

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 13th August, 2014

The House met at 2.30 p.m.

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

PRAYERS

Hon. Deputy Speaker: Hon. Members, we are properly constituted and will, therefore, start our business.

PAPERS LAID

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to lay the following Papers on the Table:-

Annual Report and Financial Statements of the Kenya Nuclear Electricity Board for the year ended 30th June, 2014.

Transition Authority Quarterly Report for the period, October to December, 2013.

Report of the Auditor-General on the Financial Statements of the Tourism Fund for the year ended 30th June, 2013, and the certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of the National Social Security Fund for the year ended 30th June, 2013, and the certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of Public Complaints Committee on Environment for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of the Kenya Veterinary Board for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

Hon. Deputy Speaker: Thank you. Next Order!

NOTICE OF MOTION

REFORMS BY THE GOVERNMENT TO REVAMP TOURISM SECTOR

Hon. Muzee: Thank you, hon. Deputy Speaker, for this opportunity.

Hon. Deputy Speaker, I beg to give Notice of the Following Motion:-

THAT, aware that the service sector, which is dominated by tourism, contributes over 60 per cent of Kenya's gross domestic product (GDP); concerned that contribution

of tourism to the country's economy was lumped to about US\$1.1 billion during the 2012/2013 Financial Year compared to the US\$1.1 billion in the previous period; worried that this trend is getting worse leading to closure of hotels, winding up of tour firms and massive loss of jobs; cognizant of the fact that the dwindling tourism fortune is attributable to insecurity, a prohibitive tax regime and poor infrastructure in key tourism attraction sites countrywide, this House resolves that the Government undertakes reforms to revamp tourism through improved security, strengthening and funding institutions in the tourism sector, upgrading infrastructure, reviewing tax regimes and repackaging Kenya's diverse tourism products across the country.

Hon. Deputy Speaker: Thank you, hon. Kazungu. That is the only Notice of Motion.

Let us move to the Next Order.

REQUESTS FOR STATEMENTS

Members, we will use the Schedule given on the Order Paper. We will start with the request for a Statement by hon. James Gakuya.

TRANSITION OF FORMER PROVINCIAL ADMINISTRATION TO DEVOLVED UNITS

Hon. Gakuya: Hon. Deputy Speaker, pursuant to the Standing Order 44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the transition of the former Provincial Administration to devolved units.

Hon. Deputy Speaker: The next one is by hon. Francis Mwangangi. Before hon. Mwangangi speaks, can we get when this Statement will be delivered from the Chair?

Hon. Abongotum: Hon. Deputy Speaker, we will take about three weeks, but to the best of my knowledge and information, I am not sure whether we have devolved the Provincial Administration. I do not think we have devolved the Provincial Administration because it was converted to National Administration. So, they just co-operate on matters of security, but I do not think they have been devolved.

Hon. Deputy Speaker: Chair, what are you saying? Have you responded to the request or what have you done?

Hon. Abongotum: I do not think this requires the Cabinet Secretary because it is a policy issue that is straightforward. The former Provincial Administration was converted to National Administration. It has never been devolved. They are based at the counties, but they are not devolved.

Hon. Deputy Speaker: Is the Member satisfied with that response?

Hon. Abongotum: I do not know whether my good friend is satisfied, but I know they co-operate with ward administrators, sub-county administrators, but---

Hon. Deputy Speaker: Hon. Chair, you are using your knowledge as a former District Officer (DO) or what knowledge?

Hon. Abongotum: No; I am using my current knowledge.

Hon. Deputy Speaker: Okay; is hon. Gakuya satisfied? Do we need a further response or that is sufficient?

Hon. Gakuya: Hon. Deputy Speaker, I am not satisfied with the answer given by the Chairperson, taking into consideration that, in fact, we have representatives who are well known as “County Commissioners”. Still, we have regional representatives. In Nairobi in particular, this position is held by a single person who was the previous Provincial Commissioner of this City. So, I just want to have a clear answer on this.

Hon. Deputy Speaker: I think clearly you need a date from the hon. Chair. So, just give a date when you think you will be able to provide an answer.

Hon. Abongotum: This will take one week, if possible. It is a straightforward matter.

Hon. Deputy Speaker: Okay. You still insist that it is straightforward. That is okay. Get the answer and then the Member will be satisfied.

The next one is by the hon. Member for Yatta.

STATUS OF WORKERS IN THE HEALTH SECTOR

Hon. Kilonzo: Thank you. Hon. Deputy Speaker; pursuant to Standing Order No.44 (2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Health regarding the status of workers in the health sector.

Hon. Deputy Speaker: Okay. Thank you, hon. Mwangangi. The hon. Chair or the Vice-Chair.

Hon. (Dr.) Pukose: Thank you, hon. Deputy Speaker. We will be able to give an answer in two weeks’ time. He has asked on the status, but I think once I read his request, then I will know what status he is asking about. I will first read the request; probably, we will be able to issue it in two weeks’ time.

Hon. Deputy Speaker: Hon. Mwangangi, I believe that is sufficient.

Hon. Kilonzo: Yes. Thank you, hon. Deputy Speaker. I think they should also include in their response the Ebola situation in the country. This is very critical.

(Laughter)

Hon. Deputy Speaker: So, now you are raising supplementary questions that you want addressed?

Hon. Kilonzo: Yes.

Hon. Deputy Speaker: Okay. That one might need a much quicker answer than two weeks, hon. Mwangangi. Anyway, that one would have to be a different question.

Hon. (Dr.) Pukose: Hon. Deputy Speaker, I have not gotten what he is asking.

Hon. Deputy Speaker: He has asked you that you include in your response something on Ebola. That is what I believe he has asked you.

Hon. (Dr.) Pukose: Hon. Deputy Speaker, when he says we include something I do not know what something means. He needs to come out very clearly. You know he was talking of Wambora or Ebola. He has to come out very clearly; if he is talking of the Ebola virus, which is a hemorrhagic fever then he needs to be able to phrase the question very clearly, so that we can give him a comprehensive answer. Ebola is a tragedy that is

happening worldwide and is of concern to many Kenyans; he has to come out with a very clear question on what he wants answered.

Hon. Deputy Speaker: Yes, I want to agree with you and that is why I said really you do not have to respond to that; his concern is workers in the health sector. Stick to what the original question was.

Member for Murang'a, hon. Sabina.

TERMS/AGREEMENT OF LEASE
FOR KAKUZI AND DEL MONTE LIMITED COMPANIES

Hon. (Ms.) S.W. Chege: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No.44(20)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Lands regarding the terms and agreement of lease for the Kakuzi and Del Monte Limited companies.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay; Chair of the Departmental Committee on Lands. As I said yesterday, your docket has suddenly generated a lot of interest across the country.

Hon. Mwiru: Thank you, hon. Temporary Deputy Speaker. I will be able to bring an answer to the House in 14 days from now.

Hon. Deputy Speaker: That is two weeks. Hon. Sabina, I think you can wait for that long.

Yes, Member for Loima, Protus Ewesit.

DELAYS IN DISBURSEMENT OF CASH TO NEEDY

Hon. Akujah: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding delays in effecting of cash transfers to orphans and vulnerable children, older persons and the persons with severe disabilities.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: The Chairperson of the Departmental Committee on Labour and Social Welfare, hon. David Were.

Hon. Were: Thank you, hon. Deputy Speaker. I can deliver a Statement in two weeks.

Hon. Deputy Speaker: Okay; you will wait for that response.

The Member for Kisumu West, the hon. Olago Aluoch.

STATUS OF TITLE DEEDS/PARCELS
OF LAND OF NPS/MASENO POLICE LINES

Hon. Aluoch: Thank you, hon. Deputy Speaker. This is directed to the Chairperson of the Departmental Committee on Lands, and concerns the status of title deeds and parcels of land originally allocated to, or reserved for, the National Police Service in the country especially Maseno Police lines.

Hon. Deputy Speaker: The Chairperson on the Departmental Committee on Lands.

Hon. Mwiru: Thank you, hon. Deputy Speaker. The first part of the question seems to encompass a large scope of an area that we need to look at. The second part is specifically about Maseno police lines is a little bit easier. So, I would urge my brother, hon. Aluoch, to give me a little bit of some time; maybe I need one month, so that I am able to deal with the whole matter.

Hon. Deputy Speaker: Hon. Olago.

Hon. Aluoch: Hon. Deputy Speaker, if you saw the original Statement request, I zeroed in on the Maseno Police Lines parcel of land. I would be happy to go on record that the answer can confine itself to Maseno Police Lines.

Hon. Deputy Speaker: Are you satisfied with that clarification?

Hon. Mwiru: Very much, hon. Deputy Speaker. We can give it within one week because he has zeroed in on one police station.

Thank you very much.

Hon. Deputy Speaker: The next Statement request is by the Member for Roysambu, Isaac Waihenya.

STATUS OF ROADS IN ROYSAMBU CONSTITUENCY

Hon. Ndirangu: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the status of various roads in Roysambu Constituency, particularly Lumumba Road.

Hon. Deputy Speaker: Is the Chair of the Departmental Committee on Transport, Public Works and Housing or the Vice-Chair in the House? Is any member of that Committee in the House? There is no one from that Committee here?

Hon. Wangwe: Thank you, hon. Deputy Speaker. I am a member of that committee and I will undertake to deliver the message to the Chair; hopefully, within two weeks he should be able to come back to the House with the answer.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. Thank you hon. Wangwe. The hon. Member should be satisfied with that period.

Member for Westlands. I can see Nairobi is very active today. Is the hon. Timothy Wanyonyi in the House? Yes. Can you give him the microphone?

VETTING OF JUDICIAL OFFICERS BY THE JUDGES AND MAGISTRATES VETTING BOARD.

Hon. Wetangula: Thank you, hon. Temporary Deputy Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Justice and Legal Affairs regarding the vetting of judicial officers by the Judges and Magistrates Vetting Board.

Thank you, hon. Speaker.

Hon. Deputy Speaker: Thank you hon. Wanyonyi. Chepkong'a, when can you give the Statement?

Hon. Chepkong'a: Thank you, hon. Deputy Speaker. I am being prodded by the Chair of the Departmental Committee on Environmental and Natural Resources. She thinks that standard answers require two weeks, but I do not think so in this case. This is a very important question and we need three weeks. So, in three weeks we will provide a very comprehensive Statement.

Thank you.

Hon. Deputy Speaker: Okay; three weeks. That is because of requiring a very comprehensive answer to your request.

Hon. Sane: Hon. Deputy Speaker, before I request my Statement, allow me to differentiate my names from those of my colleague from Wajir North, with whom I share a name. My name is "Sane" and not "Saney". In some cases, the HANSARD uses the name "Saney" when referring to me. So, I am Sane and not Saney.

Hon. Members: Spell it!

Hon. Sane: It is S-A-N-E. You can call me sane, that is, the opposite of insane.

(Laughter)

Hon. Deputy Speaker: What about your counterpart? What is the opposite of his name?

Hon. Sane: His name has a "Y" at the end, but my name does not have the "Y".

Hon. Deputy Speaker: Thank you for the clarification.

PAYMENT OF BENEFITS TO MWARABU FAMILY

Hon. Sane: Hon. Deputy Speaker, pursuant to Standing Order No.44(2)(c) I hereby request a Statement from the Chairperson of the Departmental Committee on Environment and Natural Resources regarding payment of benefits to the family of Mr. Peter Jacob Saumu Mwarabu, a former employee of Kenya Wildlife Service (KWS).

Hon. Deputy Speaker, the deceased---

Hon. Deputy Speaker: Hon. Sane, I hope you realize that everybody else has just read what is on the Order Paper. You will give further details when the answer is given.

Is the Chairperson of the Committee in?

Hon. (Ms.) Abdalla: Hon. Deputy Speaker, the Committee will be ready with an answer in two weeks' time.

Hon. Deputy Speaker: We have called it the standard answer. Let it be two weeks even though it is becoming a standard. Hon. Sane, you seem not to be satisfied.

Hon. Sane: Hon. Deputy Speaker, I am satisfied with the two weeks; but I have a concern. Chairpersons pledge to bring answers in two weeks' time but they do not deliver. I am owed responses by the Leader of the Majority Party and also the Chairperson of the Departmental Committee on Labour and Social Welfare. I sought the answers in May, 2014. They had said that they would give the answers in two weeks, but we are now in August, 2014. I believe this will not suffer the same fate.

Hon. Deputy Speaker: Hon. Amina Abdalla has promised that when she asks for two weeks it is two weeks.

The Leader of the Majority Party, you have been accused by hon. Sane of not bringing an answer in two weeks. Maybe, you were not paying attention when he made those remarks.

Hon. A.B. Duale: Which Sane?

Hon. Deputy Speaker: The one whose name does not have a “Y”.

(Laughter)

Hon. A.B. Duale: Hon. Deputy Speaker, I have had no request from hon. Sane. The only people I have had requests from are hon. Kaluma and hon. Ochieng. I have disposed of all my Statements unless he is seeking one today.

Hon. Sane: Hon. Deputy Speaker, I requested a Statement from the Leader of the Majority Party regarding a visit by the Cabinet Secretary for Agriculture, Livestock and Fisheries in May, 2014. He promised that he would give an answer in two weeks’ time.

Hon. Deputy Speaker: Is the Leader of the Majority Party aware of that Statement request?

Hon. A.B. Duale: Hon. Deputy Speaker, that was a very small Statement request, and I thought the Chairperson of the relevant Departmental Committee would respond to it. I had directed that the answer be given to the Chairperson of that Committee. However, now that the Member for Garsen has brought the matter up, and I hope to be in his constituency on Sunday, so that he welcomes me very well, I will bring the answer on Tuesday, next week.

The question was about why the Cabinet Secretary for Agriculture, Livestock and Fisheries went to Kilifi and part of Tana River without informing the leadership of Tana River. That was the gist of the matter. I will bring a Statement here on Tuesday.

Hon. Deputy Speaker: Okay. I think we get the gist of what hon. A.B. Duale is alluding to.

Hon. Members, that brings us to the end of the Order on requests for Statements. What is it, hon. Pukose?

Hon. (Dr.) Pukose: Hon. Deputy Speaker, I requested a Statement about a month ago on GSU and Anti-Stock Theft Unit doing farming in my constituency at a place called Chepchoina instead of providing security. The Leader of the Majority Party talked of hon. Sane’s request being a small question; I do not know whether mine is also a small question that cannot be answered in two weeks’ time. He had, in fact, promised to answer in a week’s time and now it is a month.

Hon. Deputy Speaker: Hon. A.B. Duale, you have more than two Statements in your---

Hon. A.B. Duale: This is a serious matter. I want to confirm that one month is not over. I have a calendar in my office and this Statement is due on Thursday next week, when I will, hopefully, answer him. The Member is talking of one week, but I asked for one month; the Statement is due on Thursday, next week. I will answer him then, if not on Wednesday.

Hon. Keynan: On a point of order, hon. Deputy Speaker. You have just heard the Leader of the Majority Party saying that this is a serious question. All the issues raised by hon. Members here that satisfy the Speaker and meet the basic parliamentary requirements are serious. Is the Leader of the Majority Party in order to term one request as “a small issue” and the another one as “a serious issue”?

Hon. Deputy Speaker: Hon. A. B. Duale, for hon. Members to ask a question means that they consider the matter to be very serious, or at least serious to the people they represent.

Hon. A. B. Duale: Hon. Deputy Speaker, I stand guided. However, in the context of Statements, there are those that cannot wait for a day. There are some that are so heavy in context that they need a lot of investigation. That is the context in which I made my remarks. I do not take matters of this House lightly. That is why the Jubilee Coalition felt that I should lead this Coalition. I have a lot of respect for all Members of Parliament.

Hon. Deputy Speaker: The Leader of the Majority Party takes all of you seriously.

Hon. Irea: Hon. Deputy Speaker, yesterday I asked whether the Clerk of the National Assembly could do some profile on parliamentary business, so that when children from our schools visit Parliament they can be given some literature to carry home. It is common knowledge that whichever institution you visit all over the country today, there is some literature on what those institutions do. I think it is high time Parliament, through the Clerk of the National Assembly, did a profile of Parliament and printed it for our school children to carry home whenever they visit us.

