

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 28th October, 2014

The House met at 2.30 p.m.

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

PRAYERS

PETITIONS

INTRODUCTION OF BILL TO AMEND THE CONSTITUTION OF KENYA, 2010

Hon. Speaker: Hon. Members, pursuant to Standing Order No.225 (2) (b), I would like to convey to the House a petition signed by one Erick Barare Orina of P.O. Box 12751 – 00400, Nairobi, who prays for the introduction in the National Assembly, of a Bill to amend the Constitution of Kenya, 2010, in accordance with Article 256(1). Among the Articles proposed for amendment are 81(b), 90, 98 paragraphs 1(a) and (b) and paragraph (2); and Articles 163, 177 and 25 as well as the First Schedule to the Constitution.

Hon. Members, this petition stands committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee is requested to consider the petition and report its findings to the petitioner, and to the House, in accordance with Standing Order No.227 (2). I must hasten to add that the Committee should also undertake to hear the petitioner with a view to taking into account his views as well as the views of the members of the public.

Hon. Members, it is important for me to draw your attention to the specifics of some of the Articles proposed to be amended. Article 81(b) of the Constitution requires that the electoral system shall be such as to enable that not more than two-thirds of either gender is represented in any elective office. Article 90 deals with party lists. The paragraphs proposed for amendment in Article 98 deal with the nomination of 16 women, two youths and two persons living with disabilities. Article 163 establishes the Supreme Court, and the petitioner wants it deleted. Article 177 establishes the county assemblies. It is, therefore, important that all of us get seized of the import of what the petitioner requires this House to do.

NULLIFICATION OF APPOINTMENT OF TOP MANAGERS OF UNCLAIMED FINANCIAL ASSETS BOARD

Hon. Speaker: Hon. Members, the same petitioner, Mr. Erick Barare Orina, who is a Member of the Board of Directors of the Unclaimed Financial Assets Authority, representing the interests of consumers of financial services in Kenya, has yet another petition.

He alleges that due process was not followed during the recent recruitment exercise of top managers and other staff. He is ever praying that Parliament recommends nullification of this recruitment exercise in totality.

Hon. Members, the petition is committed to the Departmental Committee on Labour and Social Welfare for consideration. The Committee is requested to consider the petition as well as hear the petitioner, among others, and report its findings to the House and to the petitioner in accordance with Standing Order No. 227(2).

Thank you.

Next Order.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, first of all, let me ask that the first petition be distributed to hon. Members because it is a very important one.

Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

The Report of the Auditor-General on the Financial Statements of Kenya Ports Authority for the year ended 30th June, 2013 and the certificate of the Auditor-General therein

The Annual Report and Accounts of the National Environmental Management Authority (NEMA) for the year ended 30th June, 2012 and the certificate of the Auditor-General therein

The Annual Report of the Witness Protection Agency for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Annual Report of the Export Processing Zones Authority for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Ministry of Foreign Affairs and International Trade for the period 2013/2014, pursuant to Article 153(4)(b)

The Constituency Development Fund Board Report on Project Approvals and Disbursement Status for the month of March, 2014

The Annual Report and Financial Statements of the South Nyanza Sugar Company Limited for the year ended 30th June, 2012 and the certificate of the Auditor-General therein

The Annual Report and Financial Statements of the Kenya Sugar Board and the Sugar Development Fund for the period 2008 and the certificate of the Auditor-General therein

The Annual Report and Financial Statements of Kenya Sugar Board for the years ended 30th June, 2010, 2011 and 2012 and the certificates of the Auditor-General therein

Thank you, hon. Speaker.

Hon. Speaker: Yes, Chairperson, Departmental Committee on Health.

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

Report of the Departmental Committee on Health on the capacity of the National Hospital Insurance Fund (NHIF) to roll out universal social health insurance in Kenya

Hon. Speaker: Hon. Amina Abdalla, did I see a Report of your Committee on the Water Bill?

Hon. (Ms.) Abdalla: Hon. Speaker, I am told that the Report is in your office. I was to table it today.

Hon. Speaker: Hon. Abdalla, the reason as to why I said I saw it is that I process things quickly.

Hon. (Ms.) Abdalla: Hon. Speaker, I am willing to table it but I do not have it with me.

(The Speaker consulted the Clerk-at-the Table)

Hon. Speaker: Hon. Amina Abdalla, since I have already approved the Report for tabling, it must be within the process. When you be through with the next business, you should be permitted, at whatever stage, to table the Report. It is important for purposes of hon. Members debating the Water Bill with the benefit of what you have reported.

Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT ON NHIF'S CAPACITY TO ROLL OUT UNIVERSAL SOCIAL HEALTH INSURANCE IN KENYA

Hon. (Ms) Nyamai: Hon. Speaker, I beg to give notice of the following Motion:-
THAT, the House adopts the Report of the Departmental Committee on Health on the capacity of the NHIF to roll out universal social health insurance in Kenya, laid on the Table of the House on Tuesday, 28th October, 2014

Hon. Speaker: Hon. Amina Abdalla, you may now table your Report.

PAPER LAID

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Departmental Committee on Environment and Natural Resources on its consideration of the Water Bill, 2014.

COMMUNICATION FROM THE CHAIR

WITHDRAWAL OF "MONEY BILL" AMENDMENTS FROM ORDER PAPER

Hon. Speaker: Hon. Members, before we go into the business at No. 8 on the Order Paper, I would like to make the following Communication.

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Hon. Members, you will note from today's Order Paper that under Order No.8, this House is scheduled to consider the Mining Bill, 2014 (Bill No.9 of 2014) at the Committee Stage. A number of amendments both by the Departmental Committee on Environment and Natural Resources and individual Members are lined up for consideration. In particular, I wish to draw your attention to the following amendments: (a) the proposed amendments to Clauses 156 and 157, and the proposed New Clause 157A, by hon. Joyce Lay, MP, and (b) the proposed amendments to Clause 156 by hon. Makali Mulu, MP. The said amendments appear on pages 485 and 486 of the Order Paper.

Hon. Members, I have carefully considered the aforesaid amendments and I am convinced beyond doubt that they clearly fall within the meaning of "money Bill" as contemplated by Article 114 of the Constitution. As I have reiterated severally in the past, amendments falling within the meaning of money Bills can only proceed upon recommendation of the Budget and Appropriations Committee of this House, after it has taken into account the views of the Cabinet Secretary responsible for finance. There is no indication that the proposed aforesaid amendments have been considered by the Budget and Appropriations Committee as contemplated by Article 114 (2) of the Constitution.

That being the case, this House cannot be called upon to consider them during the Committee Stage, and they accordingly stand withdrawn from the Order Paper. It is so ordered.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

The Speaker (Hon. Muturi) left the Chair

IN THE COMMITTEE

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

THE MINING BILL, 2014

Hon. Chairlady: Hon. Members, we are now in the Committee of the whole House to consider the Mining Bill, 2014.

(Loud consultations)

Hon. Chairlady: Order, hon. Members! There is so much movement in the House. Can you settle down? This is a very serious Bill, and there is a lot of interest in it; you should also have interest in it. You will only be able to participate if you are very careful and you have read it. You have been given an opportunity to read it, so that you can give meaningful contribution.

Hon. Members, let us start.

(Clause 5 agreed to)

An hon. Member: Why jump the first four Clauses?

Hon. Chairlady: Hon. Members, we will come to Clauses 4, 3, 2 and 1 at the end. Just hold your horses; we will get there.

Hon. Mulu: Thank you, hon. Chairlady. I am just following up on something to do with the whole Bill. You realize that I had proposed an amendment, yet there is a ruling that it cannot be discussed because it is money Bill amendment.

Hon. Chairlady: Hon. Makali, are you discussing the Communication from the Speaker?

Hon. Mulu: I just want your guidance.

Hon. Chairlady: Hon. Makali, you are out of order. Can we, please, proceed? This is not the time and forum. That matter has already passed.

Hon. Mulu: Hon. Chairlady, it is very important that you give guidance on this matter. Once I propose an amendment as a Member of Parliament---

Hon. Chairlady: Hon. Makali, can we put that matter to rest? The Speaker has already made a ruling on that matter and we will not go back to discuss a ruling that has been made by the Speaker.

(Loud consultations)

(Hon. Mulu spoke off the microphone)

Hon. Chairlady: Nobody doubts the seriousness of what you are saying, but a clear Communication has been given. What is it, hon. Makali? I hope you do not want to discuss the Communication from the Speaker.

Hon. Mulu: What I am saying is this: The Bill before us is very important to all of us. Even the amendments by the Committee have not been presented to the Budget and Appropriations Committee. This is a procedural matter. Even the things that we want to discuss here have not been studied by the Budget and Appropriations Committee. Is it not better that we push this thing forward so that all the amendments are discussed by the Budget and Appropriations Committee first?

Hon. Chairlady: Can we hear something from the Chairperson of the Committee?

Hon. (Ms.) Abdalla: Hon. Chairlady, we do not have an amendment that is related to a money Bill apart from our amendment on Clause 156, which was agreed on between us and the Executive. So, it is presumed that it need not be taken before the Budget and Appropriations Committee, because the Executive has already approved it.

(Loud consultations)

We do not have a proposal on a money Bill as has been proposed by hon. Makali Mulu.

Hon. Chairlady: The Chairperson of the Committee has clarified. We will listen to you, hon. Members. Nobody is gagging you from making your contribution. Although

you are indicating that you are not discussing the Communication from the Speaker, really that is what you are doing.

What is your point of order, hon. Mbadi?

Hon. Ng'ong'o: Hon. Chairlady, I do not think that we are discussing the ruling of the Speaker, because he actually only reaffirmed Article 114 of the Constitution. Would it be in order for me to ask that we postpone the debate on this Bill until the amendments which touch on a money Bill, including the one by hon.(Ms.) Abdalla--- I know she has spoken to an issue about a money Bill. You cannot discuss a money Bill with the Executive. The law requires that it goes through the Budget and Appropriations Committee, and it is not the work of the individual Member to ensure that his or her amendment is taken to the Committee; it should go to them automatically. So, it is disadvantageous to Members when an amendment is not taken to the Committee. Again, why are Members not allowed to move their amendments just because someone did not take them to the Budget and Appropriations Committee.

There is no single day when the Budget and Appropriations Committee has been asked to sit to discuss any amendment – not a single one – in the Mining Bill. So, I do not see why we should apply double standards. We need to defer the Committee of the Whole House on this Bill and allow the Budget and Appropriations Committee enough time to look at all the amendments, including the one hon. (Ms.) Abdalla is saying they agreed on with the Executive. Indeed, that is unprocedural. It is for the Budget and Appropriations Committee to contact and consult with the Treasury and not individual Committee members. I have neither seen that in the Standing Orders nor in the Constitution. It is irregular.

Hon. Kathuri: Hon. Chairlady, the Speaker made a ruling and the same amendment is to Clause 156. I am a member of the Committee, but I seek your guidance on whether or not we will have this amendment when it has not been canvassed as has been agreed.

Hon. Gichigi: Hon. Chairlady, since I came after the Speaker had made the ruling I hope I will not be going against its spirit. There is no doubt at all on Clause 29(a) because its intention is to create a board. The creation of a board amounts to an anticipated expenditure. The Constitution is very clear that if you want to spend money – there is no way of going around it – you must present an issue to the Budget and Appropriations Committee which must bring here a report on that particular issue after consulting the Cabinet Secretary for Treasury. There is no way of going around the issue unless you want to act unconstitutionally.

Hon. (Eng.) Gumbo: Hon. Chairlady, mine is slightly different. I am just concerned with the way we seem to be transacting business in the House. When you hear the arguments that are going on, it really means that a lot of these amendments have not been considered by the Committee. I have a concern because I have been looking at some of the amendments. My concern, without trying to go ahead of myself, is that if you look at the proposed amendment to Clause 95 and you also look at the provision of the Constitution, the question will arise: Really, is it be right? On the face of it, some of these amendments are clearly unconstitutional. The question then is: Do we have to transact business in this House which has not been scrutinized by the relevant Committees? How does a matter then find its way to the Order Paper? It is not the first time this is

happening. This thing ought to concern the House because we are going to look like a House which is used in a rubberstamping process. That is not good for the image of the House.

With regard to what hon. Gichigi has said, it is my plea--- You know the interests that are in mining. You know the contention that is going on even right now in the mining sector in the country. You know how communities in these countries have been affected by mining processes. My plea is this, please, let us stay the discussion of this Bill, so that we even look at the constitutionality of some of the proposed amendments. Looking at this Bill and from the plain reading of the Constitution, it is my contention that the proposed amendment to Clause 95 is unconstitutional. How then does this House handle a matter which will conflict with the Constitution? I plead with you, Madam Chairlady.

Hon. Langat: Hon. Chairlady, I think we have been discussing this matter for quite some time. I remember the hon. Speaker made the same ruling last time, and I think it is high time we stopped discussing this matter. It is good that we have some procedure on how to transact the amendments which are brought by individual Members. This is because bringing an amendment means that somebody has read the Bill and done a lot of research in order to be able to bring it. Personally, I would support that we report progress now, and allow those amendments to be taken to the Budget and Appropriations Committee, so that a Member who has proposed an amendment can be given an opportunity to defend his amendment.

Hon. Members: On a point of order, hon. Chairlady.

Hon. Chairlady: Order! Order! Let us get a clarification from the Chair of the Committee.

Hon. (Ms.) Abdalla: Hon. Chairlady, I am actually quite amused by this move to postpone this debate; I am actually quite intrigued by the statement from hon. Gumbo regarding the unconstitutionality of the proposed amendments to Clause 95. This has been the position of stakeholders represented by the Kenya Chamber of Miners (KCM), who we have met ten times and have been unable to convince us to move from the figure we have proposed under Clause 95. We even gave them a hearing last week on Tuesday.

Hon. Chairlady, I was amused when hon. Gumbo raised the same justification on a matter regarding the short message service (SMS) that I have also received. We have spent nine months reviewing this Bill. I have just received an SMS about Clause 95. I want to urge this House that even on Tuesday last week--- I have just received it and I can share it with you. Even on Tuesday last week---

Hon. Members: On a point of order, hon. Chairlady.

Hon. (Ms) Abdalla: Hon. Chairlady, let me request--- There is so much interest; even last week this matter was on the Order Paper with these same amendments. New amendments have been brought by other members, and we have sat in the Committee; we have looked at them and we have opinions. Hon. Chairlady, if it is an issue about money Bills, the only money Bill clause in this Bill is Clause 156. Why don't we do the rest of the clauses, report progress and come back and discuss Clause 156? Essentially hon. Chairlady---

Hon. Chairlady: Yes Leader of Majority Party.

Hon. A.B. Duale: Hon. Chairlady, let us call a spade a spade. This Bill was printed on 17th March, 2014. It has been before the National Assembly since then. The

Speaker, until this afternoon, has made a communication not once, not twice on the provisionS of Article 114. Let us not play politics.

I can read Article 114 for the benefit of everybody; Article 114 is on Money Bills; sub-Article (2) says:-

“If, in the opinion of the Speaker of the National Assembly a Motion makes provision for a matter listed in the definition of “a money Bill”, the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly...” which in this case is the Committee on Environment and Natural Resources and the one on budget, “...after taking into account the views of the Cabinet Secretary (CS) responsible for Finance.”

That is the letter and the spirit of the Constitution. It is not for hon. Amina Abdalla or Members of her Committee. Last Tuesday, the Mining Bill was on the Order Paper. The Bill was withdrawn to give Members a whole week to bring amendments.

If there are other issues we can discuss them, in my opinion following the procedures of the Standing Orders and Article 114. A communication was made by the Speaker. Hon. Chairlady, you need to give guidance. We should not argue on this.

If you remember last year, we had the Finance Bill and a draft of amendments was brought by Members of Parliament based on Article 114 and this House erupted into chaos. The substantive Speaker came and made a ruling. He has made a second ruling as far as Article 114 is concerned. This House must be a House that respects the Constitution and the Standing Orders. We should not play to the Gallery. We need to stick to the communication and the guidance given by the Speaker.

Hon. Chairlady: What is your Point of Order hon. Mbadi? That should be the last from that Member’s chair.

Hon. Ng’ongo: On a point of order, hon. Chairlady. The Leader of Majority Party is clearly misleading this House. He is saying that the Committee referred to in Article 114 is the Departmental Committee on Environment and Natural Resources. Hon. A.B. Duale, can you stop heckling and listen to me.

Hon. Chairlady, Standing Order 114 is very clear that where the Speaker is of the opinion that a legislative proposal is Draft Bill in terms of Article 114 of the Constitution, he directs that the legislative proposal be referred to the Budget and Appropriations Committee. We are not disputing the Speaker’s ruling; what we are saying is that the Budget and Appropriations Committee has not been given an opportunity to look at these proposals.

Therefore, you cannot say that the Budget and Appropriations Committee has rejected the proposal. What this provision envisages is a situation where the proposed amendments are referred to the Budget and Appropriations Committee for processing by that Committee. What we are saying is that, that did not happen. Since that did not happen, you cannot disadvantage the Members who proposed these amendments. Therefore, I request that under Standing Order 134 we report progress.

Thank you, hon. Chairlady.

Hon. Chairlady: Order Members! Order Members! Hon. Members, from where I sit, and having heard the contributions that you have made, and from what the Chairperson of the Committee--- Honourable Members, from the reading of 114 as given by the Leader of Majority, it is clear that only Bills that are considered to be money Bills-

-- Not every Bill must go through the Budget and Appropriations Committee.

So, I plead with Members that we continue. If, and when we do get a money Bill apart from what was communicated--- The Speaker did communicate on what he considered to be a money Bills; he has said specified amendments will be withdrawn.

Honourable Members I want us to continue because we cannot discuss this exercise continuously; this Bill has really been with us for too long; this Bill has a lot of interest, as we have all shown. So, let the Chair and the Committee that we have tasked with--- It is this same House that has given this Committee the responsibility of processing the Bills on our behalf.

Hon. Members, can we then use the committee where and whenever we find that there is--- The Members who have amendments--- An earlier communication from the Speaker said that any amendment that touches on money must be taken to the Committee, and not processed on the Floor of the House; the agreement was that it must go to the Committee, and the Committee then will process it in the manner which has been read to us on the Floor of this House.

Hon. Members, let us not heckle; let us treat each other with respect, and allow the processing of this Mining Bill by the House.

Order Members! Can we have the next clause?

Hon. Members: On a point of order, hon. Chairlady.

Hon. Chairlady: Hon. Members, let us go to Clause 6.

Clause 6

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

That, Clause 6 be amended –

(a) in sub-clause (4) by deleting the expression “1:150,000” and substituting therefor the expression “1: 50,000”; and

(b) in sub-clause (6) by deleting the word “mining” and substituting therefor the words “and artisanal mining operations”.

(Question of the amendment proposed)

Hon. Wandayi: On a point of order, hon. Chairlady.

Hon. Chairlady: And it should be on Clause 6.

Hon. Wandayi: No, hon. Chairlady. I am not talking about Clause 6.

As a matter of procedure really, it is only fair that once a Member suggests that the Committee of the Whole House do report progress, we take a vote. It is important regardless of the hurry we are in.

Hon. Chairlady, secondly, there is an impression being created in this debate that the onus of processing money Bill amendments rests with the Members who have proposed them, which is not true. Can we then proceed and vote on the question proposed by hon. Mbadi before we can proceed with this matter?

Hon. Chairlady: What question are you proposing? What is your question? Is it that we report progress?

Hon. Wandayi: Yes, hon. Chairlady.

Hon. Chairlady: Order. You have moved a Motion.

Hon. Wanjiku Muhia, do you have an intervention?

Hon. (Ms.) Muhia: Yes, hon. Chairlady. I want to bring to the attention of the House that the Speaker ruled that Clauses 156 and 157 are about money Bills, and I strongly believe Clause 95 is also about a money Bill.

Hon. Chairlady: Now, hon. Members, really--- Hon. Mbadi, are you saying you have moved a Motion about reporting progress?

Hon. Ng'ongo: Hon. Chairlady, I said that I was moving a Motion for this House to report progress under Standing Order No.134.

An Hon. Member: No!

Hon. Ng'ongo: Why don't you think so? It is my right to speak. How is it an illegality and we see it in the Bill?

Hon. A.B. Duale: On a point of order, hon. Chairlady.

Hon. Chairlady: Yes, Leader of the Majority Party. What is your point of order?

Hon. A.B. Duale: On a point of order hon. Chairlady. We report progress on what? On what legality? We cannot report progress on a communication made by the Speaker. You are being taken round. The right thing is that we must go on. You report progress on something that is within the Standing Orders and the Constitution. How do we report progress on a communication made by the substantive Speaker? We need to move because this Bill is huge. We might have an extension of sitting time. The issue in contention is about Article 114, which is very clear. If you want to believe in the spirit and the word of the Constitution, read it. Communication has been made. Let us move on.

Hon. Chairlady: This is what I have been pleading with Members that we do; we need to carry everyone along. We do not want to look like we are doing something in exclusion of some Members.

Hon. Mbadi, no one is denying that you have indicated that you wish us to report progress. You are not the only person in the House. We must also respect the views of other Members.

Hon. Members, I have asked that we allow this Committee of the Whole House to continue. Hon. Mbadi, let us have some consultation.

(Hon. Mbadi Consulted with the Chair)

Hon. Chairlady: Hon. Members, okay, as I said earlier, we are continuing with the process of prosecuting the Bill that is before us.

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

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

(Clause 6 as amended agreed to)

(Clause 7 agreed to)

Clause 8

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

THAT, Clause 8 be amended –

(a) by deleting sub-clauses (2), (3), (4), (5) and (6);

(b) by inserting the following new sub-clause immediately after sub-clause (1) –

(2) The Cabinet Secretary may make Regulations to provide for exploration, mining, processing and export of strategic minerals and strategic mineral deposits.

Hon. Chairlady, this amendment seeks to give the Cabinet Secretary the powers to make regulations on strategic minerals.

(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 8 as amended agreed to)

Clause 9

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

THAT, Clause 9 be amended by –

(a) renumbering the existing clause as sub-clause (1); and,

(b) inserting the following new sub-clause immediately after sub-clause (1) –

(2) Subject to sub-section (1), a person who reports the discovery of any mineral shall be granted the first right of refusal to apply for a mineral right over the area of discovery.

Hon. Chairlady, the import of this amendment is that when a member of the public discovers a mineral they are usually scared of reporting the discovery because then the people in the Ministry will give that information to somebody else, who will not give the discoverer an opportunity. Our amendment speaks to protecting the person who gives that information, and wants them to be the first person to be given the right of refusal to mine that mineral. So, this is protecting local people. This is informed by a local miner who informed us that he knows that in his village there is copper. He has been mining it but he has no intention of telling the Government about for he has to protect his business. That is what the import of the amendment is.

(Question of the amendment proposed)

Hon. Chairlady: What is your contribution, hon. Nicholas Gumbo?

Hon. (Eng.) Gumbo: Hon. Chairlady, I support the provision that subject to sub-section (1), which says that a person who reports the discovery of any mineral shall be granted the first right of refusal to apply for a mineral right over the area of discovery. However, I see a problem here. Clause 8, which we have just passed, states that the Cabinet Secretary shall make regulations to provide for exploration, mining, processing and export of strategic minerals and strategic mineral deposits. I think that amendment should also include the procedure for reporting; if I report that I have discovered a particular mineral and the procedure of reporting is not clear, what if that reporting is not captured? How will my rights be safeguarded? I would plead with the Chair of the Committee that, even as we agree that is a good amendment, let us also include as part of the regulations a procedure for reporting the discovery of minerals, so that it can be captured in an official manner.

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

(Clause 9 as amended agreed to)

(Clause 10 agreed to)

Clause 11

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

THAT, Clause 11 be amended by-

(a) inserting the following words in sub-clause (1) (d) “however this shall not be a requirement for artisanal and small-scale mining operations wholly owned by Kenyans” immediately after the word “resources”

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

(3A) the provisions of sub-section (1) (d) and (3) shall not apply to artisanal miners.

Hon. Chairlady, stakeholders in this sector pointed out that the use of technical and financial capacity as a condition for issuing licences will close out artisanal miners and small-scale miners. So, we are proposing that those provisions be exempted from applications received on artisanal mining and small-scale mining that is wholly owned by Kenyans.

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

Hon. Chairlady: Hon. Members, we have two amendments to Clause 13, one by hon. Amina and the other one by hon. Joyce Lay. Let us start with the one by hon. Amina Abdalla.

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

THAT, Clause 13 be amended by-

(a) deleting the word “may” appearing immediately after the word “Secretary” and substituting therefor the words “shall upon recommendation of the Mineral Rights Board” in sub-clause (1), and

(b) inserting the words “and artisanal” immediately after the words “small scale” in sub-clause (2).

Hon. Chairlady, this is an important reference, so that the other amendment can be looked at in that light. Following large stakeholders’ and Member’s input that we remove discretionary powers of issuing licences from the Cabinet Secretary, our Committee proposes the establishment of a body known as the ‘Mineral Rights Board,’ so that the Cabinet does not give any licenses anymore unless he has received recommendations from the Mineral Rights Board. That is the import of amendment (a).

Amendment (b) speaks to the inclusion and the legalization of artisanal mining in Kenya. We are making reference to artisanal mining, which then makes it legal. So, amendment (a) and (b) are speaking to the inclusion of artisanal miners. So, the Cabinet Secretary will not be able to give anything without the recommendation of the Mineral Rights Board.

I beg to move.

Hon. Chairlady: So, you have proposed both of your amendments?

Hon. (Ms.) Abdalla: Yes, hon. Chairlady.

(Question of the amendment proposed)

Hon. Chairlady: Yes, hon. Kangongo.

Hon. Bowen: Thank you, hon. Chairlady. I want to oppose part of the proposed amendment to Clause 13. As we speak, the Government is in the process of collapsing together so many parastatals, and here we are creating more parastatals. We would like the Departmental Committee Chair to tell us whether this is a corporation that is going to stand on its own, and without a budgetary allocation from the Treasury. I support part (b) of the amendment but oppose part (a).

Hon. Chairlady: Hon. Abdalla, it seems different parts of your amendment are being supported or opposed. Can we process one at a time? Let us deal with part (a) of the amendment and put the question on it first.

