

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 27th August, 2014

The House met at 9.30 a.m.

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

PRAYERS

PAPERS LAID

Hon. Deputy Speaker: Hon. Timothy Bosire, is yours a petition or a Paper?

Hon. Bosire: It is a petition, hon. Deputy Speaker.

Hon. Deputy Speaker: You know, it has got to be passed before you can raise it here. It has to go through the Clerk. So, can it be done in the afternoon, once you have gone through the procedure, hon. Timothy Bosire?

Next Order!

STATEMENTS

Hon. Deputy Speaker: Hon. Members, we have requested hon. Members that we defer this Order to enable us to prosecute the Victim Protection Bill, which is a constitutional Bill. We need to dispense of it, without anticipating debate, before some of the Orders that will be prosecuted tomorrow. So, I want to ask that we defer the Statements for now and proceed to the next Order.

(Statements deferred)

BILLS

First Readings

THE TRAFFIC (AMENDMENT) BILL

THE COUNTY GOVERNMENTS (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

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(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 VICTIM PROTECTION BILL

The Chairlady: Hon. Members, we are in the Committee of the whole House to consider the Victim Protection Bill (National Assembly Bill No.41 of 2013).

(Clause 3 agreed to)

Clause 4

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

THAT, the Bill be amended by deleting Clause 4 and inserting the following new Clause-

“4. (1) A court, administrative authority, or a person performing any functions under this Act, shall respect and uphold the values and principles in the Constitution and, in particular, be guided by the provisions of Articles 10, 27(4), 47, 48, 49 of the Constitution.”

(2) subject to subsection (1) a court, administrative authority or person performing functions under this Act shall ensure that—

(a) the court, administrative body or person does not discriminate against any victim on the basis of race, colour, gender, age, language, creed, religion, nationality, political or other opinion, cultural belief or practices, property, birth or family status, ethnic or social origin, disability, or any other grounds;

(b) every victim is, as far as possible, be given an opportunity to be heard and to respond before any decision affecting him or her is taken;

(c) the victim's dignity is preserved at all stages of a case involving the victim, from the pre-trial to post-trial phase;

(d) every victim is addressed in a manner appropriate to his or her age and intellectual development and should be spoken to and be allowed to speak in his or her language of choice, or through an interpreter if necessary;

(e) every victim is treated in a manner which takes into account his or her cultural values and beliefs;

(f) every victim is protected from secondary victimization in all informal, administrative and judicial proceedings relating to the victim;

(g) every victim is accorded legal and social services of his or her own choice and if the victim is a vulnerable victim within the meaning of this Act, then he or she shall be entitled to legal and social services at the State's expense;

(h) a vulnerable victim is entitled to contact with his or her family or any primary care giver;

(i) the victim's dignity is upheld at all times;

(j) the victim's cultural values and beliefs are respected;

(k) the victim is not discriminated; and,

(l) the victim is protected from victimization of any sort.

(5) Where in the opinion of the court or a police officer there is sufficient reason to believe that a victim is likely to suffer intimidation or retaliation from the accused, offender or any agent of the accused or offender, the Board shall immediately refer the victim to the Witness and Victim Protection Agency established under the Witness Protection Act, 2006.

Hon. Chairlady, the reason for the amendment is that we have enlarged this particular Clause by introducing the relevant Articles of the Constitution of Kenya, 2010; Articles 10, 27(4), 47, 48 and 49, so that it can be in line with the supreme law.

(Question of the amendment proposed)

Hon. Chairlady: Yes, hon. Maanzo!

Hon. Maanzo: Hon. Chairlady, I have looked at the amendment proposed to Clause 4. It is good that it has been put in accordance with the Constitution. However, Paragraph (j) says that the victim's cultural values and beliefs are to be respected. Kenya has a wide cultural diversity. So long as those cultures are not repugnant to justice, they can be controlled by law. There are many practices which sometimes victimise people. People end up being victims by virtue of some cultures. In some instances, people die, like in the case of Female Genital Mutilation (FGM).