(Laughter)

Hon. Deputy Speaker: Thank you. That is a matter that is being handled by Parliament. You raised it yesterday and it is being worked on. We want young men and women and children who visit us here to go away with something that will make them feel that they have actually visited Parliament. That is being viewed very seriously; I hope the Parliamentary Service Commission will also look into having just a small souvenir for the young people to remember that they were in Parliament.

Let me recognize the presence of St. Josephs Combined Academy from Kabondo Kasipul Constituency, Homa Bay County. You are most welcome.

Hon. Members, as we move to the next Order, please refer to your Supplementary Order Paper. There is not much difference but there are slight changes in ordering. Refer to your Supplementary Order Paper.

BILLS

Second Reading

THE FINANCE BILL

(Hon. Langat on 7.7.2014)

(Resumption of Debate interrupted on 12.8.2014)

Hon. Deputy Speaker: Hon. Members, can you settle down. We want to put Questions on a few Bills. For this Bill, we had already completed debate on it and only the putting of the question was left pending. Since we are well constituted, I want to put the Question.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

Second Reading

ORDER OF PRECEDENCE

(Hon. Keynan on 30.7.2014)

(Resumption of Debate interrupted on 30.7.2014)

Hon. Deputy Speaker: Hon. Members, this is another Bill on which debate had been concluded. I will, therefore, proceed to put the question.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

MOTION

ADOPTION OF REPORT ON NATIONAL
CONSTRUCTION AUTHORITY REGULATIONS

THAT, this House adopts the Report of the Committee on Delegated Legislation on the National Construction Authority Regulations 2014, laid on the Table of the House on Thursday, 24th July, 2014 and resolves to annul regulation 24(2) of the National Construction Authority Regulations, 2014.

Hon. Deputy Speaker: Hon. Members, debate on this report was also concluded and, therefore, I will put the question.

(Hon. Cheptumo on 24.7.2014)

(Resumption of debate interrupted on 6.8.2014)
(Question put and agreed to)

First Readings

THE PUBLIC SERVICE (VALUES AND PRINCIPLES) BILL
THE PERSONS DEPRIVED OF LIBERTIES BILL
THE ENVIRONMENTAL MANAGEMENT AND
CO-ORDINATION (AMENDMENT) BILL

*(Orders for First Readings read - Read the First Time and
ordered to be referred to the relevant Departmental Committees)*

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. Chairlady: Hon. Members, we are now in the Committee of the whole House to consider the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No.24 of 2014. Just to inform you that the way we will prosecute the amendments will be as they appear in the Bill, that is sequentially as they appear in the Bill and as they also appear on the Order Paper.

Hon. Ng'ongo: On a point of order, hon. Chairlady. I just wanted to seek your guidance on this Statute Law (Miscellaneous Amendments) Bill, if any hon. Member introduces an amendment, through this Bill, to an Act that is not mentioned in the Bill, how then do we proceed? Will that be transacted or allowed for debate?

Hon. Chairlady: Hon. Ng'ongo, the only amendments allowed are those that are contained in the Bill. We cannot introduce amendments which are not published. The answer is: If it is not published, we cannot allow it to change an Act. Let us stick to that before we confuse ourselves further.

We will begin with the Schedule.

THE INTERPRETATION AND GENERAL PROVISIONS ACT (CAP 2)

Schedule

Hon. Chepkong'a: Hon. Chairlady, I beg to move:-

THAT the Bill be amended in the Schedule in the proposed amendments to the Interpretation and General Provisions Act (Cap 2)-

(i) by deleting the words “or the President, Deputy President or the Attorney General” appearing in the definition of the words “Cabinet Secretary” in s.3;

(Loud consultations)

Hon. Chairlady: Hon. Members, we have to concentrate on this because there are a lot of amendments; as I said, we are following them sequentially. So the one that hon. Chepkong’a has just moved is under the Schedule; it is the first one in your Order Paper; page 303 of the Supplementary Order Paper. Hon. Chepkong’a, you moved only one; move both of them.

Schedule

Hon. Chepkong’a: Hon. Chairlady. I beg to move:-

THAT the Bill be amended in the Schedule in the proposed amendments to the Interpretation and General Provisions Act (Cap 2)-

(i) by deleting the words “or the President, Deputy President or the Attorney General” appearing in the definition of the words “Cabinet Secretary” in s.3;

(ii) by deleting the words “or the President where executive authority for the matter in question is retained by him, or the Attorney General where executive authority for the matter in question has been conferred on him” appearing in the definition of the words “the Cabinet Secretary” in part of s.3

Hon. Chairlady: Just give us a brief explanation as to what is the thrust of your amendment.

Hon. Chepkong’a: Hon. Chairlady, we are moving these amendments as a consequence of the passage of the new Constitution. This is to align this with the new Constitution by providing for Cabinet Secretary in place of the others because that is the function of the Cabinet Secretary and not of the President.

(Question of the amendment proposed)

Hon. (Ms.) Abdalla: Hon. Chairlady, I think hon. Chepkong’a needs to give us a better explanation because there is confusion over the matter. When the issue of a petition against the Attorney-General came, the Speaker ruled from the Chair that the Attorney-General does not qualify under the title “Cabinet Secretary”. Since hon. Chepkong’a and his Committee have the details, I think he needs to go further than just stating what he has stated. We need better rationale than what he has stated.

Hon. Chairlady: If that ruling was made concerning the Attorney-General not being at the same level of a Cabinet Secretary, are you familiar with that ruling? How has it been aligned with the new Constitution?

Hon. Chepkong’a: Hon. Chairlady, I respect hon. Amina. I basically said that the deletion is to align it with the Constitution. As you know, the Attorney-General is not a Cabinet Secretary. But he is a Cabinet Secretary in what we call in law *sui generis*. He is not strictly a Cabinet Secretary. He holds office only on presidential terms. If the President today decides that he does not want him on the grounds that are set out in the

Attorney-General's Act, then he will cease to hold office. So, we are basically cleaning up the interpretation. This is purely the Interpretation and General Provisions Act, Cap 2. There is nothing substantial.

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

(Schedule as amended agreed to)

(Provisions relating to the Advocates Act agreed to)

THE CRIMINAL PROCEDURE CODE (CAP 75)

Schedule

Hon. Chepkong'a: Hon. Chairlady, I beg to move:-

THAT, the Bill be amended in the Schedule in the proposed amendments to the Criminal Procedure Code (Cap. 75) –

- (i) by deleting in the proposed amendment to s. 123A (1);
- (ii) by inserting the following new provision in its proper numerical sequence —

Provision Amendment

s. 123A Delete subsection (2) and substitute therefor the following new subsection—

“(2) Subject to Article 49(1)(h) of the Constitution notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular” –

- (iii) by deleting the words “not punishable by imprisonment” appearing before the word “offence” and deleting the words “or police officer (in the case of a person under arrest)” appearing before the word court in the proposed amendment to s. 123A (3).
- (iv) by deleting the words “and welfare; or” in the proposed amendment to s. 123A (3) (b).
- (v) by deleting paragraph (c)

Hon. Chairlady: Try to give us a little bit of explanation, hon. Chepkong'a. You are the ones who have interacted very well with this and Members need to be clear on what they are passing.

Hon. Members, this will take a while. This is the job that we are all employed to do. That is to make legislation. Let all of us take a little time. We may even have to extend time in order for us to complete this exercise.

Hon. Chepkong'a: Hon. Chairlady, as you are aware Article 49(h) of the Constitution provides that every offence is bailable in law. What we have seen in the recent past is that the courts cannot exercise any discretion at all; there is no latitude for the courts. Whenever an advocate applies for bail or bond for persons who have been charged with capital offences, particularly those who have committed murder and robbery with violence, the courts have granted bail because the Constitution provides that they must grant it.

In the recent past, there was a case in Bungoma in which a suspect who had been charged with the murder of the husband of a lady who had given evidence was given bail. The first thing that he did when he went home was to go and kill the wife and the children. We cannot have a society in which we have someone who is supposed to be in custody being released and thereafter he commits a worse murder than the one he had committed earlier.

What we are seeking to do is to give discretion to the courts, so that when they see situations in which to protect the family of those who have suffered harm, the suspect or the accused person is locked in custody instead of being released to the public. That is the import of this particular amendment and other amendments that will be coming thereafter.

(Question of the amendment proposed)

Hon. (Ms.) Nyasuna: Hon. Chairlady, I just wanted to agree with the Chair that judges and the judiciary generally must be able to look at situations such as the one the Chair has just described. Under circumstances where children's and women's lives are at stake they should be able to use discretion not to give bail.

We also talked about terrorists being released on bail; they came back and committed even worse atrocities. In view of these circumstances, I support the amendment.

Hon. Irea: Hon. Chairlady, I support the amendment. However, the Chairman of the Committee should have gone further to explain to the House whether after the law was changed to allow people who have committed capital offences to go out on bail those offences increased or decreased; in that way we, Members, can contribute to this from a point of knowledge.

Hon. Ng'ongo: Hon. Chairlady, whereas I agree that the Constitution allows for limitation of rights and fundamental freedoms, it should be realized that the people of Kenya gave themselves the Bill of Rights for a purpose. This is because of the misuse of the loophole that existed in law. The Committee should have gone to Article 24. It is allowed under Article 24(5)(f) to limit the rights of arrested persons.

However, when you do that through legislation, first, you must tell us the nature of the right or fundamental freedom, the importance or the purpose for the limitation, the nature and extent of the limitation, and finally the need to ensure that the enjoyment of rights and fundamental freedoms by an individual does not prejudice the rights of others.

The Committee should have been categorical and clear in this amendment by specifying the rights that they are limiting. In the case of a capital offense, what stopped the Committee from spelling out clearly that they are limiting the rights of capital

offenders like those involved in robbery with violence. Leaving it the way it is, is open to abuse. Some lawyers or judges will interpret this law in their own way and even deny bail to someone who should ordinarily be granted it under the Bill of Rights which is enshrined in our Constitution. Therefore, in the absence of a limitation to certain categories of offences, I am reluctant--- I oppose this particular amendment because I see it as one that will be open to possible abuse.

Hon. Chairlady: Is the Chair giving an explanation? I notice that you have written subject to “L” and “H”.

Hon. Chepkong’a: Yes.

Hon. Chairlady: Is the Member aware, or you are going to give an explanation?

Hon. Chepkong’a: Yes Chairlady; as you know I have a lot of respect for hon. Mbadi as he is a very good accountant, but not as a good lawyer. Of course he is a good law maker but is not a lawyer.

Hon. Chairlady: Remember that not all lawyers are good law makers.

Hon. Chepkong’a: I know that is the reason he is seeking clarification.

(Laughter)

Chairlady, you know of the discretion of the courts to give or deny bail. We are just merely providing for discretion, but it is still subject to the Constitution; it will still be subject to Articles 24, and 49.

Secondly, as hon. Ng’ongo may be aware, one of the laws that must be passed by the 27th of this month is the rights of persons detained in prison or who are in custody. That is going to be defined in that particular law. So, hon. Ng’ongo should hold his horses until we bring that particular law; he will find that all his fears will be assuaged in that Bill. He will, therefore, have no reason to have any fear. In fact after my remarks, I am sure he will abandon his opposition and support what the Committee is proposing.

Hon. Chairlady: Hon. Ng’ongo I believe that you have been--- We do not have to take a long time on this. Hon. Ng’ongo will make his last comment.

Hon. Ng’ongo: Hon. Chairlady, what hon. Chepkong’a has said is what I was alluding to. It is in order to ask him to defer this to the time when we will pass the law we are likely to pass before the end of this month instead of bringing it in through this Bill. Why don’t you just wait for the comprehensive and substantive law, and bring in all the good thoughts that you are bringing in today.

Hon. Chepkong’a: Thank you hon. Chairlady. I know my good friend wants to engage in a discussion. I wish he was in the Committee. This is a fairly straightforward---. What he is seeking to do is anticipate what the House will pass in the form it will be. What we are providing are short-term measures to ensure that in between, and as you are aware---

As a Member of Constitution Implementation Oversight Committee, we have already filed a Motion seeking the extension of time on the Bills which must be passed by the 27th of August by nine months. So, we cannot wait for nine months to allow capital offenders to be released on bail. We must give discretion to the courts.

Hon. Chairlady: Thank you. Hon. Members I want to put the question of the amendments proposed by hon. Chepkong'a in respect of the Criminal Procedure Code, CAP. 75.

*(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)*

(Schedule as amended agree to)

(Provisions Relating to the Prisons Act agreed to)

THE RETIREMENT BENEFITS ACT, (CAP. 197)

Schedule

Hon. Chairlady: Yes, hon. Langat.

Hon. Langat: Thank you Chairlady.

Hon. Chairlady, I beg to move:-

THAT, the Schedule to the Bill be amended-

(a) in the column containing provisions relating to section 25B of the Retirements Benefits Act (Cap. 197)-

- (i) by inserting the following new paragraph immediately after the proposed paragraph (ee) —
(eb) has at least sixty per cent of its paid up share capital owned by Kenyan citizens unless if the applicant is a bank or an insurance company.
- (ii) by inserting the following new amendment in proper alphabetical sequence-
Renumber the existing provision as subsection (1) and insert a new subsection as follows-

- (1) A person registered as scheme administrator under this Act shall comply with the provisions of paragraph (eb) of subsection (1) within twelve months after the commencement of this paragraph.

(a) in the column containing provisions relating to the Anti-Counterfeit Act, 2008-

- (i) by deleting the proposed amendment relating to section 2;
- (ii) by deleting the proposed amendment relating to section 16;

The amendment I am proposing on behalf of my Committee as it appears on the Order Paper seeks to make administrators who are licensed to manage our benefit schemes which have at least 60 per cent of the their shareholding owned by Kenyans, just like the insurance brokers. What we are simply saying is that the retirement benefits are actual contributions by Kenyans. It is sad that we allow between 90 and 100 per cent of the shareholding sometimes to be held by foreigners. We are encouraging our youth now to participate in business. In fact, we are amending our laws to ensure that our youth are now given 30 per cent of tenders in Government. This is actually about foreigners who

want to invest in Kenya; they should look for Kenyan partners, so that they can invest jointly; Kenyan will be part and parcel of the management of the retirement benefits schemes, which actually have money from Kenyans.

So, I wish to ask the House to support so that all those who want to manage our retirement benefits schemes must have Kenyans on board. This is actually borrowed from the Insurance Act, where the insurance brokers must have 60 percent of Kenyans owning the shareholding of their companies. This is to make sure Kenyans are part and parcel of that process.

I beg to Move.

(Question of the amendment proposed)

Hon. Gichigi: Thank you, hon. Chairlady. I rise to support that amendment. In most developed countries, nascent sectors and industries have grown tremendously because of the protection and assistance that the State gives to them. Most of the retirement benefit schemes in the country are young. This is a young sector, and we need to encourage our citizens to invest in it. We must protect the custodians and the managers of this sector from the big multinationals, which come to the country and emasculate the emerging entrepreneurs.

I support.

Hon. (Ms.) Sunjeev: Thank you, hon. Chairlady. From the outset, I would like to congratulate hon. Langat for bringing this amendment. I would not like to repeat what has already been said, but this amendment seeks to be in line with the Vision 2030 by providing for the youth and giving them more responsibilities at a time when we are looking for things for them to do. Responsibility is one of the things that we need to instill in our youth.

With that, I wish to support.

Hon. M'uthari: Thank you, hon. Chairlady. I support this amendment to the Retirement Benefits Act. It is very important that Kenyans own most of the shares in these investments, so that we can get value for money.

I support this.

Hon. Ng'ongo: Hon. Chairlady, I totally oppose this amendment. Kenya is no longer a country where we lack people with capacity to invest in professional bodies. We must make our country business friendly. This control and unnecessary conditions that we give to investors discourages them from coming to this country. We should not put unnecessary conditions, which serve no purpose. There are so many Kenyans who are now administrators of funds; there is no reason to continue nurturing them. I do not know what informed the Committee's decision in coming up with this particular amendment, which will send out wrong signals.

This country should not go the Idd Amin way; at one time the late Amin said Asians should leave Uganda, because he was Africanising the economy. We know the result of what happened in Uganda. This country has matured and we need to move forward. We cannot get stuck in one position and claim that we are nurturing our people. There are so many qualified professional Kenyans nowadays.