Hon. (Ms.) Abdalla: Hon. Chairlady, the reason as to why we are adding the Mineral Rights Board is that it is a consequential amendment. The hon. member for Marakwet East needs to wait until when we are including clause 29(a), which is what seeks to establish the Mineral Rights Board. He can raise his objections then. On the issue of whether this is a body that will get funding from the national Government, the essence of this body will be to deal with the mischief that Members were complaining about. We were saying that we did not want a Cabinet Secretary who will be issuing, revoking and suspending licences. When we establish an institution to deal with that, you say that money will be spent! You cannot have your cake and eat it too. You either want transparency and an accountably system, or you want to save money and leave the discretion to an individual. It is a choice that we need to make when we reach new 29A.

Hon. Chairlady: Let us hear hon. Makali.

Hon. Mulu: Thank you, hon. Chairlady, I want to support this amendment because of what the Departmental Committee Chair is saying. The original Bill gives a lot of powers to the Cabinet Secretary. It is very important that, that power be given to a board.

I support the amendment.

Hon. Chairlady: Yes, hon. Wamalwa.

Hon. Wakhungu: Hon. Chairlady, I support the amendment. Saying that we are trying to integrate the boards is on a need basis. It will not just be done haphazardly, and I want the hon. Member to get to know that. Looking at the Mineral Rights Board, as clearly outlined by the Departmental Committee Chair, if you do a cost-benefit analysis, you will find that there is merit. Hon. Abdalla is in order and, therefore, we support this amendment, as opposed to what hon. Bowen has said. His opposition is due to ignorance – just because the Jubilee Government is integrating parastatals. These parastatals are being integrated because some of them have heavy overheads, and there is no merit for their existence. So, the Jubilee administration will continue creating other parastatals. We have seen that the Unclaimed Financial Assets Authority is being created. It does not mean that we are just closing for the sake of it. The Departmental Committee Chair has justified the creation of the proposed Board. Indeed, it will add a lot of value. Therefore, the Board must be there.

Hon. Deputy Chairlady, I support the amendment.

Hon. Chairlady: Hon. Members, I now put the question.

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

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

Hon. Chairlady: Hon. Members, we also have the amendment by hon. Lay to the same clause.

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

THAT Clause 13 of the Bill be amended in sub-clause (1) by inserting the words “in consultation with the responsible County Government” immediately after the word “designate”.

This is to bring in participation of the county governments. Mining has been more of a curse than a blessing in Africa. Thanks to slots of suspicion and lack of public participation with regard to decisions made around mining. By bringing county governments on board, this will be part of public participation as enshrined in Article 10 of the Constitution.

(Question of the amendment proposed)

Hon. Chairlady: Is this is a position that you have shared with the Committee?
Hon. Amina.

Hon. (Ms.) Abdalla: Hon. Chairlady, the Committee has looked at this amendment and we are proposing to oppose it on the ground that it is constitutional that minerals are vested in the national Government. Institutions that are making decisions on the same are national Government institutions; introducing counties would be giving them a function that they have not been given by the Constitution.

Hon. Chairlady: Can we have a few other thoughts on this?

Hon. Ochieng: Thank you, hon. Chairlady. It is just that you moved very fast. I had an issue with what you passed, but I will support this one just on one basis. What we have just passed now takes us back to where we are trying to go away from. We have been trying to get away from as much power of Cabinet Secretaries (CS) as possible and ensure that even when Mineral Rights Board has made a decision, the CS should not be allowed a free hand to decide which people are to be involved and where we will have this small-scale artisanal. This is why we are talking about bringing in the county governments to help in identifying. This is because county governments will help build capacity of these small-scale minors. If that is not the case, then I want to appeal to the Chair to allow the Mineral Rights Board to also participate in designating areas for small-scale mining and artisanal areas for mining.

Hon. Chairlady: Hon. ole Kenta.

Hon. ole Kenta: Hon. Chairlady, I would like to oppose the proposal by hon. (Ms.) Lay. This is because constitutionally, minerals belong to the national Government. We cannot have anybody else undermining the control that the national Government has. I, therefore, go by the proposal by the Committee.

Hon. (Dr.) Ottichilo: Hon. Chairlady, this amendment is supposed to achieve what hon. Ochieng has said. The idea here is that the Mineral Rights Board will be responsible and the CS will only act on the recommendation of the Mineral Rights Board.

Hon. Chairlady: Leader of the Majority Party.

Hon. A.B. Duale: Hon. Chairlady, I think the Chairperson of the Departmental Committee on Environment and Natural Resources has made it clear. If you look at the Fourth Schedule, there is nowhere minerals are a function of the county governments. In our law making process, we must respect the spirit and letter of Constitution. We cannot give to the county governments powers that have not been given by the people of Kenya.

Hon. Chairlady: Hon. Members, we need to make progress. I will put the question.

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

(Clause 13 as amended agreed to)

Clause 14

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

THAT clause 14 be amended in sub-clause (1) by deleting the words “may, by notice in the Gazette,” and substituting therefor the words “shall, in a manner as may be prescribed in Regulations,”

We have put it in prescribed regulation, so that there is transparency. We have used the word “shall” so that there is no discretion on when he can decide where the tendering happens. This is so that he puts in regulations and conditions which are clear for tendering. That way, tendering will take place not at the discretion of the CS, but under set regulations.

(Question of amendment proposed)

Hon. Chairlady: Please show if you want to make a contribution to that particular sub-clause. If you are not making contribution to the sub-clause or the clause then remove your cards, so that we can manage this.

Hon. Cyprian Iringo, is your card there because of contribution? Cyprian is not even aware that we are at Clause 14.

Hon. Makali, are you on this sub-clause?

Hon. Mulu: Hon. Chairlady, I do support the use of the word “shall”. This is very important for the purpose of accountability. I support.

Hon. (Eng). Gumbo: Hon. Chairlady, I also support, but you realize that in dealing with these amendments, there is a lot of reference to regulations and I hope that as we go on with the amendments we shall also have a requirement for this House to approve those regulations. This is because regulations are going to become so many that without them it will not even be possible to implement this law. It will be neater that, as we go ahead, and as we have done previously, we also have a requirement in our recommendations, if the Committee has not done it already. We need to require specifically that those regulations be brought here for us to approve them.

*(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 14 as amended agreed to)

Clause 15

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

THAT clause 15 be amended by—

(a) deleting the word “may” appearing immediately after the word “Secretary” and substituting therefor the words “ shall upon recommendation of the Mineral Rights Board” ; and

(b) deleting the word “licence” and substituting therefor the words “ mineral right”.

The amendment is giving more transparency in areas where it can be decided which licences to be given. This is because we are saying upon the recommendation of the Mineral Rights Board, we are inculcating impartiality so that it is not one person who will decide on the minerals, rather it will be the Mineral Rights Board.

On the second amendment we are replacing the word “licence” with “mineral rights” because there are minerals rights that are not licences. They can be permits and so on.

(Loud Consultations)

Hon. Chairlady: Order hon. Members! The level of consultations is too high. Hon. Nassir, can you find a place to sit? Mining must be important to you.

Hon. (Ms.) Abdalla: I believe hon. Nassir is busy giving out blessings from Mecca. He has just come back from there.

(Question of amendment proposed)

Hon. Kipsang: Hon. Chairlady, my interest is to support what the Chairperson has said. This will compel the CS to gazette the designated area.

*(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 15 as amended agreed to)

Hon. Lay: Hon. Chairlady, it is the same as at Clause 13 which was meant to include the county governments. The Chairperson has already explained it and I understand. I, therefore, withdraw my amendment.

Hon. Chairlady: Do you withdraw?

Hon. Lay: Yes I withdraw.

(Proposed amendment by hon. (Ms.) Lay withdrawn)

(Clause 15 as amended agreed to)

Clause 16

Hon. (Ms.) Abdalla: Hon. Chairlady I beg to move:-

THAT, Clause 16 be amended-

(a) in sub-clause (1) by deleting the words, “for social economic development and national security purposes”; and

(b) in sub-clause (3) by deleting paragraph (a).

Hon. Chairlady, this amendment is intended to make this clause more investor-friendly by deleting the issue of social economic development and national purposes, so that the Government does not need to explain its social economic reasons for declaring a mineral strategic. That is the import of the amendment. If a mineral is strategic and has been declared so in consultation with the Cabinet, then it is strategic. We do not have to give the social economic reasons.

(Question of the amendment proposed)

Hon. Mwachugu: Hon. Chairlady, are we saying it is only the Government that will declare a mineral strategic in an area and county governments will have no space in this area? Will that be final?

Hon. Chairlady: That is a question, but just hold on, hon. Chair. Before you answer, do you want to have one or two other comments, and then the Chair can respond? Is that hon. Ottichilo?

Hon. (Dr.) Ottichilo: Hon. Chairlady, this provision is very important. As a Committee, we discussed it for a long time. Strategic minerals are not necessarily the ordinary minerals. We are looking at minerals like uranium, about which the Government has to make a clear-cut decision. That is why we said that in such a matter, the Government should have a leeway to make the decision without having to do any consultation. For some of these minerals, even if you did consultations, you may not extract the details about them from the public. The Government is in a better position through its technical people to advice.

Hon. Chairlady: Hon. Nderitu, are you on this clause?

Hon. Nderitu: Yes, hon. Chairlady. To add on to what my colleague has said, some of these minerals occur across different counties. It will be very difficult for county A and county B to come together and agree on one thing. That is why we are emphasizing that it is a national duty, and it is better left to the national Government to make the decisions.

Hon. Chairlady: Hon. Ochieng, you want to contribute to this same sub-clause?

Hon. Ochieng: Hon. Chairlady, if someone was to challenge this particular provision, and if you were to look at the way laws are done, there is a part of this proposal that we should have retained. I agree with the rule on socio-economic development, but the issue of National Security encompasses so many reasons that we

should have retained it. If you are able to invoke that alone, then no one will quite explain. I want to implore the Chair to retain this part, national security purpose. It is going to give the country a chance. If someone has to go to court to start explaining, then you will have this clearly in the law saying that the Government will have the authority to declare something of strategic interest based on national security. This is done the world over when a country wants to protect its interests from civil litigation.

Hon. (Ms.) Abdalla: Hon. Chairlady, those are the discussions that we had. Under subclause (2), all radioactive minerals have already been declared strategic. The main ones on national security will be a radioactive mineral. Then we are providing under 16(a) that the Government of the day, which has been given the powers, will then be able to say that the iron ore in Taita is strategic because we are importing a lot of ore and we will not export it. The fact that we have removed that explanation means that we are reducing the need for a Government to justify why they are going to declare that iron ore in Taita will not be exported because it is strategic to national development. That is the rationale for deleting the national interest.

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

Hon. Chairlady: Hon. Members, the further amendment that was envisaged by hon. Lay to paragraph (a) lapses since the sub-clause paragraph has been deleted. You can now proceed with your second amendment to paragraphs (b) and (c).

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

THAT, Clause 16 of the Bill be amended in sub-clause (3) by-

(b) inserting the word “and” immediately after the word “deposits” in paragraph (b).

(c) inserting the following new paragraph immediately after paragraph (b)

“(c) the criteria for reviewing the status of a mineral to establish if it is a strategic mineral”.

I am calling for the insertion of this new paragraph by keeping in mind that strategic minerals now may not be strategic minerals for social economic development and national security purposes in the future. The law should not be rigid. It should be flexible. It is, therefore, important that we give room for the review and classification of strategic minerals.

(Question of the amendment proposed)

Hon. Chairlady: Hon. Chair and your Committee, you must have looked at the amendment. Are you comfortable with it, so that we can proceed to process it?

Hon. (Ms.) Abdalla: Hon. Chairlady, the amendments by the Hon. Lay were intended to give details. We thought the more details we give, the more possibility for justification in litigation. We wanted to have it very brief, so that we do not have room for litigation. So, unless hon. Lay provides a justification of what mischief will be addressed, we are not able to appreciate it. We would be opposing the amendment.

Hon. Chairlady: Hon. Lay, have you bought the Chair's concerns?

Hon. (Ms.) Lay: Yes, Hon. Chairlady.

Hon. Chairlady: So, what do you want to do with your amendment? Are you proceeding or are you dropping it?

Hon. (Ms.) Lay: I am withdrawing, hon. Chairlady.

Hon. Chairlady: Okay; we consider that amendment dropped.

(Amendments by hon. (Ms.) Lay dropped)

(Clause 16 as amended agreed to)

(Clause 17 agreed to)

Clause 18

Hon. (Ms.) Abdalla: Hon. Chairlady I beg to move:-

THAT, Clause 18 be amended in sub-clause (4) by deleting the words "three years" and substituting therefor the words "five years".

This is increasing the tenure for the Director of Mines from three years to five years. This is a very technical field and if you give somebody only three years, then you might not attract somebody who is qualified. So, we are proving five years for purposes of increased security of tenure and retaining serious technical competence of the person who shall be appointed.

(Question of the amendment proposed)

Hon. Wakhungu: Hon. Chairlady, I oppose this amendment because there is an issue of consistency. We are going to treat this in a unique manner, yet we have other fields which are technical in nature and they are given three years. Therefore, I do not see any justification for the Chair to come and say that there will be room for motivation. Right now the government is looking towards result-based management and the performance appraisals are going to be done even on a yearly basis.

I do not see any justification for the increase from three years to five years, when this is going to create inconsistencies. This is because already in the existing set-up, all the director-generals are given three-year terms, which are subject to renewals.

Thank you.

Hon. Chairlady: Order! Let us hear from hon. Ganya and then hon. Kombe.

Hon. Ganya: Hon. Chairlady, as a Committee we discussed this issue at length. This is a very new industry in this country and we really want to build it up. Kenya is known to be as a nation, which can manage its mineral wealth. If we are able to attract good Kenyans even from Australia or wherever they are, three years will not be enough. Five years will enable this country to build this industry. That is the reason we gave for recommending five years instead of three.

Hon. Chairlady: Okay. Let us hear from hon. Harrison Kombe.

Hon. Kombe: Thank you, hon. Chairlady. I stand to oppose the amendment bearing in mind that a director shall hold office for three years and this term is renewable. Therefore, if he/she will have performed, the director will have an opportunity of being re-appointed and will serve six years instead of five years.

I oppose.

Hon. Chairlady: Okay, let us hear from hon. Mulu first, then hon. Ghati, if you are interested in this amendment.

Hon. Mulu: Hon. Chairlady, perhaps, we need clarification on this amendment. Is it five years and then there is a provision for renewal? This is because the way it reads now, there is no provision for renewal. In the current law, it was three years and there is a provision for one renewal. Therefore, one could serve for six years. So, we need clarification before we say that we support or do not support the amendment.

Hon. Chairlady: Okay. I had given hon. (Ms.) Ghati the chance. That is if she is interested in this amendment. Hon. Ghati, are you interested in this amendment?

Hon. (Ms.) Ghati: Yes, hon. Chairlady. Thank you very much. I would support this amendment because three years of service, even for us is not enough. Therefore, in my view, for effective work to be done, five years would be ideal. I need clarification from the Chair of the Committee, hon. (Ms.) A. Abdalla, whether the five years are also renewable or not. I seek to understand that, although I support the amendment to five years.

Hon. Chairlady: Hon. Ogalo, you have the Floor.

Hon. Ogalo: Thank you, hon. Chairlady. We took time dealing with this amendment. I also belong to this committee, but I do not know why the hullabaloo about the three or five years because we also have the Director of Water. This is a director in the Ministry of Mining. He is not a director of a parastatal. Therefore, I do not think three years will suffice. This is because mining processes are long term issues and, therefore, we should not change directors after every three years. Possible renewal does not mean automatic renewal. If we will be changing directors after every three years, we will be destabilising the mining sector. I think five years is reasonable. In any case, we are just specifying this because this is a very speculative sector in which somebody should not stay for a long time.

We do not do this for other directors in Ministries.

Thank you, hon. Chairlady.

Hon. Chairlady: But it is just for clarification. The amendment is only on the number of years; the wording can be reworked once. Therefore, that term of five years is renewable once to give a period of ten years. Hon. Members, it is now the chance for the Chief Whip of the Majority Party, followed by the Chief Whip of the Minority Party.

Hon. Katoo: Thank you, hon. Chairlady. I want to make an observation. It is known that all chief executive officers (CEOs) in the Government serve a three-year term renewable once. I do not know what is so special with the director of Mining. It is as if we are introducing a system that is different from the current one. If we are saying what the last speaker, hon. Ogalo, was saying, three years is such a short period. We will destabilise the mining sector.

Five years is also a very long time for somebody who is not effective. Therefore, I want to plead with the Committee that we retain what is in the Bill, three years but the term be renewable once.

Hon. Chairlady: Let the Whip of Minority Party speak then we can---

Hon. Mwadeghu: Thank you, hon. Chairlady. I want to echo the sentiments given by my colleague, that five years is too long. If somebody is effective and he/she has been given three years renewable, he/she will have another period of three years; giving somebody renewal term of five years will make us be stuck with one person for ten years.

Hon. Chairlady, it is my humble submission that the Chair should consider our views and reduce it to three years, but renewable.

Hon. Chairlady: Let us hear from hon. (Ms.) Abdalla, or her deputy can respond to this one.

You can proceed, hon. ole Kenta.

Hon. ole Kenta: Thank you, Hon. Chairlady. In fact we really thought about this matter and we agonised over it as a Committee because we expected all this disagreement.

However, we thought that this is a new and very expensive venture that requires very qualified people. We also realised that we had to get people from outside the country, who cannot be given a short contract and be effective. So, if we do not agree, at least, on the number of years, then definitely we will not get the best qualified people. We thought five years was the best period.

In fact, if you look at the mining cycle, even before you extract anything--- I think you have seen it at the oil exploration in Turkana; it will take those five years before you do anything. Therefore, we thought it was actually going to attract better qualified people, and that is something that we should think about.

Hon. Chairlady: Okay, hon. Members. I think the point has been made. Really we cannot say anything more between five and three years. Let the House decide. You know, finally it is this House that will make the decision.

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

(Clause 18 agreed to)

(Clause 19 agreed to)

Clause 20

Hon. (Ms.) Abdalla: I beg to move:-

THAT, clause 20 be amended: -

(a) in sub-clause (1) by -

(i) inserting the following new paragraph immediately after paragraph (k) -

(ka) exercising regulatory administration and supervision over the use of commercial explosives in accordance with the Explosives Act;

(ii) in paragraph (n) by inserting the word “of” immediately after the word “development”; and

(b) in sub-clause (3) by inserting the words, “of mines” immediately after the word “Director”.

Hon. Chairlady, the amendment under (a) is to ensure that mining operations conform to the Explosives Act, Cap.115, laws of Kenya. The amendment under (b) is a typographical one that and we are inserting the word “of”, and the other amendment is a clarification to show that the reference is to the Director of Mines.

Those are the three amendments to Clause 20.

(Question of the amendment proposed)

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

(Clause 20 as amended agreed to)

Clause 21

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

THAT Clause 21 be amended—

(a) by re-numbering the existing clause as sub-clause (1);

(b) by inserting the following new sub-clause immediately after sub-clause (1) —

(2) In the performance of his duties, the Director of Geological Survey or a duly authorized officer may—

(a) enter any license or permit area;

(b) upon informing the lawful owner or legal occupant, enter into or upon any land for the purpose of carrying out surveys;

(c) take soil samples or specimens of rocks, concentrate, tailings or minerals from any license or permit area for the purpose of examination or assay;

(d) break up the surface of the land for the purpose of ascertaining the rocks or minerals within or under it; and

(e) dig up any land and fix any post, stone, mark or object to be used in the survey of such land.

Hon. Chairlady, the first set of the amendments is an issue of re-numbering the existing clause, which had problems. The second amendment intends to increase the functions of the Director of Geology for purposes of allowing him to perform his duties in terms of entering and inspecting sites under mining operations.

(Question of the amendment proposed)

Hon. Chairlady: Hon. Samuel Nderitu, do you want to contribute to this amendment?

Hon. Nderitu: Hon. Chairlady, the Director of Mines will be the top technical person in the industry. Therefore, it is quite in order to allocate him duties to be able to guide the industry.

Hon. Chairlady: Hon. Wamalwa, are you contributing to this amendment?

Hon. Wakhungu: Thank you, hon. Chairlady. I have no problem with this one; I had a problem with the previous one. I support the amendment.

Hon. Chairlady: Yes, hon. Ochieng.

Hon. Ochieng: Thank you, hon. Chairlady. The proposed amendment is very good but its wording is wanting. I do not know why it was very difficult for the Committee to work with the spirit of the amendment to Clause 22, so that the wording could be very clear, specific and all encompassing. The wording given to the Director of Mining is very good. It is all encompassing but this one looks like an afterthought. If it were done in the way this other one was done, it would be much better. It sounds more legal and it captures what one may want to do.

In principle, I support.

Hon. Chairlady: Hon. Ochieng, your concern is the wording, and you are not making any proposal. This needs to be done administratively.

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

(Clause 21 as amended and agreed to)

Clause 22

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

THAT, clause 22 be amended in sub-clause (3) by deleting the word “company” and substituting therefor the word “corporation”.

Hon. Chair, this is a typographical error in which we have referred to the corporation as a company yet it is a corporation. So, we intend to address the anomaly by this amendment.

(Question of the amendment proposed)

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

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

(Clause 22 as amended and agreed to)

(Clauses 23 and 24 agreed to)

Clause 25

Hon. Chairlady: Hon. Members, we have two amendments by hon. Amina Abdalla and hon. Joyce Lay. We shall start with hon. Amina Abdalla.

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

THAT, Clause 25 be amended in sub-clause (1) by—

(a) deleting the words “who shall be non-executive unless the President otherwise directs” appearing in paragraph (a); and,

(b) deleting the word “four” and substituting therefor the word “three” and deleting the words “of whom not more than two shall be public officers” appearing in paragraph (e).

Hon. Chairlady, we need to have more accountability and, therefore, the proposed limitation to be effected by the President should not be allowed. We, therefore, propose deletion of the same in paragraph (a) of the amendment.

In part (b) of the amendment, we are seeking to reduce the number of persons who are not public officers from four to three and remove the limitation for public officers, so that we have three members who shall not be public officers. So, we are not specifying that aspect, so that they can be non-public officers appointed under this clause.

(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)*

Hon. Chairlady: Yes, hon. Joyce Lay.

Hon. (Ms.) Lay: Thank you hon. Chairlady. I am aware of the eagerness that my county people have in terms of being included in decision-making process, but given the explanation by the Departmental Committee Chair, my amendment stands withdrawn.

*(Proposed amendment by
hon. (Ms.) Lay withdrawn)*

Hon. Chairlady: Thank you.

(Clauses 25 as amended agreed to)

Clause 26

Hon. Chairlady: Yes, hon. Joyce Lay.

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

THAT clause 26 of the Bill be amended in sub-clause (3) by inserting the word “relevant” immediately after the words “holds a” appearing in paragraph (a).

Hon. Chairlady, the reason as to why I am inserting the word “relevant” is because the word “degree” has been provided for, so that the Chief Executive Officer (CEO) of the National Mining Corporation will understand this sensitive field. As the CEO, he or she will require the technical know-how to steer the corporation to great heights. So, we cannot just talk of “any degree”; it has to be a relevant degree.

(Question of the amendment proposed)

Hon. Chairlady: Departmental Committee Chair, what is your reaction?

Hon. (Ms.) Abdalla: Hon. Chairlady, we congratulate hon. Lay for that clean-up. We support the amendment.

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

(Clause 26 as amended agreed to)

(Clauses 27 and 28 agreed to)

Clause 29

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

THAT, clause 29 be amended in paragraph (a) by deleting the word “record” and substituting therefor the word “database” and by deleting the word “data”.

Hon. Chairlady, in this amendment, we are seeking to replace the word “record”, which is ambiguous, with the word “database”.

(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 29 as amended agreed to)

Clause 30

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

THAT, Clause 30 be deleted.

The rationale for requesting the deletion of Clause 30 is that the stakeholders in the sector and the Committee agreed that an *ad hoc* tribunal set up by the Cabinet

Secretary would not provide a very fair process for adjudicating crisis. I also believe that there already exists the Environment and Land Court established by the Constitution, which would solve the problem. Therefore, we are proposing the deletion of the same and proposing a mechanism in Clause 128 on the procedures of how to deal with disputes.

(Question of the amendment proposed)

Hon. Ochieng: Hon. Chairlady, the Committee, this time round is properly advised to delete this and I support the deletion.

Hon. Mwadeghu: Hon. Chairlady, I want to add my voice to what has been said. Clause 30 was creating a problem in the management of the entire industry. I concur with the Committee to delete the entire Clause 30.

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

(Clause 30 deleted)

Hon. Chairlady: Hon. Members, hon. Lay's proposal therefore, lapses, as we have deleted Clause 30.

(Proposed amendment by hon. Lay lapses)

Clause 31

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

THAT, Clause 31 be amended –

(a) in sub-clause (1) by inserting the words “on the recommendation of the Mineral Rights Board” immediately after the words “Cabinet Secretary”;

(b) in sub-clause (3) by inserting the following new sub-paragraph after paragraph (a) -

(ia) a reconnaissance licence;

(c) in sub-clause (4) by inserting the words “on the recommendation of the Mineral Rights Board” immediately after the words “Cabinet Secretary”.

This is a consequential amendment that deals with the fact that the Cabinet Secretary can only issue those rights upon recommendation of a Mineral Rights Board. That is a consequential amendment in sub-clauses 1, 3 and 4, so that they deal with the same.

In (b) we, as a Committee, in consultation with the stakeholders in the sector, are introducing a new type of mineral right called “a reconnaissance licence”. With your indulgence, I just want the Members to understand why we are proposing the reconnaissance licence. This is allowing more people to walk around in our country, so

that we appreciate what we have, either through walking around or through geophysical and other non-intrusive mechanisms. We are told that nothing much is known about our mineral wealth. So, we are introducing this, so that more can be learnt and we can also get some revenue out of that.

I beg to move.

(Question of the amendment proposed)

Hon. Mwashetani: Asante sana, Bi Mwenyekiti. Ningependa kuunga mkono marekebisho hayo kwa sababu yametoa nguvu kwa mtu mmoja katika kutoa maamuzi. Swala la madini limeleta utata sana. Iwapo marekebisho haya yatapita, itakuwa rahisi kwa watu kuzunguka na kufanya utafiti bila kusumbua ile ardhi ambayo inatarajiwa kutolewa madini.