Paragraph (k) says that the victim should not be discriminated, whereas Paragraph (l) says that the victim should be protected from victimization of any sort.

So, I support.

Hon. Speaker: Yes, hon. Millie Odhiambo!

Hon. (Ms.) Odhiambo-Mabona: Hon. Chairlady, I support the proposed amendment. What the hon. Member has indicated in relation to the victim's cultural values and beliefs is indeed, true. I would want to presume because we sat with the Departmental Committee on Justice and Legal Affairs, and because of time we may have missed out that. I do not know if it would be in order for the Chair to move a further amendment or I could do it; that the victim's cultural values and beliefs in line with the Constitution are respected. As it is, I was actually making reference to Clause 4 (1) (a) and Clause 2, that it is subject to sub-section (1). If it is subject to sub-section (1), then it is made subject to the Constitution. Therefore, I do not need to bring any further amendment.

I support it because it is richer.

Hon. Chairlady: Okay. Is that okay, hon. Chepkong'a?

Hon. Chepkong'a: Yes, hon. Chairlady.

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

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

(Clauses 4 as amended agreed to)

Clause 5

Hon. Chepkonga: I beg to move:-

THAT, Clause 5 of the Bill be amended by inserting the following new sub-Clause immediately after sub Clause (2)-

“(3) No victim shall be denied the rights or welfare of a victim under this Act by reason only that similar protection measures are available under any other written law.”

(Question of the amendment proposed)

Hon. Maanzo: Hon. Chairlady, I have looked again at Clause 5 which states that no victim shall be denied the rights or welfare of a victim under this Act by reason only that similar protection measures are available under any other written law. It means that this particular Act invites all the other laws which can protect a victim of crime and therefore, it is a great provision.

I support all what the Committee did.

Hon. (Ms.) Odhiambo-Mabona: I support hon. Chairlady.

Hon. Chairlady: Let us hear from hon. Kisang.

Hon. Kisang: Hon. Chairlady, I support the amendments proposed by the Chair of the Committee, especially where it indicates that instead of just protection of witness, we include rights and responsibilities so that, at least, the rights of victim or the suspects and the responsibility of the officers are taken care of.

I support and thank you.

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

(Clause 5 as amended agreed to)

(Clause 6 agreed to)

Clause 7

Hon. Chepkong'a: Thank you, hon. Chairlady. You know, I am having issues with hon. Kang'ata here who is consulting with regard to his own amendments.

I beg to move:-

THAT, Clause 7 of the Bill be amended by inserting the word “name” immediately before the word “age” appearing in paragraph (a).

Before, it was important that the name of the victim is known; not only the name but the age as well, so that the victim is identified.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: Thank you, Chairlady. I think that was an oversight because in case of mass victimization where you have those who are victims but can speak, they can give their names. But the ones who cannot speak then we can identify them through their age and other criteria that we provided in the Bill.

Therefore, I support.

Hon. Chairlady: Okay. Let us hear from hon. Kang’ata Irungu.

Hon. Kang’ata: No, hon. Chairlady.

Hon. Chairlady: Hon. Members, so that we manage this matter, please ask for a chance only to contribute if you are contributing on a particular Clause that was read. Hon. Maanzo, what do you have?

Hon. Maanzo: Hon. Chairlady, you know the identification of a victim is very important especially in the event of death. Sometimes even DNA has to be conducted so that a person is identified in the event they have no other documents. You have seen in the past persons have been wrongly identified in mortuaries and buried. Proper identification is important. You saw the case of displaced persons and how people were compensated only for deserving cases to claim that no compensation was paid to them. Therefore, it is important to avoid that confusion, whether the victim is alive or deceased.

I support the amendment.

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

(Clause 7 as amended agreed to)

Clause 8

Hon. Chepkong’a: Thank you, hon. Chairlady. I beg to move:-

THAT, the Bill be amended-

(a) by deleting Clause 8 and inserting the following new Clause-

*Right to
privacy and
confidentiality.*

8.(1) A victim has a right to privacy—

- (a) from the media, whether print, electronic or other types;
- (b) from unreasonable intrusion from health professionals;
- (c) of confidentiality of their communication with victim support service providers; or

(d) from any other person.