Hon. Chairlady: Hon. Amina Abdalla! Hon. Mbadi has given his bit.

Hon. (Ms.) Abdalla: Hon. Chairlady, I want to align myself with the sentiments of hon. Mbadi. It is good for us to protect Kenyans in business, but 61 per cent is a bit on the upper side. History has shown us that Kenyanisation, or Africanisation, of business does not necessarily enable the youth, or young people, to join business. In other countries, and even in this country, it ends up being the same individuals who are in positions of knowledge about the shareholding of companies.

So, I oppose unless the Chair is willing to reduce it to 51 per cent.

Hon. Chairlady: But now the Chair is being spoken to by everybody. I do not know whether he is able even to follow what we are saying.

Hon. (Ms.) Abdalla: Maybe I can repeat for him that history has not shown us any positive results where businesses have been Africanised or nationalized. So, if he is giving 61 per cent to nationals, what benefits will that 61 per cent give us? What have foreigners done to investments to show that they are not doing their job properly? Unless he changes it to 51 per cent, I will be opposing this amendment; unless the Chair gives us a valid reason we like indigenization or Kenyanisation of this sector. In any case, history has shown us that Kenyanisation ends up costing Kenyans money instead of giving them benefits.

Hon. Kisoi: Thank you, hon. Chairlady. I rise to oppose this amendment. When you say that 61 per cent should be owned by Kenyans, I totally agree that we have a responsibility to protect the local interest; but when we give 61 per cent to locals, we are trying to have a very high benchmark in terms of how investments ought to be handled.

There is no guarantee that when we do what this amendment suggests, the youths of this country will benefit. We know there is a kind of a silent monopoly that exists, and this percentage will go to a few individuals. Therefore, unless we are fully assured that this will have a direct impact on and benefit to the youth of this country, I oppose.

Hon. S.S. Ahmed: Hon. Chairlady, I rise to support this. The fact of the matter is that I cannot understand the objections. This is the Retirement Benefits Act for Kenyans. All along, we have had the Old Mutual, *na wengine*, from South African and England. When it comes to getting our retirement benefits, we have to go to the Crown Agents or elsewhere. There is nothing wrong with 60 per cent of Kenyans being in the retirement benefits industry. After all, the NSSF is 100 per cent locally owned; foreigners have really been conning us. We have some companies like Britam and other major companies that are more than 60 per cent foreign owned. I feel very strongly that if we allow this to go below 50 per cent or 40 per cent, all overseas banks, some of which we have never heard of here, are going to take over our Retirement Benefits Authority. We will have no control over those banks and they will take our money and be liquidated in some God forsaken country.

So, I support this very strongly and urge my colleagues, let us be Kenyans. Kenyans have the power and the intelligence. After all, we are doing this all over the world. We have Kenyan companies doing this in Rwanda, Uganda and Tanzania. Why do we not do it in Kenya?

Hon. Gikaria: Hon. Chairlady, I rise to support the amendment by the Chair of the Committee. I am a very big supporter of football. I want to explain, the English Premier League that is played and watched by Kenyans; English Premier teams allow foreign players to join them. You can see how dismal the English team performed in the

World Cup and that is exactly what is going to happen again in the companies. This is exactly what is going to happen. We need to encourage. As hon. Shakeel put it, these are retirement benefits and we need to have more Kenyans, so that we can benefit out of the profits that we get out of them.

Hon. (Dr.) Pukose: Thank you, hon. Chairlady. I stand to support this amendment by the Committee. When hon. Mbadi talked, I thought he was a very good accountant, but this is a retirement benefits issue and you want the majority shares to be owned 50 to 51 per cent by outsiders. This will mean that it will be Kenyans who will be saving; at the end of the day, the outsiders may run away with our money. What shall we do to support local Kenyans? Majority of the shareholders should have a say. Let us have a much bigger representation from the locals. I support the amendment by the Committee.

Hon. Chairlady: Hon. Duale, I think Members have expressed themselves.

Hon. A.B. Duale: Hon. Chairlady, I only want to say one thing: that as a country and as a Parliament, we should not shy away from having majority shareholding in the hands of Kenyans. There are Kenyan small and medium size companies in ICT and engineering. If we do not legislate on this, then foreign companies will take over.

You have seen the Chinese and the US Africa Summit, which was about nothing other than business. We will even have the European and Chinese lawyers representing us. This is about retirement and it must be in the hands of Kenyans. How can you put retirement benefits 100 per cent in the hands of foreigners? We are talking of only 60 per cent and I support.

The Hon. Chairlady: Eng. Gumbo and Makali and then we will allow the Chair to respond.

Hon. (Eng.) Gumbo: Hon. Chairlady, I also stand to strongly support this proposed amendment. If anybody read *The East African* last week they will actually get to know that this so called “foreign investment” is actually a myth. Foreigners take more money from Africa than Africa receives from foreigners, and it is time we had faith in our own people. When will we start having faith in our own people? The fact that we have got it wrong in the past does not mean that we will not get it right in the future.

So, hon. Chairlady, this retirement, as hon. Shakeel has said is for the people of Kenya. Why do we want to put our retirement benefits in the hands of a foreigner? I strongly support this proposed amendment.

Hon. Chairlady: Makali.

Hon. Mulu: Thank you, hon. Chairlady. I also support this amendment and I want to say that my hope is that Kenyans will not be used as proxies in these companies. You have realised like in the Lamu land issue that we have so many land directors who are not known, because they have used proxies. We are going to get real Kenyans being directors and shareholders in these companies.

Thank you, hon. Chairlady and I support.

Hon. Chairlady: Okay. Let the hon. Chair contribute. It is good to see that you can convince yourselves, given enough time.

Hon. Langat: Thank you, hon. Chairlady. I just wanted to express my shock that my friend, who always claims he was senior to me at the university, and who is really in this profession, is opposing this amendment. , I want to encourage him that this is a very

good amendment. Even Dubai, which we talk about everyday, its population is 1 million, but you can find millions of investors; they are more than the locals. In that country you will never start a company if you are a foreigner without the citizens of that country. That is the truth and I think that is the direction we need to go as a country.

In fact, foreigners should come and look for locals to do business together, so that Kenyans are taken on board. This is so that we do not have people whom we do not know coming to do business. They can even run away with our money. So, really I want to encourage my good friend, who is lone ranger in this thing, to accept the amendment. I have accepted that I was his junior at the university, but he should also accept that in this one, at least I am not misleading him.

Thank you very much, hon. Chairlady.

The Hon. Chairlady: Hon. Members, I will now 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)*

(Schedule as amended agreed to)

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

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

THE KENYA PORTS AUTHORITY ACT

*(Question of the provisions relating to the Kenya
Ports Authority put and agreed to)*

THE KENYA AIRPORTS AUTHORITY ACT

Schedule

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

THAT, the Bill be amended in the Schedule in the proposed amendments to the Kenya Airports Authority Act by inserting the following amendment in the proper numerical sequence-

<i>Provision</i>	<i>Amendment</i>
S.17C	Delete and substitute therefor the following new section-

17C. There shall be paid out of the Fund-

- (a) any expenditure incurred by the Authority in the exercise of its powers under this Act; and
- (b) monies for the expenditure of the Kenya Civil Aviation Authority in accordance with section 3(3) of the Air Passenger Service Act.

Hon. Temporary Deputy Chairman, if you look at the Air Passenger Act, the principal proposal here is Section 3(3). It is introducing KCCA to the Air Passenger Service Fund. The problem - that is why I am bringing this amendment - is whether we should even go with this one; Section 17C does not allow anybody else to get into the Fund and, therefore, even if we were to pass it as it is then money will not be paid out of the Fund. It will only be paid for the expenditure of KAA. I am, therefore, proposing that we now appreciate the principal Act by amending Section 17C. Section 17C, which is there now, will not allow KCAA--- But this amendment will now allows KCAA to share in the Fund, which has been proposed in the principal amendment.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Do we have the Chair or the Vice-Chair of the Departmental Committee on Transport, Public Works and Housing. Yes, I see (Eng.) Mahamud here.

Hon. (Eng.) Mahamud: Hon. Temporary Deputy Chairman, we see no harm in this amendment. We support the amendment by hon. Pkosing.

The Temporary Deputy Chairman (Hon. Cheboi): Captain Wambugu, the Member for Mathioya.

Hon. Wambugu: Thank you, hon. Temporary Deputy Chairman. I rise to support the amendment. It is good to just put some light on why we are having this amendment. The introduction of the KCAA into this is because all over the world all funds that are collected by the industry are shared within it, and the KCCA can build its capacity.

An example of the problems that have been coming arising is Uganda, where they were operating below capacity and when ICAA came to do an audit; they were not able to certify the requirements for audit. That was why the whole airline industry was shut down; that is why there is no Air Uganda anymore. We would not like to lose Kenya Airways and other operators within this region.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have hon. ole Metito, Member for Kajiado South.

Hon. ole Metito: Thank you, hon. Temporary Deputy Chairman. I stand to support the amendment by hon. David Pkosing. Without anticipating debate, I would like to say that you cannot read that amendment without reading the one following it. The amendment is giving clarity on how the sharing of this revenue is going to be done between the Kenya Airports Authority and the Kenya Civil Aviation Authority. It does not leave it to the Cabinet Secretary to decide.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, my interest is in the one on the Air Passenger Service Charge Act.

The Temporary Deputy Chairman (Hon. Cheboi): We are not there yet.

*(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)*

(Schedule as amended agreed to)

THE AIR PASSENGER SERVICE ACT, (CAP.475)

Schedule

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

THAT, the Bill be amended in the Schedule in the proposed amendments to the air Passenger Service Charge Act by deleting the proposed section 3(3) and substituting therefor the following new subsection -

“(3) all proceeds of the charge imposed under this section shall be apportioned between the Kenya Airports Authority and the Kenya civil Aviation Authority in the following manner-

- (a) for an external journey-
 - (i) eighty-five percent to the Kenya Airports Authority; and
 - (ii) fifteen percent to the Kenya Civil Aviation Authority; or
- (b) for an internal journey-
 - (i) eighty percent to the Kenya Airport Authority; and
 - (ii) twenty percent to the Kenya Civil Aviation Authority”

My leader had already touched on this issue. I agree with what the Chief Whip has just proposed.

The Temporary Deputy Chairman (Hon. Cheboi): I want you to be a little clearer for Members to be with you. I think your close relations with Capt. Wambugu has had a lot of influence in you.

Hon. Losiakou: He is my elder brother from another mother. I do not know where my father was working, but that is another thing.

(Laughter)

This is just a clarification. All proceeds of the charge imposed under this section shall be apportioned between the KAA and the KCAA in the manner prescribed.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, it is a point of information. What the hon. Member has done is this: In his previous amendment, he has done a further amendment. The first one was on proceeds and he showed how they should be shared. Now, in this amendment, he has put it very clearly that if it is external travel, KAA will get 85 per cent and KCAA will get 15 per cent. If it is domestic travel then it will be 80

per cent for KAA and 20 per cent for KCAA. The House needs to understand that. The Member was using very strong language.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I want to support but at the same time plead with hon. Pkosing that he further amends this proposed amendment. It is only in our jurisdiction where the KAA is actually bigger than the KCAA. The KCAA is actually the industry regulator. There is always a problem when you have an industry regulator which is smaller than the operators. In fact, the truth of the matter is that KAA is nothing more than a facilities manager. Even if you look at the aspect of landing, it is not just when the airplane lands on the tarmac. A greater part of landing, as Capt. Wambugu will tell you, is done using instruments which instruments are under the docket of the KCAA. So, I am proposing that let us give the KCAA more money because it is the regulator. Players like Kenya Airways and the KAA are much bigger than the regulator who is not even known. I plead with hon. Pkosing to move this thing forward to a ratio of 60 to 40 so that the KCAA has more money and is able to control the aviation industry in the country.

The Temporary Deputy Chairman (Hon. Cheboi): I hear you hon. Eng. Gumbo, but you know that is not the tidier way to proceed. It would have been easier if you really wanted hon. Pkosing to move a further amendment, to approach him before. It is now difficult. As you can see, he is already proposing an amendment. You are asking him to propose an amendment and actually propose a further amendment to his own amendment. That cannot be tidy.

We will hear from other Members briefly. Really, it will be difficult for us to proceed in your direction. Well, if you succeed in convincing him--- Let us hear hon. Eng. Mahamud.

Hon. (Eng.) Mahamud: Hon. Temporary Deputy Chairman, the amendment is making this issue clearer. In the original Bill, discretion is given to the Cabinet Secretary to apportion the money between the two organizations. We are actually putting it in law to say how much goes to the two authorities. I support.

Hon. Mulu: Hon. Temporary Deputy Chairman, I also want to support this amendment. I am really excited about the specifics. When you look at this amendment, it is very specific on the costs. I like that element that they are very specific.

(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)

(Schedule as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): I can see there is no amendment here.

*(Provisions relating to the Postal Corporation
of Kenya Act agreed to)*

THE KENYA NATIONAL HOSPITAL INSURANCE
FUND ACT 1998 (No.9 OF 1998)

Schedule

Hon. (Dr.) Pukose: Hon. Temporary Deputy Chairman, I beg to move:-
THAT the Schedule to the Bill be amended in the column containing provisions relating to the National Hospital Insurance Fund Act 1998 (No.9 of 1998)—

(a) by deleting the third column of the amendments relating to section s.4 (1) and substituting therefor the following new third column—

Delete the expression “Permanent Secretary” appearing in paragraphs (b), (c) and (d) and substitute therefor the expression “Principal Secretary”.

Delete the words “the Director of Medical Services” appearing in paragraph (d);

Insert the following new paragraph immediately after paragraph (d)-
(e) the Director of Medical Services or his representative;

Insert the words “and the Kenya Union of Post Primary Education Teachers in such manner as may be prescribed” immediately after the words “Teachers” appearing in paragraph (h).

Delete paragraph (i), (j), (k) and (l)

Insert the following new paragraphs immediately after paragraph (h)-
(i) one person nominated by the Kenya Medical Association;
one person nominated by faith-based healthcare organizations in such a manner as may be prescribed.

Delete subsection (2).

- (b) in the amendment relating to section 10 (1) by inserting the words “as the Board may with the advice of the Salaries and Remuneration Commission determine” immediately after the words “terms and conditions” appearing in the proposed new subsection (1).
(c) by inserting the following new second and third columns in proper alphabetical sequence—

- s. 18 (1) Delete the word “five” appearing immediately after the words “equal to” and substitute therefor the word “two”

This is in line with the Constitution so that the SRC determines the allowances of the board members.

The Temporary Deputy Chairman (Hon. Cheboi): Let us stop there first hon. (Dr.) Pukose because there is also another amendment---

Hon. (Dr.) Pukose: There are other amendments in bringing the Director of Medical Services or his representative. This is basically on the board membership. Then the Kenya Medical Association (KMA) as a stakeholder in the provisions. So, we want him also to be part of the board membership. The faith-based organizations should also chose a membership to the board to be represented because these organizations are providing key services in this country through the mission hospitals and other facilities that are run by the faith-based organizations. So, these are important stakeholders that must be represented in the board of the NHIF.

The Temporary Deputy Chairman (Hon. Cheboi): The reason why I have stopped you there is because on your proposed amendment (c) we also have amendments by hon. Mwaita and another by hon. Tonui. So, I would rather we finalize with that bit first and then we can proceed to the next one.

Hon. (Ms.) R.K. Nyamai: Hon. Temporary Deputy Chairman, I rise to support these amendments. The first amendments are just a matter of procedure but looking at the part where we have inserted KUPPET and KNUT, we felt as a Committee that it is better to be that democratic so that teachers themselves can make a decision on having only one slot within the board and also in the spirit of reducing the number of board members. I also support that it is important to have the KMA because of the expertise that they offer to this fund, which is a medical related fund and the faith-based institutions because they offer over 50 per cent of health care in this country. So, I support.