Kwa hivyo, ninaunga mkono.

Hon. (Ms.) Chidzuga: Bi. Mwenyekiti, pia mimi ninasimama kuunga mkono. Liseni ya utafiti ni mojawapo ya njia ambazo zitaleta mapato. Ijapokuwa tutakuwa tukitegemea madini, pia tutapata mapato kutokana na kuuza leseni ambazo zitasimamia kazi kutoka mwanzo. Ninaunga mkono.

Hon. Ochieng: Hon. Chairlady, I want to thank the Committee for this, but I am looking at part (4) and the proposal being made. In that clause, we have a list of the rights contemplated and that can be given. But part (4) contemplates that there are other rights outside the ones that are listed there. My fear is that this could be used to circumvent the very entrenched rights in this sector. So, I thought that the Chair would remove this particular sub-section. If you allow the Board or even the Cabinet Secretary to start going round and saying: "We will not give you a licence; we will not give you a lease, but we will give you something in between," what is it? Could the Chair confirm to us what kind of right is contemplated there that the Cabinet Secretary could give that could not be listed in this document?

Hon. (Ms.) Abdalla: Hon. Chairlady, I want to read the section for my good lawyer friend. With our amendment, sub-clause (4) would read: "shall on recommendation of the Mineral Rights Board by a notice in the Gazette prescribe the form and content of a mineral right licence on permit". The way a licence looks like, it has your name and physical address. That is what is going to be prescribed. They are not going to decide what licences you are getting, but the format of that licence will be prescribed in regulation. Hon. Gumbo had raised the issue that there are many regulations in this Bill, we must appreciate that the Statutory Instruments Act provides a procedure for all regulations to come to this House and be processed by the Committee on Delegated Legislation. This is just the format of how that licence should look like.

In 31(4), the Cabinet Secretary, may, by notice in Gazette, designate any other mineral right which may be granted under this Act--

Hon. Ochieng: It is an amendment to part (c).

Hon. (Ms.) Abdalla: Hon. Chairlady, it will be upon recommendation of the Mineral Rights Board, if there are new things that come up, like if we discover a mineral that does not exist. For now, we have permits for gemstones, diamonds and other

minerals. So, if something new comes up, then they can prescribe. We do not think they would have any, but the rest have already been foretold under 31(4).

Hon. Chairlady: I hope Ochieng is okay with that. They are leaving it open should a right come that is not prescribed. Hon. Ogalo, what is it?

Hon. Ogalo: Hon. Chairlady, I get hon. Ocheing's problem. But even in the same amendment, we have created one other formal licence called the "reconnaissance licence". So, we are creating an opportunity for any other types of licences not yet described, to be gazetted and created on the recommendation of the Mineral Rights Board. I would imagine one export licence for a mineral already mined. That is not already dealt with here, but can be gazetted and awarded on the recommendation of the Board.

Hon. Mulu: Hon. Chairlady, while I support this amendment, I am getting a bit worried. We are using the words "Mineral Rights Board". I thought at one point we would approve this. What happens if at the end of the day, this terminology disappears? Does it mean we have to come back? At what point will the Chair introduce this, so that it is approved officially?

Hon. (Ms.) Abdalla: This will be defined later.

Hon. Chairlady: Okay, this will be defined later.

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

(Clause 31 as amended agreed to)

Clause 32

Hon Abdalla: Hon. Chairlady, I beg to move:-

THAT, clause 32 be amended-

(a) in the marginal note by deleting the words "except mining lease" and substituting therefor the words "for large scale operations";

(b) in sub-clause (1) by deleting the word "may" and substituting therefor the word "shall" ;

(c) by deleting sub-clauses (2),(3),(4),(5),(6),(7),(8) and (9) and substituting therefor the following new sub-clauses –

(2) The Cabinet Secretary shall, on the recommendation of the Mineral Rights Board, approve or reject an application-

(a) within ninety days in the case of an application for prospecting license or reconnaissance licence; or

(b) within one hundred and twenty days in the case of an application for a mining licence;

(3) Subject to sub-section (2) the Cabinet Secretary shall notify the Mineral Rights Board of the decision to approve or reject an application before notifying the applicant.

(4) Subject to subsection (2), the Cabinet Secretary shall notify the applicant in writing whether the application has been accepted or rejected.

(5) Where the application is approved, the applicant shall by notice in writing accept or reject the offer for grant of the mineral right within twenty-one days from the date of receipt of notification of the approval.

(6) Where the applicant does not notify the Cabinet Secretary of the acceptance of the offer, the approval of the application shall lapse after twenty-one days.

(7) Where the Cabinet Secretary has rejected an application, the affected applicant may apply to the Cabinet secretary for the review of the decision.

(8) The Cabinet Secretary shall within thirty days communicate with the applicant on the decision in relation to the review.

(10) An applicant who is aggrieved by the decision of the Cabinet Secretary may appeal to the High Court within thirty days.

The first one is on the marginal note. This section will only apply to large scale mining. The other amendments on part (b) and the rest are intended to clean up and increase transparency of issuing licences. We are talking of the Cabinet Secretary, on recommendation, being able to have a timely way of issuing licences. We are saying for reconnaissance and prospecting licences, they should be given 90 days and mining licences should be given in 120 days. We are incorporating the issue of community participation in the process. So, it is an amendment that is intended to bring about more transparency and accountability in terms of time.

(Question of the amendment proposed)

(Hon. Gikaria and hon. (Ms.) Sunjeev stood up in their places)

Hon. Chairlady: Hon Gikaria, is your interest in this?

Hon. Gikaria: It was the earlier one.

Hon. Chairlady: Hon. (Ms.) Sunjeev is it on this one? Hon Members, we also want to give those who have not spoken an opportunity.

Hon. (Ms.) Sunjeev: Hon. Chairlady, thank you for giving me this opportunity. Clause 32 basically deals with feedback; status of applications and basically the format of the whole process that is to be followed by everyone who is applying for the licences. In my opinion, it brings out the transparency which is the most important in any sector, especially in this sector which is bringing a lot of interest from a lot of investors and our local public in general. So, I stand to support the amendment.

(Hon. (Ms.) Lay crossed the Floor without bowing)

Hon. Chairlady: Hon. (Ms.) Lay, you are not a new hon. Member. Can you please go back and follow the rules of the House? Is there anybody else on this one?

(Hon. (Ms.) Lay went to the Bar and bowed)

Hon. Thomas Mwadeghu has an amendment but if you look at his amendment, it is exactly the same as what we have just passed in hon. (Ms.) Abdalla's amendment to Subclause (4). The wording is almost identical, if you look at it.

Hon. Mwadeghu: Hon. Chairlady, if you read subclause (4) it says "Subject to subsection (2), the Cabinet Secretary shall notify the applicant in writing whether the application has been accepted or rejected." I am saying the reasons for rejection must be given; that is the amendment I am proposing because what may happen is that the Cabinet Secretary may just write a letter telling you that your application has been rejected and that is all. I would like to know why my application has been rejected. It is my humble opinion that it shall be civil to give reasons in writing for rejecting the application for mineral rights. It will help promote social justice as enshrined in Chapter 4, Article 19 of the Constitution. I rest my case.

Hon. Chairlady: Hon. Mwadeghu, I do not know why one would be putting it in writing, if he is not giving the reasons or otherwise of the application not being accepted. Hon. Chair of the Committee, can you pronounce yourself on this?

Hon. (Ms.) Abdalla: Hon. Chairlady, if you look at sub-clause 4 of our amendment it reads, "The Cabinet Secretary shall notify the applicant in writing, whether the application has been accepted or rejected." The approval process under sub-clause 3 envisions that even if the Cabinet Secretary was to reject the recommendation of the Mining Rights Board, he has to communicate his reasons and his reasons can only be the following:- Where it is based on Government policy; for the protection of public interest; and where the Mineral Rights Board overlooked certain information.

We have dealt with communication; that it will be in writing within a specified time. If you go through the amendments that we are proposing in clause 32, we have deleted the current part (4). Our first amendment was that we delete parts (2), (3), (4), (5), (6), (7) and (8) and substitute with these ones that are on the Order Paper. So, part (4) deals with what hon. Mwadeghu is raising.

Hon. Chairlady: Yes, it is well taken care of. Please, feel sufficiently represented by the Committee, hon. Mwadegu. Do you still have a word because I believe your concerns have been taken care of? We need to make progress.

Hon. Mwadeghu: Let me accept the explanation if that is what it captures, although my interpretation initially was different. But if that is captured, I am comfortable.

Hon. Chairlady: Okay; so you consider your amendment dropped. Can you pronounce that, that is so?

Hon. Mwadeghu: Hon. Chairlady, given the explanation that has been brought forth by the Chair, my amendment stands withdrawn.

(Proposed amendment by hon. Mwadeghu withdrawn)

Hon. Ogalo: Hon. Chairlady, sorry to drag you a little bit back again on clause 32. I am getting a little worried. I know we have taken a little more time on this Bill in our Committee, but when I read our new sub-clause (4), the Cabinet Secretary shall not reject advice by the Board. I am wondering, if the Board recommends that the licence should

not be granted, what grounds would the Cabinet Secretary have to say it should be granted? I am getting a little worried.

Hon. Chairlady: Hon. Member, now you are talking about your New Clause 32(A).

Hon. Ogalo: No, you see we deleted sub-clauses (2), (3), (4), (5) and (6) in our first amendment then we have created (2), (3) and (4). The Cabinet Secretary shall not reject advice. These are the amendments on Clause 32.

Hon. Chairlady: Now you have lost us, I do not know which one you are reading now.

Hon. Ogalo: The Chairperson is with me, I do not know why the rest are not with me. They should pay attention. Maybe I have an aided version of the amendment, so I may have more advantage over the others. Clause 32 is there at the bottom of the Order Paper on that page 460.

Hon. Chairlady: That is not what is on our Order Paper. You might be reading a document which is not here with us. I do not want to engage hon. Oner too long because if he is a Member of that Committee, we believe that he should have completed all these discussions in the Committee and give the other hon. Members time to prosecute.

Hon. (Ms.) Abdalla: Hon Chairlady, I actually think my secretariat is the source of this confusion. The conditions under which the Cabinet Secretary can approve are in our explanatory notes, but it was an amendment that we had already rejected because of the justification that hon. Oner is speaking to. So, part (4) is not on the Order Paper as stated. It is the justification document that has been done; that is not on the Order Paper.

Hon. Chairlady: Hon. Oner, you are talking to us a language we do not understand.

Hon. (Ms.) Abdalla: He is talking on a document that is not before the House.

*(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 32 as amended agreed to)

Clause 33

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

THAT, Clause 33 be amended—

- (a) in subclauses (1) and (2) by deleting the words “ and a certificate”; and
- (b) by deleting sub-clauses (3), (4) and (5).

The first one is to delete the word “certificate”. It is the opinion of the experts and the Committee that the provision of a certificate be deleted because a licence or permit is sufficient evidence of a mineral right. So, that is why we are deleting the word “certificate”. We are also deleting sub-clauses 3, 4 and 5 because as you note, in Clause

32, we have given all the conditions for providing for a mineral right. That is all in large-scale mining. So, the current Clause 33(3), (4) and (5) are no longer relevant.

(Question of the amendment proposed)

Hon. Ochieng: Thank you, hon. Chairlady. I think the Committee is learning very fast on how to do business faster and quickly. I really want to commend them. However, I just wanted to appeal to the Chair, reading the two other clauses that she has left in the Bill, I thought they could be firmed up. If we remove the word “certificate”, it leaves sub-clause (1) hanging, so that no one knows. If you say “licence or permit” then you leave it at that, I thought you needed to say “as may be appropriate or necessary”. This is necessary because a licence is given as an alternative of a permit, depending on the rights concerned or involved. So, I thought that we could say “A mineral right issued under this Act or any other written law, shall be evidenced by a licence or permit in the prescribed form where appropriate” so that we do not have part (2) because it is quite superfluous. If you leave part (a) the way you are leaving it, it is also superfluous.

Hon. Chairlady: I am waiting to hear more contributions on this. I am seeing none. So, we have to return to the Chair. Hon. Chair, allow hon. Oner, who is fascinating us by using the cell phone. I do not know how the cell phone is helping him.

Hon. Ogalo: Hon. Chairlady, somebody is insisting on calling me. The concerns of hon. Ochieng are dealt with in part (2) where the prescription of the form is dealt with. It says the “licence or permit”, after removing “and a certificate” referred to under Section 1. So, I do not think there is a problem with hon. Ochieng’s accusation to the Committee.

Hon. (Ms.) Abdalla: Hon. Chairlady, he has given the answer I would have given.

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

(Clause 33 as amended agreed to)

Clause 34

Hon. Abdalla: Hon. Chairlady, I beg to move:-
THAT, Clause 34 be amended—

(a) by deleting the words “The Cabinet Secretary shall, prior to granting a mineral right authorising prospecting or mining operations, require the applicant to seek-” appearing in sub-clause (2) and substituting therefor the following new words—

(2) The Mineral Rights Board shall, prior to recommending to the Cabinet Secretary the grant of a Mineral Right, require the applicant to seek—

(b) by deleting paragraph (a) in sub-clause (2) and substituting therefor the following new paragraph—

(a) approval of the National Land Commission in relation to public land;

(c) in sub-clause (2) by deleting the words “the consent” appearing in paragraphs (b) and (c) and substituting therefor the word “approval”; and

(d) sub-clause (2) paragraph (g) by deleting the marginal note.

This is appreciating that the functions previously given to the Cabinet Secretary would be done by the Mineral Rights Board. The second one is to ensure that all consents are approved by the National Land Commission in relation to public land.

(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 34 as amended agreed to)

Clause 35

Hon. Abdalla: Hon. Chairlady, I beg to move:-

THAT, Clause 35 be amended by-

(a) deleting the words “mineral rights” wherever they appear in this clause and substituting therefor the words “prospecting and mining rights”

(b) inserting in sub-clause (1) the words “and such consent shall not be unreasonably withheld” immediately after the word “owner”; and

(c) renumbering the Clause “2” as “3”.

The import of this amendment is that we do not envision that somebody would need consent if they are doing a reconnaissance licence that requires a non-intrusive look into somebody’s land such as doing some airborne activities. So, we are re-proposing that instead of mineral rights that include the issue of reconnaissance, we substitute it with the word “prospecting and mining rights” because those are the intrusive activities that require consent from the owner.

Secondly, on the issue of giving that consent, we are looking at restricting, that this consent is not unreasonably withheld. The third one is an issue of renumbering the clauses subject to the approval of the changes.

(Question of the amendment proposed)

Hon. Ochieng: Hon. Chairlady, the real idea in that particular clause is warped. I thought what the Committee would have sought to do, and with my senior there being the Vice-Chair, would be to take over that land. If you are going to give mining rights and this is public land, the best thing should have been that if the Government is going to give a right on someone’s piece of land, just take over the land. Do not give the right, but just take over the land. Then the Government can give the right as such. In terms of the amendments proposed, they are fine but the principle in that particular Clause is quite downright wrong.

Hon. ole Kenta: Hon. Chairlady, you see, there are two interests in what hon. Ochieng is saying, namely, the one that you take over the land through compulsory acquisition, if it is private or community land, and the one on leases. So, we have to look at all cases in their own perspectives. The way this clause is framed is correct.

Hon. Korir: Hon. Chairlady, I have some questions on this clause. We are talking about getting permits and permission from land owners, especially when you are doing exploration. For example, in the initial stages of trying to find out if there are mines or not, that will put a lot of burden especially to investors who are willing to go round looking for mining investments. So, I would like to ask the Committee if they looked deep into this, so that we can have the initial stage of looking for mines or exploring for mines being excluded from this clause.

Hon. (Ms.) Sunjeev: Hon. Chairlady, I really want to implore the hon. Member. He is overlooking the fact that the last sentence says that the owner should not withhold consent unreasonably. We know that once some national sort of resource is found on your land, it is not yours. It becomes the State's resource. This particular clause is actually giving room for consultation. It gives the State time, so that they can engage with the owner. These days, as you know, land and mining are very big issues to talk about. So, I agree with this clause and ask the Member to reconsider what he is saying.

Hon. Ganya: Hon. Chairlady, our Constitution allows compulsory acquisition of land in the interest of the public or for the common good of this nation.

In this particular case, it is only for reconnaissance where the land is not disturbed in any way. It is actually for use by planes; it is airborne. Therefore, when the amendment basically says that the owner of the land should not unreasonably deny Kenyans access to that resource, it is something that is in order and we beg that this House goes with us in the interest of the public.

Hon. (Ms.) Abdalla: Hon. Chairlady, people are given vast areas for prospecting. Therefore, before you do mining you can find out whether there is something on the land. You do not have to compulsorily acquire that land, yet it does not have resources. That is why we are just asking for consent until you narrow down to the specific area where you want to mine, then the issue of compulsory acquisition comes in.

Thank you.

Hon. Gikaria: Thank you, hon. Chairlady. I would like to ask; under this clause, are mineral rights on private land? Why do we add the words, "and such consent shall not be unreasonably withheld", yet it is private land? I do not understand, I need clarification.

Hon. ole Kenta: Thank you, hon. Chairlady. The hon. Member should actually appreciate the fact that land belongs to you on the surface. When it comes to minerals, they belong to the State. Since we rely on these minerals for the economic benefit of the country and everybody else, it is imperative that you do not stop the extraction of those minerals. Minerals belong to the national Government or the people of Kenya. Therefore, you cannot stop it, even if the land is yours.

*(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 35 as amended agreed to)

Clause 36

Hon. (Ms.) Abdalla: Thank Chairlady for the opportunity.

I beg to move:-

THAT, clause 36 be amended by deleting the words “mineral right” wherever they appear and substituting therefor the words “prospecting and mining rights”.

This is the same rationale, that mineral rights include reconnaissance rights. They would not require consent. Therefore, we are replacing the words “mineral right” with “prospecting and mining rights”.

(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)*

Hon. Chairlady: We have a further amendment by hon. Mwaita.

Hon. Mwaita: Thank you, hon. Chairlady.

I beg to move:-

THAT, clause 36 be amended in sub-clause (1) by inserting the following new paragraph immediately after paragraph (b) –

“(c) registered group representatives of the Community.”

The gist of this amendment is just to bring in clarity on how mineral rights are granted. It is also aimed at bringing in the role of the community.

Secondly, taking into account that Community Land Act is before this House for enactment; it is important to raise the issue. That is why I want registered group representatives of the community to have a say on how these mineral rights are granted. Thirdly, most of these minerals are found in Arid and Semi Arid Lands where title deeds are non-existent. Therefore, it is only fair to bring in the local community to participate in the granting of these rights

Hon. Chairlady: The hon. Chairlady of the relevant Committee, have you discussed this amendment and seen whether it is good and worth going into our Bill?

Hon. (Ms.) Abdalla: Hon. Chairlady, we discussed this amendment and we proposed to oppose it. One, the two provisions that are provided under Clause 36 give the conditions under which the person who can give consent can appear. If the land is not alienated, then we are waiting for the institution that deals with administration and management of the community land; the National Land Commission in relation to community land that is not alienated. Therefore, it would be proper to consult a registered

group representative of the community yet that land is not allocated to them. So, we thought that this is introducing something that would not be supported by the law.

Hon. Chairlady: Hon. Ganya and hon. Kombe want to say a word on this. Hon. (Ms.) Otucho also had interest in this.

Hon. Ganya: Hon. Chairlady, the National Land Commission has the constitutional mandate and will have a role to play in this. Even at the county level, there are county land boards and members at the county level will be legally mandated to play their role. Therefore, in that sense, both at the national level and the county level, the interest of the public or community land is taken care of and it is clearly shown in the subsequent amendments.

Hon. (Ms.) Otucho: Thank you, hon. Chairlady. I rise to support the amendment because I feel that it is important. From the outset, it brings on board the community and this would minimize some of the confrontations we have been experiencing in the past, especially with the exploration of oil in Turkana. Therefore, it ensures that communities get benefits from the resources that are discovered and exploited from their areas. So, this amendment is important.

If you look at Clause 36(2), it affirms this position because it says that there must be consent from the community or as stated in this amendment, the representatives of the community should give consent.

Hon. Kombe: Thank you, hon. Chairlady. I stand to support the amendment by hon. Mwaita because it is this amendment that is going to take care of the community. If we say that the community is catered for at the county level, why then did we have the community land recognised in the first place?

Hon. Chairlady, it is very important that we have this amendment and I wish to urge the entire House to support it. The community should have a say in the minerals that will be discovered in their areas.

Thank you.

Hon. Baiya: Hon. Chairlady, with regard to representatives of the communities, it is good to remind the House that one of the laws we are yet to make with regard to land matters is recognition of community land. We need to make provisions for its protection and safeguarding of the community rights. I believe, in view of that legislation which we are going to enact before the fifth year since the enactment of the new Constitution, we are going to entrench management and regulations of the rights of community land. Bringing it here does not serve anything. It is not the real legislation that should protect and safeguard community interests in land. This is legislation mainly to regulate mining process and we should not be seen to be obstructing mining legislation by bringing in community interests. If the community wants to oppose the mining process, what that entails is that we will be obstructing investment from flowing into mining but we can take care of community interests in land over mineral rights through community land laws which we are going to come up with.

Hon. (Ms.) Ghati: Hon. Chairlady, I wish to support the amendment by hon. Mwaita. We cannot talk about community land without involving the community. We are talking about a very serious issue. We need to enshrine the word “community” here from the word go. We are not going to be talking about community at later stage. We have to get it right and we have to enshrine it here. We have to mainstream it right here at (c).

How do we ensure that we are engaging our community, if we are not, from the word go, making sure that we are working with the community? The land is found within the community; the community has to be engaged. We have rules in this country that a certain percentage of resources that are found within that community benefit that community. It should be very clear and I wish to see that as (c), the way hon. Mwaita is suggesting. I wish to urge the House to support so that our communities are able to benefit and be aware, from the word go, that they are also part of the process and they are part of the benefits that accrue from their resources.

Hon. Sitati: Hon. Chairlady, I want to support the amendment from the word go because on many occasions when minerals are found in certain areas, you get people masquerading as having bought that land in advance. Therefore, that denies the community any opportunity to gain from that position. Therefore, I want to support hon. Mwaita for bringing that amendment and I want that amendment to go through so that we take care of the interests of the community where minerals are found.

Hon. Chairlady: Hon. Members, we are changing the conversation. Is this where this amendment was taking us? I do not think; it is not whether or not the community is supposed to be included.

Hon. (Dr.) Ottichilo: Hon. Chairlady, I want to plead with the hon. Members that all what they are saying is covered in this clause. In fact, exactly what they are saying is covered in this clause. If you look at 36 (1)(b) which says “the National Land Commission in relation to community land that is un-alienated” it means that the National Land Commission is going to come up with law on community land and all that the hon. Members are asking for will be specified in that community land law. I plead with the hon. Members not to include it here because the National Land Commission will take care of all that. This clause clearly says that no action will be taken on the community land without those conditions.

(Several hon. Members stood up in their places)

Hon. Chairlady: Order, hon. Members! I think the hon. Member has clarified. Let us not belabour the point. The debate is now changing to the question of community land.

Hon. ole Kenta: Hon. Chairlady, let all hon. Members know that the Constitution recognises community land. Even their management must be put in place and I agree with them fully. What we have not appreciated is that if you look at Clause 36(1)(a), which reads; “A mineral right shall not be granted under this Act or any other written law over community land without the consent of-

(a) the authority obligated by the law relating to administration and management of the community land to administer community land”, that includes community representatives in group ranches. So, unless you want to remove that one and say “the community representatives” or “group representatives” but that is what it means. It is very clear.

Hon. Chairlady: I will have hon. Gikaria and the Chairperson of the Committee. Hon. Members, let us not put all our debates to this because a lot of us may not have read what this amendment is in relation to what is already in the Bill.

Hon. Gikaria: Hon. Chairlady, if you look at Clause 36(2), it just says what hon. Mwaita is saying. It says very clearly-

“For the purpose of subsection (1), consent shall be deemed to be given for the purposes of this Act where the registered owners of the---” It is already included in the Act. Why do we need to repeat? Already, the registered owners of a community land have been taken care of under subsection (2). So, I do not think it is fair for us and hon. Chairlady, you keep on telling us that we do not need to repeat ourselves. I also agree with hon. Baiya. This Act is purely on mining issues. The issues of community land can be dealt with under specific law, as the Vice-Chairman has just said.

Hon. (Ms.) Abdalla: Hon. Chairlady, I want to urge hon. Members to appreciate that the amendment by hon. Mwaita states “registered group representatives of the community”. Let us give an example of community land under group ranches. You can have group ranch “x” but there is a group of people who are members of that group ranch that are registered as a community based organisation or as a self-help group. Would you be dealing with the owners of this group ranch who have some legitimacy in ownership or will you be dealing with the self-help group? So, the import of hon. Mwaita’s amendment is adding people who are not recognised in community land, if it is community ranches, or what will be determined in the Community Lands Act. This is a group that is not formally registered as having ownership to this land. There is also the argument that hon. (Dr.) Simiyu was advancing, that some people would come and say that they own that particular land. There is a provision in this licensing process, that consultation must take place and if you have an objection you raise it within those 90 days, for purposes of those people who might be masquerading as the owners of that land. You have to appreciate that as leaders the rights to prospecting and mining are different from ownership of that land. Somebody might own a block to explore oil in your area. In the past, he did not have to get your consent but now he has to get the consent of that community. But as phrased, the communities are covered in the existing clause and the proposal by hon. Mwaita is bringing people outside ownership of that land.

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

(Clause 36 as amended agreed to)

(Clauses 37 and 38 agreed to)

Clause 39

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

THAT, clause 39 be amended by deleting the word “may” wherever it appears and substituting therefor the word “shall”.

Once an area is designated for large scale mining, we are making it mandatory that the provision of licences should be done through tendering.

[The Chairlady (Dr Laboso) left the Chair]

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

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see hon. Ogalo. Kindly let us move fast. Let us not introduce unnecessary debate into this.

Hon. Ogalo: Thank you, hon. Temporary Deputy Chairman. That is just to compel the Cabinet Secretary to always tender. When you say “may tender” then interpretation will allow him an opportunity to do it without tendering.

The Temporary Deputy Chairman (Hon. Cheboi): So, are you supporting?