(2) Where a victim requests for confidentiality, the head of the law enforcement agency investigating the offence shall ensure that the residential address, telephone number, cell phone number, email, fax and place of employment of the victim and members of the victim's family are not disclosed by the agency except to the extent required—

(a) by law, or for the purpose of law enforcement or prosecution or other legal proceedings;

(b) to ensure the safety and security of any person.

(3) The right to privacy protected under subsection (1) shall be deemed to have been waived where the victim publicizes or consents to publication of matters relating to their case.

Right to
privacy and
confidentiality.

8A.(1) A victim has a right to—

(a) be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse;

(b) have their safety and that of their family considered in determining the conditions of bail and release of the offender; and

(c) have their property protected.

That again was in concurrence with hon. Millie Odhiambo-Mabona to provide for the rights to privacy and confidentiality of the victim. It is important that the victim is protected from the intrusion of the media, whether print or electronic to ensure that they do not suffer double.

Secondly, we are proposing further inclusion of a Clause that deals with the right of protection of a victim. It is important that a victim is protected from intimidation and harassment from any person so that we do not inculcate a process of fear on a victim who has already suffered.

Hon. Chairlady: But this is a very long one. I hope you have sufficiently explained your new amendment. Is the owner of the Bill, hon. Millie Odhiambo--- First of all, hon. Millie, before you come on board, I want to propose the Question.

(Question of the amendment proposed)

Do you want to have the other Members first or you want to come in first? Maybe, you can allow the other Members to come in. Hon. Gikaria, you want to make a contribution to this?

Hon. Gikaria: Hon. Chairlady, I rise to oppose the proposed amendment. I am not saying that the victim should not be given protection, but where the victims are also lying, should it not be at the discretion of the court and not just that somebody must be protected from the media? We have seen this in the past. Secondly, this case might have appeared in the lower courts and those people gave evidence in public. Later, the case

might be going to another court and we saw what happened with the Deputy President's case at The Hague. Somebody went to the Court in Nakuru and said he wants protection. It does not add up. The most important thing for the victim is that it should be at the discretion of the court and not a person just being given a blanket protection and yet, they are lying in front of the court when they have taken the oath. Sometimes, it is good to bring them to the media so that if they are lying, a neighbour can witness to prove that the person is lying. It is important for us to think about it and not just to give people protection by hiding their faces and identity only to give them a leeway to cheat in court. It is important for us also to think about the accused person whom the victim is coming to testify against. We saw what happened when somebody was out-rightly cheating. We want to unmask them, so that another person can come to the rescue of the accused. We do not have an opportunity to do that.

Hon. Ochieng: Hon. Chairlady, I want to support the amendment by the Chair. You realise that the current Clause 8 is quite skeletal and so, the reason we added meat was so that we put the rights of the victim positively. You identify the positive right that you are trying to protect and then you provide for it. Just to respond, the court cannot be relied on. The court has its mechanisms of knowing what the truth is and what the lie is, but you want to give the victim that protection. You do not want to give room for people speculating and the media saying that we can do this and we cannot do this.

With regard to the media privacy and how the media is supposed to treat victims' offences, they have a code of conduct. We also have a law that guides that. We are just restating this, so that no one has an excuse to treat a victim unfairly.

I support.

Hon. Mulu: Thank you, hon. Chairlady. I also want to support this amendment. My interest is more in the area of where the victim is protected from bribery. We have seen situations where victims are bribed and, at the end of the day, we do not realise justice because they will just have been given some small amount of money. I do not know how that will be done, but it is a good proposal that they be protected from bribery.

I support.

Hon. Chairlady: Now, we really have a very long list. Can the Chair clarify? That is why I asked you in the beginning whether you have made it sufficiently clear what the import of your amendment is, so that Members are continuously aware of what you have changed.