The Temporary Deputy Chairman (Hon. Cheboi): Very well! We are proceeding quickly on this one and the hon. Member should be informed, particularly hon. Tonui. It is important that you note this; that if the amendment as proposed by hon. (Dr.) Pukose is carried, the net effect will be that yours will be dropped. I hope that makes it clear to hon. Members and I see there is no more interest in this one.

(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): That means hon. Tonui’s amendment is dropped. Let us go to hon. Mwaita’s amendment.

(Proposed amendment by hon. Tonui dropped)

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

THAT, the Bill be amended in the Schedule in the proposed amendments to the National Hospital Insurance Fund Act, 1998, by inserting the following new amendments in their proper numerical sequence—

Provision

Amendment

s. 18(1)

Delete and substitute therefor the following—

“(1) Subject to the provisions of this section and without prejudice to any other penalty imposed under this Act, if any contribution which any person is liable to pay under this Act in respect of any month, is not paid on or before the day on which payment is due, a penalty equal to—

in the case of micro and small enterprises, twenty-five percent of the amount of that contribution; and

in any other case, two times the amount of that contribution, shall be payable by that person for each month or part thereof during which the contribution remains unpaid, and any such penalty shall be recoverable as a sum due to the Fund, and when recovered, shall be paid into the Fund”.

New

Insert the following new subsection immediately after subsection (3)—

“(4) In this section, the expressions “micro enterprise” and “small enterprise” have the meanings assigned thereto respectively in the Micro and Small Enterprises Act, 2012”.

This is where the penalty is currently slapped at five times, which I thought is very punitive and when you compare with the financial sector, five times is way beyond. It does not encourage investors. It does not encourage employers to add their number of employees.

Secondly, even with the NSSF, the percentage is 5 per cent and it is silent on what happens to self employed persons. So, I was proposing that we break it into two: Small and microenterprises at 25 per cent and then for the other enterprises like medium and large, we charge it at two times.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I want us to be up to speed. The Committee under part (c) - I can see hon. Members are interested in knowing why we are not dealing with it - is proposing a deletion of the word “five” but

hon. Mwaita is proposing deletion of the entire (c). I hope we are together on that one. So, what we are saying is that if hon. Mwaita's amendment is carried, the one by the Committee is dropped.

(Question of the further amendment proposed)

Hon. Chairperson, do you want to speak to that one especially because you get the consequences of hon. Mwaita's amendment.

Hon. (Ms.) R.K. Nyamai: Hon. Temporary Deputy Chairman, I would like to say that this matter was discussed by the Committee after we were awakened or after the matter was brought to us by hon. Mwaita. It is true that we felt that it is too punitive to charge five times when you do not remit in time. The feeling of the Departmental Committee on Health was that the charge should be two times but not five times. But at the same time, I have a feeling that it is important to consider the small companies and charge them less and also compare with the NSSF which charges 5 per cent. It is too much to charge five times and it is important for us as Kenyans to be considerate of our own institutions that are being overcharged but at the same time encourage—

The Temporary Deputy Chairman (Hon. Cheboi): Then agree with me that we do not have a proposal for two; so if hon. Mwaita's is carried, the consequences are as indicated.

Hon. (Ms.) Nyasuna: Thank you, hon. Temporary Deputy Chairman. I think hon. Mwaita's proposal is for two times. However, he just separated and said that for micro and small enterprises we do 25 per cent which I agree with. This is because micro and small enterprises do not have systems and structures that ensure that at the end of every month you will submit in good time your NHIF contribution. Larger enterprises have systems and structures and I do not see why we should excuse them for not submitting. This is because some do not even submit completely. So, I do not see why we should reduce drastically the fine from five to two times. What we must do is to protect our people. Yes, we protect businesses but priority should also be to protect those poor people who work there every day. If their contributions are not submitted in good time the employer should feel afraid of not submitting. However, if you tell them that it is only two times, if the submission is Kshs320 and they are only going to submit Kshs600, it must be punitive not to submit your employee's contribution.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Wanga, are you supporting or you are opposing?

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I am supporting the micro and small enterprises but I am opposing the reduction from five to two.

Hon. Gikaria: Thank you, hon. Temporary Deputy Chairman. I want to concur with what hon. Wanga is saying and oppose hon. Mwaita's proposal. This issue was brought on the Floor of this House as a resolution by somebody who wanted the 500 per cent to be reduced to 25 per cent. We have a communication from the Cabinet Secretary in that regard. We are a little confused as to whether the commitment given by the Cabinet Secretary still stands. A Motion was brought to the House which resolved--- The Ministry has accepted the policy and they are now charging 25 per cent. We arrived at that percentage when that Motion was brought to this House because there are those

individual contributors who are supposed to give. I want to agree that we cannot again reduce from five times to two times for the big companies. That will be punitive. So, I oppose part “b” of hon. Mwaita’s proposal and support part “a”.

*(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)*

(Schedule as amended agreed to)

Hon. A.B. Duale: On a point of order, hon. Temporary Deputy Chairman. I want you to bring order to hon. Kang’ata because he is causing unnecessary confusion. I do not know which amendment he is carrying but he has to respect the procedure in the House.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kang’ata, I have noticed that you are moving round the House. I do not want to use the term indicated by the Leader of Majority that you are bringing confusion. I actually do not know what you intend to achieve because I can see that there is an amendment here which has not been approved at all. Hon. Kang’ata, if you are doing anything, do it quietly.

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, as you know, hon. Kang’ata is a Member of the Departmental Committee on Justice and Legal Affairs. He should have proposed this in the Committee. I am just wondering why he is doing this in the House. Any way, it is his right.

The Temporary Deputy Chairman (Hon. Cheboi): Order, hon. Members! We are on page 304 of the Supplementary Order Paper.

THE COPYRIGHT ACT, 2001 (NO.12 OF 2001)

Schedule

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the Schedule in the proposed amendments to the Copyright Act, 2001 (No. 12 of 2001) by deleting the word “compulsory” immediately after the word “licence” in the proposed s. 33A (1) amendment.

There is nothing like compulsory licence. So, the entire amendments are good except removal of the word “compulsory”.

(Question of the amendment proposed)

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

(Schedule as amended agreed to)

THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT (NO.3 OF 2003)

The Temporary Deputy Chairman (Hon. Cheboi): I can see there are amendments proposed by hon. Musimba and hon. Linturi on the Anti-Corruption and Economic Crimes Act (No.3 of 2003). I will start with the amendment proposed by hon. Musimba.

Hon. Members: He is not there!

The Temporary Deputy Chairman (Hon. Cheboi): In the absence of hon. Musimba, his amendment is dropped.

(Proposed amendment by hon. Musimba dropped)

Schedule

Hon. Linturi: Thank you, hon. Temporary Deputy Chairman. I beg to move:-
THAT, the Bill be amended in the Schedule in the proposed amendments to the Anti-Corruption and Economic Crimes Act, (No.3 of 2003)—

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)	s. 62(1)	Delete and substitute therefor the following— “(1) A public officer, or state officer with executive responsibility, who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case”.
	New	Insert the following new subsection immediately after subsection (1)— “(1A) A state officer or public officer with executive responsibility who has been adversely mentioned in a report prepared by a committee of a House of Parliament and adopted by the relevant House shall be suspended until investigations are complete”.

Hon. Temporary Deputy Chairman, the new Constitution has created a different order in this country. It is out of the new Constitution that we also find the Public

Officers Ethics Act. You will find that there are State officers--- If you look at the definition of a “State Officer” by virtue of Article 260, you will find that there are a number of Kenyans that exercise Executive authority. It is very difficult for somebody, for example, a Cabinet Secretary who has been taken to a court of law to face a charge that touches on economic crime or corruption to sit down in the same office and dispense his duties and serve Kenyans when he is still being investigated. That is why I propose that we amend this section so that, that particular officer--- The law presumes innocence of any person until due process is followed, up to a time when that case is finalized.

So, if he is found to be innocent then he may as well get back to office. This Parliament has been bestowed with the power of oversight by the Constitution on behalf of the people of the Republic of Kenya, on the part of the Executive or the State organs. This Parliament has passed and adopted many reports. In these reports, many people with Executive authority have been adversely mentioned. What happens Chair is that, after the passage or adoption of these reports by Parliament, you find the same people working. That beats the logic of why Parliament has to sit down and work overtime to come up with these reports which are never acted upon by the Executive. So, I want to beg the House to find it necessary to accept and support these amendments.

The Temporary Deputy Chairman (Hon. Cheboi): Very well, I will now propose the Question.

(Question of the amendment proposed)

Now, can we start with the Chairman of Justice and Legal Affairs Committee?

Hon. Chepkong’a: Thank you, hon. Temporary Deputy Chairman. I would like to first and foremost thank my very good friend, hon. Linturi for bringing this amendment. This amendment is very important. The reason being this Constitution has devolved functions to the counties. It has created executives within the counties who claim to have been elected by people. Whenever they commit crimes or are charged, they insist that they are duly elected by people. They insist that they cannot be suspended until the people who elected them find them guilty. This is very good, Chair.

The other day, governors said they are not going to appear before the Senate. Now, we want the Senate to conclude their proceedings with respect to the laws on those millions of shillings. This will ensure that governors take leave, to allow others do a good job. It is good to see how counties can be managed in a better way in their absence. This is a very good provision and I support it.

The Temporary Deputy Chairman (Hon. Kajwang’): Now, let us have hon. Keynan. Probably you can come to this microphone, it is much clearer there.

Hon. Keynan: Thank you, hon. Temporary Deputy Chairman. I want to take this opportunity to thank hon. Linturi because this is a very important amendment. First, the tradition has been there; the practice has been there, if you are a public or a State officer and you are charged in a court of law, the first thing that happens is you remain suspended until the conclusion of that case. It has been there. I want hon. Kaluma to listen to this; it has been there, the tradition has been there and we must accept the reality. If you are a public or State officer, you have two aspects; it is a double edged sword. You must enjoy the pleasures as well as face the pressures of that position. That is why I

am saying it is a double edged sword. Therefore, we accept that criminal responsibility is individual. If you are taken to a court of law, and you are a State or public officer, the first thing that you will do is remain suspended. You will have whatever you are entitled to until the conclusion of that case. Therefore, this is just appreciating the reality and putting it in perspective. To that extent, I want to sincerely thank hon. Linturi.

The second aspect is that Parliament is a quasi-judicial institution. I want hon. Kaluma to hear this. You investigate through a Committee. Article 125 of the Constitution says that Parliament enjoys the same inherent powers as the High court. In fact, there is a Bill that I have published that will clearly define and give meaning to the provision of that particular Act. It is called Powers and Privileges Act. Therefore, what hon. Linturi has done is good. A Committee of Parliament which is a quasi-judicial institution investigates and brings a report. If it finds an individual culpable, is that a public relations exercise? How is it supposed to be treated? In the current Constitution, it means that until those issues are concluded that individual should---

The Temporary Deputy Chairman (Hon. Cheboi): That should be it, hon. Keynan. This is not time to debate; you have made your contribution. I am actually proceeding to put the Question. I will allow two more Members starting with hon. Kaluma; you have not spoken. I am going to be keen; I will give priority to Members who have not spoken. So, hon. Kaluma, proceed.

Hon. Kaluma: Thank you very much, hon. Temporary Deputy Chairman. The first amendment, contrary to the Constitution proposes that people are guilty until they prove their innocence. I have an experience with this amendment. I had mentioned to the Chair of my Committee that this amendment can only work if we limit the period within which those criminal cases have to be determined. You have people charged and then you are in court for ten years until you retire simply because somebody has charged you with an offence for which you are later acquitted. So, I would request if the Mover of the amendment can limit the trial of such cases to a period of one year. Within one year, the trial should be complete.

In terms of the proposed part 1(A), it is well motivated but let us look at the wording of these provisions clearly. You are saying that when a person is adversely mentioned in a report, he will stand suspended pending what investigations? This is what needs to come out clearly. Pending investigations by whom? By the time you are doing the report, you have done your investigations and that is why in the report, you are mentioning the person. So, when you are saying you will be suspended pending investigations, what investigations? As long as that explanation is not coming out, I think this is premature. We should remove it unless it is corrected.

The Temporary Deputy Chairman (Hon. Cheboi): I will give more Members the Floor because I see there is a lot of interest. Let us get hon. Ichung'wah then we will come to--- Hon. Members, I do not want to be bullied at this point in time. Those ones who have spoken before, let us give an opportunity to other Members kindly, I am going to give you time. Hon. Ichung'wah you have not spoken today.

Hon. Ichung'wah: Thank you, hon. Temporary Deputy Chairman. I stand to strongly support this amendment by hon. Linturi. It is important for us to note that this amendment is being restricted to people with Executive authority and Executive powers within an organization, even those serving in Government positions. It is very important

because those who hold Executive authority, if you allow them to continue serving in the position that they are serving after being charged over economic crimes, they will continue with the same stealing that they are being charged with. A thief, I must say will always remain a thief and there is nothing you can do to stop someone from continuing to embezzle public funds, other than suspending and removing them from the positions where they are serving, until their case is concluded.

I wish to support what hon. Kaluma is saying. Encourage him to move an amendment to include 24 months for conclusion of the case to enable someone to go back to ---

The Temporary Deputy Chairman (Hon. Cheboi): Very well, that should be it. Let us have hon. Mwamkale.

Hon. Mwamkale: Thank you, hon. Temporary Deputy Chairman. I have no issues with the first one. My problem is with part 1(A), where one is supposed to be punished just after being mentioned in a Committee or Committee Report. I feel this can be prone to abuse. We know sometimes what transpires in committees. One can make sure that you are adversely mentioned so that you can lose or be punished. I feel that this should not be taken at this point in time.

Hon. Keynan: On a point of order, hon. Temporary Deputy Chairman. The Member here is an elected Member of the 11th Parliament and he is on record. We will not allow somebody to make a generalized statement to abuse or to cast aspersions on the integrity on the Members of this House. He says that he is aware of what happens. He is a Member of a Committee and he needs to say what happens in that particular Committee. Therefore he needs to withdraw. The House as seated right now is a Committee of the whole House and there are other Committees. Therefore, we will not allow somebody to get away with a generalized statement that cast aspersion on the elected representatives of the people of Kenya. He either substantiates or withdraws unconditionally and sits down.

Hon. Mwamkale: Hon. Temporary Deputy Chairman, the Member cannot pass a judgement on me. There is a Chair and it is not for him to tell me to withdraw. It is for the Chair.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kamoti that is a valid point of order. I think it would be totally out of order for you to cast aspersion against any individual Member or even them as a lot. That will not be correct. That is one bit that you need to withdraw unless you have to substantiate.

Hon. Mwamkale: Hon. Temporary Deputy Chairman, I was saying that Committees have no personnel to investigate issues. They do not have proper means to investigate and when somebody is mentioned---

The Temporary Deputy Chairman (Hon. Cheboi): No! Hon. Mwamkale, that is totally out of order. We have very serious Committees including the one which you sit on. It would be wrong for you to go that direction. In fact, I will deny you the opportunity to proceed. I will proceed and give hon. Fatma. That matter should be left to rest. Before we even proceed to hon. Fatma, hon. Mwamkale, I order you to withdraw unreservedly.

Hon. Mwamkale: Hon. Temporary Deputy Chairman, I oblige.

(Hon. Mwamkale left the Chamber)

The Temporary Deputy Chairman (Hon. Cheboi): Let us proceed and have hon. Fatma.

Hon. Ochieng: Hon. Temporary Deputy Chairman---

The Temporary Deputy Chairman (Hon. Cheboi): Order, hon. Ochieng! You are also out of order. Now, let us keep order! I might actually ask you to withdraw from the House. So, you better take care of that. Hon. Ochieng, I think you will need to have some respect at this point in time. Hon. Ochieng, I am giving you the last warning. So, hon. Fatma!

Hon. (Ms.) F.I Ali: Thank you, hon. Temporary Deputy Chairman. Accountability is very important and people with Executive powers need to be accountable. My real concern and I have said this before, this country is taking a dangerous trend by introducing amendments that might undermine fair and impartial accountability. People with Executive powers in this country are the President, Cabinet Secretaries and governors. We need to tighten accountability. These amendments might target specific Executive offices and might bring some uncontrolled damage which might dent the people who are targeted to account.

Suspending somebody who has been adversely mentioned in a report is not appropriate. They should be allowed to stay. There must be certain threshold to allow that kind of suspension.