Hon. Ogalo: Yes, I support.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. Ochieng if you are opposing--- Members are actually supporting so there should be no reason for us to take unnecessarily long.

Hon. Ochieng: Hon. Temporary Deputy Chairman, welcome to the seat.

The Temporary Deputy Chairman (Hon. Cheboi): Order, hon. Ochieng! Let us be serious. I am going to proceed and put the Question.

*(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 39 as amended agreed to)

Clause 40

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

THAT Clause 40 be amended in sub-clause (1)(g) by-

(a) deleting the word “licences” and substituting therefor the word “blocks”; and

(b) inserting the words, “or company” immediately after the word, “person”.

Hon. Temporary Deputy Chairman, the first one is that you could have a licence with a very big block, or you could have many licences, but the blocks are fewer. So, we want to deal with limiting the number of blocks because that is the actual land mass that will be involved. The second one is just to appreciate that applicants can either be persons or companies.

(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 40 as amended agreed to)

Clause 41

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT Clause 41 be amended in paragraph (b) by deleting the words “mining best practice” and substituting therefor the words, “best industry practice”

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, you should be aware that hon. Amina Abdalla is dealing with paragraph (b) of Clause 41.

(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 Speaker (Hon. Cheboi): I notice that we have another amendment by hon. Lay to sub-clause 2(a) and (b).

Hon. (Ms.) Lay: Thank you hon. Temporary Deputy Speaker. After further consultations---

The Temporary Deputy Speaker (Hon. Cheboi): Just to clarify paragraph (b) has already been dealt with, so you will be dealing with paragraph 2(a).

Hon. (Ms.) Lay: Thank you hon. Temporary Deputy Speaker. After further consultations, I withdraw these amendments, that is, both 41(2)(a) and (b).

The Temporary Deputy Speaker (Hon. Cheboi): Very well.

(Proposed amendment by hon. (Ms.) Lay withdrawn)

*(Clause 41 as amended agreed to)
(Clauses 42, 43, and 44 agreed to)*

Clause 45

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

THAT Clause 45 be amended in sub-clause (2)-

(a) deleting the word “at” appearing in paragraph (d) and substituting therefor the word “towards”; and

(b) inserting the words, “as prescribed in regulations” immediately after the word “agreement” in paragraph (g).

(c) deleting the words “responsibility to” and inserting the words “responsible investment for” in paragraph (f)

Hon. Temporary Deputy Chairman, a lot of this is about cleaning up the clause.

(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 45 as amended agreed to)

Clause 46

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Speaker, I beg to move:-

THAT clause 46 be amended-

(a) in the marginal note by deleting the word “license” and substituting therefor the word “licence”; and

(b) in sub-clause (3) by deleting the words “and prospecting companies” and substituting therefor the words “operations which shall be agreed with the holder at arm’s length”

The first amendment is to deal with a typographical error while the other one is to deal with negotiations at arm’s length.

(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 46 as amended agreed to)

Clause 47

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

THAT Clause 47 be amended by deleting sub-clauses (2), (3) and (4) and substituting therefor the following new sub-clauses —

(2) A holder of a mining license whose planned capital expenditure exceeds the prescribed amount shall list at least twenty percent of its equity on a local stock exchange within four years after commencement of production.

(3) The holder of a mining licence may apply in writing to the Cabinet Secretary to execute an equitable alternative mechanism that will allow the company to meet the requirement set in sub-clause (1) including an extension of time.

(4) The Cabinet Secretary, may after consultation with the National Treasury extend the period set out in sub-clause (2) for reasons that the market conditions do not allow for a successful completion of the offering in the local stock exchange.

This amendment is a very important one in that it requires that every mineral right owner, especially a mining company, has to offload 20 per cent of its company in the stock exchange. However, the input that we have received indicates that it could be too early to do it in four years and we are putting amendments that allow the 20 per cent to be met at a longer time should the investor request.

Secondly, it is to give alternative methodologies of offloading that 20 per cent, but with a clear indication that it should be equitable. This is because it has been shown that sometimes it is so expensive to list in the stock exchange and yet you could be able to have counties invest in this or other mechanisms. So, this is a very important amendment that intends to improve transparency in the offloading of 20 per cent ownership of these mining companies to Kenyans.

The Temporary Deputy Speaker (Hon. Cheboi): It is clear.

(Question of the amendment proposed)

The Temporary Deputy Speaker (Hon. Cheboi): I see hon. Gikaria. Do you want to contribute to that one?

Hon. Gikaria: Hon. Temporary Deputy Chairman, I just want to understand what the Chairperson means by this. Does she mean that the four year period should be extended? I did not understand that bit. I think offloading of the listing at the stock exchange to the locals at 20 per cent is a very good idea. The only thing I do not understand is whether she intends to prolong the length of the time to four years.

The Temporary Deputy Speaker (Hon. Cheboi): That is not the way to proceed, but I will give hon. Amina just a minute to probably expand on that.

Hon. (Ms.) Abdalla: Yes, we are providing, in consultation with the National Treasury, for extension of the period of four years for reasons that market conditions do not allow for a successful completion of the offering in the local stock exchange. However, we have further protected this by providing that they can offer and the Treasury can also offer alternative methods of offloading that 20 per cent. We are using the word “equitable” because we have learnt that in other countries where that offloading has taken place, they have ended up with a situation whereby an individual or a group of,

say, less than 10 people take all that local equity. So, we want to protect ourselves by providing that if they do not go to the stock exchange, the methodology should be equitable and that it would attract more people. So, if it is a group it is better

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kombe, do you have a point of order? What is out of order?

Hon. Kombe: Not really a point of order, hon. Temporary Deputy Chairman. I wish to seek some clarification on Clause 47(2).

The Temporary Deputy Chairman (Hon. Cheboi): We will be having a problem.

Hon. Kombe: Just a moment, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kombe, even as I allow you to do that, let it not be repeated henceforth because if there is a particular bit that you do not understand, it is better when you approach the Chair and then you will be able to transact it. Otherwise, we will take a lot of time exchanging and comparing notes.

Hon. Kombe: Sorry, hon. Temporary Deputy Chairman. In Clause 47(2), we have ‘licensed’ with an ‘s’ and in Clause 47(3) we have ‘licence’ with ‘c’. So, what is the difference?

The Temporary Deputy Chairman (Hon. Cheboi): Now, really, let us have hon. Amina. Anybody who does not understand a particular bit can consult with the Mover of the amendment so that clarifications can be done quietly then we can move quickly. Hon. Amina, let us have your contribution to that.

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. Actually this is a typographical thing that we have dealt with before. So, the people in the Legal Department need to appreciate that they should not use the ‘s’ instead of the ‘c’.

The Temporary Deputy Chairman (Hon. Cheboi): I think that is perfect. You now understand that bit, hon. Kombe.

*(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 47 as amended agreed to)

(Clause 48 agreed to)

Clause 49

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

THAT, Clause 49 be amended-

- (a) in the marginal note by inserting the word “mortgage” immediately after the word “transfer”;
- (b) in sub-clause (1) by inserting –
 - (i) the word “mortgage” immediately after the word “transfer”;

(ii) the words, “on recommendation of the Mineral Rights Board” immediately after the word, “Secretary”;

(c) in sub-clause (5) by inserting the word, “Secretary” immediately after the word “Cabinet”.

Hon. Temporary Deputy Chairman, we are adding the word ‘mortgage’ because some of these mineral rights holders would want to mortgage their rights, and that had been excluded. The other amendment is to appreciate that the Cabinet Secretary can only act on the recommendation of the Mineral Rights Board. The final amendment is to make it specific that it is not the Cabinet but the Cabinet Secretary.

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

(Clause 49 as amended agreed to)

Clause 50

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

THAT, Clause 50 be amended by deleting the existing clause and substituting therefor the following new clause —

50. The Mineral Rights Board shall prepare and submit a report on each application for a mineral right to the Cabinet Secretary.

This is in appreciation of the fact that it is in the Mineral Rights Board where the Director of Mines would be present to prepare this report for submission to the Cabinet Secretary.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see no interest, so I proceed to put the Question.

*(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 50 as amended agreed to)

Clause 51

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

THAT, Clause 51 be amended in sub-clause (2) by inserting the words “in accordance with International Accounting Standards” immediately after the word “statements”.

This is so that the annual audited reports conform to international auditing standards.

(Question of the amendment proposed)

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

(Clause 51 as amended agreed to)

(Clause 52 agreed to)

Clause 53

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

THAT, Clause 53 be amended in sub-clause (2) by deleting the words “to grant” appearing immediately after the word “rejecting”.

This is for purposes of cleaning the Bill.

(Question of the amendment proposed)

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

(Clause 53 as amended agreed to)

Clause 54

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

THAT, Clause 54 be amended by deleting sub-clause (2).

Hon. Temporary Deputy Chairman, this is an important amendment. The small-scale miners felt that if we were to use technical and financial reasons as the basis for judging those who apply at the same time, there would be undue advantage to international investors who definitely have more technical and financial capacity. In fact, the stakeholders called this ‘the Chinese clause’.

(Question of the amendment proposed)

Hon. Kombe: Thank you, hon. Temporary Deputy Chairman. Actually, this is to support the amendment because it will give priority to the locals. In case the locals are the first ones to apply, then they stand a better chance of getting the tender. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Well, I will give another opportunity, brief as the previous one, to hon. M’uthari.

Hon. M’uthari: Thank you, hon. Temporary Deputy Chairman. This consideration is actually important because many times our natural resources end up

being exploited by foreigners and the citizens are left disadvantaged. So, this amendment is very useful as far as our interests as a nation and citizens are concerned. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. That is it.

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

(Clause 54 as amended agreed to)

(Clauses 55, 56 and 57 agreed to)

Clause 58

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

THAT clause 58 be amended in sub-clause (3) by deleting –

(a) paragraph (c) and substituting therefor the following new paragraph—

(c) the applicant has submitted an environmental rehabilitation and restoration plan”

(b) the word “proposal” appearing in paragraph (d) and substituting therefor with the words, “local product plan” ;

(c) the word “proposal” and substituting therefor the words , “employment product plan” in paragraph (e).

Hon. Temporary Deputy Chairman, the first amendment is on (c) and it is in relation to a prospecting licence. To expect a full Environmental Impact Assessment (EIA) on a prospecting licence, I would be expecting a lot. So, we are proposing a new sub-clause (c) that reads thus: “the applicant has submitted an environmental rehabilitation and restoration plan.”

On (b), we are removing the word “plan”. There is no need for them to submit a plan. All they need to submit is a proposal on how they are going to buy local products and under (c) a proposal on employment of locals.

Hon. Temporary Deputy Chairman, that is the gist of our amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Before we proceed, I can see that the next amendment is by hon. Korir. Your amendment will fail if hon. (Ms.) Abdalla’s amendment is taken. I want you to be clear on that. If hon. (Ms.) Abdalla’s amendment is taken, please, know that yours is dropped. Do you want to contribute? I see that there is nobody with an intention to contribute to that. I will now put the Question.

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

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

The Temporary Deputy Chairman (Hon. Cheboi): As a consequence, hon. Korir's amendment fails. Hon. Korir, what is it? Do you want to speak to that particular one?

Hon. Korir: Hon. Temporary Deputy Chairman, I think you should give me a chance to speak on my amendment even if it is at this stage. There is a reason why I had it.

The Temporary Deputy Chairman (Hon. Cheboi): Well, proceed because you have the microphone.

Hon. Korir: The reason I brought this amendment is that at the initial stages – this is what I have been saying since we started deliberating on this Bill – we are putting so much requirements and restrictions with regard to looking for minerals in this country. We thereby kill and take away morale of investors who would come in and help us discover these minerals.

If you look at the Environmental Management and Co-ordination Act, No.8 of 1999 you will realize that it does not bring prospecting exploration activities under that Act. That is why I was proposing that unless there is excavation and disturbance of land, we should not deny people the opportunity just because they do not have the environmental requirements.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. That would have been good. I think if you had approached the Committee, probably, they would have adopted it because it looks reasonable. Unfortunately, as I indicated earlier, I will now proceed.

(Proposed amendment by hon. Korir withdrawn)

(Clause 58 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): What is it hon. Amina? It looks like there is an issue you want to address.

Hon. (Ms.) Abdalla: I have just noted a word that was included under amendment (c) that must have been a problem of “cut and paste”. The words that are supposed to be substituting the word “proposal” are “employment plan” and not “employment product plan”. The issue of local product plan was addressed in (b). So, under (c) we should delete the word “product”. Instead of reading “employment product plan” it should read “employment plan”.

The Temporary Deputy Chairman (Hon. Cheboi): That looks like a typographical error and, therefore, that bit will be expunged.

Hon. (Ms.) Abdalla: I just wanted it noted because we are now re-amending the Wildlife Act because of such small things.

The Temporary Deputy Chairman (Hon. Cheboi): That is taken care of now.

Clause 59

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

THAT, Clause 59 be amended by deleting the words “seven hundred and fifty” and substituting thereof the words “one thousand five hundred”. This is in appreciation that prospecting requires a very big size of land and so if you are giving licences to 750 blocks, then you will not be attracting investors. You need a higher number. The number that we negotiated was to double the 750 to 1,500 blocks.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): The gist of it is, of course, the deleting the words “seven hundred and fifty” and substituting thereof “one thousand and five hundred”. I am doing that because there will be an amendment by hon. Korir and I wanted Members to be alive to that one. I see hon. Zuleika.

Hon. (Ms.) Juma: Okay, hon. Temporary Deputy Chairman. I was just a bit concerned about increasing the size especially because in Clause 58 a social impact assessment was not required. Such an assessment would explain how *wananchi* will be affected by the prospecting, especially if there has to be some relocation and also if their livelihoods will be affected. So, I was just a bit concerned about that. In the meantime, I oppose.

The Temporary Deputy Chairman (Hon. Cheboi): So, you are opposing. Hon. Chachu Ganya.

Hon. Ganya: Hon. Temporary Deputy Chairman, at the prospecting stage, very little disturbance is done to the environment. We have looked at this practice in other parts of the world and that is where we brought it from. When it comes to actual mining of the minerals then a very comprehensive environmental and social impact assessment will be done. That is required by the law anyway. So, at this point very little adverse impact is done to the environment.

Secondly, we have looked at other models. If we are to attract investors with a very small piece of land, we will not make it. This is a new industry. We really want this industry to take off in this nation and that is why we have looked at the models in Botswana, Tanzania and other jurisdictions and we feel this is the right thing to do. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Ochieng.

Hon. Ochieng: Thank you very much, hon. Temporary Deputy Chairman. I want to oppose this amendment for the simple reason. I have a feeling that giving someone 1500 blocks for prospecting should not arise if the Government of Kenya takes its job seriously by first of all doing what my colleague is calling “geophysical surveys”.

As a country, we should do these things you are calling geophysical surveys. However, giving someone these pieces of land to prospect I think is giving that person *carte blanche* in terms of what he may find. So, I think what we must do first is that we should try to probably prioritise the geophysical survey instead of prospecting.

The Temporary Deputy Chairman(Hon. Cheboi): I see there is quite an interest in this particular issue. Since we have been moving fast, I think I will give a little more leeway. Let us have hon. Mwashetani.

Hon. Mwashetani: Asante sana, Mhe. Naibu Mwenyekiti wa Muda. Ningependa kuchangia na kuunga mkono kwa njia ya kuwa utafiti ukiendelea katika mashamba, wananchi walioko pale hawasumbuliwi sana. Nazungumza kwa kuwa nina sehemu yangu kule kwangu ambapo madini yametafutwa na wananchi wako palepale na leseni imepeanwa.

Lakini sasa hivi kulingana na mikakati iliyokuwepo – Pengine hawakufuata mikakati kisawasawa ikaregeshwa nyuma na ikachukuliwa na Serikali. Kwa hivyo, kwa upande wangu, mimi husema kuwa katika utafiti hakuna suala la kusumbuliwa kwa wananchi kivyovyote. Kwa hivyo, naunga mkono.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have hon. Dennis Waweru.

Hon. Waweru: Hon. Temporary Deputy Speaker, I think having looked at the recommendation of the Chair of the Committee and bearing in mind that there is not a lot of activity that will be done at the prospecting level, I think it is fair to just retain the original figure considering that you are just prospecting. You are not even sure if there is anything. At the point of mining, you may need a big size of land.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Ogalo and briefly please.

Hon. Ogalo: Thank you, hon. Temporary Deputy Chairman. Hon. Ochieng was talking of geophysical survey. There is no geophysical survey you will ever do to know all the possible minerals in all the possible areas in Kenya. Prospecting will still take place and giving investors such a small block will discourage them from coming here to do prospecting. A figure of 1,500 blocks is what we got from very many industry experts and I would like to ask the House to adopt it. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): I think we have flogged that one sufficiently. It is now up to the Members to make their decision. I will now put the Question.

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

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

The Temporary Deputy Chairman (Hon. Cheboi): Now, we will go to hon. Korir's amendment.

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

THAT, Clause 59 be amended by deleting the words "seven hundred and fifty" and substituting therefor the words "two thousand, three hundred and twenty six".

My amendment is really pretty much like what people are saying, but it was to increase the figure even further.

The Temporary Deputy Chairman (Hon. Cheboi): Now, let us be clear. That is a further amendment to the amendment by hon. Amina. That is for Members to take note of.

Hon. Korir: Yes. Hon. Temporary Deputy Chairman, my further amendment was to increase the number further to 2,326. The reason is that the industrial standard is 500 square kilometres but it takes 500 square kilometres per plot which will come to 2,326 plots. So, that is why I wanted to increase it to meet the industrial standards that we all have to.

The Temporary Deputy Chairman (Hon. Cheboi): That is your proposal hon. Korir, is it not?

Hon. Korir: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): When you said you wanted to increase I got the impression that probably you had changed your mind.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gikaria, do you want to contribute to that one?

Hon. Gikaria: Yes, because I was going to oppose the earlier one of 1,500. I am opposing this one and I think like hon. Dennis has just put it because it is for purposes of prospecting, we just leave it unless it is for actual mining. So, what we have from the Chair, of 1,500 is reasonable.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I also see a lot of interest. Let us have hon. Abdinoor.

Hon. Abdinoor: Thank you, hon. Temporary Deputy Chairman. I want to oppose the amendment. I also wanted to ask my hon. colleague to clarify where he is getting that 500 square kilometres because we heard the experts saying 1,500. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have hon. Kathuri Murungi.

Hon. Murungi: Hon. Temporary Deputy Chairman, I also strongly oppose the amendment by hon. Korir because basically we really consulted the stakeholders in this sector and they are comfortable with the 1,500. He talks of some arithmetic which he thinks can suit the industry. So, I oppose his amendment.

Hon. Baiya: I do not support that amendment. If the Committee sees that it did not consult with key stakeholders and that, that position of 1,500 was sort of a negotiated process, the hon. Member can only be said to be speaking for the miners.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Baiya, you know you are a senior member. That is imputing improper motives if you are talking about him speaking on behalf of miners.

Hon. Baiya: I am only saying he is only leaning too much in favour of the miners by the numbers he is proposing. In addition, we really need to bear in mind---

The Temporary Deputy Chairman (Hon. Cheboi): If it is a point of order based on that, I have already protected you. Let us have hon. Korir.

Hon. Korir: On a point of order, hon. Temporary Deputy Chairman, I think he is out of order to say that I am talking on behalf of miners. I am a miner. I want to be an

investor in mining. I want to make sure that I set up something such that when I become an investor then I have a chance.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Korir, I had actually protected you but you have put yourself into the fat saying that you are not protecting the miners but are actually protecting yourself without declaring your interest. On a more serious note hon. Members, I see quite a number of members want to speak. I want to give a chance only to those who are supporting because we have had quite a number of sentiments opposing the amendment. If there is any member who is supporting this amendment, then I would gladly do it. However, I do not see anyone. Let me give a chance to hon. Alice Ng'ang'a.

Hon. (Ms.) A.W. Ng'ang'a: I am not supporting that amendment. I am saying that we understand him. He has done his arithmetic. However, we sat down as a Committee and those stakeholders and we agreed that people could come up with their own figures. It is good and it is allowed but we had to settle down to that specific figure and we did.

The Temporary Deputy Chairman (Hon. Cheboi): I think we can dispose of that now.

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

(Clause 59 as amended agreed to)

Clause 60

Hon. Korir: Hon. Temporary Deputy Chairman, after consulting with my friend here, who is a member of the Committee, I drop that amendment.

(Proposed amendment by hon. Korir withdrawn)

(Clause 60 agreed to)

(Clauses 61 and 62 agreed to)

Clause 63

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, clause 63 be amended in sub-clause (1) by-
(a) deleting the words “such other period as may be specified in the licence” appearing in paragraph (a) and substituting therefor the words, “a period specified in the approved programme for prospecting operations”; and
(b) deleting paragraph (d) and substituting here for the following new paragraph—
“(d) comply with the terms and conditions of the environmental rehabilitation and restoration plan”

The issue addressed here is the approved programme for prospecting whose time we will be stating. We shall state when they will begin prospecting operations. In addition, part (b) deletes the current (d) so that we say, “comply with the terms and conditions of the environmental rehabilitation and restoration plan” in appreciation that prospecting will not require a full year.

(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 63 as amended agreed to)

(Clauses 64, 65 and 66 agreed to)

Clause 67

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT clause 67 be amended—

(a) in sub-clause (4) by inserting the words “ on recommendation of the Mineral Rights Board” immediately after the word “Secretary” and by deleting the words “two months” and substituting therefor the words “ sixty days”;

(b) in sub-clause (5) by inserting the words “ until the application is determined” immediately after the word “ operations”.

This is to appreciate, in Clause 4, the fact that the Cabinet Secretary cannot respond unless it is on recommendation of the Mineral Rights Board. Secondly, if he delays in providing that response within the 60 days that we have stated there, the mineral rights holder shall continue prospecting until the application is determined. That is the gist of the amendment.

(Question of the amendment proposed)

Hon. Ogalo: Hon. Temporary Deputy Chairman, the reason for this amendment is to also conform to the earlier amendments where we were reducing the power of the Cabinet Secretary and introducing the recommendations by the Mineral Rights Board. I support.

Hon. Ngunjiri: Hon. Temporary Deputy Chairman, I would like to support this amendment because there are many applications which are done to the Cabinet Secretary and most of them stay for one or two years before they are acted upon. I support the

number of days given. If he does not respond, then the prospector can go in and start doing his job.

Hon. Ochieng: Hon. Temporary Deputy Chairman, I oppose.

(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 67 as amended agreed to)

(Clause 68 agreed to)

Clause 69

The Temporary Deputy Chairman (Cheboi): As we go to Clause 69, I would like to get information from the Leader of Majority Party and the Whip. What is the position in as far as the Procedural Motion is concerned? Do you have it, or do we proceed?

Clause 69

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

THAT Clause 69 be amended in sub-clause (1) by deleting the word “two” and substituting therefor the word “three”.

All the prospecting licences are going to be for three years. So, even the extended prospecting licence should be for three years. It will be a total of nine years if they get the first three and then they get two approvals. So, it will be a total of nine.

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

(Clause 69 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Mover, it is time you report progress.

PROGRESS REPORTED

THE MINING BILL

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Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Mining Bill, National Assembly Bill No.9 of 2014 and its approval thereof with amendments and seek leave to sit again today.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Mining Bill, National Assembly Bill, No.9 of 2014 and approved the same with amendments and seeks leave to sit again today.

Hon. (Dr.) Shaban seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Deputy Leader of Majority Party on the Procedural Motion.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Hon. (Dr.) Shaban: Hon. Temporary Deputy Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No. 33(1), this House resolves to extend the sitting time of the House until conclusion of business appearing under Order No. 8 on today's Order Paper.

Hon. Temporary Deputy Speaker, considering that the Mining Bill had stayed for so long, we should be able to conclude the Committee Stage today so that we can move on to other business of this House.

I will ask the Leader of Majority Party to second this Motion.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you. Yes, Leader of Majority Party, you have the Floor.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, without anticipating debate, on Thursday this week the House will go on a recess for 11 days. We have a serious matter that is coming before we go today, tomorrow and the day after.

Hon. Temporary Deputy Speaker, this is a very important Bill, not only to the Government, but to the whole nation. Therefore, I urge my colleagues that we just indulge. I am sure that after Clause 100, we will move faster. This is because there are very few amendments after that, so that we complete in the shortest time possible, but extend the sitting of the House.

This is part of serious legislative business and we expect as Members of Parliament, that once in a while, time will come when we will need to extend time to serve the people of Kenya.

Thank you. I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, we have a digital system and I can see people here. May I take it that these are people who want to express themselves on this intervention; for example, hon. Member for Nakuru Town East. Is this a mistake?

Hon. Gikaria: Hon. Temporary Deputy Speaker, I was just going to ask you to put the Question, but it is very important as you have said.

The Temporary Deputy Speaker (Hon. Kajwang’): No, no! I can see requests here. Therefore, if you are not speaking to it, just release your intervention button then I will know that there is no interest in the House.

Hon. Gikaria: Basically, it is just to support what the Leader of Majority Party has just said.

The Temporary Deputy Speaker (Hon. Kajwang’): No, no! You know, I am not taking time because we want to save that same time. I am just requesting you that, if you are on the screen, please, release it then I will know that there is no interest in that intervention.

I can still see the member for Ugenya on intervention list.

Hon. Ochieng: Thank you so much, hon. Temporary Deputy Speaker. I would very much want to agree with the Mover of this Motion. This is a very important Bill. I have been sitting here since it was started and what I see, and if you look at the laws that were made in the dying moments of last year, when members sit for more than two hours on the same subject, we risk passing things we will not look at very keenly.

That is why I would want to oppose this Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Alright, thank you. Hon. Member for South Imenti, you have the Floor.

Hon. Murungi: Thank you, hon. Temporary Deputy Speaker. This Bill is so important to this Republic of Kenya because the Bill we are repealing or amending was enacted in 1940. Hon. Members really need to concentrate to the subject of this Bill and maybe where we are going, you know I am a member of the Committee and now I am feeling almost dizzy.

Hon. Temporary Deputy Speaker, I suggest we adjourn because there is no hurry when we are making an important law for this country. Let us have time. We can go for recess even for one month and come back until we make a good law which will serve this country for the generations to come and for posterity of this country.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): You are essentially opposed to the Motion?