Hon. Chepkong'a: Thank you, hon. Chairlady. The victims that we are making reference to in this particular Clause are victims of offences committed against them. Those offences could include rape. You do not want the media to report about the rape of an individual. That is an intrusion into the privacy of that person, which is protected under Article 27(4) of the Constitution. We are seeking to protect the victim from further harm and injury, particularly, on the reputation of that victim. The victim has already suffered. It could include men who are also sexually assaulted by other men. So, you do not want a person who has possibly been raped by another man to also be put in the media that so and so was raped by so and so. Those are graphical things that we do not want to disclose to our children. Again, the newspapers are not read by adults only; they are also read by children. So, that even includes the families of those who have been

raped. You will also traumatize them. So, they need to be protected. We are not only protecting the victim, but also the extended family.

Hon. Serut: Thank you, hon. Chairlady. I do not know at what stage we would describe one as a victim because before evidence is given, I do not think one is a victim. We have had cases of people making allegations and they want to hide behind protection. We have to be very careful when we are making laws in this House. In the past, people have hidden behind certain cocoons, named some people to have assaulted them and later on, it turns out that those are falsehoods. So, as much as we want to protect victims, we also want to protect the accused. We must also protect those who are alleged to have committed certain crimes.

Hon. Mwaura: Hon. Chairlady, I support this amendment because sometimes the media is very intrusive with regard to the details. If we all remember the case of Ms. Kerubo and Ms. Nancy Baraza, it was one of those that you could see how it can be used against even a person who holds a high public office. However, we need to expressly mention social media as part of the media even if it may be captured by inference as other types of media. That is now being used so commonly and it is also used to expose victims. For example, there were even allegations that some of the people who may have been victims in the ICC cases were disclosed in the social media. So, without necessarily saying that it is part of other types, it should be captured as media, whether print or social. It is very important because all of us know that there is a lot of information that is being shared in social media.

Hon. (Ms.) Kedogo: Hon. Chairlady, I support this amendment. The victim should be given the right to privacy especially from the media. Some are shy and it may also cause stigma to them. So, I support.

Hon. Chairlady: Hon. Members, we do not really want to go too long on this one. Hon. Wesley Korir. There are too many of you!

Hon. Korir: Hon. Chairlady, I stand to support this amendment just because we know what the media can do in this country. Some Members are opposing and saying that people can pretend to be victims, but they cannot. You never know if they are lying or not. What if we let the media go out and expose people who are real victims? We should put a blanket to protect everybody. If you are lying or not, it is only the law which can know who is the victim. I support this amendment because the worst thing that happens to people is being exposed. When you expose things that have been done to somebody, it becomes more painful than even the action that was done to that person. In this country, the media can be bought. We know that. Anybody can buy the media and what they write is not always what is right. So, I agree with what the Member has said; that we need to include the social media in this. Social media has become the worst and the biggest liars in exposing the victims.

Hon. Onyonka: Hon. Chairlady, Clause 8(b) says that the victim has a right to privacy and from unreasonable intrusion from health professionals. I do not know whether the Chairman of the Departmental Committee on Justice and Legal Affairs would agree with me that we need to make reference to the Constitution on Chapters 47, 48, 49 and 50. The feeling I have is that, if we take Clause 8(b) and say that the victim should be protected from unreasonable intrusion from the health professionals, then you are creating an environment where you cannot explain what “unreasonable intrusion” is

going to be. In other words, is that individual going to be taken to a doctor? Can the individual who is violated stand up and say: “No, the doctor cannot take specific or certain tests?” This then means that you expose the victim and you expose the accused. The feeling I have is that it would be fair if we just brought in the issue of the Constitution which is Chapters 47, 48 and 49 which talk of fair administration of justice.

Hon. Chairlady: Okay; I want to give it to the owner of the Bill to make a comment. Hon. Members, we cannot over-ventilate one Clause.