The Temporary Deputy Chairman (Hon. Cheboi): That should be it, hon. Fatma. We will not take a lot of time on that. I will 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)

(Several Members stood up in their places)

Members, I see the numbers. We have 20 Members standing and we require 30. Therefore, the amendment is taken. Members, it is easier for you to propose a further amendment now because you have not raised the numbers. As the further amendment is being handled, that is what we are going to consider. But as far as we are concerned, that has been taken and we are now going to the next.

I will give hon. Chepkong'a a chance to move a further amendment.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, the Constitution anticipates that every person is entitled to fair administration. So that we can ensure that there is fair administration, I would like to propose the following amendment---

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear hon. Chepkong'a first and then we will come back to the rest.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, in Section 61(1) at the end of it, after the conclusion of the case, I would like to include the following proviso:-

THAT, provided that the said case shall be heard and determined within 24 months.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkong'a, you need to be very clear. Is it in respect of (1) or (1)(A) or both?

Hon. Chepkong'a: Clause 1 only.

The Temporary Deputy Chairman (Hon. Cheboi): It is good for the Members to be up to date on that one.

(Question of the further amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I support the further amendment by hon. Chepkong'a. The constitutional principle of presumption of innocence until proven guilty must be upheld. We know that Public Service in Kenya is not perfect. There are people who have been victimized on flimsy grounds and taken to court and charged. The court cases drag on and on with consequences both to their personalities, their families and friends. Therefore, this proposed amendment of 12 months is a bit too short. Two years as proposed by hon. Chepkong'a is okay. I support it.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. That is fine, hon. Gumbo. Hon. Wanga.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I just really want to agree. This amendment, going without this further amendment would really have been punitive to our people. This is because we know there are officers here where somebody just wakes up and puts a very flimsy accusation against you and you retire when you are still waiting for justice. What has been said is what will give justice to our people.

The Temporary Deputy Chairman (Hon. Cheboi): The hon. Member for Kibra.

Hon. Okoth: I also oppose this amendment as proposed by hon. Linturi and I would like to propose that as we make further amendments, it be 18 months so that we have a reasonable time for any case to be done. Two years is too long. It is disruptive to people's careers. If we have anything important to be done, it should be done in a quick manner.

The Temporary Deputy Chairman (Hon. Cheboi): That is fine. I think Members have spoken to this.

Hon. Ng'ongo: On a point of order, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order, hon. Mbadi?

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, I have two points of order. The first one is that when we are legislating, we really need to be clear as a House on what you are legislating. So, in the absence of the definition of what is "executive responsibility" really we are legislating nothing. What do you mean when you say someone with executive responsibility and it is not defined in law? So, hon. Temporary Deputy Chairman, the Mover of this amendment should have defined either "accounting officer" or "executive responsibility".

Two, hon. Temporary Deputy Chairman, you cannot put an amendment on an amendment that has already been voted on. We should have proposed an amendment when we were debating that amendment but once the amendment was carried, you cannot now call it an amendment by hon. Linturi because it has already been voted on.

The Temporary Deputy Chairman (Hon. Cheboi): First, hon. Member, we have already transacted that and it has already been carried by the House. The issue of a further amendment being made on an amendment is really something that happens here all the time in this House and you are a senior Member of this House. So, that one has been dealt with. I do not think we are going to reopen it. In terms of wanting to be clearer on these issues, you have the Order Paper. You should be actually following it yourselves. So, let us proceed.

Hon. Ochieng, do you also have a further amendment?

Hon. Ochieng: Hon. Temporary Deputy Chairman on New (1A), I thought we could get a better wording than the wording “adversely mentioned” so that the issue is not being mentioned in a report but being found to have broken the law. This is really what I wanted to bring out.

The Temporary Deputy Chairman (Hon. Cheboi): The Committee will not do that hon. Ochieng. I have heard you. So, I will proceed and 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)*

Hon. Mulu: On a point of order, hon. Temporary Deputy Chairman. You know some of us are getting frustrated because with this technology we are not supposed to be shouting. I wanted to revisit the amendment by hon. Musimba. Although you have said you have dropped it, what is happening when you look at this amendment is very important. You see, this is a situation where the power of this Commission is being taken away from the commissioners and given to a CEO who is somebody who is just appointed by the public. We must be fair.

The Temporary Deputy Chairman (Hon. Cheboi): Order, hon. Makali! There is an issue which I want to get clear from you. What is it that you want to do?

Hon. Mulu: Hon. Temporary Deputy Chairman, you know I am not hon. Musimba but in this House we have actually had cases where people are sent by hon. Members to come and represent them. Unless you are demanding a letter, we are in touch with Musimba since technology is quite advanced.

The Temporary Deputy Chairman (Hon. Cheboi): For clarity purposes, whenever a Member wants to have a colleague move an amendment, it should be in writing and we should be notified in good time. So, as far as I am concerned hon. Makali, I am very sympathetic with you. I can only see one letter from hon. Munyaka and we have it here. So, probably that is what we need in future because we have already dropped the amendment in the absence of a letter and in the absence of hon. Musimba.

Hon. Mulu: Hon. Temporary Deputy Chairman, I agree but it is noted in this House that even though some of these amendments are championed by individual Members of Parliament, interests are shared by a number of Members. I want to support it because it makes sense in terms of law making. I agree with you that I do not have a letter but that should be noted because it is very important.

The Temporary Deputy Chairman (Hon. Cheboi): What hon. Makali has raised is extremely important. That is for the information of Members. Some Members bring amendments and, therefore, deny other Members an opportunity to amend and then for one reason or another are not present to move their amendments. That is number one.

What Members should know is that in future there are two ways in which you can handle this matter. You can have a letter by the Member if you want to move on his behalf or secondly, you can proceed and make your own amendment like hon. Mwaita did even if there is also another amendment. This is because if one is carried, the other one will be dropped. So, I think that is one thing that we really need to do in future. I see the frustration in the eyes of hon. Makali but unfortunately my hands are tied.

Now, we will proceed and dispose of hon. Kang'ata's further amendment.

Hon. Kang'ata: Hon. Temporary Deputy Chairman, I am proposing to amend Section 48 of the Anti-Corruption and Economic Crimes Act, 2003 by inserting the following new Sub-section immediately after Sub-section (1):

“(a) Notwithstanding Sub-section 1 above, a person convicted of an offence under Part (a) when the act or omission constituting the offence occasion a monetary loss to the Government of between Kshs100 million and Kshs1 billion, the person shall be liable to life imprisonment and,

(b) Where the act or omission constituting the offence occasion a monetary loss to the Government of more than Kshs1 billion, the person shall be liable to be sentenced to death.”

(Laughter)

Hon. Temporary Deputy Chairman, the reason why I am proposing this further amendment is that I have looked at the country with the best case practices against corruption. China has the best case scenario and Chinese have been very hard on corruption. Corruption is the number one evil and, therefore, this is going to be the remedy.

Hon. Temporary Deputy Chairman, finally, some Members have raised the issue of the death penalty but my rebuttal to that is very simple: One, how come we are not saying that robbers and murderers are not going to face the death penalty?

The death penalty is still in our statute books. Therefore, so long as it is still there, you cannot support corrupt people and forget about the robbers and murderers. If you do not like death penalty, remove it against murderers, those doing treason, and everyone else.

Secondly, the effect of corruption is that it is making our children die. It is making our poor people fail to get services. The effect is so profound that it is only this amendment that is going to save this country.

(Loud consultations)

(Question of the further amendment proposed)

Hon. Ganya: Hon. Temporary Deputy Chairman, I want to really oppose that amendment. It is very retrogressive. Actually, I think it is unconstitutional. This is because our Constitution allows for capital punishment such as life sentence and I do not think it allows for killing or taking away somebody's life. As it is, I actually do not know even how the Speaker approved this amendment.

Hon. Kamau: Hon. Temporary Deputy Chairman, with due respect to hon. Kang'ata who is from my county, however much I would like to support him I fear because capital punishment is not the way to go in this country. If you are talking about getting all that money and taking it back, that is a different thing all together. With regard to killing and causing death, we are still not yet there.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! There are some Members here who believe that they always have to speak for the Chair to be proved to be fair. I said that I was going to pick Members who have not spoken. I picked Chachu Ganya and Jamleck Kamau who had not spoken. Now, I do not know what unfairness would be unless you are saying that if you do not speak, that is unfairness. Hon. Member for Igembe, I have listened to you and I hear you from where I sit here. I think that is totally unfair. You speak many times in this House. When a Member who has not spoken for the last one week or so speaks, that is what is considered fair.

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

(Loud consultations)

(Several hon. Members stood in their places)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I see your numbers. Allow me to make a decision.

(Loud consultations)

We have 19 Members standing and therefore you fall short of the numbers required.

(Schedule as further amended agreed to)

THE PUBLIC OFFICER ETHICS ACT, 2003 (NO.4 OF 2003)

Schedule

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended in the Schedule in the proposed amendments to the Public Officer Ethics Act, 2003 (No. 4 of 2003)-

(i) by deleting the proposed amendment to section 35(3);

(ii) by deleting the proposed amendment to section s. 38;

(iii) by deleting the proposed amendment to section s. 39;

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkong'a, that was actually brief. Just give us a small explanation. I know you have that capacity.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, they are straightforward. One, we are seeking for the deletion of the proposed amendment to Section 35(3). The reason is that the only amendment that is being sought is that default institution for purposes of investigation should be Ethics and Anti-Corruption Commission. The substantive Act as it is gives powers to the Commission to refer any matter to any appropriate body for investigation. We think that any appropriate body for investigation should continue to remain. For instance the Public Service Commission could decide to refer the matter to Director of CID or the DPP. It is left to the wisdom of the Commissioners of that particular Commission.

(Question of the amendment proposed)

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

(Schedule as amended agreed to)

((Provisions relating to Employment Act agreed to)

THE ANTI-COUNTERFEIT ACT

The Temporary Deputy Chairman (Hon. Cheboi): We do not seem to have an amendment on that one and that is why Members cannot follow. Do we have an amendment? As far as I am concerned we have no amendment, hon. Lang'at. Is the amendment in the Order Paper and if so, which page? There is nothing on page 306, to the best of my knowledge.

((Provisions relating to the Anti-Counterfeit Act agreed to)

((Provisions relating to the Merchant Shipping Act agreed to)

((Provisions relating to the National Youth Council Act agreed to)

((Provisions relating to the Independent Offices Appointments Act agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): As we proceed, hon. Members, you are well aware that the Speaker pronounced himself to the Salaries and Remuneration Commission Act, 2011, and, therefore, it is not going to be part of the Bill even when we proceed and process the entire Bill.

THE POLITICAL PARTIES ACT, 2011 (NO.11 OF 2011)

Schedule

The Temporary Deputy Chairman (Hon. Cheboi): We have amendments to the Political Parties Act, 2011 by the Chairman, Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the Schedule in the proposed amendments to the Political Parties Act, 2011 (No. 11 of 2011), by deleting the proposed amendment to the Seventh Schedule.

The import of the proposed amendment is that we delete paragraph (8) which states that the selection committee shall elect the chairperson and vice-chairperson from among its numbers. That provision should be retained in the Schedule because if you remove it, then there is no provision to elect a chair and vice-chair. So, we thought that should remain and we propose the deletion of the deletion.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I want to support the amendment as proposed but I think the Committee, may be not now but as we proceed in the future, should take a further look at the Office of the Registrar of Political Parties. This is because I believe that there will be democracy in our country if people respect their political parties but we have seen cases where parties recommend disciplinary action on errant members to the Registrar of Political Parties and no action is taken. I think we need to strengthen as a further amendment in future the Office of the Registrar of Political Parties so that we may have discipline. In a democracy, there have to be winners and losers. Like I have said here before, winning and losing is not a permanent thing; today you win, tomorrow you lose; today you are in the Opposition and tomorrow you are in the Government. It would be important that people respect the vehicles that bring them to this House and that can only happen if we strengthen the Office of the Registrar of Political Parties; we give it teeth so that when political parties, with reason, recommend a member for disciplinary action or recommend for removal of a member from the register of political parties, then that action should be taken.

I support!

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

(Schedule as amended agreed to)

THE INDUSTRIAL COURT ACT, 2011 (NO. 20 OF 2011)

Schedule

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT the Bill be amended in the Schedule in the proposed amendments to the Industrial Court Act, 2011 (No. 20 of 2011)-

(i) by inserting the word “employment and” immediately before the words “Labour Relations Court” appearing in the proposed long title of the Act;

(ii) by inserting the word “employment and” immediately before the words “Labour Relations Court” appearing in s.1;

(iii) by deleting the proposed amendment to part 2 of s. 2;

(iv) by deleting the proposed amendment to s.3(1) and substituting therefor with the words “just, expeditious, efficient and proportionate;

(v) by inserting the word “employment and” immediately before the words “Labour Relations Court” appearing in s.4.

(vi) by deleting the proposed amendment to s. 5(1)(a);

(vii) by deleting the proposed amendment to s. 5(2), (3), (4) and (5);

(viii) by deleting the proposed amendment to s. 7(2);

(ix) by deleting the proposed amendment to s.8;

(x) by deleting the proposed amendment to section 9(1) and substituting thereof the following new provision in its proper numerical sequence —

<i>Provision</i>	<i>Amendment</i>
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s. 9(1)	Delete paragraph (b) and substitute therefor the following new paragraph—
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“(b) one or more Deputy Registrars as the administration of justice requires”

(xi) by deleting the word “issued” immediately before the word “guidelines” and substituting therefor with the words “as may be published” appearing in s.15 (6);

(xii) by deleting the proposed amendment to s. 21(2);

(xiii) by deleting the proposed amendment to s.24;

The Committee made several amendments to the ones that had been proposed. Again the reason why those amendments were made was to align it with what the Constitution provides. The Constitution provides that Parliament shall enact laws that will create an industrial and employment court. What they had merely provided was a labour relations court. What we have included is labour and employment court to make it clear so that people do not rush to the High Court for purposes of seeking remedies on matters to do with employment. So, if you have a dispute concerning employment, you refer the matter to the labour and employment court which is equivalent to a High Court. I move that those consequential amendments be approved. We just merely cleaned a number of those proposals and sections that needed to be cleaned to align it with the Constitution.

(Question of the amendment proposed)

Hon. Muchai: Hon. Temporary Deputy Chairman, I want to seek your guidance because I am strongly opposed to these amendments as proposed. I want to bring to the attention of this House that the very amendments that are before the House came in the Tenth Parliament. All of them were thrown out on the basis that there had been no prior consultations between the consumers of the services of the Industrial Court, namely, the employers and workers in this country. This is a requirement under the employment Act. It is a requirement in the Constitution with regard to people's participation. It is a requirement of the international Labour Convention No.144 which is duly ratified by the Government of Kenya and, therefore, forms part of the laws of Kenya. On the same basis, I am aware that there have no consultations before these same amendments are introduced between the social partners. If we proceed on this basis, we will not only be imposing these amendments on the consumers of the services of the Industrial Court---

The Temporary Deputy Chairman (Hon. Cheboi): Order! You have asked for guidance and I am giving it to you now. I will give you an additional one and a half minute to proceed and convince the rest of the membership in opposing. I believe what you are doing is opposing and, therefore, you will have your time to oppose and hon. Members will speak to it. That will be the better way to proceed because you are opposing and I am sure hon. Members are listening.

Hon. Muchai: Hon. Temporary Deputy Chairman, I oppose in entirety the amendments that are proposed by the Departmental Committee on Justice and Legal Affairs on the Industrial Court Act of 2011. This is because the law relating to employment requires that before any labour law is amended and the Industrial Court Act is part of the labour laws, prior consultations will be held at the Labour Board level. Also, there should be participation by the consumers of these services, namely the employers and the workers in this country and further by the International Labour Organisation (ILO) Convention No.144 which is duly ratified by Kenya and therefore forms part of the laws of Kenya.

Hon. Temporary Deputy Chairman, I want to bring it to the attention of this House that these amendments were proposed during the Tenth Parliament---

The Temporary Deputy Chairman (Hon. Cheboi): You know, you are a guru in the field of labour relations.