Hon. Murungi: Hon. Temporary Deputy Speaker, I am opposed to the Motion, as a Member of the Committee. So, when the Chair sees me walking away, she should appreciate that I am exhausted.

The Temporary Deputy Speaker (Hon. Kajwang’): Member for Kiambu, there is no need for points of order. The Chair will know when something is out of order. Do not intervene; we just want to have a feeling on what Members are saying on the question of extension. I can see you on intervention. That is why I am trying to tell you that when I see something out of order, I will raise it. I am trying to tell you to resume your seat.

Yes, Member for Rangwe.

Hon. Ogalo: Hon. Temporary Deputy Speaker, earlier on, I was opposed to the extension but, having heard that this House might adjourn on Thursday, I am inclined to support the Motion, so that we conclude this Bill. This is the youngest august House to have ever been constituted. The average age of Members in this House is much lower than at any other time in the history of Kenya. If we cannot sit in the House for an extended period of time, we will be failing Kenyans who decided to elect young people. Let us proceed with this Bill until we finish with it.

The Temporary Deputy Speaker (Hon. Kajwang’): Member for Rangwe, is there anything related to age in terms of the stamina required to stay on?

Hon. Ogalo: Hon. Temporary Deputy Speaker, a younger person is supposed to be more attentive for a longer period than an older person. That is what I am saying.

So, I support the Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, Member for North Horr.

Hon. Ganya: Hon. Temporary Deputy Speaker, I stand to support the motion.

We have a duty in this country. As a Committee, we have done a lot of work on this Bill. I am sure that even if we stay until 8.00 p.m., we will be able to guide the House to do the right thing.

With those few remarks, I support the Motion for extension of the time.

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, Member for Thika Town.

Hon. (Ms.) A.W.Ng’anga: Hon. Temporary Deputy Speaker, as a Committee, we sat down for a long time and did great work on this Bill. So, as we sit down here, our minds are as alert as never before. We are here to contribute and move forward. Let us continue sitting until we do justice to this Bill. We are not being rushed. We have been doing well, and we will continue doing well until we finish with this Bill. We are not in a hurry, and we will do a good job.

The Temporary Deputy Speaker (Hon. Kajwang’): I hear those of you who are in support of the Motion. Shall we only hear those of you who are opposed so that, in a short while, we can determine the mood of the House and subject the Motion to vote?

What is the problem, Member for Kitui Central?

Hon. Mulu: Hon. Temporary Deputy Speaker, I rise to oppose the extension Motion. We are now at Clause 69, and the Bill has about 198 Clauses. On a serious note,

even if we were to rush and do justice to this Bill, I do not see us doing justice to this Bill, unless we continue sitting until morning. We are only one-third through the Bill. Therefore, I propose that, since we are breaking for only a week, we still have time to do justice to this Bill.

I oppose the Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Is there any other Member who is opposed to the Motion? I want to put the Question, shall I? Member for Garissa, are you on intervention or you want to contribute?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I do not want to challenge you while you are on the Chair, but it is not procedural for a presiding officer of this House to say that he will only listen to those who are opposing debate. It is for Parliament to listen to those who are opposing and those who are supporting. At the end of the day, the Question will be put. Without questioning your position in the Chair, that is not procedural. I just wanted to go on HANSARD before you put the Question – that the Chair is supposed to give chance to both those who are opposing and those who are supporting debate before the Question is ultimately put. Saying that you are giving chance to only those who oppose the Motion would, in my opinion, be un-procedural.

The Temporary Deputy Speaker (Hon. Kajwang’): Have you finished?

Hon. A.B. Duale: Yes, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): All right. Member for Ugenya, what do you have in mind?

Hon. Ochieng: I was just wondering what the Leader of Majority Party was trying to do because he had contributed to the Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Please resume your seat. Member for Nakuru Town East, I can still see you on my request list, then the Member for Bahati.

Hon. Gikaria: Hon. Temporary Deputy Speaker, I support the Motion. I do not know what we are waiting for because you can see the mood of the House. We are ready to move on and finish this Bill. We do not have enough time to wait because the public is waiting for us to pass this Bill. We should proceed, telling from the mood of the House. I think you can see the mood of the House.

The Temporary Deputy Speaker (Hon. Kajwang’): Order! I will not allow you to go that direction. The mood of the House is only seeable by the Speaker presiding. So, allow the Speaker to do his job, which is to preside and superintend the House.

Hon. Njomo: Hon. Temporary Deputy Speaker, I support this Motion. As you have seen in the past, county governments have gone ahead to pass Bills that purport to override this proposed Mining Bill. So, the earlier we are done with this Bill, the better. That is why I support this Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Members, we have done this. So, when I see more requests coming, it only means that you have an interest which you want to raise. Member for Narok South.

Hon. ole Lemein: Hon. Temporary Deputy Speaker, I would like to support the Motion. As a Member of the Committee, this is one of the Bills that raise a lot of expectations with Kenyans. They want this industry streamlined and the more it delays,

the more problems are encountered. Sometimes, licences are cancelled in some very bad ways. So, it is important that we finish with it. We should just get on with the Bill.

The Temporary Deputy Speaker (Hon. Kajwang’): All right, Members, you will have to make a decision one way. I see there are about three of you who still want to speak to it. I will cut you short and put the Question.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE MINING BILL

*(Resumption of consideration interrupted
in Committee today)*

Clause 70

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

THAT, Clause 70 be amended by -

- (a) deleting sub-clause (2) ; and
- (b) inserting in sub-clause (3) the word, “or company” immediately after the word, “person”.

This is cleaning up and dealing with expansion of the persons to apply for licences.

(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 70 as amended agreed to)

(Clause 71 agreed to)

Clause 72

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 72 be amended in sub-clause (3) by inserting the words
“on recommendation of the Mineral Rights Board” immediately after the word
“Secretary”.

This is giving the powers of recommendation to the Mineral Rights Board.

(Question of the amendment proposed)

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

(Clause 72 as amended agreed to)

Clause 73

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, clause 73 be amended by—
(a) deleting the words “in any case” appearing immediately after the word
“years”.

(b) renumbering the existing provision as (1);

(c) inserting the following new sub-clauses immediately after sub-clause (1)—

“(2) The holder of a retention licence may, at any time but not later than three months before expiration of the initial term of the licence, apply to the Cabinet Secretary for a renewal of the retention licence in the prescribed manner.”

“(3) The Cabinet Secretary on the recommendation of the Mineral Rights Board shall grant a renewal of the term of the licence for a further period not exceeding two years.”

The first import on part (2) is that we need to give timelines on when the person with the prospecting licence must apply to the Cabinet Secretary for a renewal. That is replaced as three months. We have also given position that the renewal will be for a two-year period.

(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 73 as amended agreed to)

(Clause 74 agreed to)

Clause 75

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

THAT clause 75 be amended by—

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

(d) comply with the terms and conditions of the environmental restoration, rehabilitation and heritage plan.

(b) renumbering the current paragraph (h) as paragraph (g)

The first one is to deal with the fact that prospecting licences should not require full EIA, so it is just conditions for restoration and rehabilitation and (b) is to deal with mistakes in numbering, that is currently in 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)*

(Clause 75 as amended agreed to)

(Clause 76 agreed to)

Clause 77

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

THAT clause 77 be amended in —

(a) sub-clause (1) by deleting the word “him” and substituting therefor the words, “the holder” ;

(b) sub-clause (5) by deleting the word “ cancelled” and substituting therefor the word “revoked” .

We are just dealing with the substituting with the right words. We are substituting “cancelled” with “revoked” and “him” with “the holder.”

(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 77 as amended agreed to)

Clause 78

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

THAT, Clause 78 be amended by-

(a) In sub-clause (1) by inserting the words “or company” immediately after the word “person”.

(b) In sub-clause (2) by inserting a new paragraph immediately after paragraph (i) as follows—

(j) a plan giving particulars of the applicant’s proposals with respect to social responsible investments for the local community.”

The Temporary Deputy Chairman (Hon. Cheboi): Be advised that you will start with only sub-clause (1)

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

THAT, Clause 78 be amended by —

(a) In sub-clause (1) by inserting the words “or company” immediately after the word “person” in appreciation that the applicant can either be a person or a company.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Abdalla, since I realise what hon. Ndirangu is proposing is a New Clause; Sub-Clause 2(c), you could still proceed with your 2(j)

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I am also proposing that we add a new clause that reads “a plan giving particulars of the applicant’s proposals with respect to social responsible investments for the local community”. I want to share with the Members that our Committee is trying to ensure that these investors do not give tokenism in form of corporate social responsibility, but goes further into agreeing with the community on socially responsible investments, so that issues of sustainability can be addressed.

(Question of the amendment proposed)

Hon. Gikaria: Hon. Temporary Deputy Chairman, I want to support the Chair and the Committee for a job well done. It is very important. We are used to companies coming to our areas and just giving out some handouts and pretending that they are doing some social corporate responsibility. This social responsible investment is more sustainable to the community. It is a job well done and congratulations.

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

The Temporary Deputy Chairman (Hon. Cheboi): Before we proceed to the next amendment, we will have hon. Ndirangu, the Member for Embakasi Central. It is indicated in the Order Paper as the Member for Westlands. I wanted to know if you shifted some time last week. Hon. Ndirangu proceed.

Hon. Kariuki Ndirangu: Thank you, hon. Temporary Deputy Chairman for correcting that position.

I beg to move:-

THAT, Clause 78 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c) –

(ca) a proposed programme for management of ground water and financing of the supply of water to affected persons where the mining operations affect the water table;

I am proposing a programme of management of ground water and financing of the supply of water to affected persons where the mining operations affect the water table. It is the duty of this House to pass people-friendly laws. In this case, it is widely known that where mining processes are done, miners drill down to the extent of affecting water table which after their operations, that area is left inhabitable. It is important that people within the area of operation are taken care of in terms of compensation or management of continued supply of water.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear from hon. (Ms.) Alice Ng'ang'a.

Hon. (Ms.) A.W. Ng'ang'a: I want to oppose hon. Ndirangu, who is a very good friend of mine. If we start narrowing down to the water, it will affect the Bill. That is captured by the Water Bill. The Water Bill has captured where and how water should be supplied. NEMA also speaks loud about what should happen when a miner starts mining. NEMA gives rules that should be adhered to. Therefore, I oppose the proposed amendment by my fellow colleague.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear from hon. Abdinoor. Hon. Abdinoor, be very brief, please.

Hon. Abdinoor: Thank you, hon. Temporary Deputy Chairman. I beg to oppose the amendment proposed by hon. Ndirangu. His worries will be taken care of by the Environmental Impact Assessment (EIA), which will be done by the company before the licence is given.

Therefore, I strongly oppose the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. I think it is time to dispose of this matter.

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

(Clause 78 as amended agreed to)

Clause 79

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 79 be amended by-

- (a) inserting the words, “reconnaissance licence” immediately after the words “prospecting licence”; and
- (b) deleting the word “holder” and substituting therefor the word “applicant” immediately after the word “the” in paragraph (b).

This is to include reconnaissance licence which we are introducing and replacing the word “holder” with “applicant” because you do not become a holder until you are issued with a licence.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

(Question of the amendment proposed)

There seems to be no interest.

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

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 79 as amended agreed to)

Clause 80

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

THAT, Clause 80 be amended by –

(a) inserting the words, “on recommendation of the Mineral Rights Board” immediately after the word “Secretary”;

(b) renumbering the paragraph appearing immediately after paragraph “d” as paragraph “(e)”;

(c) renumbering the paragraph appearing immediately after the new paragraph “e” as paragraph “(f)”

(d) inserting a new paragraph immediately after paragraph (f) as follows—

“(g) the applicant’s proposal with respect to engaging in community investments that is socially responsible”.

This is basically to have the impartiality brought about by the Minerals Rights Board and the second amendments are basically to deal the numbering that was inaccurate.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

(Question of the amendment proposed)

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

(Clause 80 as amended agreed to)

Clause 81

Hon.(Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT Clause 81 be amended in paragraph (a) by deleting the words “or in respect of minerals to which the prospecting licence relates”.

(Question of the amendment proposed)

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

(Clause 81 as amended agreed to)

(Clause 82 agreed to)

Clause 83

Hon.(Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT Clause 83 be deleted.
The clause gives the response period and it has been covered by amendments in Clause 32.

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

(Clause 83 deleted)

(Clauses 84, 85 and 86 agreed to)

Clause 87

Hon.(Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT Clause 87 be amended-

- (a) in paragraph (a) by deleting the words “such other period of time as may be specified in the licence” and substituting therefor the words, “as may be specified in the approved program for the mining operations.”;
- (b) by inserting the following new paragraph immediately after paragraph(h)-
 - (i) sign a community development agreement with the community where mining operations are to be carried out in such a manner as shall be prescribed in Regulations.

Hon. Temporary Deputy Chairman, in (a), we are substituting the period of time in a licence to a period specified in the approved program for mining. In (b), which for me is a really big development--- I am happy with it and I hope the House will move that

no agreement shall be allowed unless the investor signs a community development agreement with the community where the operations are to be carried out. So, this is what we are proposing in the amendment of Clause 87.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I am sure you are alive to the fact that we are dealing with Clause 87(a) of hon. Amina Abdalla.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Cheboi): We will proceed to the further amendment by hon. Member for Embakasi *Kati*, hon. Ndirangu.

Hon. Kariuki Ndirangu: Thank you hon. Temporary Deputy Chairman. I have consulted with the Members of the Committee and I wish to withdraw the amendment.

(Proposed amendment by hon. Kariuki Ndirangu withdrawn)

The Temporary Deputy Chairman (Hon. Cheboi): Very well. That is perfect, so we now proceed.

(Clause 87 as amended agreed to)

(Clauses 88 and 89 agreed to)

Clause 90

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

THAT, Clause 90 be amended in sub-clause (5) by inserting the words “on recommendation of the Mineral Rights Board” immediately after the word “Secretary”.

This is basically adding the recommendation of the Mineral Rights Board before the Cabinet Secretary can make a decision.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gikaria, yours is on permanently but I will rule you out of order anyway. Let us proceed.

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

(Clause 90 as amended agreed to)

Clause 91

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

THAT, Clause 91 be amended—

(a) in sub-clause (2) by deleting—

(i) the word “ twelve” appearing in paragraph (a) and substituting therefor the words “six”;

(ii) the word “ six” appearing in paragraph (b) and substituting therefor with word “three”; and

(iii) the words “three” appearing in paragraph (c) and substituting therefor the word “one”;

(b) by inserting a new sub-clause immediately after sub-clause 6—

6A. Where the holder is unable to give the required notice as provided under sub-clause (1) and the holder suspends or curtails production from a mine, the holder shall, within three days of the suspension or curtailment, notify the Cabinet Secretary.

Hon. Temporary Deputy Chairman, the first set of amendments is to reduce the amount of time that a mineral right holder needs to give notice to the Government for curtailment. Twelve months is too long, so we are recommending that it be reduced to six months. Where it is six months, to three months and where it is three months, to one month. We are further giving a leeway in situations where the curtailment is forced by either issues of weather or insecurity so that they can curtail production but report to the Ministry in three days. That is the import of the amendment.

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

(Clause 91 as amended agreed to)

(Clause 92 agreed to)

Clause 93

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

THAT, Clause 93 be amended in paragraph (c) by inserting the words “and Community development agreement” immediately after the words “Environmental Management and Coordination Act.”

This is my pet topic, that development agreements must remain conditions for issuing licence.

(Question of the amendment proposed)

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

(Clause 93 as amended agreed to)

(Clause 94 agreed to)

Clause 95

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 95 be amended –

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

(1) The Cabinet Secretary in consultation with the National Treasury may enter into a mineral agreement with the holder of a mining licence where the proposed investment exceeds five hundred million United States Dollars.

(b) by deleting sub-clause (2);

(c) in clause (3) by inserting the following new paragraphs immediately after paragraph (j) –

(k) the payments of royalties, taxes, cess and other fiscal impositions; and

(l) financial arrangements.

(d) by renumbering the paragraphs accordingly.

Hon. Temporary Deputy Chairman, there is a question of constitutionality that was raised by hon. (Eng.) Gumbo, in that the Constitution requires Parliament to approve all mineral rights agreements. Our amendment was to deal with fiscal concessions. We are saying that investments of less than USD500 million, the investor should not be given fiscal concessions, but I want to concede on the issue of agreements being a constitutional question.

So, hon. Temporary Deputy Chairman, with your indulgence, I do not know the procedure, but I would want Clause 95(a) to read as follows:-

“The Cabinet Secretary in consultation with the National Treasury may enter into a mineral agreement involving fiscal concessions with the holder of a mineral licence where the proposed investment exceeds five hundred million United States Dollars.”

This then allows us to continue having mineral agreements approved by the House, but fiscal components cannot be included, they will only be included when it is a large investment. So, I do not know what I need to do. Or do I propose a further amendment that inserts the words ‘involving fiscal concessions’ between the words ‘mineral agreements’ and the word ‘with’? Hon. Temporary Deputy Chairman, I would like your advice on that.

The Temporary Deputy Chairman (Hon. Cheboi): We are at clause 95 and the one which you are speaking to as having an issue is clause 95(a)(1). You would have the freedom of moving it an amended form.

Hon. (Ms.) Abdalla: So I move it in an amended form?

The Temporary Deputy Chairman: I thought that is the neater way to proceed so that we can capture that specific bit which you think can be cured by what you are indicating.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, clause 95 be amended –

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

“The Cabinet Secretary in consultation with the National Treasury may enter into a mineral agreement involving fiscal concessions with the holder of a mineral licence where the proposed investment exceeds five hundred million United States Dollars.”

The Temporary Deputy Chairman (Hon. Cheboi): So what have you removed or what have you added?

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I have further amended that amendment by inserting the words “involving fiscal concessions” between the word “agreement” and the word “with”.

The Temporary Deputy Chairman (Hon. Cheboi): It is clear now. We will proceed now specifically to what hon. (Ms.) Abdalla has further amended.

(Question of the further amendment proposed)

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. This amendment is quite important because mining is---

The Temporary Deputy Chairman (Hon. Cheboi): Let me get what you just said, I am very interested. Now start afresh because something escaped me from what you said.

Hon. Mulu: Hon. Temporary Deputy Speaker, I was saying that I want to support this amendment because it is a very important amendment. The fact that mining is a very expensive exercise and involves a lot of money, it is important that we have the Cabinet Secretary, National Treasury and the Cabinet Secretary of the concerned Mining Ministry getting together, otherwise if you leave it to an individual, it becomes very tricky. So, I like this amendment and I support it.

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

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

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Korir, do you have a further amendment to this one?

(Hon. Gikaria stood up in his place)

The reason why I did not give you an opportunity hon. Gikaria is that at one point, I gave you your time to speak but you were concentrating and there was a white paper ahead of your face. I do not know what you were doing so I removed your card from here. It has just come in now. You will have an opportunity to speak when you require.

Hon. Korir: Looking at the amendments by the Committee, my amendment is captured so, I am dropping it.

(Proposed amendment by hon. Korir withdrawn)

The Temporary Deputy Chairman (Hon. Cheboi): That is fine. Hon. Gikaria, you had something. You have to be brief on this one and I can see you almost want to put another paper. Proceed.

Hon. Gikaria: I am sorry, hon. Temporary Deputy Chairman. I want to agree totally with what you have said. I was worried before because I got seven text messages about that clause from some concerned Kenyans. They said that what was done was not in line with the spirit of our Constitution. However, now that it has been amended, I support it. I apologize too.

(Clause 95 as amended agreed to)

Clause 96

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

THAT, Clause 96 of the Bill be amended by inserting the words “and on the advice of the Prospecting and Mining Licensing Committee” immediately after the word “state”.

However, after further consultations, I would like to bring a further amendment and remove the words---

The Temporary Deputy Chairman (Hon. Cheboi): Please, give us a minute so that we consult here at the Table.

(Hon. Cheboi consulted the Clerks-at-the-Table)

Hon. Lay, what you do in order to make it neater is to proceed in the direction of hon. Amina, which is moving your amendment in an amended form. That will make it neater and it is your amendment anyway.

Hon. (Ms.) Lay: Hon. Temporary Deputy Chairman, I propose that I amend Clause 96 by inserting the following words immediately after the word “State, “The Cabinet Secretary may on behalf of the State and on the advice of Mining Rights Board”.

I am doing this so as to make sure that the Cabinet Secretary does not enter---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Lay, you have to be extremely clear for Members to capture that amendment, especially the amended form which we are getting from you. What is it in the Order Paper that you are amending?

Hon. (Ms.) Lay: In the Order Paper the clause reads, “Prospecting and Mining Licensing Committee”.

The Temporary Deputy Chairman (Hon. Cheboi): So, what is it that you want to amend?

Hon. (Ms.) Lay: I am putting “Mining Rights Board” or “Minerals Rights Board”. It does not change the meaning of the whole clause.

The Temporary Deputy Chairman (Hon. Cheboi): Just a minute so that we consult.

(Hon. Cheboi consulted the Clerks-at-the-Table)

What you are trying to capture is the fact that you are now introducing a Minerals Rights Board rather than the Prospecting and Mining Licensing Committee and it is because Members had already created a board.

Hon. (Ms.) Lay: It is a board now.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, you may proceed.

Hon. (Ms.) Lay: Hon. Temporary Deputy Chairman, I am calling for the Cabinet Secretary, on behalf of the State to consult and seek advice from the Minerals Rights Board in negotiating mineral agreements. This will ensure that we understand, as a country, what agreements we are getting into.

(Question of the amendment proposed)

Hon. Ogallo: Hon. Temporary Deputy Chairman, I do not think I would have a problem with that amendment. In any case we are opening up the process of negotiating the agreement to transparent eyes that make the eventual agreement more beneficial to the country. I support the amendment.

Njomo: I also support that amendment because it is going to be in tandem with other clauses of the Bill which involve the Mineral Rights Board. This particular clause is also talking about prospecting and large scale mining which is governed by the Mineral Rights Board. So, I support that Bill.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have hon. Abdalla. Are you in any way opposing? If you are supporting then we will proceed and put the Question.

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

(Clause 96 as amended agreed to)

(Clauses 97, 98, 99, and 100 agreed to)

Clause 101

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman I beg to move:-
THAT, Clause 101 be amended by deleting paragraphs (a) and (b)
and substituting therefor the following new paragraphs –

- (a) a reconnaissance permit;
- (b) a prospecting permit; and
- (c) a mining permit

(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 101 as amended agreed to)

Clause 102

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman I beg to move:-

THAT clause 102 be amended—

(a) in sub-clause (1) by inserting the words, “an artisanal mining permit” immediately after the words “acquire”;

(b) in paragraph(b) by deleting the words “wholly owned by Kenyans” and substituting therefor the words, “where no less than sixty percent of the shareholding is held by citizens of Kenya”

(c) in sub-clause (2) by deleting the word, “A” and substituting therefor the words “An artisanal mining permit” .

Hon. Tempory Deputy Chairman, we are adding the words “an artisanal mining permit” because as I said before we are going to legitimize artisanal mining in the country. Two, we are going to allow small scale miners to get international equity This is an input by small scale miners who pleaded with us that they want to attract international funding to their programmes.

(Question of the amendment proposed)

The Temporary Deputy Chairman: I proceed to put the Question.

*(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 102 as amended agreed to)

(Clauses 103 and 104 agreed to)

Clause 105

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

THAT, Clause 105 be amended in sub-clause (2) by deleting the word “licence” and substituting thereof the word “permit”.

We are replacing the word “licence” and taking “permit” because we are now dealing with permits in this section.

(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 105 as amended agreed to)

(Clauses 106, 107, 108, 109 and 110 agreed to)

Clause 111

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

THAT, Clause 111 be amended in sub-clause (1) by inserting the words “on recommendation of the Mineral Rights Board” immediately after the word “Secretary”.

This is just adding on the recommendation of the Mineral Rights Board which is a consequential amendment to increase transparency in the regulatory process.

(Question of the amendment proposed)

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

(Clause 111 as amended agreed to)

Clause 112

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

THAT, Clause 112 be amended in sub-clause (1) by deleting the word “ten” and substituting thereof the word “five”.

We are reducing the length of time of mining licence from ten to five for purposes of ensuring that compliance is adhered to.

(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 112 as amended agreed to)

Clause 113

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 113 be amended in sub-clause (2) by deleting the
word “temporary” appearing in paragraph (b).

We are deleting the word “temporary” because we want these investors to not be confined to developing temporary structures. They do whatever is necessary and we have a plan for what to use it for in future.

(Question of the amendment proposed)

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

(Clause 113 as amended agreed to)

Clause 114

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

THAT, Clause 114 be amended by deleting the words “any large scale mechanized equipment or” in paragraph (g) and substituting therefore the words “such equipment as may be prescribed in Regulations.”

Hon. Temporary Deputy Chairman, we are dealing with excluding the use of large scale mechanized equipment or chemicals such as cyanide or mercury. We do not want to say no to the use of any large scale mechanized equipment but such should be equipment as may be prescribed in Regulations and then deal with cyanide and mercury as well.

(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 114 as amended agreed to)

(Clauses 115,116 and 117 agreed to)

Clause 118

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 118 be amended-

(a) in sub-clause (1) by inserting the words “on recommendation of the Mineral Rights Board” immediately after the word “Secretary”; and,

(b) in sub-clause (4) by inserting the word “any” immediately after the word “of” appearing in paragraph (b).

Hon. Temporary Deputy Chairman, this is basically a clean-up.

(Question of the amendment proposed)

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

(Clause 118 as amended agreed to)

Clause 119

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

THAT, Clause 119 be amended in sub-clauses (1) and (2) by inserting the words “on recommendation of the Mineral Rights Board immediately after the word “Secretary”

Hon. Temporary Deputy Speaker, this is to include the recommendations of the Mineral Rights Board, which is consequential.

(Question of the amendment proposed)

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

(Clause 119 as amended agreed to)

(Clause 120 agreed to)

Clause 121

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

THAT, Clause 121 be amended in-

(a) sub-clause (1) by inserting the following words “on recommendation of the Mineral Rights Board” after the word immediately after the word “Secretary”; and,

(b) sub-clause (2) by deleting the words “within three months of date of grant thereof” and substituting therefor the words “in accordance with approved work programme or programme of mining operations.