Hon. (Ms.) Odhiambo-Mabona: Hon. Chairlady, I have been listening to the comments by hon. Members. I know the issues by the Member for Nakuru are very valid because we do not want to gag the media. But having looked at this carefully in Sub-Clause 2, it says that the victim would request for confidentiality and so it is not a blanket bar. So, the media can report but where the victim says: “I do not want to be covered”, then you do not need to cover. However, it is also a call for our media to be considerate; that when you have mass victimization like the Westgate Mall in Kenya, we go and cover even before the family or next of kin is informed, that is not proper. You see your sister or brother dead and you have not yet been informed. However, on the issue that hon. Onyonka has raised, the Chairperson of the Departmental Committee on Health was also whispering to me and I think it may be dangerous. So, if we have the concurrence of the Chairperson, we can move a further amendment that, that Clause be deleted; the unreasonable intrusion from health professionals. That is because it might bar health professionals from helping victims of crime. So, we do not leave a blanket provision where people will start asking what is reasonable and what is unreasonable. If it is in order, I could move a further amendment that Sub-Clause 8(1)(b) be---

Hon. Chairlady: Let us dispense of it first before we agree on the further amendment.

Hon. Kang’ata: On a point of order, hon. Chairlady. Is the owner of the Bill right when she says that Clause 8(2), where a victim has the right to request confidentiality, applies also in respect to Clause 8(1)? I think 8(2) is a separate Clause and article and 8(1) is also a separate Clause and article. Therefore, the issue of a victim requesting for confidentiality only applies in respect to (2) but not to (1). She needs to clarify.

(Hon. Maanzo stood up in his place)

Hon. Chairlady: You have had your chance, hon. Maanzo. If you can allow, I want to hear the Chairman of the Committee with respect to what the owner of the Bill has raised.

Hon. Chepkong’a: Hon. Chairlady, as you will see, that is the reason I did not raise it. I thought hon. Members would have gone through this because it is already on the Order Paper. We have provided sufficient safeguards against victims who would want to be unreasonable in the manner in which they are being handled. If you look at Clause 8(3) which reads as follows: “The right to privacy protected under Subsection (1) shall be deemed to have been waived where the victim publicizes or consents to publication of matters relating to their case.” With respect to intrusion by health professionals, ordinarily, in normal circumstances, there are forms which patients fill to waive their rights while they are being treated in hospital. If they refuse to waive it, then you cannot

intrude against them. So, it is quite clear. This is the practice in this country and it is protected by law.

Hon. Chairlady: So, hon. (Ms.) Odhiambo-Mabona, I hope that puts that matter to rest. Hon. Members, I will want 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)*

(Clause 8 as amended agreed to)

Clause 9

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

THAT, the Bill be amended by—

(a) inserting the following new Clause immediately before Clause (9)-

9A. (1) A victim has a right to—

Rights

during the trial process (a) be present at their trial either in person or through a representative of their choice;

(b) have the trial begin and conclude without unreasonable delay;

(c) give their views in any plea bargaining;

(d) have any dispute that can be resolved by the application of law decided in a fair a fair hearing before a competent authority or, where appropriate, another independent and impartial tribunal or body established by law;

(e) be informed in advance of the evidence the prosecution and defence intends to rely on, and to have reasonable access to that evidence;

(f) have the assistance of an interpreter provided by the State where the victim cannot understand the language used at the trial; and

(g) be informed of the charge which the offender is facing in sufficient details.

(2) Where the personal interests of a victim have been affected, the Court shall—

(a) permit the victim's views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court; and

(b) ensure that the victim's views and concerns are presented in a manner which is not—

i. prejudicial to the rights of the accused; or

ii. inconsistent with a fair and impartial trial.

(3) The victim's views and concerns referred to in subsection (2) may be presented by the legal representative acting on their behalf.