Hon. Muchai: Yes.

The Temporary Deputy Chairman (Hon. Cheboi): What the Committee is proposing to amend was already in the Bill. So, was this other one subjected to public participation? What the Committee is doing is basically proposing an amendment.

Hon. Muchai: Hon. Temporary Deputy Chairman, the provision of the Employment Act requires participation by social partners, namely the employers and the workers in the amendment of any labour laws.

I am saying that the Industrial Court Act is part of the labour laws. I am further saying that this is a requirement of Convention No.144 of the ILO which is duly ratified by the Government of Kenya and therefore forms part of our laws.

Hon. Temporary Deputy Chairman, if we proceed on this basis we will not only appear as though we do not value what this House considered during its Tenth Session--- These are the same amendments which were brought before the House but were rejected on this basis. We should take a cue from what the Tenth Parliament did and agree that

there is need to have the social partners duly consulted on these issues so that the amendments are not introduced through the Statute Law (Miscellaneous Amendments) Bill but rather substantively after due process in terms of consultations has taken place.

Hon. Chepkong'a: On a point of order, hon. Temporary Deputy Chairman. My very good friend, the Member for Kabete may not have understood the import of the amendments that are being proposed.

Article 162 of the Constitution provides as follows:-

“(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a) employment and labour relations;”

The amendments that are being made to the parent Act which is already in existence is just to delete the words “industrial court” and insert words which are contained in the Constitution which are “employment and labour relations court.” That is all. This Constitution was passed by Kenyans after consultation. So, this is purely aligning the law to the Constitution.

Secondly, the proposed amendments seek to provide that judges of the industrial court shall be employed by the Judicial Service Commission (JSC) like any other judge of the High Court. The amendments do not touch on employment of people but they touch on judicial process. So, what we are talking about here are judicial processes.

In fact, I am ensuring that the Civil Procedure Act applies to industrial court. Previously, the industrial courts have been held as courts with lower jurisdiction. Through the amendments that we have proposed here, we are making the industrial court to be like any other High Court of equivalent jurisdiction.

The Temporary Deputy Chairman (Hon. Cheboi): That is fine. It is not normal but I will give you this opportunity because I can see that other Members do not seem to have a lot of interest in this. You should be brief now. What hon. Chepkong'a is saying which I want you to respond to is that his Committee is basically importing what is in the Constitution which has already been subjected to extensive public participation to the relevant law.

Hon. Muchai: Yes, hon. Temporary Deputy Chairman. There are two issues arising from what hon. Chepkong'a is saying. One, he is saying that he wants these amendments to align the Act with the Constitution. This is what took place when the law on the industrial court was first enacted. This was to operationalize Article 162 of the Constitution. Every consideration was made to ensure that the Act conforms with the Constitution. But more importantly, if you look at some of these amendments that are being proposed, you will find that they have far reaching consequences.

For example, Section 15(5) of the Act states that in the exercise of its powers under this Act, the court shall be bound by the national wage guidelines on minimum wages and standards of employment and other terms and conditions of employment that may be issued from time to time by the Cabinet Secretary for the time being responsible for Finance.

This way, the industrial court's hands are tied. I have read the amendments that are proposed by the Departmental Committee on Justice and Legal Affairs relating to this section. It is not just a question of changing names. This has far reaching consequences on the consumer of the services offered by the industrial court.

Hon. Temporary Deputy Chairman, I strongly oppose and urge the Members---
The Temporary Deputy Chairman (Hon. Cheboi): So, you are opposing. Of course, hon. Chepkong'a has moved the amendments. Let the House have the say.

Hon. Muchai: Hon. Temporary Deputy Chairman, I urge the Members to stand with the employers and workers in this country by entirely opposing these amendments.

The Temporary Deputy Chairman (Hon. Cheboi): I know you have two caps. I will put the Question.

Hon. Gikaria, are you seeking clarity from the Chair, the Departmental Committee on Justice and Legal Affairs?

Hon. Gikaria: Hon. Temporary Deputy Chairman, amendment (xii) reads; "by deleting the proposed amendment to s. 22(2);" and yet we do not have s.22(2).

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Muchai is speaking to the Bill rather than to the amendment by hon. Chepkong'a and his Committee. So, let us dispose of these amendments.

*(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)*

(Schedule as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): I see four Members. I think honestly that one has passed. We are talking about four Members.

THE ETHICS AND ANTI-CORRUPTION COMMISSION
 ACT, 2011 (NO. 22 OF 2011)

The Temporary Deputy Chairman (Hon. Cheboi): Do we have any amendment on that? Hon. Chepkong'a, for the ones that are as brief as this in the Order Paper, you also be brief.

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman. In fact, the only amendment that we are making as a Committee is just to insert the words "the Anti-Corruption and Economic Crimes Act" with respect to Section 11(1), which is the particular legislation that is being referred to. We are just making clarity.

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

THAT, the Bill be amended in the Schedule in the proposed amendments to the Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011) by inserting the following row immediately after the proposed amendment to s.11(1),

s.11 (1) insert the words, "the Anti-Corruption and Economic Crimes Act" immediately before the words "or other written law" appearing in paragraph (d)

(Question of the amendment proposed)

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

(Schedule as amended agreed to)

((Provisions relating to Tourism Act agreed to)

THE VETERINARY SURGEONS AND VETERINARY
PARA-PROFESSIONALS ACT, 2011 (NO. 29 OF 2011)

Schedule

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Dr.) Munyaka has an amendment. I see a letter here where he is asking hon. Kisoi to move on his behalf.

Hon. Kisoi: Thank you, hon. Temporary Deputy Chairman---

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Order, hon. Members! What is happening in this direction of the House? That one you can do it later when we have finished this very important business. You can proceed and pull each other one side or the other!

Hon. Kisoi: Thank you, hon. Chair. I beg to move:-

THAT, the Schedule to the Bill be amended in item relating to the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 (Act No.29 of 2011) by inserting the following new rows after the proposed amendment to s.2 -

s. 23(3) Delete the words "*in private practice*"

New s. 45A Insert the following section-

Application of the Universities Act, 2012 45A. The supervisory and approval functions of the Board as provided in this Act shall not apply to a university established or accredited in Kenya, under the Universities Act, 2012 and which has been granted a Charter.

You know that this particular amendment seeks to provide access to veterinary services. The way it is currently, it only limits those services to only private practice. Where this is one of the very crucial services in this country, it would be paramount that other people who are practising in that profession be able to undertake their work.

When you come to the second amendment, universities are established under the Universities Act. Under the Universities Act, Section 5 seeks to establish the Commission for University Education. One of the functions primarily mentioned in the functions of the Commission for University Education is to accredit, inspect and set standards. This country has witnessed a lot of confusion where some students who get trained in those universities do not get recognition by the Veterinary Board. The

Veterinary Board always claims that it is not part and parcel of the inspection, the accreditation or the standards set by the universities.

The Temporary Deputy Chairman (Hon. Cheboi): I want you to be brief because of time. You have actually made your very good contribution. We could deal with it from now.

Hon. Kisoi: The essence of this amendment is to bring sanity, to align and allow those students who have already been accredited by the university to continue enjoying that professional service. The Veterinary Board should not again subject those students to unnecessary vetting or approvals. Therefore, in case the University Council or the universities require the services of the Board, then they are free to do so.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kisoi, this is a very brief one and so, you do not need to take a lot of time. I have a letter here from hon. (Dr) Munyaka who is actually in Lusaka. I am surprised that he is seated next to you in Lusaka!

(Laughter)

Hon. Kisoi: Hon. Temporary Deputy Chairman, I now recognize his presence.

The Temporary Deputy Chairman (Hon. Cheboi): I will proceed and transact the business. I will give a chance to only one Member and, probably, I will give it to hon. Munyaka to be on record that he is not in Lusaka and that he is here in Kenya!

(Question of the amendment proposed)

Hon. (Dr.) Munyaka: Thank you, hon. Temporary Deputy Chairman. In fact, I have just driven straight from the airport to come and attend this session. I have actually found hon. Kisoi moving the amendment. I shall expound on it in the middle of the business. I am back from Lusaka.

The Temporary Deputy Chairman (Hon. Cheboi): Well, I consider that you have spoken to it. 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 be inserted,
put and agreed to)*

(Schedule as amended agreed to)

THE PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL)
ACT, 2011 (NO 33 OF 2011)

Schedule

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The Temporary Deputy Chairman (Hon. Cheboi): We have an amendment by hon. Chepkong'a. We must move a bit faster now; we only have an hour to go.

Hon. Chepkong'a: I beg to move:-

THAT, the Bill be amended in the Schedule in the proposed amendments to the Public Appointments (Parliamentary Approval) Act, 2011 (No 33 of 2011)-

(i) by deleting the words "House of Parliament" immediately before the words "by a" and substituting therefor with the words "National Assembly" appearing in s.13 (1);

(ii) by deleting the word "House" immediately before the word "the" and substituting therefor with the word "Assembly" appearing in s.13 (1);

(iii) by deleting the words "House of Parliament" immediately before the word "a" and substituting therefor with the words "National Assembly" appearing in s.13 (3);

(iv) by deleting the word "Parliament" immediately before the word "of" and substituting therefor with the words "National Assembly" appearing in s.13 (3)(a);

(v) by deleting the words "relevant House" immediately before the word "the" appearing in s.13(3)(b);

First and foremost, the Public Appointments (Parliamentary Approval) Act applies only to the National Assembly. There are no appointments that are made by the Senate. What we are seeking to amend is to remove the words "House of Parliament" and replace thereof with the words "National Assembly". Issues of appointments lie with this House only. They have nothing to do with the Senate. The Senate never approves any appointment. We have aligned all the rest parts (i) to (v) just to replace "House of Parliament" and make it clear that it is the National Assembly.

(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)*

(Schedule as amended agreed to)

(Provisions relating to the Land Registration Act agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, just for information, we were dealing with the Land Registration Act and there was no amendment to that one. The amendment that the Committee has brought is on the next one - the National Land Commission.

THE NATIONAL LAND COMMISSION ACT, 2012 (NO.5 OF 2012)

Schedule

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

THAT, the Bill be amended in the Schedule in the proposed amendment to the National Land Commission Act, 2012 (No. 5 of 2012) by deleting the expression “one other member of the Commission” in the proposed amendment to section 24 and substituting therefor the expression “Secretary to the Commission”.

There is an ambiguity here because the Chair of the Commission can decide to appoint his crony to be authenticating for him. Therefore, we must have a definite person who will be authenticating with the Chair of the Commission. That is why I propose the Secretary of the Commission, who is the Chief Executive Officer. That is the import of the whole matter.

(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)

(Schedule as amended agreed to)

(Provisions relating to the Kenya School of Government Act agreed to)

THE LEADERSHIP AND INTEGRITY ACT, 2012 (NO. 19 OF 2012)

Schedule

The Temporary Deputy Chairman (Hon. Cheboi): You will realize that the one that is ahead of it; the Public Finance Management Act, has been spoken to by the Speaker and, therefore, we will not be handling it.

Hon. Chepkong’a, do we have an amendment on the Leadership and Integrity Act, 2012?

Hon. Chepkong’a: Yes, hon. Temporary Deputy Chairman. We do. The only thing I seek to do is that instead of amending Section 13 we amend Section 14.

The Temporary Deputy Chairman (Hon. Cheboi): So, you are amending Section 14?

Hon. Chepkong’a: Yes.

The Temporary Deputy Chairman (Hon. Cheboi): Which one is it? It is not on the Order Paper.

Hon. Chepkong’a: I am amending Section 14.

The Temporary Deputy Chairman (Hon. Cheboi): But what we have on the Order Paper is Section 13.

Hon. Chepkong’a: Yes, I am saying that I am proposing the amendments from Section 13 to Section 14.

The Temporary Deputy Chairman (Hon. Cheboi): Are you saying that it is a typographical error?

Hon. Chepkong'a: It is a typographical error.

The Temporary Deputy Chairman (Hon. Cheboi): On (ii) and (iii)? As you speak, you have to be a little clearer on that one.

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkong'a, what is in the Bill is actually 13 and 13(i) and 13(ii). So, I would be surprised that you want it to be 14.

Hon. Chepkong'a: May I consult, hon. Temporary Deputy Chairman?

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkong'a, proceed to move. It looks like it is still in 13(1) and 13(2).

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I am so sorry. I was making reference to the Kenya School of Law Act. I was way ahead of you. I apologise!

I beg to move:-

THAT the Bill be amended in the Schedule in the proposed amendments to the Leadership and Integrity Act, 2012 (No. 19 of 2012)-

(i) by deleting the word “may” immediately before the word “and” appearing in s.2;

(ii) by deleting the proposed amendment to s. 13(1);

(iii) by deleting the proposed amendment to s. 13(2);

(iv) by deleting the proposed amendment to s. 52(1);

(v) by deleting the proposed amendment to s. 55;

The proposal is to delete Section 55, but in the Principal Act, it is indicated that Section 55 is deleted. So, we are being asked to delete what has already been deleted. So, it is superfluous.

With regard to the words “except Section 18” again, Section 18 is still in the Act. So, we found that as an anomaly to remove the reference to Section 18. With Regard to 13(1), we are proposing that this proposed amendment be deleted particularly with regard to the reference to the Independent Electoral and Boundaries Commission and substituting therefor the word “Commission”. It is important to ensure that the Commission that is being referred to is made clear. So, we would like to retain the words as contained in the Principal Act.

(Question of the amendment proposed)

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

(Schedule as amended agreed to)

(Provisions relating to the National Security Council Act agreed to)

THE KENYA SCHOOL OF LAW ACT, 2012 (NO.26 OF 2012)

Schedule

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the Schedule in the proposed amendments to the Kenya School of Law Act, 2012 (No. 26 of 2012)

- (i) by inserting the words “subject to the approval of the Cabinet Secretary for the time being responsible for Finance” immediately before the words “charge property” appearing in s.7 (2);
- (ii) by inserting the following new provision in its proper numerical sequence —

Provision

Amendment

Second
Schedule
item1 (b)

Insert the following new subparagraph

“(iii) has sat and passed the Pre-Bar examination set the School”

- (iii) by deleting item 2

Hon. Temporary Deputy Chairman, I want to give the reasons for the amendment with regard to Section 7(2). It is proposed to give power to the Kenya School of Law to borrow monies and charge the property. The Committee felt that, that power should be subject to the approval by the Cabinet Secretary in charge of Finance. We do not want Kenya School of Law to mortgage their property and wake up one day to find their entire property has already been sold and they do not have a place for students to live.

Secondly, with regard to Section 14(4), we propose that, that section be completely deleted. It is proposing to give power to the School of Law to conduct all examination, including Kenya Certificate of Secondary Examinations (KCSE). There is no such power. They can only conduct examinations with regard to the subjects that they have and that power is already contained in Section 14. So, what they are trying to say is to conduct examinations with regard to KCSE and the rest. It does not make sense at all.

As regards the Second Schedule, we propose that, that should also be deleted. What they were seeking to do is to lower the threshold for persons who will be admitted to the Kenya School of Law. There are already minimum requirements for a person to be admitted to do law in any university. So, they are seeking to reduce that so that anyone can join. Probably, if you obtained a D+ and you went and did law, you can be admitted. What we are saying is that, that is completely unacceptable. It is just like, for instance, in the banks also, if you did not get a C+ in mathematics, you cannot be employed by a bank even if you have a Bachelors of Commerce or Masters of Business Administration (MBA).

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkong'a, that is clear for Members. So, I will now propose the amendment.