(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 121 as amended agreed to)

(Clause 122 agreed to)

Clause 123

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT clause 123 be amended—

(a) in sub-clause(1) by deleting the word “following” and substituting therefor with the words “statement of the immovable and movable assets and any other” immediately after the word,“the” ; and

(b) by deleting sub-clauses (3),(4),(5) and (6) and substituting therefor the following new subclauses—

(3) All immovable assets of the holder under the mining licence shall vest in the Republic from the effective date of the surrender or termination of the licence.

(4) All movable assets of the holder in the mining area which are fully depreciated for tax purposes shall vest in the County Government without charge on the effective date of such termination and any property not then fully depreciated for tax purposes, the County Government or the Republic shall have the right of first refusal for the sale of such assets from the effective date of termination at the depreciated cost.

(5) Subject to sub-clause (4), the Cabinet Secretary may permit the assets to be removed solely and exclusively for the purpose of use by the holder in another mining operation in the country.

(6) The Cabinet Secretary shall prescribe regulations for the use of the assets.

This is a very significant amendment because we are dealing with movable and immovable assets of the mining companies. We are cleaning it up so that they can be vested on the Republic on the effective date. We are dealing with this because there is mischief by some of these investors who take away equipment that have already been depreciated in their books. We are, therefore, looking for opportunity to ensure that the Republic does not lose when it comes to movable and immovable assets.

(Question of the amendment proposed)

Hon. Mwadeghu: Thank you, hon. Temporary Deputy Chairman. I just needed a bit of clarification on these immovable or movable assets which have been depreciated to nil that the State would wish to get hold of them. How would that be effected? How would the State make sure that it gets hold of those assets out there in the mining sector?

The Temporary Deputy Chairman (Mr. Cheboi): Hon. Mwadeghu, at one point we had agreed that any consultations should be between hon. Members and the Chairperson. However, I will allow you because you were not in then. I will allow the Chairperson to clarify the issues raised by hon. Mwadeghu.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, anytime the investors import heavy machinery, which is the movable assets, it is in their accounting documents. When the Mineral Rights Board shall be receiving these statements--- The Board will know when the accountants say that the assets have depreciated, say, 25 per cent and all that. Once it is fully depreciated they hand it over to the Republic and that becomes the property of the Republic.

When the situation is that they have not been fully depreciated – they are supposed to be monitored - then with regard to the “underpreciated” amount, the first right of sale will be to the Republic. Do not forget that this Bill proposes an investment arm for the mining sector under the mining corporation. That is the entity that will own the movable and immovable assets that we put in place.

I just want to note that the Republic will be the one to receive everything and then share it out with the counties. So, the amendments on who it is vested in, in both sub-clauses 3 and 4 it should be the Republic and not the counties.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Mwadeghu, I can see from the shaking of your head that you must be agreeing with hon. Abdalla.

I proceed to put the Question.

*(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 123 as amended agreed to)

(Clauses 124, 125 and 126 agreed to)

Clause 127

The Temporary Deputy Chairman (Hon. Cheboi): On Clause 127, we have several proposed amendments. One by hon. Ndirangu, who will be dealing with sub-clause 1(bb); hon. Mwadeghu dealing with sub-clause 2; hon. (Ms.) Abdalla dealing with sub-clause 7 and new sub-clause 8. We will proceed in that order. We will start with hon. Member for Embakasi Central.

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

THAT, Clause 127 of the Bill be amended in sub-clause (1) by inserting the following new paragraph immediately after paragraph (b)

“(bb) causes damage to the water table or deprives the owner of water supply;

I had explained earlier.

The Temporary Deputy Chairman (Hon. Cheboi): What is the rationale for your amendment for the Members to be up to speed? At this point in time, we do not want many Members to be speaking.

Hon. Kariuki Ndirangu: It involves the same thing I was talking about earlier on damaging the water table, causing loss of water and depriving owners the water supply.

The Temporary Deputy Chairman (Hon. Cheboi): I will give two Members to speak to this one and we will start with hon. Alice Ng’ang’a.

(Question of the amendment proposed)

Hon. (Ms.) A.W. Ng’ang’a: Hon. Temporary Deputy Chairman, I understand what hon. Ndirangu is saying. I also need clarity. Let us assume that a property that I was using before the miner came in is affected by the miner. Hon. Ndirangu is asking whether that person should be compensated, if I am correct.

The Temporary Deputy Chairman (Hon. Cheboi): In other words, are you supporting or not?

Hon. (Ms.) A.W. Ng’ang’a: Hon. Temporary Deputy Chairman, if that is what hon. Ndirangu is proposing, yes I support him because if that is my property, I need to be compensated. If the miners have come, especially where I come from, there is mining of building stones. Most of the neighbours’ properties are affected by the miners when they start mining. They need to be compensated.

The Temporary Deputy Chairman (Hon. Cheboi): I am sure you have heard about somebody in the Bible known as Saul, who turned Paul. If you remember, in the first instance, you opposed the first one. I still remember that bit, but let us hear from the Member for Garissa Township, who is also the Leader of Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, it is very clear. Coming from a pastrolist area, there are places that have something called water aquifers; many kilometers where the water table is used by communities. If a mining company, in its exploration business, affects that water table or that well, the Member is saying that, that

is a genuine compensation. The House will agree with that. It is in the interest of the people.

The Temporary Deputy Chairman (Hon. Cheboi): Let me hear someone from the left side of the Chair. Fortunately or unfortunately, they are almost the Members contributing. So, let us have hon. Ogalo.

Hon. Ogalo: Hon. Temporary Deputy Chairman, even though I completely sympathise with the emotional situation of losing water and the water table, I am not convinced that the science that exists as we speak, can enable us to determine that cost and get proper compensation for it. Even as we legislate it, are we sure we will be able to execute that part of the law? I would like to persuade the hon. Member that when we talk of causes or losses or damage to buildings and other removable property, I would assume that when you are staying on this building you are getting water supply. In my view, all this should be computed as one compensation.

Therefore, I oppose.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. You have made your point hon. Ogalo. You are saying that you do not want to legislate in vain.

Lastly, let us hear from hon. Ganya.

Hon. Ganya: Thank you, hon. Chairman. I truly appreciate the concerns raised by hon. Ndirangu. We have laws in this country which ensure that whenever we have any development or investment plans, we do a comprehensive Environmental Impact Assessment before any development is undertaken. It is a law and if in any way it is found to be injurious or in any way to have adverse impact on the ecology and on the water aquifers, then there must be a compensation plan because compensation is a must and that is the law. So, we already have it. Actually, in our Committee we are even working on a more comprehensive new law.

The Temporary Deputy Chairman (Hon. Cheboi): So, are you opposing?

Hon. Ganya: Hon. Temporary Deputy Chairman, I do not see the need because we have the laws already to take care of this.

The Temporary Deputy Chairman (Hon. Cheboi): Are you a member of the Committee?

Hon. Ganya: Yes, hon. Temporary Deputy Chairman; a senior one.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Lastly, let me hear from an hon. Member who is not a Member of the Committee, that is hon. Gikaria.

Hon. Gikaria: Hon. Temporary Deputy Chairman, I support my colleague, hon. Ndirangu. When I was doing my accounting course, under the company law, what he is talking about came up. I am not a lawyer; therefore, I cannot remember exactly the case because it was in England, somewhere I do not know who versus who.

However, the precedent is that the person who was affected was compensated and that is what it is basically. It was legislation and that went through a court process in England where we have borrowed a lot of our legislation from and that person was paid. This is an instance where; assuming I am mining some huge stuff upfront and my land is at the lower end; and not by natural calamities, but by negligence of the other person, then that thing breaks and finds me in my area, I deserve to be compensated.

Basically, that is what hon. Ndirangu is saying. Therefore, I totally support hon. Ndirangu.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, so it is up to hon. Members to make a decision.

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

The Temporary Deputy Chairman (Hon. Cheboi): Let us have hon. Mwachugu contributing on Sub-Clause 2.

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

THAT, Clause 127 be amended in sub-clause (2) by inserting the words “with the Mineral Rights Board” immediately after the word “bond”.

Under Sub-Clause 2, a mineral right holder shall deposit a compensation guarantee bond. As it is, the Bill does not state where the bond will be deposited or to who. To steer clear of any uncertainty, my humble opinion is that the compensation guarantee bond should be deposited to the Mineral Rights Board.

That is what I am proposing, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Now, did you say you are opposing?

Hon. Mwachugu: Hon. Temporary Deputy Chairman, as it is right now, it is not stated clearly---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Mwachugu, of course, you are a seasoned hon. Member of this House. You now have the Floor to prosecute your amendment. So, do not bother about the amendment that was done by anybody else; it is now your time to prosecute yours.

Hon. Mwachugu: Hon. Chairman, under Clause 127, Subsection 2, states that a mineral right holder shall deposit a compensation guarantee bond and it stops there.

I am suggesting that bond should be deposited to the Mineral Rights Board.

That is what I am requesting to be added.

The Temporary Deputy Chairman (Hon. Cheboi): That is very clear. I will give chance to three Members at most, starting with the Member for Githunguri.

(Question of the amendment proposed)

Hon. Baiya: Hon. Temporary Deputy Chairman, I am sorry, I had made this request to contribute to the previous amendment. Nevertheless, I support the amendment with regard to custody to be with the Board in charge of rights.

I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, remember that there is a clause which created that Board earlier – Clause 29 I.

Let us hear hon. Chachu and, finally, hon. Amina Abdalla.

Hon. Ganya: Hon. Temporary Deputy Chairman, I want to appreciate and understand what my colleague is trying to achieve by this amendment. Is it just a matter of depositing the bond with the Mineral Rights Board? This is just an advisory body to the Ministry, without any executive mandate. What is he trying to achieve? Would we not

be better off depositing the bond with the Ministry responsible for mining? What do you want to achieve?

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Departmental Committee Chairperson and come back to the Mover of the amendment.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I appreciate the fact that hon. Mwadeghu wants to know where that bond should go. My understanding of this clause is that a bond that is bonding a person on a figure that the Government would recall goes to the Republic, whose custodian is the National Treasury. The bond is addressed to the National Treasury, under normal circumstances. The Mineral Rights Board is not the right institution. My assumption was that the silence means that it is clear that it goes to the Republic. If he feels that, that is not enough, we could amend it to say that the compensation guarantee should be made to the Republic, and not to the Mineral Rights Board.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Amina Abdalla, at this point, you are not able to amend this Clause.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, on that ground, I oppose.

The Temporary Deputy Chairman (Hon. Cheboi): Lastly, let us hear hon. Mwadeghu, particularly on the line asked by hon. Chachu Ganya.

Hon. Mwadeghu: Hon. Temporary Deputy Chairman, at times we legislate and leave a lot ambiguity. The Departmental Chairlady has said that as far as she is concerned, the bonds will be placed with the National Treasury. Are we sure that, that is what happens? Are you convincing this Committee that all bonds in this country are held by the Republic? If, today, a Government organization or Ministry signs bonds, would you convince me that all those bonds are lodged with the National Treasury? Since we have already created the Mineral Rights Board, which will be responsible for executing the bond, why can such bond not be lodged with it and it becomes the custodian of that bond? Why are we having a lot of ambiguity?

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, there are two Members who are particularly interested in speaking to the amendment. I will start with the Member for Kiambu.

Hon. Njomo: Hon. Temporary Deputy Chairman, when you have a contract with, for example, the Ministry of Public Works and you are supposed to execute a bond, you execute it to the Ministry. When you are doing a bond, maybe for import and export, you do it directly to the KRA. If you were to do this bond to an advisory board, we are complicating this issue. It will make more sense if we said that the bond was to be addressed to the Ministry of Mining.

The Temporary Deputy Chairman (Hon. Cheboi): Now, I think the Members are beginning to give different opinions. So, it is up to the Members to make a decision. I do not think we need to spend more time on it. It is up to the Members to make the decision as to whether they want to support the amendment by hon. Mwadeghu or not.

Hon. Mwadeghu: Hon. Temporary Deputy Chairman---

The Temporary Deputy Chairman (Hon. Cheboi): No, hon. Mwadeghu. If you want me to give permission, I will not give you permission. I would rather give to another Member.

Hon. Mwachugu: Hon. Temporary Deputy Chairman, given that there has been consensus arising from what my colleague has just said, if my amendment was to be amended, would I then be right to amend it to read: “The Ministry that is concerned” as opposed to leaving it to the Board as has been corrected?

The Temporary Deputy Chairman (Hon. Cheboi): This would be the third time. Hon. Abdalla did what hon. Mwachugu has done. Someone else also did the same. We can as well deal with hon. Mwachugu’s amendment, not as a further amendment, but we move it in an amended form. That is what we have done. So, just put that bit for purposes of record.

Hon. Mwachugu: Hon. Temporary Deputy Chairman, it provides that a mineral right holder shall deposit a compensation guarantee bond. As it is, the Bill does not state where the Bill shall be deposited and to whom.

The Temporary Deputy Chairman (Hon. Cheboi): But you have the Floor and you simply need to specifically point out where you need the bond to be deposited. To my mind, I seem to hear you saying that you want it deposited with the relevant Ministry. Is that the case, hon. Mwachugu?

Hon. Mwachugu: Hon. Temporary Deputy Chairman, a mineral right holder shall deposit a compensation guarantee bond with the Ministry of Mines.

The Temporary Deputy Chairman (Hon. Cheboi): Well, I do not want to delve into your amendment but I was having a problem with the changes in Ministries. I do not know if it would make sense if it is the “relevant Ministry”. I do not know, but we could still proceed in the manner which hon. Mwachugu has proposed.

Hon. Mwachugu: Hon. Temporary Deputy Chairman, it should be “the relevant Ministry.”

The Temporary Deputy Chairman (Hon. Cheboi): I thought so. So, I proceed to put the Question?

Hon. Mwachugu: Yes.

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

The Temporary Deputy Chairman (Hon. Cheboi): Now, we go to hon. Amina Abdalla’s sub-clause 7 and the new sub-clause 8. We will now start moving a little faster.

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

THAT clause 127 be amended—

(a) by deleting sub-clause (7) and substituting therefor the following new sub-clause—

(7) A holder of a mineral right shall not commence mining of minerals unless the

lawful occupier, owner or user of land is compensated.

(b) by inserting the following new sub-clauses immediately after sub-clause (7)—

(8) The Cabinet Secretary in consultation, the community and the National Land

Commission shall in such manner as may be prescribed, ensure that the inhabitants or communities who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land, with due regard to their economic wellbeing, social and cultural values and the resettlement is carried out in accordance with the relevant physical planning law.

(9) The cost of resettlement under sub-clause (8) shall be borne by the holder of the Mineral Right.

This is an important amendment in that no mining operation shall begin before the lawful occupier or owner of the land is compensated. This is to avoid people starting mining and then change their goal posts about compensation.

On the second one, we are putting the situation of the new subclause 8, so that we can give an alternative to persons who are displaced by a mining operation to be resettled in a suitable area. The new sub-clause 8 is to ensure that we know who is going to do the compensation and we have put it as the responsibility of the mining right holder.

(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 127 as amended agreed to)

Clause 128

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:- THAT clause 128 be amended by deleting paragraph (b). We deleted “*ad hoc* tribunal”; so, this is a consequential amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Are you proposing a deletion? To me it looks like an amendment.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, it is amending clause 128 by deleting paragraph (b), which is the *ad hoc* tribunal that we have already deleted under clause 30.

(Question of the amendment proposed)

Hon. Kajwang? do you have an intervention or you want to contribute to it?

Hon. Kajwang’: Hon. Temporary Deputy Chairman, I do not want to be the source of your troubles this evening.

The Temporary Deputy Chairman (Hon. Cheboi): I am already having enough of them!

Hon. Kajwang’: Hon. Temporary Deputy Chairman, this is seeing that you have studiously guided us this far. I have been sitting here and studying the contents of this Bill silently, but as we are now going into this section, I see a constitutional problem in terms of something in public law, which translates to settlement of dispute. I know that the Committee wants to create a system in which disputes can be resolved very fast, and in a way that is not very expensive. If you read clause 128, although it is not part of what the Chair is trying to delete or add, it is the substance of the Bill and will remain so. What will remain, therefore, is the Cabinet Secretary, the mediation process and the judicial process. I wish my senior, who sits in that Committee, had just advised them to name it and have the High Court; you talk of a judicial process, but it is very ambiguous; a judicial process can be anything. I am trying to read it in advance; because under Clause 30 the Chair moved the amendment, thereby taking away the invitation of the Chief Justice to be able to bring what would have been a judicial process. I heard hon. Members congratulating it and thought it was good; now as I am reading it, perhaps, you should have taken better counsel on this matter.

When you read the clause which is ahead, which is 130, it clothes the Cabinet Secretary with judicial powers. Clause 129 talks about the things which Cabinet Secretaries should do or the disputes that he should handle, but when you go to clause 130, it tells you how the Cabinet Secretary will go about his duty. There is a memorandum and a statement of claim; this is the kind of thing that you do when you go to a court of law. Now that could have been fine, but the problem is when it is given to the Cabinet Secretary. There is a problem of separation of powers, because a Cabinet Secretary is the hand of the Executive. These are judicial powers; even if we describe him as Cabinet Secretary the duty that he will do is a court process.

So, you will find yourself in a situation where we are giving the Executive judicial powers. I wish that the Committee could have sat on this a little more and refined it. I see a situation where this part of the law will be struck down every so often by the courts because you are giving judicial power to a body which is administrative. It could have been quasi judicial, but at the moment we want to make it almost something which looks like a court of law; we are confusing powers.

Just to wind up, when we had problems with the Cabinet Secretaries, it was because of conflict of powers, separation of powers. This is now what we have come to; we are giving Cabinet Secretaries powers which are reposed in courts of law. The Committee could have looked at it and seen where to locate these powers properly.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kajwang’, first I am looking at a situation where Clause 30 of the particular Bill has already been deleted. That puts us in quite some difficulty. But before we proceed it is something that we need to be thinking aloud together. I can see hon. ole Kenta, who is an equally senior lawyer. Let me hear what he has to say.

Hon. ole Kenta: Hon. Temporary Deputy Chairman, I tend to agree with my colleague on, at least, (d); that it should be specific. It is definitely the High Court that we should go to instead of talking of judicial processes. They are many judicial processes. So, I agree with him fully. Do we not need to give the Cabinet Secretary the first chance?

For purposes of cutting litigation, which is unnecessary and expensive, why can we not give the administrative process a chance first? If we are told that the Cabinet Secretary is unable to resolve the problem, then we will go to arbitration, if it is provided for. For example, under the Land Adjudication Act, before you go to the High Court, you have first of all to go through the Minister and through the objection process. I believe it is meant to ensure that we do not get into litigation.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. ole Kenta, so that we can save time on this, it means that you are in agreement with hon. Kajwang' on (d). I thought the one he had an issue with also was (b). Do you also have an issue with (d).

Hon. Kajwang': Yes.

Hon. Temporary Chairman: So, you have a problem with (d)?

Hon. Kajwang': Yes, but there is also Clause 129, which we will come to. We have not reached it.

The Temporary Deputy Chairman (Hon. Cheboi): If we can deal with this one, then when Clause 129 comes, we will sort it out. What hon. ole Kenta is saying, if I heard him well, is that he also wants to have a more defined judicial process through the High Court. Let us have hon. Gikaria and then we will have hon. Baiya. That will be it. Be brief.

Hon. Gikaria: Hon. Temporary Deputy Chairman, I am just talking from a lay man's point of view, because I am not a lawyer. What the Vice Chair is saying is very clear. If you look at a judicial process, there are so many court cases taking years. The Chief Justice said that you can even hire the services of a witch-doctor to try and clear some of these before you go for judgment. Let us give the Chief Justice an opportunity first; if he does not work, then we can go for mediation.

The Temporary Deputy Chairman (Hon. Cheboi): That will not be a judicial process but a "judicial doctor".

Hon. Gikaria: But that is why the Chief Justice was advising that we do not take everything to court.

The Temporary Deputy Chairman (Hon. Cheboi): Are you agreeing with this particular position expounded by hon. Kajwang'?

Hon. Gikaria: But only specifically for the High Court. But as regards the other section, saying that the Chief Justice cannot hear a case in the first instance is not fair. We need to give him an opportunity and, maybe, people will agree. If they do not, then you can now seek redress elsewhere.

The Temporary Deputy Chairman (Hon. Cheboi): That is okay hon. Gikaria. Let us hear the legal mind of hon. Baiya

Hon. Baiya: Hon. Temporary Deputy Chairman, from the definition of "dispute" under Clause 129, it is quite clear that the kind of disputes anticipated here are strictly not legal. I would say that they are operational disputes about boundaries and where pipes can be laid. This is the kind of matter which can be handled administratively. Only after that process has failed, or when the parties do not feel that, that is a satisfactory process, can they have recourse to the judicial process. In my view, it is an attempt to provide for a quicker remedy to parties.

The Temporary Deputy Chairman (Hon. Cheboi): As you speak to it, and so that you can even be clearer on it, hon. Baiya, read through Clause 128; all those other

avenues have been put in place. The only thing that Members are having a problem with is the description of this judicial process. As the hon. Members are saying, it is amorphous. We have the Cabinet Secretary who can deal with it, an *ad hoc* tribunal, which can be established and a mediation and arbitration process. If all these three fail or in the absence of the three, do we just rely on a judicial process, or specifically the High Court, as suggested by hon. Kajwang'?

Hon. Baiya: Hon. Temporary Deputy Chairman, in my view, I agree with the Committee on doing away with the establishment of a tribunal.

The Temporary Deputy Chairman (Hon. Cheboi): That is not in dispute here.

Hon. Baiya: That is right because the first port of call, if there is a really a legal dispute, should be the environmental court. We have created an environmental court to be a specialized court. Remember, the nature of interest in mining is bound to be quite substantial; it possibly requires technical and more specialized people.

The Temporary Deputy Chairman (Hon. Cheboi): Then probably we need to inquire again because ultimately the person who will move it in an amended manner is hon. (Ms.) Abdalla.

Hon. Kajwang', let us look at the direction which hon. Baiya is talking about. It should not be necessarily the High Court, but the environmental court.

Hon. Kajwang': Hon. Temporary Deputy Chairman, I think hon. Baiya is absolutely right because these are issues which are determined by the Environment Court, only that I think it is right that we be very specific and provide for the Environmental Court; we can get the citations right away. There is the High Court. The problem with the Constitution is that it has identified the High Court and other specialized courts which deal with the environmental matters. We need to be very clear on this one and provide for the environmental court that deals with issues of environment, mining and so forth, so that it is very clear in people's minds.

Hon. ole Kenta: It is also part of the High Court.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. ole Kenta, you are seated next to your Chair. If you have a major issue, you can talk to her. This is because it is up to her to make the decision whether she wants to go that direction. We will give a chance to hon. (Ms.) Abdalla. Probably, you can get some legal advice from your hon. Member, if at all it is required.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I thought you gave me a legal licence to practise after spending two terms in the legal committee. But I want to propose that we do a further amendment to Clause 128 (b) that deletes the current Clause 128 (d) and replaces it with the "High Court".

Hon. Temporary Deputy Chairman, I am not persuaded on 129 and 130; there are similar arguments by hon. ole Kenta and hon. Baiya; but this one on 128, and in addition to deleting completely paragraph (b), I would recommend that paragraph (d) be replaced with the "High Court".

I beg to move.

The Temporary Deputy Chairman (Hon. Cheboi): That brings in other issues. Is it the environment court or the High Court?

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, let me point out that we had a long discussion on this issue. In fact, the discussion was that, when we say "High

Court”, does it mean that issues of mining cannot be handled by a magistrate? Therefore, when we were deleting Clause 30, the argument was that it should go to the High Court, because when the dispute is environmental, then it should go to the environment court. What if the dispute is financial? It will go to the Commercial Division or whatever---

The Temporary Deputy Chairman (Hon. Cheboi): Probably then, hon. Members should convince themselves that the judicial process covers all these.

Hon. Kajwang’: Hon. Temporary Deputy Chairman, what we should do is talk of a court of law with competent jurisdiction. What it will mean is that, there can be so many disputes, including a dispute before the Cabinet Secretary, including arbitration and so forth.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kajwang’, you know unfortunately or fortunately, we had the opportunity of going through the same legal training at the same time. I am trying to look at it this way; really what do we lose? What does this particular Bill lose when it remains in the judicial process? This is because it will be fairly open to probably going even to the lower---- It is up to hon. Members to make their decision.

Hon. (Ms.) Abdalla, it is up to you really.

An hon. Member: A court of law with competent jurisdiction!

The Temporary Deputy Chairman (Hon. Cheboi): To make it easier, perhaps, let us start with part (b); deal with the deletion as you undertake further consultations. It will give us an opportunity. Maybe, you will be looking at it and, hopefully, hon. Kajwang’ will be looking at the Constitution here. Therefore, let us deal with part (b), which is not contentious, the deletion.

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

The Temporary Deputy Chairman (Hon. Cheboi): We will proceed to that other one now. I am sure you have made your decision. So, proceed hon. Abdalla.

Hon. (Ms.) Abdalla: I wish to propose a further amendment that deletes the current sub-clause (d) and replaces it with “a court of law with competent jurisdiction”.

The Temporary Deputy Chairman (Mr. Cheboi): Okay.

(Question of the further amendment proposed)

For purposes of understanding, what did you put it as specifically?

Hon. (Ms.) Abdalla: I proposed to delete the current sub-clause (d) and replace it with, “a court of law with competent jurisdiction”. This is so that it can be commercial, environment, or anything.

The Temporary Deputy Chairman: Okay, you will have your words so that the Members can make a decision.

*(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)

(Clauses 128 as amended agreed to)

(Clauses 129 and 130 agreed to)

Clause 131

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT clause 131 be amended by deleting the words “or an ad hoc tribunal” appearing immediately after the word “Cabinet Secretary.”

This is just deleting the words “ad hoc tribunal”.

The Temporary Deputy Chairman: Very well.

(Question of the amendment proposed)

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

(Clause 131 as amended agreed to)

(Clauses 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147 and 148 agreed to)

Clause 149

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman. I beg to move:-
THAT clause 149 be amended in sub-clause (2) by deleting the words “mineral right” and substituting therefor the words “mining licence”.

We are replacing “mining rights” with “mining licence” because mining rights are inclusive of prospecting and reconnaissance that do not require a full environmental impact assessment.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

(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 149 as amended agreed to)

(Clauses 150, 151, and 152 agreed to)

Clause 153

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 153 be amended by inserting the word “or” after the words “rehabilitation and”.
This is just dealing with adding the word “or” that was missing.