This is purely an addition. We are not proposing for deletion of Clause 9. Clause 9(a) deals with the rights during a trial process where a victim has complained and proceedings are being conducted in court. This deals with the question of the right of the victim to be present during the trial or through a representative. Sometimes, the victim himself or herself may not wish to be present during a trial. That should not inhibit the fact that he or she is not present in person but a representative could as well do. So, we want to give it a wide latitude for representatives, including lawyers or family members, to be present on behalf of the complainant or the victim. That is the tenure generally that is introduced in Clause 9(a).

(Question of the amendment proposed)

Hon. Chairlady: I said, please, put requests only if you want to contribute to that particular Clause. It will help us to manage the House.

Hon. Iringo: Hon. Chairlady, I wanted to contribute to the one which was just concluded, but I also support this one.

Hon. Gikaria: Hon. Chairlady, again I stand not to support the exception of 9(1)(a). I do not see why a victim should not be present throughout the trial. That is somebody who adversely mentions my name. For example, when I come there, they are not present to see whether those are the people. First of all, they were given protection so I never saw them. Now this is another issue where you are coming to court and she is not there. This is something that is not acceptable at all. It is important for us to have, if you are a victim and you are required to be in court, if you have adversely mentioned my name, I cannot fathom a situation where, by the time I come to court, I cannot find anybody. I do not think that is right. Of course, the other Clauses are okay; they give view of any plea and things like that. That is not right.

Hon. Chairlady: You have expressed yourself on that one.

Hon. Chepkong'a: On a point of order, hon. Chairlady. If we leave that comment just to go like that, it will not be fair. Hon. Gikaria needs to understand the process in court. The presence that is referred to here is for the victims just to be seated. However, when it comes to the point when he or she is supposed to give evidence, he or she is supposed to be present. There is no substitution of a victim when he or she is supposed to give his or her evidence. They must be present in court. The accused person has the right thereon to cross-examine the victim either through his lawyer or himself.

Thank you, hon. Chairlady.

Hon. Chairlady: Hon. Members, I keep referring back to the Committee because I believe that the Committee and the owner of the Bill are the people that have prosecuted and studied this Bill the most.

Yes, hon. Ochieng.

Hon. Ochieng: Thank you very much, hon. Chairlady. I also want to support my Chair. In terms of good sense and order, I want to appeal to my Chair that the amendment he has proposed is very good. That is because it builds onto the constitutional right to a fair trial.

We are proposing to introduce 9(a) before Clause 9. That is what we are proposing to do. Could we not have Clause 9 first before we have 9(a)? I hope hon.

Chairlady you are following what I am talking about. We are introducing 9(a) before we do Clause 9. Could we not have Clause 9 and then 9(a)?

The current Clause 9 talks about security of the victim. If we introduce 9(a), we can then call it the right of the victim at trial because the two are not related. Security of the victim and the right to victim at trial are two separate ideas. They are very important in their own separate rights. So, I would like to request my Chair and even the Mover of the Bill to consider having 9(a) after Clause 9 and probably rename the footnote as---

Hon. Chairlady: I do not think there will be any problem with that. Maybe, we need to let the drafters work with the Chair and the owner of the Bill.

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

(Clause 9 as amended agreed to)

Hon. Chairlady: Let us now move on to Clause 10. We have three amendments to this Clause. We shall begin with the one by hon. Kang'ata. That is the amendment to Sub-Clause 1. After that, we will move to the amendment on Sub-Clause 2 by hon. Chepkong'a and finally, an insertion by hon. Kang'ata. We shall move in that order.

Clause 10

Hon. Kang'ata: Hon. Chairlady, I beg to move:-

THAT, Clause 10 be amended in subClause (1) by—

(a) deleting the word “may” appearing immediately after the words “criminal offence” and substituting therefor the word “shall”;

(b) deleting the words “unless the court orders otherwise” appearing immediately after the words “Criminal Procedure Code and”.

The import of my amendment is to tighten the impact of Clause 10. That is because the way it is, is vague and it will not give the desired effect. The desired effect is to ensure that there is the victim impact statement. When the court is sentencing a person who has been convicted of the offence, the views of the victims are always taken into account. This will not be a discretionary matter.