(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)

(Schedule as amended agreed to)

THE LEGAL EDUCATION ACT, 2012 (No.27 OF 2012)

Schedule

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the Schedule in the proposed amendments to the Legal Education Act, 2012 (No. 27 of 2012)-

- (i) by inserting the following new provision in its proper numerical sequence —
- | <i>Provision</i> | <i>Amendment</i> |
|------------------|--|
| s. 4(5) | Delete paragraph (a) of subsection (4) and substitute therefor the following new paragraph—
“(a) a Chairperson appointed by the President, who shall be a person with at least fifteen years experience in matters relating to legal education and training.” |
- (ii) by deleting the words “university, nominated by the” appearing in paragraph (g) and substitute therefor the words “public university, nominated by the public university” appearing in s.4 (5);
- (iii) by deleting the proposed amendment to s. 4(5) (i);
- (iv) by deleting the proposed amendment to s. 4(5) (j);
- (v) by inserting the following new paragraph immediately after the proposed paragraph (j)-
(k) one person who teaches law in private universities nominated by private universities.
- (vi) by deleting the words “four” and substitute therefor the word “three” appearing in s.4 (9);
- (vii) by inserting the following new provision in its proper numerical sequence —
- | <i>Provision</i> | <i>Amendment</i> |
|------------------|--|
| s. 8 (1) | Insert the words “offered by legal education providers” immediately after the word “Kenya” appearing in paragraph (a). |
- (viii) by inserting the following new provision in its proper numerical sequence —
- | <i>Provision</i> | <i>Amendment</i> |
|------------------|---|
| s. 8 (2) | Insert the word “providers” immediately after the word “be responsible” appearing in s. 8(2). |

- (ix) by inserting a new paragraph immediately after paragraph (d) as follows- “recognize and approve qualifications obtained outside Kenya for purposes of admission to the Roll” appearing in s. 8(1);
- (x) by inserting the following new provision in its proper numerical sequence —
- | <i>Provision</i> | <i>Amendment</i> |
|------------------|---|
| s. 13 | Delete the words “Higher Education” appearing in paragraph (a) and substitute therefor the words “University Education” |
- (xi) by inserting the word “PROVIDERS” immediately after the word “EDUCATION” appearing in Part III;
- (xii) in S.40(1) by inserting the words “upon the advice of the Salaries and Remuneration Commission” at the end of the subsection.
- (xiii) by deleting the words “Council may, with the approval of the Cabinet Secretary” and substitute therefore the words “Cabinet Secretary may, upon recommendation by the Council and with the prior approval of the National Assembly,” appearing in s. 46 (1).
- (xiv) by deleting the words “Higher Education” appearing in paragraph (c) and substitute therefor the words “University Education” appearing in 46 (1) (c).

Hon. Temporary Deputy Chairman, the Committee deliberated upon all those recommendations for purposes of making amendments to the parent Act and we have a number of proposals to the amendments.

First, we are seeking to amend Section 4(5) (a). In that amendment, we are seeking to cure an anomaly that was contained in the Act in which it stated as follows:-

“The Attorney-General will appoint the Chair of the Council while the Attorney-General himself is a member of the Council. So, there is no way you, as a member of the Council sitting as a member, you can wear a different hat and decide to appoint a Chair. That is an anomaly. So, what we have provided is that the Chair of the Council shall be appointed by the President and must have 15 years experience. What had been provided earlier was that the Chair of the Council must be a senior counsel. Again, we know that senior counsels are very few. So, to restrict it to a club of a few people to the exclusion of other advocates who have been admitted and are practicing would be totally unfair and that was the unanimous decision of the Committee.

The other proposal that we are making is this: There was a proposal that persons be appointed from the private and public sector. What we have done is to clean it up to provide that public universities who are providers of legal education will appoint one person to the Council and private universities providing legal training will appoint one person to sit in the Council. The reason for that is that issues that touch on private and public universities are not the same. They are different and so, we wanted to ensure that all those experiences are brought to the Council to ensure that we have a balanced Council.

So, those are the amendments we are making to ensure that the Council is balanced and the others are purely just corrections. We are removing Higher Education

and replacing it with University Education. That is because, as you know, we no longer have anything called Higher Education. We now have a Commission for University Education (CUE). So, we just made those consequential amendments.

The other one where we are seeking to make amendments is on the remuneration that will be paid to members of the Tribunal as envisioned in the Act. It should be subject to the advice of the Salaries Remuneration Commission (SRC). We do not want salaries to be paid at the whims of the Council. They should be paid at the advice of SRC. Again, that is a constitutional provision.

The Temporary Deputy Chairman (Hon. Cheboi): That is now clear, hon. Chepkong'a.

(Question of the amendment proposed)

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Speaker, I just want to seek a clarification from the Chairperson of the Committee. They are seeking to replace people from the private sector with somebody from the public universities. Does that mean that now in that Council, there will be nobody from the private sector; that is, somebody who is practicing? My view would be that the experience that people have when they are in the private practice is not exactly the same as the experience of people who are teaching.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Nyikal, to the best of my knowledge, what the Chairperson is saying is that they replacing the private sector with a person from the private universities, which is still private sector to the best of my knowledge. Hon. Chepkong'a will clarify that.

Hon. Chepkong'a: What we have just done is this: You know, previously, the Law Society of Kenya had been given responsibility to appoint four persons from the legal profession. What we have done is to reduce to two persons to be appointed by the Law Society of Kenya from practicing lawyers. We want to give an opportunity to people who are not necessarily practicing law in the private sector, but they are teachers of law in the public universities and private universities. This is so that we have a balance. You know when you are only legal practitioners to the exclusion of scholars, then---

The Temporary Deputy Speaker (Hon. Cheboi): That is now clear, hon. Chepkong'a. Let us have hon. Kang'ata briefly.

Hon. Kang'ata: The proposals are very good except the one relating to the representation into the Council where you have a public university getting one representation, which is the same as the private university. Taking into account that this is a public body funded by public funds and where public interest must always supersede private interest; and also taking into account the nature of the legal profession where it is becoming very elitist and where the students coming under the public realm are now being whittled down, I am of the view that we increase the number of representation for public universities instead of maintaining it at the same level with the private universities. I ask the Chairperson, kindly, to increase the representation by public universities to two or three.

The Temporary Deputy Speaker (Hon. Cheboi): That is fine, but I wonder where you were when the Committee was sitting. You should have contributed very vigorously.

*(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)*

We have another amendment by hon. Ichung'wah, Member for Kikuyu Constituency.

An hon. Member: A lay man.

The Temporary Deputy Speaker (Hon. Cheboi): We have a lay lawyer.

(Laughter)

Hon. Ichung'wah: Hon. Temporary Deputy Chairman, I take great exception to that because I have no intention of being a lawyer.

The Temporary Deputy Speaker (Hon. Cheboi): I hear hon. Kajuju say that the word "lay" is un-parliamentary, but I can guarantee you that "lay" is parliamentary and "lawyer" too. So, when you combine both, it is still parliamentary twice.

Hon. Ichung'wah: Hon. Temporary Deputy Chairman, I really have no intention of being a lawyer. I have never had such intentions in my life. I am a very good accountant; one of the best accountants in this Republic. It is in the interest of serving our very good country that I wish to move this amendment.

I beg to move:-

THAT, the Schedule to the Bill be amended in item relating to the Legal Education Act, 2012 (No.27 of 2012) by inserting the following second and third columns immediately before the column relating to s.4(5)-

s.2(1) Insert the words "except those granted a charter under section 19 of the Universities Act, 2012" immediately after the word "degree" appearing in the definition of "legal education provider"

It is basically to recognize that the Legal Education Council has laid a lot of emphasis on those colleges and universities that offer degree courses. You will agree with me that there are very many other tertiary and middle level colleges that are offering legal courses. The Council has not focused on those and all that this amendment seeks to do is to ensure that the Legal Council puts more focus on those tertiary colleges to ensure that the lawyers that we have in this country are people who are very well trained.

The Chairman of the Departmental Committee on Justice and Legal Affairs is whispering that he has no problem with the amendment. I beg to move that amendment.

(Question of the amendment proposed)

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

(Schedule as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): The National Intelligence Service Act, No.28 of 2012, as you are aware, is no longer part of the Bill. We will, therefore, skip that one.

THE KENYA NATIONAL EXAMINATION COUNCIL ACT, 2013 (NO.29 OF 2013)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Melly, you have an amendment on behalf of the Committee. Proceed.

Hon. Melly: Hon. Temporary Deputy Chairman, we sat and deliberated with the Committee on this matter. I, therefore, beg to move:-

THAT, the Bill be amended in the Schedule by inserting the following amendment in the proposed amendments to the Kenya National Examination Council Act, 2012 (No.29 of 2012)-

- insert the following new amendment in its proper numerical sequence —

<i>Provision</i>	<i>Amendment</i>
s.4	Delete subparagraph (vi) of paragraph (f).

Hon. Temporary Deputy Chairman we need to insert the following amendment in the proper numerical sequence just for order. We, therefore, need to delete Sub-paragraph (iv) of Paragraph (f). Thank you.

(Question of the amendment proposed)

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

(Schedule as amended agreed to)

PROGRESS REPORTED

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Temporary Deputy Chairman (Hon. Cheboi): Hon, Members, we are nearing the interruption of business and yet we are not through with the Bill in the Committee. In keeping with the procedure, we have to report progress and either seek to continue the consideration of the Bill in Committee today or another day.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, the Committee of the whole House is considering the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No.24 of 2014 and has instructed me to report progress and seek leave to sit again today.

(Question proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Before I put the Question, I would like to inform hon. Members that we are basically reporting progress for the House to reconvene again so that we can proceed with this matter because we need the extension of time.

(Question put and agreed to)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, before we move the Motion for the extension of time, we are in the House after the Committee of the whole House. We will, first of all, report progress.

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House is considering the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No.24 of 2014, and has instructed me to report progress and seek leave to sit again today.

Hon. Ichung'wah seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Ogalo wants us to recommit and I order him to move.

Hon. Ogalo: Hon. Temporary Deputy Speaker, I propose that the Motion be amended by inserting the words "subject to re-committal of the Land Registration Act provisions". The reason for this is that by passing that section of the Bill, we have literally disbanded all land control boards across the country. Those control boards have a function that they carry out and I do not think it is fair for this House to disband them without a mechanism of replacing them in what they were doing. I would like to appeal to hon. Members to ensure that we keep the land control boards because agricultural land which is freehold is controlled by those land control boards. They are not controlled by the county land management boards under the National Land Commission. I appeal that we do not disband the land control boards.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Do you have a Seconder?

Hon. Ogalo: Yes. Hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Speaker, the request for re-committal is very justified. The land control board deals with issues of consent around agricultural land and if we are going to repeal the entire Act--- We are putting the Act under the schedule in the Land Registration Act and those are the laws which are being repealed. I have looked at the Land Registration Act and it has no provisions in terms of dealing with those matters which were remitted to the Act that is sought to be repealed by being

included in the schedule. I would urge my colleagues to seriously reconsider recommitting that matter so that it can be dealt with seriously. It is a very serious issue and this is why sometimes some of us have said that we must begin to be deeply thinking about matters which we want to treat under the Statute Law (Miscellaneous Amendments) Bill. That is because you may think it is a mere deletion or mere mention of a law but it may have very far-reaching social and economic consequences to this country.

I second the proposal for re-committal.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, for your information, any debate that will be allowed is on the re-committal on the Land Registration Act's provisions.

Hon. Kang'ata: Hon. Temporary Deputy Speaker, I support the re-committal because we all know the effect and importance of land control boards. I would foresee a situation where if the law is passed the way it is, so many women and children are going to lose their land because one of the key functions of those boards is to protect the vulnerable because members of those boards happen to know the local conditions. You cannot depend on the Registrar to protect the rights of women and children. So I support the re-committal. Hon. Members should very seriously think around the issue of the intended decision to do away with land control boards.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the request is for re-committal. The only person who can move an amendment here is hon. A.B. Duale. He is the owner of the Bill.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, first of all, it is very strange that the hon. Member who has asked for re-committal is a Member of the Departmental Committee on Lands. The Bill was with his Committee for more than two months and his Chair brought only one amendment. So, it is about the same thing we did with the Departmental Committee on Defence and Foreign Relations; that if you are a member and you did not do your work, you do not come to the Floor at the last minute to ask for that. To make it clearer, even if we recommit, the person he should be talking to is me. It is only me who can do it. You cannot propose an amendment and so, you better, if the re-committal is agreed upon, bring your amendment to me. I am the owner of the Bill

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. A.B. Duale, I am putting the Question that the House agrees with the Committee in the said report subject to re-committal of the Lands Registration Act.

(Question put and agreed to)

*(Provisions relating to the Land
Registration Act recommitted)*

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. A.B. Duale, I understand you have a Procedural Motion for extension?

PROCEDURAL MOTION

EXTENSION OF HOUSE SITTING TIME

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provision of Standing Order No.33(a), this House resolves to extend its sitting time until the conclusion of business appearing under Order No.14 in today's Order Paper.

Hon. Temporary Deputy Speaker, because we have started with the Statute Law (Miscellaneous Amendments) Bill, we virtually need about 40 minutes because we are remaining with about nine Acts to deal with. I request my colleagues that we extend the time to around 7.00 p.m. so that we can finish this Order. I know that hon. Members are tired and the recess is around the corner. But these are very important pieces of legislation to the people of Kenya and the Government. I will decide on the re-committal when the time comes.

Hon. Oner should learn the Standing Orders. He needs to come and talk to the owner of the Bill because I could have saved him a lot of time. Come and talk to me and I will make your life very easy. I can withdraw that Act. He should get the wisdom of the Member for Kikuyu who knows where the power is.

I ask the Member for Nakuru Town, who was a very great Mayor before we came up with those crazy county things, to second the Procedural Motion.

Hon. Gikaria: Thank you. I think hon. Duale has put it rightly. We have already engaged a very high gear on the Statute Law (Miscellaneous Amendments) Bill. I think it is only fair for us to finish.

So, I second the Procedural Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, since this is a Procedural Motion, I need not propose the Question. Therefore, I will put the Question.

(Question put and agreed to)

Hon. Members, we will go back to the Committee of the whole House.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

*(Resumption of consideration
interrupted in Committee today)*

THE UNIVERSITIES ACT, (NO.29 OF 2012)

Schedule

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

THAT, the Bill be amended in the proposed amendments to the Universities Act, 2012 (No. 42 of 2012—

(i) in the proposed amendment to s.2 by inserting the following new definition immediately before the definition of “technical university”-
“foreign university campus” means an extension of a foreign university, set up by the university pursuant to its statutes and established in accordance with section 28 of this Act;

(ii) by inserting the following second and third columns immediately after the row relating to s.2-

s.5(1) Delete paragraph (c) and substitute therefor the following paragraph-

(c) promote, advance, publicise and set standards relevant in the quality of university education, including the promotion and support of internationally recognized standards;

Delete the words “set standards and guidelines” appearing in paragraph (h) and substituting therefor the words “the provisions of this Act or any regulations made under section 70”

Deleting paragraph (l) and substitute therefor the following paragraph-

(l) on regular basis, inspect universities in Kenya;

Delete paragraph (n)

New Insert the following new subsection immediately after subsection(2)-

(2A) The Commission shall have all the powers as may be necessary for the proper discharge of its functions under this Act.

(iii) by deleting the word “employment” in the proposed amendment to section 12(1) and substituting therefor the word “employed”;

(iv) by deleting the word “programmes” in the proposed amendment to section 13(3) and substituting therefor the word “academic programmes”;

(v) in the proposed amendment to s.20 (1) by inserting the following new rows in the third column in proper alphabetical sequence-

Delete paragraph (c) and substitute therefor the following-

- (c) may, in accordance with its Charter, develop and mount academic programmes.

Delete paragraph (e) and substitute therefor the following-

(e) may award-

(i) degrees, including post graduate degrees and honorary degrees;

(ii) diplomas, including post graduate diplomas; and

(iii) other academic certificates.

- (vi) by deleting the proposed amendment to section 35(1) and substituting thereof the following new provision in its proper numerical sequence —

Provision Amendment

s.35(1) Delete subparagraph (v) of paragraph (a) and substitute therefor the following new subparagraph—

“(v) in the case of public universities, recommend the appointment of the Vice-Chancellor, Deputy Vice-Chancellor and Principals and deputy principals of constituent colleges to the Cabinet Secretary after a competitive process; and”

- (vii) by deleting the proposed amendment to section 55(3);

- (viii) in the proposed amendment to section 70(2)-

- (ix) in the row relating to s.70 (2) by inserting the following second and third columns in their proper alphabetical sequence-

Delete the word “university campuses and university campus colleges” appearing in paragraph (a) and substitute therefor the words “open universities, foreign university campuses and university constituent colleges”

Delete the expression (h) and substitute therefor the expression (f);

Delete paragraph (l).

