave to sit another day.

(Question proposed)

(Question put and agreed to)

(The House resumed)

(The Temporary Deputy Speaker (Hon. Christopher Omulele) in the Chair)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Koske.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Children Bill (National Assembly Bill, No. 38 of 2021) up to New Clause 35 (b), and has instructed me to report progress and seek leave to sit another day.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM) Seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, I also direct that the next step in that regard be undertaken when this matter will be set down on the Order Paper next time.

I also want to thank those Members who have taken time to do what we have done this afternoon. It satisfies the soul that those young ones that are most vulnerable and cannot speak for themselves can find time within our busy schedule to be of importance today.

I thank you.

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 7.02 p.m., this House stands adjourned until Wednesday, 18th May 2022 at 9. 30 a.m.

The House rose at 7. 02 p.m.