(Question of the amendment proposed)

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

(Clause 153 as amended agreed to)

(Clauses 154 and 155 agreed to)

Clause 156

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, in Clause 156, just before I propose the Question, we will be dealing with hon. Mwaita’s proposed amendment to sub-clause (1) and hon. (Ms.) Abdalla’s. The rest have been withdrawn.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Mwaita.

Hon. Mwaita: Thank you, hon. Temporary Deputy Chairman. Following consultation and defeat of my earlier proposed amendment to Clause 36, and also taking into account the amendment to Clause 156 by the Chair of the Committee on Environment and Natural Resources, I wish to withdraw that amendment since it is a consequential amendment. Thank you.

(Proposed amendment by hon. Mwaita withdrawn)

The Temporary Deputy Chairman (Hon. Cheboi): Very well. That one is withdrawn. Let us have hon. Abdalla on the new insertion to sub-clause (5).

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 156 be amended by inserting the following new sub-clause immediately after sub-clause (4) –

(5)The royalties payable under sub-clause (1) shall be distributed as follows—

(a) seventy percent to the National Government;

(b) twenty percent to the County Government; and

(c) ten percent to the community where the mining operations occur.

Hon. Temporary Deputy Chairman, I just want it noted that although this falls under the same judgment on the amendment from hon. Mulu and hon. Lay that this is a money Bill, there was consultation and agreement with the Executive. This is because if we do not provide a formula for revenue sharing, this Bill will not see the light of day because of the Members. We are proposing that the royalties paid to the Government

shall be shared in the following formula: 70 per cent to the National Government, 20 per cent to the County Government and 10 per cent to the community where the mining operation occurs. So, this is to avert the problems that Members and counties have of not receiving adequate compensation for their resources.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. Before I even propose the Question, I wanted to know from hon. Mwaita. You have a proposed amendment to Clause 159 and another one to Clause 162. Is the same fate befalling them or you will be moving those amendments?

Hon. Mwaita: Hon. Temporary Deputy Chairman, it is the same fate because these are consequential amendments.

(Question of the amendment proposed)

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Chairman, I support the proposed amendment by hon. (Ms.) Abdalla especially on revenue sharing; the royalties as per sub-clause 5(c), 10 per cent to the community where the mining operations occur. This has great meaning to the community in the area where mining is and to make sure that it benefits that community. Together with the 20 per cent of the County Governments, at least they can get something. Very important to the community is the 10 per cent.

The Temporary Deputy Chairman (Hon. Cheboi): I will go the direction earlier espoused by the Speaker, where I would have to ask: Of the five or six requests, do we have any contrary view? If they are all supporting we do not need to put a lot of time into it. I realize everybody is supportive, so we will proceed and put the Question and you will support it in the normal manner.

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

(Clause 156 as amended agreed to)

(Clauses 157, 158 agreed to)

Clause 159

(Proposed amendment by hon. Mwaita withdrawn)

(Clause 159 agreed to)

Clause 160

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

THAT Clause 160 be amended in sub-clause (1) by inserting the words "requiring repayment of the outstanding royalties" immediately after the words "notice to the mineral right holder"

This is basically to add clarification to the clause.

(Question of the amendment proposed)

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

(Clause 160 as amended agreed to)

(Clauses 161 agreed to)

Clause 162

(Proposed amendment by hon. Mwaita withdrawn)

(Clause 162 agreed to)

Clause 163

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

THAT clause 163 be amended by inserting the words, “or successor legislations” immediately after “2006”.

This is to deal with the procedural error that the Act referred to in the Bill of 2006 so that we do not have to amend that clause when there is successor legislation in place.

(Question of the amendment proposed)

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

(Clause 163 as amended agreed to)

Clause 164

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

THAT Clause 164 be amended in sub-clause (2) by deleting the word “at reasonable hours by any interested person on the payment of prescribed fee” and substituting therefor the words, “in such a manner as may be prescribed in Regulations.”

This means that matters to do with registration and records will be catered for in regulations rather than talking about the details of what is reasonable time and what is unreasonable.

(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, 167, 168, and 169 agreed to)

Clause 170

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

THAT clause 170 be amended in sub-clause (1) by inserting the words “for a maximum period of seven days” immediately after the word “seize”, appearing in paragraph (g).

(a) in sub-clause (1) by deleting the word “an” appearing immediately after the words “secretary or” and substituting therefor the word “a”

(b) in sub-clause (1) (g) by inserting the words “for a maximum period of seven days” immediately after the word “seize”.

This amendment allows the Inspector of Mines to have a time limit under which they can seize equipment they believe has been used to commit an offence; a maximum of seven days.

(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 170 as amended agreed to)

*(Clauses 171, 172, 173, 174, 175, 176, 177, 178,
179, 180, 181, 182, 183, 184, 185, 186, and 187 agreed to)*

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

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

Clause 188

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I was just wondering now that they are replacing the Temporary Deputy Chairman if they could also replace the Chairperson moving this amendment. However, now that we are about to finish let me proceed.

I beg to move:-

THAT, Clause 188 be amended by deleting the word “ten” and substituting therefor the words “two years” wherever it appears and deleting the word “ten million” and substituting therefor the words “two million”.

This is to reduce the penalties for offences not clearly stipulated. We are reducing them from ten years to two years and from Kshs10 million to Kshs2 million in order to protect small scale and artisanal miners who are found committing these offences that do not have a specified penalty.

(Question of the amendment proposed)

Hon. Ogalo: This section of the law would be the most draconian law I have ever seen. Somebody is saying an offence which is not specified –if you commit an offence which is not yet specified then you should be imprisoned for a term not exceeding ten years and pay a fine not exceeding ten million. For sure hon. Temporary Deputy Chairman, this would be the most draconian law I have ever seen. “Two years” and “two million” shillings would be more appropriate. Thank you.

The Temporary Deputy Chairman: Member for Nakuru Town East?

Hon. Gikaria: I totally support the Chair in terms of the amendments. In fact, we have the young upcoming miners who will be going into this business and again this is just too much. It is just like what hon. Kang’ata had just said the other day; we kill those people who commit economic crimes. Reducing it would be fair.

The Temporary Deputy Chairman: I think we are persuaded by that, that an offence, a misdemeanor which is not identified in law should cause someone ten years in prison or ten million---

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

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

(Clause 188 as amended agreed to)

(Clauses 189, 190, 191, 192, 193 and 194 agreed to)

Clause 195

Hon. (Ms.) Abdalla: Thank you hon. Temporary Deputy Chairman. I beg to move:-

THAT, clause 195 be amended by deleting sub-clause (1) and renumbering the existing sub-clause appropriately.

This is for the purposes of confining the issues of radioactive minerals.

(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 195 as amended agreed to)

(Clauses 196 and 197 agreed to)

Clause 198

Hon. (Ms.) Abdalla: Thank you hon. Temporary Deputy Chairman. I beg to move:-

THAT clause 198 be amended—

(a) deleting sub-clause (2) and substituting therefor the following new sub-clause—

(2) Any regulations made under the laws repealed under sub-clause (1) shall continue to be in force in so far as they are consistent with this Act until such time as they are revoked by the Cabinet Secretary

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

(3) Any right contained in a lease, prospecting right, exclusive prospecting licence, special licence and location granted under any of the enactments repealed in (1) and subsisting immediately before the commencement of this Act, shall continue in force until expiration by passage of time.

(4) Subject to sub-clause (3) the holder of mineral right in respect of large scale operations as defined under this Act and relevant regulations, to comply with all boundary provisions of the Act and regulations.

(5) Notwithstanding sub-clause (4) the holder of any mineral right in respect of a large scale operation as defined under this Act, shall be required, not later than eighteen months following enactment of the Act and relevant regulations, to update its mine plan with regard to conditions

of employment, health and safety, the management of the environment and community social investments in order to comply with provisions of the new Act and its regulations.

(6) A mineral right for prospecting, mining or dealing in minerals granted prior to this Act shall not be extended or renewed but where the granted Mineral Right provided a right to apply for a renewal or extension of the right, the holder of that mineral right may apply, subject to this Act for a similar type of licence or permit as provided for under this Act on a priority basis.

(7) Any pending applications made under the written laws specified in sub-clause (1) shall be determined in accordance with the provisions of this Act and regulations

This has been a very contentious clause. We have been discussing very deeply in terms of how do you replace the current mining licences that have longer durations than what is in the new Act? There are larger block sizes than what is in the new Act, and the fact that this new Act gives new provisions on health and safety, environment and commitment to community development agreements. So, we are saying that those holders who have longer mining agreements shall have to comply with the issues of employment, health and safety, management of the environment and communities in 18 months.

On issues of the block size and the rest, they will do that with the maturity of the licences. This is a clause that we have yielded to the input of the stakeholders. It gives me a lot of grieve that after agreeing with the Chamber of Mines on this amendment, they still sponsored some article saying that we have denied them this right yet we have already done it in the Act. So, hon. Temporary Deputy Chairman, I do propose that the amendments be approved.

(Question of the amendment proposed)

The Temporary Deputy Chairman: This is transition, right? So, to the extent that we are just transiting these things and to make sure that rights and people who already have licences are not affected. That kind of thing, is it so?

(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 198 as amended agreed to)

New Clause 29

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
That the Bill be amended by inserting the following new clauses immediately after clause 29 -

Mineral
Rights Board.

29A.(1) There is established a Mineral Rights Board.

(2) The Mineral Rights Board shall comprise of-

(a) a chairperson with demonstrable knowledge and experience of the minerals and mining sector, who shall be appointed by the President;

(b) the Principal Secretary responsible for matters relating to mining, who shall be the secretary to the Mineral Rights Board;

(c) the Principal Secretary responsible for the National Treasury;

(d) the Principal Secretary responsible for matters relating to devolution;

(e) the Chairperson of the National Land Commission;

(f) the Director of Mines;

(g) the Director of Geological Surveys; and

(h) two members with professional qualifications and experience in the mining industry, who shall be appointed by the Cabinet Secretary.

(3) The Cabinet Secretary shall appoint persons under sub-section

(1)

(h) who shall serve a period of three years.

(4) A person shall be qualified for appointment as a chairperson or member of the Mineral Rights Board if that person-

(a) is a citizen of Kenya;

(b) holds a degree from a recognized university, in geology, geophysics, mining, engineering, economics, business administration or law ;

(c) has experience in the mining sector of not less than ten years in the case of the chairperson and five years in the case of any other member; and

(d) satisfies the requirements of Chapter Six of the Constitution.

(4) A person shall not be qualified for appointment as a Chairperson or member of the Mineral Rights Board if that person-

(a) is an undischarged bankrupt;

(b) suffers from physical or mental infirmity which renders him or her incapable of discharging the function of the Mineral Rights Board; and

(c) has been convicted of an offence whose term of imprisonment exceeds six months.

(5) The Chairperson and members of the Mineral Rights Board appointed under subsection (2) (a) and (g) shall hold office for a period of three years and may be eligible for re appointment for one further term.

Functions of
the Mineral
Rights Board.

29 B. (1) The functions of the Mineral Rights Board shall be to advise and give recommendations, in writing, to the Cabinet Secretary on-

(a) the grant, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering, or transfer of Mineral Rights Agreements;

(b) the areas suitable for small scale and artisanal mining;

(c) the areas which mining operations may be excluded and restricted;

(d) the declaration of certain minerals as strategic minerals;

(e) cessation, suspension, or curtailment of production in respect of mining licences;

(f) fees, charges and royalties payable for Mineral Right or mineral; and

(g) any matters which under this Act, are required to be referred to the Mineral Rights Board.

(2) The Mineral Rights Board may for the purpose of facilitating the performance of its functions establish such number of committees to advise the Mineral Rights Board on matters relating to mining and minerals.

Hon. Temporary Deputy Chairman, this is the clause that establishes the Minerals Rights Boards, discusses the composition of the Mineral Rights Board and deals with the qualification for the persons to be in that Board and gives the functions that will be performed by this Mineral Rights Board.

Hon. Temporary Deputy Chairman, there has been a major shift in this Bill for purposes of inculcating transparency, accountability and a consultative process through which the mining regulations would be managed.

(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. Kajwang): Member for North Horr, do you want to speak to this?

Hon. Ganya: The Mineral Rights Board is good innovations that can enable the mining industry in Kenya to take off because it is informed by good practices elsewhere; in Ghana, Botswana, Republic of South Africa and Australia. The Board will bring about accountability, transparency and professionals in this sector. Kenyans will be able to serve on the Board.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Ganya, you are saying that you have done some very good benchmarking across the world?

Hon. Ganya: Absolutely, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang'): Alright.

Hon. Ganya: Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Rangwe.

Hon. Ogalo: Hon. Temporary Deputy Chairman, I also want to support the creation of the Mineral Rights Board.

This is a shift from relying or centralizing decision-making in this sector to one individual, which has been the case with the previous Act, and which also attempted to be the basis of this Bill. This amendment made by the Committee is very bold and it will make this Bill a very progressive one. We have seen very many actors in this field such as the investors who, based on our interaction with them, appear to be happy due to the creation of this Board.

With those remarks, I beg to support.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, is there anyone with a contrary opinion? Let us deal with those with a contrary opinion.

Yes, hon. Kang’ethe.

Hon. Njomo: Hon. Temporary Deputy Chairman, it is not a contrary opinion. Kenya has been viewed as a risky mining destination after several cancellations of licences for reasons that were not understood by the stakeholders. The introduction of this Mining Rights Board will bring confidence to the investors, who will see Kenya as a country where decisions are made after prudent consideration. I support this as a measure that is going to help bring in more investors to come and invest their money in our country.

The Temporary Deputy Chairman (Hon. Kajwang’): Lastly, let us hear the Member for Githunguri. If you are supporting, make it very brief, unless you have a contrary opinion, so that I can give you more time.

Hon. Baiya: Hon. Temporary Deputy Chairman, I am supporting the amendment. I welcome this invention by the Committee to help the country institutionalise the process of issuing mineral rights by removing them from an individual and making them open and transparent and, thereby, winning the confidence of all the stakeholders.

The Temporary Deputy Chairman (Hon. Kajwang’): Departmental Committee Chair, can you, therefore, speak last on it and restrict yourself to the issue of Clause 114 so that the HANSARD is now so replete about. Previously, Members like hon. Ng’ongo and others made a lot of contribution on this matter.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, the main focus on the debate on the Mining Bill was on Clause 156. The one raising the issue of setting up the Mineral Rights Board was by hon. Kangogo, who wanted to know why we are setting up a new institution while the Government claims that they are trying to reduce the number of parastatals. This is not a parastatal; it is a Committee that involves members of the Executive such as Principal Secretaries and the rest with only an independent Chair and three new members.

The Temporary Deputy Chairman (Hon. Kajwang’): So, there is no issue of Clause 114 (a)?

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, there is no issue.

*(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 32A

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

THAT the Bill be amended by inserting the following new clause immediately after clause 32 –

Mineral right

Applications

32A. (1) The Cabinet Secretary shall, on receipt of the application, give notice in writing of the pending application for the grant of a mineral right to –

(a) the land owner or lawful occupier of the land where the mineral is located;

(b) the community; and

(c) the relevant county Government.

(2) The Cabinet Secretary shall, on receipt of the application, publish notice of the pending application in a newspaper of wide circulation at the applicant's expense.

(3) A notice given under sub-section (1) shall-

(a) state the proposed boundaries of the land in relation to which an application for a mineral right is made; and

(b) be published, for twenty one days in the Gazette and in the offices of the County Government within which county the land is situated.

(4) Subject to sub-section (3) a person or community may object to the grant of a licence-

(a) within twenty one days in case of an application for prospecting licence and reconnaissance licence; and

(b) within forty two days in case of an applications for a mining licence.

(5) The Cabinet Secretary shall hear and determine any objection to an application under sub-clause (4) through the Minerals Rights Board.

This new clause is intended to provide for public participation in the application process by requiring the Cabinet Secretary to give notice to land owners, communities and county governments before issuing a mineral right to anyone. The amendment also requires that a notice be published in the newspapers for 21 days so that there is input provided on this application.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clauses 57A

The Temporary Deputy Chairperson (Hon. Kajwang⁷): Hon. Abdalla, just under one minute, give us a very brief summary of your intended amendment.

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

THAT the Bill be amended by inserting the following new clauses immediately after clause 57 —

Reconnaissance Licence

Application of Part 57A. (1) This part shall only apply to reconnaissance licence holders.

Application for a reconnaissance licence.

57B. (1) An application for reconnaissance licence shall be submitted to the Cabinet Secretary in the prescribed form with the prescribed fee.

(2) An applicant for a reconnaissance licence shall provide the following information to the Cabinet Secretary—

- (a) the area in respect in which the reconnaissance licence is sought;
- (b) the proposed programme for the reconnaissance operations to be carried out;
- (c) details of the technical expertise and financial resources to be used in the conduct of the reconnaissance operations;
- (d) a plan outlining the proposals for procurement of local goods and services by the applicant; and
- (e) any other information required by the Cabinet Secretary as may be prescribed by Regulations.

(3) The Cabinet Secretary, on the recommendation of the Mineral Rights Board shall grant a reconnaissance licence, if—

- (a) the size area of land on which the reconnaissance licence is sought is reasonable and in line with the programme of operations proposed by the applicant;
- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry on the proposed programme of reconnaissance operations;
- (c) the local product plan by the applicant with respect to the procurement of locally available goods and services is acceptable; and

(d) the local employment plan by the applicant with respect to employment and training of Kenyan citizens is acceptable.

Maximum area of
Reconnaissance
Licence

57C. (1) The maximum area covered by a reconnaissance licence shall be a block or any number of blocks not exceeding five thousand contiguous blocks each having a side in common with at least one block the subject of the application.

(2) Notwithstanding the number of blocks that may be granted under sub-section (1), nothing in this Act shall prevent the government from conducting any reconnaissance over the total land offshore area of Kenya or such lesser area as the Cabinet Secretary may approve.

(3) A person or company may hold only one Reconnaissance Licence or such number of licences as the Cabinet Secretary shall prescribe in Regulations.

Term of a
Reconnaissance
Licence

57D. The term of a reconnaissance licence shall not exceed two years and is not renewable.

Restrictions on grant
of Reconnaissance
Licence

57E. (1) Any existing Mineral Right area, or an area closed to prospecting and mining falling within the reconnaissance licence area, shall be deemed to be excluded from the application.

(2) Where any land which is the subject of a reconnaissance license becomes the subject of an exclusive Mineral Right, or is subsequently closed to prospecting or mining, it ceases to be subject of the reconnaissance licence.

(3) Where it is required to fly over any land for the purpose of the exercise of any right under a reconnaissance license nothing shall prevent any such flight from being undertaken anywhere within the boundaries of the reconnaissance licence area whether or not any areas are excluded by virtue of sub-clauses (1) and (2).

(4) Any results obtained from any airborne survey shall be subject to copyright laws of Kenya with regards to disclosure as prescribed in Regulations.

Rights conferred by a
Reconnaissance
Licence

57F. (1) The holder of a reconnaissance licence shall enjoy nonexclusive rights to carry out reconnaissance for the minerals in the area covered by the licence in accordance with the provisions of this Act.

(2) The holder of a reconnaissance licence may, in exercise of the rights conferred under sub-clause (1) —

(a) enter on or fly over the reconnaissance area to carry out approved reconnaissance operations;

(b) take and remove specimens and samples from the reconnaissance area not exceeding such limit as is reasonably required for reconnaissance purposes;

(c) take timber and water from any lake or watercourse for the purposes of reconnaissance operations;

(d) erect equipment, plant and buildings necessary to carry out the reconnaissance operations; and

(e) remove on or before the termination of the reconnaissance operations, any camps, temporary buildings or installations which the holder may have erected in the licence area.

(3) A person appointed by the holder of a reconnaissance licence to act as an agent of the holder may exercise the rights of the holder of the Licence subject to any limitations on the power of the agent contained in the instrument of appointment.

Minerals obtained under

Reconnaissance Licence

57G. (1) Any mineral acquired in the course of reconnaissance operations under reconnaissance licence shall be the property of the National Government and shall not be disposed of or removed from Kenya without the written consent of the Cabinet Secretary.

Obligations under

Reconnaissance Licence

57.H. (1) The holder of a valid Reconnaissance Licence shall—

(a) commence reconnaissance within three months of grant of the licence;

(b) carry out reconnaissance in accordance with the approved programme of reconnaissance operations;

(c) expend on reconnaissance in accordance with the programme of reconnaissance, not less than such amount as may be specified in the reconnaissance license;

(d) not engage in drilling, excavation or other subsurface exploration techniques;

(e) inform and consult, on an on-going- basis, with local government traditional authorities and communities about those reconnaissance operations that require physical entry onto the land within their jurisdictions;

(f) not enter land that is excluded from the Reconnaissance Licence;

(g) compensate users of land for damage to land and property resulting from reconnaissance operations in the licence area;

(h) not remove any mineral from reconnaissance area except for the purpose of having such mineral analysed, valued or tested;

(i) ensure that the amount of work and amount of expenditure as specified in the approved programme or reconnaissance operations is actually expended in the course of undertaking reconnaissance operations within the mandated deadlines stipulated in the plan and reported in the reports that may be required by the relevant Regulations;

(j) notify the Cabinet Secretary without any unreasonable delay of the discovery of any mineral deposit of potential commercial use;

(k) notify the Cabinet Secretary of any archaeological discovery;

(l) comply with the conditions of the Licence and any directions issued by the Cabinet Secretary or authorised officer in accordance with the Act;

(m) submit to the Cabinet Secretary geological and financial reports and such other information relating to reconnaissance operations as may be prescribed;

(n) carry out reconnaissance in accordance with the international good practice standards and any guidelines as may be prescribed;

(o) remove within sixty days of the expiration of the Reconnaissance Licence, any camps, temporary buildings or machinery erected or installed by the holder and repair or otherwise make good any damage to the surface of the ground occasioned by such removal to the satisfaction of the Cabinet Secretary or a duly appointed officer;

(2) Where the expenditure specified in the approved programme of reconnaissance operations in sub-section (1)(c) is not expended during the term of the reconnaissance licence, any shortfall shall be paid to the Ministry of Mining in a manner as prescribed by the Cabinet Secretary.

(3) A reconnaissance licence is subject to an area-based annual charge as may be prescribed.

(4) A reconnaissance license is not transferable.

Form of Reconnaissance

Licence

57I. (1) A reconnaissance licence issued in accordance with this Act shall include—

(a) an approved programme of reconnaissance including an expenditure commitment;

(b) an approved plan for the procurement of local goods and services;

(c) an approved plan to employ and train citizens of Kenya; and

(d) any other conditions applying to the licence.

Record- keeping and reporting requirements

57J. (1) The holder of reconnaissance license shall keep complete and accurate records of the reconnaissance operations at the registered office of the holder in the prescribed manner.

(2) The records of a reconnaissance operations shall include—

(a) details of all minerals discovered;

(b) the results of geological, geochemical, geophysical or airborne surveys obtained and compiled by the holder;

(c) financial statements and books of accounts as the Cabinet Secretary may by notice require; and

(d) any other reports or information as may be prescribed or otherwise determined by the Cabinet Secretary.

(3) The holder of a reconnaissance licence shall submit six monthly and annual reports on reconnaissance operations in the form prescribed in guidelines

Amendment of programme for reconnaissance.

57K (1) The holder of a reconnaissance licence may make an application in the prescribed form to the Cabinet Secretary for approval to amend the approved programme for reconnaissance.

Right to surrender

Reconnaissance License.

57L (1) The holder of a reconnaissance licence may, upon application in the prescribed form and manner and upon meeting prescribed conditions, surrender the licence.

(2) Upon surrender, the holder of a reconnaissance licence shall submit all records, reports, results, data and interpretation arising from the reconnaissance operations to the Cabinet Secretary which shall become the property of the State, and the holder shall not trade or otherwise divulge information to any third party without the express permission of the Cabinet Secretary.

Hon. Temporary Deputy Chairman, I have been moving a lot of consequential amendments that have included what we are calling “a Reconnaissance Licence”. This licence gives an opportunity to the prospectors to work around and do non-intrusive types of prospecting that are covered under the Reconnaissance Licence. This section will, therefore, apply to only reconnaissance licences; how they will look like; the conditions under which they should be given; the maximum size of the areas they can be issued; and the rights under which those licences would be done; restrictions on what they can do with the minerals they find; and the obligation of the holder who has a Reconnaissance Licence.

So, this amendment is a whole new section to allow for more people to be looking at what we may be having as a country so that we get a better picture of what our mineral resource base is like.

(Question of the new clauses 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 read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 77

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

THAT the Bill be amended by inserting the following new clauses immediately after clause 77

Artisanal Miners Operations

Application of
Part

77A.(1) This part shall only apply to artisanal miners.

Establishment of
offices in the
County.

77B. (1) The Cabinet Secretary may establish a county office of the Ministry.

(2) The Cabinet Secretary shall designate a representative of the Director of Mines who shall be the head of the county office and who shall report to the Director of Mines.

(3) The functions of the officer shall be to-

- (a) grant, renew and revoke artisanal mining permits;
- (b) compile a register of the artisanal miners and specifying particulars that may be determined by the Cabinet Secretary;
- (c) supervise and monitor the operation and activities of artisanal miners;
- (d) advice and provide training facilities and assistance necessary for the effective and efficient artisanal mining operations;
- (e) submit to the Director of Mines, reports or other documents and information on artisanal mining activities within the county as requested by regulation;
- (f) facilitate the formation of artisanal association groups or cooperatives; and
- (g) promote fair trade of artisanal miners.

77 C. (1) There shall be established in every county an Artisanal Mining Committee.

(2) An Artisanal Mining Committee shall comprise of-

- (a) a representative of the Governor, who shall be the chairperson of the committee;
- (b) the representative of the Director of Mines who shall be the secretary;
- (c) three persons not being public officers and elected by the association of artisanal miners in the county;
- (d) a representative of the inspectorate division of the Ministry;
- (e) a representative of the National Environmental Co-ordination and Management Authority; and
- (f) a representative of the county land board.

(2) The Committee shall advise the representative of the Director of Mines in the granting renewal or revocation of artisanal mining permits.