- (x) by deleting the proposed amendment to paragraph 4 of the First Schedule.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, for purposes of saving time, have the Order Paper. They are definitely seeing what you have indicated there. You should simply highlight very briefly your amendments because we want to save time.

Hon. Melly: Hon. Temporary Deputy Chairman, on Section 35, we have also proposed that the Vice-Chancellors and all the officers, the Deputies and the Principals be appointed after a competitive process.

Thank you, hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

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

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

Hon. Ichung'wah: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Schedule to the Bill be amended in the item relating to the Universities Act (No.29 of 2012) –

(a) In the proposed amendment to s.2 by inserting the following definition in proper alphabetical sequence--

“programmes accreditation ” means, the process by which the Commission recognizes an academic curriculum of a proposed university, or of a university with a Letter of Interim Authority or a foreign university campus.

(b) in the proposed amendment to s.13 (3) by inserting the following new row in the third column in proper alphabetical sequence-

Insert the following new paragraph immediately after paragraph (h)-

(ha) the financial ownership structure of the university if the university is a private university

(c) by inserting the following second and third columns immediately after the row relating to s.35(1)-

s.35(2) Delete the words “with the approval of the Commission”

s.35(3) Insert the words “in accordance with any written law or financing arrangement under section 51A” at the end of paragraph (d).

(d) by inserting the following second and third columns immediately after the row relating to s.38-

s.51(2) Delete the words “Boards of Trustees” appearing in paragraph (b) and substitute therefor the words “sponsor or the Board of Trustees of the university or its equivalent”

New Insert the following section immediately after section 51-

Financing arrangements.

51A. (1) A private university granted a Charter may enter into a financing arrangement with any person or institution upon such terms and conditions as may be set out in the arrangement for the purpose of financing the objectives for which the university is established.

(2) Without prejudice to the generality of subsection (1), the

- financing arrangement set out-
- (a) the rights and obligations of each party to the arrangement;
 - (b) the sharing of assets or liabilities arising from the arrangement;
 - (c) the manner of termination of such arrangement;
 - (d) such other matter as may be necessary under the law under which the arrangement is made.

This is simply to help universities – the University of Nairobi Enterprise Services (UNES) – to access financing to finance their operations. They have been doing this without a law. We want to have that provision for other universities that may have similar enterprises to borrow money and finance their 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)

Hon. (Dr.) Munyaka: Hon. Temporary Deputy Chairman, I have consulted the Vice-Chair, the Departmental Committee on Education, Research and Technology and I wish to withdraw that amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. The amendment is, therefore, withdrawn.

(Proposed amendment by hon. (Dr.) Munyaka's withdrawn)

(Schedule as amended agreed to)

THE TREATY MAKING AND RATIFICATION ACT (NO.45 OF 2012)

Schedule

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:-
 THAT, the Bill be amended in the Schedule by inserting the following new amendments relating to the Treaty Making and Ratification Act No. 45 of 2012:-
 s.8(2) Delete subsection (2).
 s.8(6) Delete subsection (6).
 s.8(7) Delete subsection (7) and substitute therefor the following new subsection-

(7) where the National Assembly refuses to approve the ratification of a treaty, the Speaker shall submit the decision of the House to the relevant Cabinet Secretary within fourteen days of the decision.

s.8(8) Delete subsection (8)

s.8 Delete the word “Parliament” wherever it appears in subsection 1-9 and substitute therefor the words “The National Assembly”.

s.9 Delete the word “Parliament” wherever it appears in subsection 1-3 and substitute therefor the words “the National Assembly”.

s.13(1) Delete the word “treaties” appearing immediately after the words “relating to” and substitute therefor the words “foreign affairs”.

This is very simple. If you look at Sections 8 and 9 of the Treaty and Regulations Act, you will find that they provide for the processing of ratifications of treaties by both Houses of Parliament. This is contrary to Paragraph 1(i) of the Fourth Schedule of the Constitution that has mandated this function to foreign affairs, foreign policy and international trade. If you look at those, you will find that they are functions of the national Government. So, this amendment is basically saying that it should not be to Houses of Parliament. The mandate of considering ratifications and treaties should be for the National Assembly. That is in accordance with the Fourth Schedule.

So, I propose the deletion of Section 8(ii), 6, 7 8 and 9 of that Act. Secondly and finally, under Section 13(i) of the same Act, the word “treaties” appearing after the words “relating to” is to be deleted and substituted with words “foreign affairs”, so that the House can receive all treaties from the Ministry of Foreign Affairs. We do not receive treaties from the Ministries. The treaties that they sign should come through the parent Ministry, Ministry of Foreign Affairs. This is a national Government function and it should not apply to both Houses. It should apply to the National Assembly which is mandated to oversight the National Government. So, the ratification of treaties, in my amendment, is the sole function of the National Assembly.

I beg to move.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I want to put the Question but there is a small correction that we really want to quickly confirm here. Just a minute! Let us give hon. Duale a chance to make some corrections.

Hon. A.B. Duale: Yes, it is good. There is typographical error on the Order Paper at Sub-section 8(vii), where, the National Assembly refuses to approve the ratification of a treaty. The Order Paper reads the Speaker. It should not be the Speaker. It should be the Clerk. The Clerk shall submit the decision of the House to the relevant Cabinet Secretary within 14 days of the decision.

The Temporary Deputy Chairman (Hon. Cheboi): That is, therefore, the Clerk to the National Assembly.

Hon. A. B. Duale: It is not the Speaker. It is the Clerk who is the custodian of all the correspondence to and from Parliament.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. That is indicated. It is “the Clerk of the National Assembly”.

(Question of the amendment proposed)

*(Question, that the words 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)*

(Schedule as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): The Office of the Director of Prosecution Act has also been removed from the Bill and so, we will not be transacting that one.

THE KENYA NATIONAL COMMISSION FOR UNESCO ACT (NO. 5 OF 2013)

Schedule

Hon. Melly: Thank you Temporary Deputy Chairman. The Committee discussed the proposals and I beg to move:-

THAT, the Bill be amended in the Schedule by inserting the following new amendments relating to the proposed amendments to the UNESCO Act No. 5 of 2013:-

(i) by deleting the proposed amendment to section 6(1);

(ii) by deleting the proposed amendment to section 26;

(iii) by deleting the proposed amendment to section 27;

Hon. Ganya: What is the import of this? First it says: “by inserting the following new amendments except deletions”. So, I need further clarifications from the Vice-Chair of the Committee.

The Temporary Deputy Chairman (Hon. Cheboi): Probably, hon. Melly, just in some few minutes, give a brief import of it.

Hon. Melly: Yes. Thank you, Chair. The proposed amendment is to put it in line with the new Constitution. But, first of all, the UNESCO offices have been set in foreign nations and there are instances where, in the previous dispensation, the Principal Secretary in the Ministry of Foreign Affairs was part of the membership. But we saw that, because it was mainly a function of the education sector, we propose that the offices be set up in various parts and the Cabinet Secretary in the Ministry of Education be the responsible Cabinet Secretary. Only the supervisory part should be done by---

The Temporary Deputy Chairman (Hon. Cheboi): Let us just put it this way, hon. Ganya. The Committee is proposing deletions to all the proposed amendments as in the Bill. It, therefore, means that the Act goes back to its original state. So, I think it is straightforward.

(Question of the amendment proposed)

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

(Schedule as amended agreed to)

*(The provisions relating to the
National Honours Act agreed to)*

The Temporary Deputy Chairman (Hon. Cheboi): The Public Benefits Organization Act, is also not part of what we are transacting and so, Members should note that.

THE KENYA LAW REFORM COMMISSION ACT, 2013 (NO. 19 OF 2013)

Schedule

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move;-

THAT, the Bill be amended in the Schedule in the proposed amendments to the Kenya Law Reform Commission Act, 2013 (No. 19 of 2013)-

(i) by deleting the proposed amendment to s.12;

(ii) by inserting the following new provision in its proper numerical sequence —

<i>Provision</i>	<i>Amendment</i>
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s. 8(4) (c)	Delete paragraph (c) of subsection (4) and substitute therefor the following new paragraph—
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“(c) one of whom must be from the Law Society of Kenya.”

Hon. Temporary Deputy Chairman, the proposals we are making to the amendments are just purely two. Substitution, to me,--- We thought that would dilute the Bill. Secondly we are proposing that among the two persons to be nominated by the Attorney General to sit in the Kenya Law Reform Commission, one of them must be from the Law Society of Kenya.

(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)*

(Schedule as amended agreed to)

(Provisions relating to Civil Aviation Act agreed to)

THE SCIENCE, TECHNOLOGY AND INNOVATION ACT (NO. 28 OF 2013)

Schedule

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

THAT, the Bill be amended in the Schedule by inserting the following amendment relating to the Science, Technology and Innovation Act, 2013 (No.28 of 2013)

- (i) by deleting the proposed amendment to section 2(1) and inserting therefor the following new amendments in its proper numerical sequence —

Provision Amendment

s.2 Delete the definition of “Secretary”.

Insert the following definition in its proper alphabetical sequence-

“Director-General” means the “Director-General of the Commission appointed under section 8”;

- (ii) by deleting the proposed amendment to section 5(1) and substituting therefor the following new amendments in their proper numerical sequence —

Provision Amendment

s.5(1) Delete the word “Secretary” appearing at the beginning of paragraph (h) and substitute therefor the word “Director-General”;

- (iii) by deleting the expression “ Insert the word “academic” immediately after the words “research institution” in the proposed amendment to section 12 (2) and substituting therefor the expression “Delete the word “a” appearing immediately before the words “research institution” and substitute therefor the words “an academic”

The Temporary Deputy Chairman (Hon. Cheboi): What is the effect of your amendment?

Hon. Melly: That the Bill be amended in the Schedule by inserting the following amendments relating to the Science, Technology and Innovation Act, 2013, (No. 28 of 2013). The amendments are actually to put the Act in line with the new constitutional dispensation and to ensure that we differentiate academic research centers from those which are actually purely research centers.

Thank you, Chair.

(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)*

(Schedule as amended agreed to)

THE TECHNICAL AND VOCATIONAL EDUCATION ACT, 2013 (NO.29 OF 2013)

Schedule

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

THAT, the Bill be amended in the Schedule by inserting the following amendment in the proposed amendments to the Technical and Vocational Education Act, 2013 (No.29 of 2013) –

s. 9.3 insert the words “at least” immediately before the word “masters” in the proposed amendment to s. 9(3);

We are trying to ensure that we set the minimum standards in the appointment of officers in that particular institution.

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

(Schedule as amended agreed to)

THE LAND REGISTRATION ACT, 2012 (NO.3 OF 2012)

The Temporary Deputy Chairman (Hon. Cheboi): I hope hon. Oner is still here. This is the one that he had successfully requested for a re-committal. Of course, we know that the owner of the Bill is the Leader of Majority Party and we would like to hear from him.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, let me help hon. Oner, and this should be the last time. Being his Committee - and I know he is a very good surveyor - he must have time to do surveying and time to do Committee work.

I beg to move:-

THAT, the Land Registration Act, 2012, (No.3 of 2012) be deleted from the Bill.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, it is good to be clear. We will be proposing and putting the Question later. I am giving you this time, so that you can start consulting. If it is taken, it means that there is no amendment to the original Act.

(Question of the amendment proposed)

Hon. Ogalo: Hon. Temporary Deputy Chairman, I want to thank my brother, hon. Duale, for listening and agreeing with me on this. It is not that I was surveying. It is that I also belong to the Committee on Environment and Natural Resources, which has been prosecuting the Mining and Water Bill for the past few weeks and I did not have time to sit in the Lands Committee during the deliberation of the Statute Law (Miscellaneous Amendments) Bill.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. You have said something to it. I probably will give your neighbour one chance. He has put up his hands in surrender. So, I will proceed to put the Question, which is that the amendment proposed by hon. Duale in respect to the Land Registration Act No.3 of 2012 be now approved.

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

*(Provisions relating to the Land
Registration Act agreed to)*

The Temporary Deputy Chairman (Hon. Cheboi): Members, you will realize that we are not putting the Question now because it is no longer part of the Bill. I hope you understand. So, the effect is that the original Act remains as it is.

(Clauses 2 and 3 agreed to)

(Clause 1 agreed to)

(Title agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Now, hon. Members before we move to report progress, I want to take this opportunity to thank you especially, in terms of your numbers. You have been here all through and, secondly, for vigorously contributing and transacting the matters before us today in a very quick manner. I thank you all and, particularly, the Chairs of Education, Science and Technology Committee, Justice and Legal Affairs Committee, Finance, Planning and Trade Committee, Administration and National Security and more than anybody else, of course, hon. A.B. Duale, the Leader of the Majority Party who has been patient here. I want to thank the acting Leader of the Minority Party and I think that must be hon. Junet.

(Laughter)

No! Thank you very much, hon. Members. Especially also, let me thank the Member for Kiharu who has the knack of coming with very new and interesting issues. So, finally, let us have the Mover.

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No.24 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 STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Temporary Deputy Chairman (Hon. (Ms.) Mbalu): Where is the Chairperson? Please, do the reporting.

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No.24 of 2014 and has approved the same with amendments.

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

Hon. M'uthari seconded.

(Question proposed)

(Question put and agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No.24 of 2014 be now read a Third Time.

Hon. M'uthari seconded.

(Question proposed)

The Temporary Deputy Chairman (Hon. (Ms.) Mbalu): Hon. Members, I have to congratulate you for the good work you have all done, especially the Chairperson, the Leader of the Majority Party and the Members who have contributed.

Hon. Kimaru: Hon. Temporary Deputy Speaker, I concur with the Committee. I congratulate my fellow MPs for a job well done.

Hon. Katoo: Hon. Temporary Deputy Speaker, I want to thank all Members of this House. When the Temporary Deputy Chairman was appreciating the support from Members, I wanted to thank them too. I have lobbied them to be in the Chamber. It is quite unusual to have over 50 Members in the Chamber at this hour, taking into consideration the fact that we have passed a Motion to extend the Sitting of this House to even up to midnight. I thank Members from both sides of the House.

Hon. Nuh: Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity as the Acting Leader of the Minority Party. I thank the House for the good work it has done. I want to thank, especially, the Leader of the Majority Party for conceding to remove many contentious matters in this Bill. This is the spirit we require

when handling Bills in this House. There are major Bills that are coming up very soon. We have just launched *Okoa Kenya* today. We want this unity of purpose so that two-thirds of the membership here passes that Bill when it comes to this House, maybe, next year, so that we can do the referendum.

I urge the Leader of the Majority Party to support the referendum which is forthcoming. That is because it will be good for the country. We want to take *pesa* to *mashinani*. Thank you very much.

Hon. Kaluma: Hon. Temporary Deputy Speaker, thank you for giving me the opportunity. For once, let me thank all the Committees of this House for work well done. Being faced with this Statute Law (Miscellaneous Amendment) Bill and requiring all hon. Members to pour into it by looking at parent statutes relating all the things together and coming up with this superb legislation, moving forward is commendable. But I want to add my voice to the need to discourage that mode of legislation. Statute Law (Miscellaneous Amendment) Bills should deal with minor amendment proposals to law. Some of these things, if we are not vigilant--- Like the one hon. Ogalo - out of vigilance - raised with us, could have very fundamental and far-reaching consequences. There is need to bring those very substantive amendments in the parent law so that they can be checked against substance and the spirit of the law, instead of proceeding in the manner that we have proceeded.

Of course, there is beauty in having us do so much in this casual way, but this is not the way to go. I think the Chair would do well to make indications to the Executive and to the originators of this Bill that we need to discourage this practice so that we do not fall into the traps of not so good work at times. But I thank hon. Members for the vigilance and the beautiful enactments of laws that we are coming up with.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you hon. Members for the contributions. I can confirm that we have the quorum and I will, therefore, put the Question.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, congratulations for the good work. We are doing the right thing in the right way. That is why you came to this House. Hon. Members, the time now is 6.50 p.m. That is as a result of the Procedural Motion that was passed by this House.

It is now time to interrupt the business of the House. The House is, therefore, adjourned, until tomorrow, Thursday, 14th August, 2014, at 2.30 p.m.

The House rose at 6.50 p.m.