(3) The members of the Committee shall hold office for a period and on such terms and conditions as may be determined in the instrument of appointment.

Qualification of
applicants for
an Artisanal
Mining Permit

77 D. (1) A permit for an artisanal mining operation shall be granted to a

person who –

- (a) is a citizen of Kenya;
- (b) has attained the age of majority; and
- (c) may be a member of an artisanal mining cooperative association or group.

(2) Where any other mineral right has been granted over a parcel of land an artisanal permit shall not be granted.

(3) A person shall not engage in artisanal mining operations unless the person has been granted an artisanal mining permit under this Act.

(4) A person may apply for an artisanal mining permit to the representative of the Director of Mines in the area of operation in the prescribed form.

(5) An application for an artisanal permit shall contain the following information–

(a) the name, nationality and address of the applicant;

(b) the name of the co-operative, association or group, place of registration and the registered office address;

(c) the minerals in respect of which the permit is sought;

(d) description of the area in respect of which the permit is sought; and

(e) the land owner's consent has been obtained where the land is not designated as an artisanal or small scale mining area.

(6) The representative of the Director of Mines shall notify the applicant of the grant or refusal of the application within the prescribed time.

(7) A permit granted by the representative of the Director of Mines shall be for the specified mineral in the application and shall be subject to conditions specified in the permit.

Duration of a
permit

77E.(1) A permit granted under this Act shall be valid for a period three years from the date of issue and shall be renewable upon application for one more term.

(2) A holder of an artisanal permit may apply to convert it to a small scale permit in the manner as may be prescribed in Regulations.

Revocation of a
permit

77 F. (1) The representative of the Director of Mines may revoke a permit granted where the holder of the permit–

(a) contravenes the terms and conditions of the permit; or

(b) is convicted of any offence relating to smuggling or illegal sale or dealing in minerals.

Operations of

Artisanal Miners

77 G(1). A holder of an artisanal permit may mine and produce minerals in an effective and efficient method.

(2) The holder of an artisanal permit shall observe good mining practices, health and safety rules and pay due regard to the protection of the environment.

(3) The Cabinet Secretary shall prescribe regulations for the protection, health and safety of artisanal mining operations.

Compensation of

use of land

77 H. Where a permit is granted in a designated area to a person other than the owner of the land, the holder shall compensate the owner of the land in the prescribed manner.

Sale of Minerals

77 I. The sale of mineral won by an artisanal miner shall be subject to the regulations prescribed by the Cabinet Secretary.

Hon. Temporary Deputy Chairman, I am really happy with this inclusion because for the first time we are going to legalize artisanal mining in Kenya and we stop having the problems that a big miner in TaitaTaveta is legal and can proceed with their work, but the small scale miner is illegal and would be arrested.

In New Clause 77A we are applying this section to artisanal mining. We are establishing the office of the Ministry of Mining in the counties so that artisanal miners do not have to come to Nairobi to get their licences. We are establishing a Mineral Rights office that would be granting this agreement that involves representatives of the Governor, Director of Mines, Public Officers and the Inspectorate division of the Ministry and NEMA. We are setting up a replica of the Mineral Rights Board in the county so that artisanal miners do not have to come to Nairobi.

In New Clause 77 D, we are providing for the qualification of an artisanal miner so that we do not have foreigners applying to be artisanal minors. We will also be encouraging the formation of artisanal mining co-operations so that they can get better pricing and are able to save and improve their livelihoods. We are also looking at the duration of the permits and providing provisions on when the permits can be revoked. Basically we are legalizing artisanal mining by giving them all the conditions that they would need for work. We are also giving the responsibility to the Government to facilitate them so that they can form co-operatives. This will enable them access the market and funding.

(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. Kajwang’): Many of you are requesting to speak, all in support, I suppose. Let us share two minutes with everybody. Member for Rangwe, a few seconds should be enough.

Hon. Ogalo: Hon. Temporary Deputy Chairman, some time back, a Member asked in this House about smuggling of gold and money laundering. We heard that players in the gold industry were saying that they were buying gold from artisanal miners and they could not keep the records because those people were illegal. They found a conduit for laundering money in the name of artisanal miners because we were not licensing them. This amendment has for the first time recognized these very important Kenyans. They will no longer run away from the police or any dealer of gold.

Hon. (Ms.) Lay: Hon. Temporary Deputy Chairman, I want to commend the Committee for the additional clauses. It is a big break especially towards artisanal miners in Taita Taveta. We have been trying to see how we can put them together and regulate their market. We have even tried to come up with the community based organization called the Tsavo Mineral Organisation. So, I just want support and say that it is a huge step.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us have somebody who has not spoken although he has been requesting to do so. Member for Kapenguria.

Hon. Chumel: Hon. Temporary Deputy Chairman, I want to join my colleagues in congratulating the Committee especially on this issue. Where I come from, the place is rich in these minerals and some harassment has been going on over the years. This will save the situation in that place. I support.

Hon. (Dr.) Shaban: Asante sana Bwana Mwenyekiti wa Muda. Nataka kumuunga mkono Mwenyekiti wa Kamati hii ya Maswala ya Mazingira na Uchimbaji Madini hapa nchini. Kwa sisi ambao tunatoka Taita Taveta, tunajua kuwa watu wamepelekwa kortini na wengi wameteswa. Hata wale ambao wanafanya shughuli kwenye mashamba yao, wameteseka kwa sababu wale matajiri wamewasumbua. Hii itarekebisha na itatoa tiba kwa tatizo hili.

Hon. (Ms.) R.K Nyamai: Hon. Temporary Deputy Chairman, I would like to congratulate the Committee and the Chairperson for doing a very good job. Having the artisans given an opportunity to also participate in this important activity is a move in the right direction, especially for those of us who represent communities where mining is soon going to happen.

I support this.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Emuhaya, I know that we are in support, but I must allow you to ventilate because your role here is also representation and this is when you are representing your people.

Hon. (Dr.) Ottichilo: Hon. Temporary Deputy Chairman, I wish to thank the Committee and all those who contributed to this. This is the most innovative part of this Bill because it was not there. The Committee did a good job and for the first time, people in Western Kenya, who have been doing artisanal gold mining for many years will benefit.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Narok South.

Hon. ole Lemein: Hon. Temporary Deputy Chairman, as my colleagues before me have said, this is one of the most important decisions of the Committee. These people appeared before the Committee and it broke out hearts that most of them were tortured such that they are not exploiting resources from their own homes. If one discovered a mineral, he was criminalized and he was tortured. This is time that Kenyans realized that this is their country.

Hon. Njomo: Thank you, hon. Chairman. This part of the Bill will ensure that our small scale miners or our artisanal miners, who have been doing activities in the dark because of fear of being arrested by the police for doing illegal business, will now be able to do their business and grow. This is because they have been recognised by the law and they will be able to expand their businesses.

I am sure this Committee has set a precedent such that even the other committees that will be doing new laws in other areas, they will also consider small scale business people in their respective fields.

*(Question, that the new clauses be read
a Second Time, put and agreed to)*

(The new clauses read a Second Time)

*(Question, that the new clause be added
to the Bill, put and agreed to)*

New Clause 102

Hon. Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by inserting the following clauses immediately after
clause 102 –

Reconnaissance Permit
Application for
a reconnaissance
permit

102A. (1) A person may apply for a reconnaissance permit to the
Cabinet Secretary in the prescribed form and upon payment of the
prescribed fee.

(2) An application for a reconnaissance permit shall contain the
following–

- (a) the full name, nationality and address of the applicant;
- (b) the mineral or minerals in respect of which the permit is
sought; and
- (c) the area in respect of which the permit is sought.

Rights conferred
by a
Reconnaissance
Permit

102B. (1) The holder of reconnaissance permit shall enjoy the non-
exclusive
rights to conduct reconnaissance for the mineral or minerals in the area specified
in the Permit.

(2) The holder of a reconnaissance permit may, in exercise of
the right conferred under sub-clause (1) enter into the land within
the area specified in the permit and take all reasonable measures to
undertake reconnaissance of the land .

Obligations
under
reconnaissance

permit

102C. The holder of reconnaissance permit shall—

(a) comply with the terms and conditions specified in the Permit; and

(b) take all necessary measures to protect the environment
Mineral Rights
on Community
land

102D. (1) A reconnaissance license or permit and prospecting license or permit shall be granted under this Act on, under or over community land unless it involves excavation and drilling in which case consent should be sought prior to those activities being undertaken from—

(a) the authority obligated by the law relating to administration and management of community land to administer community land; or

(b) the county government in relation to the community land that is un-alienated.

(b) the county government in relation to the community land that is un-alienated.

(2) Consent shall be deemed to have been given for the purposes of this Act where the registered community land representatives have—

(a) entered into a legally binding arrangement with the applicant for the Mineral Rights or with the Government, which allows the conduct of mining operations; or

(b) entered into an agreement with the applicant for the Mineral Right concerning the payment of adequate compensation.

(3) Subject to the law relating to community land, where consent is granted prior to any change in land ownership, such consent shall be valid for as long as the Mineral Right subsists.

(4) The Cabinet Secretary may make Regulations to provide for the grant of mineral rights over community land which is not already covered by valid licences and permits duly granted under this Act, during the period of validity and renewal terms.

Hon. Temporary Deputy Chairman, this is a consequential amendment, in that we did establish a section on reconnaissance licence. Now we are providing for a reconnaissance permit and conditions under which they would get it and their relationship with community lands and their obligation of the licence holders.

Therefore, these four amendments are consequential to 57 and providing this additional---

(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 read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 143(A)

Hon. (Ms.) Abdalla: Hon. Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 143—

Mines

Support 143A (1) A person or company shall provide any mine support services subject to being issued with a licence by the Cabinet Secretary

(2)The Cabinet Secretary shall prescribe regulations to give effect to this Clause.

Hon. Temporary Deputy Chairman, we realised in the course of dealing with this Bill that there are many services that are provided to the mining sector that have not been regulated. We had situations where people have these specialised tools such as drills that they would come and do their job and not be regulated. So, they are being dealt with as consultants and there are issues of health and safety, all of which were not regulated.

We are now proposing that a personal company provides any mining support services subject to being issued with a licence by the Cabinet Secretary and two, that the Cabinet Secretary shall prescribe regulation to give effect to this clause.

I will be recommending a further amendment, as mentioned by hon. Jude Njomo, that allows the Cabinet Secretary to be issuing this licence. A personal company shall provide any mine support services subject to being issued with a licence by the Cabinet Secretary upon recommendation of the Mineral Rights Board.

Therefore, there is a further amendment of adding in Clause 143A (1) the words “upon recommendation by the Mineral Rights Board”.

The Temporary Deputy Chairman (Hon. Kajwang’): Just a minute. Let us just clean it up. First of all, we are on the amendment. Now, let me propose the amendment first and then you come with that further amendment and then we propose it and we clean it.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

Can you now speak to the HANSARD on that further amendment?

Hon. (Ms.) Abdalla: Hon. Chairman, we have been removing the issue of regulatory functions of the Cabinet Secretary and expanding transparency so that it is upon recommendation of the Mineral Rights Board. Therefore, I propose a further amendment seeking to insert the words “upon recommendation of the Mineral Rights Board” in Clause 143A (1), immediately after the words “Cabinet Secretary”.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. Member for Nakuru Town East, are you in support of this further amendment.

Hon. Gikaria: Hon. Yes, I am in support. Specifically, it is a very good input of this thing. I know that, within my county, in Naivasha; some young men are being duped into some adventure of trying to get some gold. They have been toiling and their safety and health have been at risk. With this support, a person or any other company who might come might be able to assist them because, as it is now, the Naivasha lads are just toiling in the mud, getting nothing. It has been very unfortunate. If the Government had tried to provide an expertise input in terms of determining whether they might find some gold or not, the young boys who have been looking for something to have in their lives would not be toiling as they are doing and getting nothing. With this amendment in place, even a private person can be able to assist.

(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)

First Schedule

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Amina Abdalla, it is a long Schedule. So, summarise it in a few words.

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

THAT, the First Schedule be amended —

(a) by deleting items 12, 46 and 52;

(b) by deleting item 1 appearing in paragraph E and substituting therefor the following new item immediately after item 3—

4A. Bauxite

(c) deleting the words “and oil shale and all substances related thereto or derived therefrom, but not including petroleum and hydrocarbon gases” appearing in paragraph F.

Hon. Temporary Deputy Chairman, we are deleting number 12, 42 and 56, which are not minerals that would be covered under the Mining Act. These are soapstone’s, clay

and those kinds of resources that are already devolved. We are further amending the First Schedule by deleting paragraph E on the issue of oil shell. This is an important amendment which speaks to the conflict between the Ministry of Energy and the Ministry of Mining. The mining of coal is under the Ministry of Mining. The transformation of coal to energy is under the Ministry of Energy. We are, therefore, retaining the word “coal” under that First Schedule, but removing oil gas and hydrocarbons, because they do not relate to mining operations. They relate more to the energy sector.

That is the amendment that we have proposed on the First Schedule.

*(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 First Schedule as amended agreed to)

Clause 4

The Temporary Deputy Chairman (Hon. Kajwang): Hon. Amina Abdalla, just a snippet. You have several amendments but I am sure that this is a definitive clause. Hon. Members will follow on their copies of the Order Paper, but speak to it.

Clause 4

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

THAT Clause 4 be amended –

(a) by inserting the following new definitions in the proper alphabetical sequence–

“artisanal mining” means traditional and customary mining operations using traditional or customary ways and means;

“artisanal mining permit” means a permit issued under clause 77D;

“block or cadastral unit” means a pseudo-quadrilateral formed by two meridians of longitude and two parallels of latitude of the Cadastral Graticule spaced fifteen seconds apart;

“community” means–

(a) a group of people living around exploration and mining operations area; or

(b) a group of people who may be displaced from land intended for exploration and mining operations;

“Community Development Agreement” means an agreement entered into between a large-scale mining licence holder and a community;

“day” means a calendar day;

“inspector of mines” means a public officer who has been appointed in accordance with clause 169;

“Mineral Rights Board” means the Board established under section 29 A; “mines support” means—

(a) contract mining services which include top soil and waste removal, drilling and blasting, excavating and haulage of ore to plant on turnkey basis;

(b) assay laboratory services;

(c) drilling and blasting services;

(d) mineral exploration services for a holder of a mineral rights;

(e) contract mining services for small scale and artisanal mining, which include mining and processing of ore reclamation re-vegetation and management of mining operations;

(f) any other services specifically and exclusively related to mining, which the Cabinet Secretary considers necessary for the effective and sustainable development of the mining industry;

“precious stones” means the minerals specified in Part C of the First Schedule;

“reconnaissance” means the operations and works to carry out the non-intrusive search for mineral resources by geophysical surveys, geochemical surveys, photo geological surveys or other remote sensing techniques and surface geology in connection therewith, but excludes drilling and excavations;

“reconnaissance area” means an area that is subject to a reconnaissance licence;

“reconnaissance licence” means a licence granted under clause 102 of this Bill;

“strategic minerals” means minerals declared to be strategic minerals under this Act;

(b) by deleting the definition of the word “Board”;

(c) in the definition of the expression “construction minerals” by deleting the words “all forms of rock, limestone,” ;

(d) in the definition of the expression “mineral right” by inserting the following new paragraph immediately after paragraph (e) –

(f) an artisanal permit;

(e) in the definition of the expression “prospecting area” by inserting the word “ permit or” immediately after the word “licence”; and

(f) by deleting the definition of the expression “mines inspector”.

These are just amendments to give more clarity. I want to note the two which are the most important amendments in terms of definitions. We refined the definition of “community” because of the fear that anybody can declare that they are a community of interest affected by mining. So, we have narrowed it to communities living around an exploration area or a group of persons who may have been displaced from land intended for mining. This is important because sometimes we resettle people in a new place and the mining operation needs to invest in providing them with schools, hospitals and other amenities.

The other amendment is my pet subject of the community development agreements. These are agreements entered into between a large scale mining licence and a community. We have then changed that from corporate social responsibility to corporate social investment. Those are the main ones. A certain Member was concerned about the issue of sand. I just want the Members to note that in our definition of “rocks”, we have deleted it from construction minerals, so that we do not create confusion that all

rocks and limestone are not included under construction minerals, which in most cases, especially sand and the rest, are already devolved.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Leader of the Minority Party! No, the Chief Whip of the Minority, you are now the face of leadership in this House at 8.30 p.m. I do not want to give you the microphone because I want to first of all deal with the Chairlady’s amendment, then I will come back to you. As we are doing this, look at your amendment again and understand it along the lines of what the Chair has 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)

The reason why I was coming to you, hon. Mwadeghu is because it is the thinking at the Table that with the amendment that has been moved by the Chair, if you look at the definition of “community” in hon. Amina’s amendment, it speaks to the definition that you intend to bring in page 484. If you are convinced, can we hear you? If not, we can also hear you.

Hon. Mwadeghu: Hon. Temporary Deputy Chairman, I have a problem in defining “community”. I will expound by giving an example. Where we are mining iron ore within a particular location, where there are people from one tribe or it is within a village, hon. Amina’s definition is very expansive. So, when you are talking of the community, who are we referring to? Is it the people who live within a specified area or how far do we go in defining the community? The Chair must admit that even in my amendment, I tried to bring it down to a location, but still I could as well be confining myself to my area.

The Temporary Deputy Chairman (Hon. Kajwang’): Make it short because we just want to see where the discrepancy is. The discrepancy is just the terminology or the words you have used. She is using “around” and you are using “location”. She has actually fractured them into (a) and (b). So, in (b), she is saying that the people who may be displaced and in your second phrase of your definition, you are saying “people who are affected”. Are those two people equally affected; the people who could be displaced and the people who are affected? So that we have one definition which is clear cut. We do not want to have two or three or four definitions.

Hon. Mwadeghu: Hon. Temporary Deputy Chairman, I am convinced. After consultations, I wish to withdraw.

(Proposed amendments by hon. Mwadeghu withdrawn)

(Clause 4 as amended agreed to)

(Clause 3 agreed to)

(Clause 2 agreed to)

(Clause 1 agreed to)

(Title agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Do I hear you?

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, Speaker, I beg to move that the Committee doth report to the House its consideration of the Mining Bill, Bill No.9 of 2014 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE MINING BILL

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Mining Bill, National Assembly Bill No.9 of 2014 and approved the same with amendments.

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

Hon. (Dr.) Shaban seconded.

(Question proposed)

(Question put and agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Mining Bill, National Assembly Bill No.9 of 2014 be now read the Third Time.

Hon. (Dr.) Shaban seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I can see five requests on the Third Reading. Let me get hon. Chachu Ganya.

Hon. Ganya: Hon. Temporary Deputy Speaker, the Mining law that we are repealing today was enacted in the 1940s when we were part of Her Majesty's Government. That is where we are, as a nation, when it comes to the mining industry. I am really happy that many years later, we have done this. About 50 years after our Independence, let alone in the 1940s, we are not able to do much about this sector. I hope that this law will enable this country to make the best use of its resource base in terms of mining. I am sure the Jubilee Government had something in mind when they merged many Ministries and came up with a brand new Ministry of Mining. It was for a reason. They have a legal framework to do what they have to do.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, just remember that we are making few recommendations. We are through with the Second Reading and we are in the Third Reading of the Bill. Hon. Kajwang'.

Hon. Kajwang': Hon. Temporary Deputy Speaker, they say that good laws are made in the morning. Today, we have disapproved it. Good laws are made when ladies and gentlemen sit down in the cooler hours of the evening to consider what is most important for this country. I want to thank particularly the Chair of this Committee. She has led us with clarity and seems to have the entire Mining Industry on her finger tips. She is explaining every clause and making us able to debate this issue with a lot of comfort. Hon. Oner, who is also a Member of the Committee, thought that stamina is only given to the younger people, but now he has seen older people, the Leader of Majority Party, my learned friends, hon. Baiya and hon. ole Kenta and myself. I must confess that I am an old man and Dr. Ottichilo too is. We have all stayed this late with enough stamina to scrutinise this Bill. If there is anything that we have done which could be unconstitutional or whichever way it is, there are various arms of Government to deal with it. That is how the code of justice or legal legislations behave. We pass it. Other people will implement it and others will interpret it. We have done our part. I thank you for this.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you for remembering to commend the Chair. At one point, I saw Chairs of Committees exchanging seats, but hon. Amina has been on her seat until now. Hon. A.B. Duale, the Leader of Majority Party and Member for Garissa Township.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, first I want to thank the able membership of the Committee under the leadership of hon. (Ms.) Abdalla. Secondly, I also want to thank the Jubilee Executive Arm for bringing this Bill. As hon. Ganya said, this was a law that was enacted during the colonial time. So, we are yet to get Independence. Today, the mining sector has got its independence. Finally, this is an indication that the National Assembly of the Republic of Kenya, the Eleventh Parliament, can stay very late and work for the people that they represent. Those out there who say that parliamentarians do not work can see that the Members have been sitting here since 3.00 p.m. this afternoon. I want to thank the Committee and the leadership. The Bill that came from Government, ideally through public participation, each and every Clause, or most of it; 90 per cent, has been amended. That is a true function of Parliament.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, well spoken. Hon. Ogalo, Member for Rangwe. I have seven requests.

Hon. Ogalo: Thank you, hon. Temporary Deputy Speaker. I want to thank the Departmental Committee on Environment and Natural Resources. We have come to the end of a very consultative process of looking at this Bill. We have taken our time and met everybody. I am happy today that as a Committee we are concluding our second Bill since we started the Eleventh Parliament; these are very important substantive Bills. We cleared the Wildlife Conservation Act, and today we have done the Mining Bill.

Therefore, our Committee has been meeting our mandate. I hope all those investors who were staying out fearing the legal framework for mining in this country can now come in because today we have set the framework.

Thank you, hon. Temporary Deputy Speaker.

Hon. Gikaria: Hon. Kajwang' has just left. I want to tell him that I am also his friend. He should, therefore, remember me in future.

First and foremost, I want to thank the Committee and the Jubilee Government for coming up with this Bill. I know Kenya has been rated as a middle income country. Coming to this Parliament has really given me a lot of knowledge. I did not even know that we have 50 minerals. I can see it under the First Schedule. It is only that in my county sand has been removed and I believe it is the only mineral that we have. But as a person, I have an opportunity to go into the mining industry and it is going to help develop this country.

First and foremost, the Committee has done community involvement and recognized that the community needs to be given some percentage. It is very important, especially for the proponents of *OKoa Kenya* and more so the Governor of Bomet, who is also the Chairman of the Council of Governors. He should now see the commitment and that there is a lot of money going to the counties; not necessarily through Parliament. The Government is committed to devolution. It will give the counties a lot of money. I was at some point trying to say that assuming *OKoa Kenya* goes through and they get 45 per cent or 20 per cent, then the central Government will be left with nothing!

I know hon. (Ms.) Abdalla being in Jubilee, knows that *OKoa Kenya* is not headed anywhere, so they had to give them 20 per cent. I support that and we totally support this Bill. As my brother had said earlier, we were portrayed as a very negative country when we cancelled and revoked some of these licences. But there is an opportunity for us to have an economic take off. I know that in the next few years, we will be somewhere competing with America and other countries.

There was a clause there that was referred to as "Chinese Clause". The Chinese Government has done a lot in terms of partnership with us. Therefore, whoever was saying that might have made a misplaced statement. But, I totally support the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, and well spoken.

Hon. Members, I am sure we are repeating ourselves. All the hon. Members have commended (Ms.) A. Abdalla. Because of time, it is now 20.50 p.m. and I can assure you, as the Leader of Majority Party has said, it is work well done. Kenyans are aware that we are here and they can tell the kind of work we have been doing. We have many requests showing the importance of this Bill and what we can give back to hon. (Ms.)

Abdalla, the Chair of the Committee. She has done a very good work, maybe we should commend her because she has been congratulated by every hon. Member here.

We can give her some time.

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Speaker, I will seek your indulgence to donate a minute to hon. Njomo, after I finish.

I want to begin by thanking all the hon. Members who have had five hours and 50 minutes of amendments that we have had to go through. Specifically, I would like to thank hon. Members of my Committee. I do have a quorum and I can move any amendments because of having more than nine of the Members of the Committee until the end.

This is our second very technical Bill that we have passed. But more importantly, whereas I come from a background in the conservation sector with hon. Ottichilo, hon. Ganya and many others we did our best.

I want to acknowledge the assistance given to us by the Australian Government through the training of seven of our hon. Members by the State University by giving us a constitutional consultant and mining expert. Currently, we are negotiating to have another training programme with the Government of Canada. Therefore, we really would like to thank them. I want to thank the CIC which is very unpopular in this House, but in the mining sector, they shared with us a consultant from Ghana who provided us an African perspective of the Mining Bill. Without his input, we would really have been lost. I want to thank that consultant and CIC for giving us that assistance.

After nine months, I am really happy that this Bill has come to day. We are giving this country a regulatory regime that is transparent, accountable and consultative. We are legalizing artisanal mining – you should have seen the artisanal miners who came to us; they were really in a pathetic state.

We have achieved the establishment of reconnaissance licences that will allow us to get more information on what we actually own. So, with those many remarks, I want to thank everybody. I want to thank the Speaker and the Clerk of the National Assembly for the assistance they have given us. I am sounding very knowledgeable on mining, but without the assistance provided by Parliament, we would not be this knowledgeable, that is, my Committee members and I. With your indulgence, I would really beg that you allow my internal experts who were trained in Australia to contribute. Hon. ole Kenta and hon. Njomo attended training on mining at University of Western Australia. I beg your indulgence that you allow them to say something.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Jude Njomo, the beneficiary of the philanthropic hon. Amina. Please, take a minute.

Hon. Njomo: Thank you hon. Temporary Deputy Speaker. I can say that in terms of mining, as a country, we have been wandering around blindly because we do not know where our minerals are. Moreover, we do not have a proper legal framework to guide us. Today, after nine months; the amount of time that a child takes to be born, we have come up with a new law. This is a law that will guide us into a future of wealth and order in mineral---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Your minute is over. Hon. Member, I gave you one minute.

Hon. Members, because of obvious reasons, I am not able to put the Question and, of course, it will be put in the next sitting. However, I must appreciate the work that you have done. I also appreciate the beautiful ladies and the gentlemen who are in the House.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the House now stands adjourned until tomorrow Wednesday, 29th October 2014 at 9.30 am.

The House rose at 8.54 p.m.