The intended amendments are crucial particularly when you take into account the fact that amendments which were brought by the Chair at 9A(1)(c) “to give their views in any plea bargaining” have now become law. If we fail to support my view then that Clause will be a contradiction to 9A(1)(c).

Thank you.

(Question of the amendment proposed)

Hon. Chepkong'a: Thank you, hon. Chairlady. I agree with the second proposed amendment which seeks to delete the words “unless the court orders otherwise”. But with respect to the first amendment which obligates the victim to make a statement; that, in itself, is going too far. If that amendment is carried, it means that every victim must write

a statement. There are times when victims do not want to write any statement. So, you are forcing every victim to write a statement. First and foremost, that is contrary to the Constitution. No one should be forced to give a statement. It is supposed to be voluntary. I agree with the second amendment that the court should not be given discretion as to whether a witness should give a statement or not. However, when the statement is given, the court must take it into account. So, I agree that the second part of the amendment is in order but the first part of the amendment is unconstitutional. That is forcing a victim to record a statement.

Thank you, hon. Chairlady.

Hon. Ganya: Thank you, hon. Chairlady. I concur with the Chair of the Committee on the first amendment where victims are forced - or is it mandatory - to make a statement. That should be voluntary.

Hon. Ochieng: Thank you very much, hon. Chairlady. I want to oppose the amendment by hon. Kang'ata. But as I do so, I thought what we should be considering - and I have been discussing this with the Mover of the Bill - is whether the so-called statement should be given to a third party to prepare it or it should be the victim to prepare. However, in terms of representation, we must make it optional. I want to oppose both the issue of "shall" and the removal of the words "unless the court orders otherwise".

Hon. Chairlady, I want us to remember that in terms of protection of the victim, the court has a lot of say. The court, may, during the proceedings, have noted one or two things that make it necessary that we do not need that statement. I would like to oppose both (a) and (b) so that the section remains as it is now.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Chairlady. I would like to encourage hon. Irungu if he could adopt what the Chair is saying. If you look at the import of what he is suggesting by deleting "may" and putting "shall", it means that every victim of crime - and victims of crime here include victims of hit and run of accidents, victims of rape and victims of all manner of crimes--- Every time you are a victim and the matter is in court, you must give a victim impact statement. That will actually slow down the process. We are saying that let the victim who wants to tell the court how the crime has impacted their lives do so. That is because sometimes courts do not understand until they listen to how, for instance, our dear colleague, hon. Dennitah Ghati, through the accident, has suddenly become disabled or the hon. Member for Kamukunji. If that person is given a chance to explain to court how the crime has impacted directly in his or her life, sometimes people may not understand. I think we should leave it to discretion.

However, I agree with the second amendment. This is so that we do not make victims give impact statements and then the courts do not consider what they have said. I agree with the second bit but I would like to persuade him to leave it at "may".

Hon. Chairlady: Hon. Irungu, I will give you the last chance and then I have to put the Question and allow the House to make the decision.

Hon. Kang'ata: I am persuaded and so I withdraw.

Hon. Chairlady: Can you withdraw so that it is on the HANSARD, please?

Hon. Kang'ata: Yes, hon. Chairlady I withdraw the amendment in respect to 10(a). So, the "may" can remain instead of "shall".

*(Proposed amendment to Clause 10(a)
by hon. Kang'ata withdrawn)*

Hon. Chairlady: Okay and, therefore, I will put the Question.

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

Hon. Chairlady: Now, hon. Members we are still on Clause 10 and we have an amendment by hon. Chepkong'a. It is on Sub-Clause 2. We have dispensed with sub-Clause 1.

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

THAT, the Bill be amended in Clause 10-

(a) by inserting the following new sub-Clauses immediately after sub-Clause 2-

(3) A victim has a right to present a victim impact statement in all cases where the court is to consider victim protection and welfare.

(4) The statement referred to under subsection (1) shall include information on the impact of the offence on the victim's life and any concerns the victim may have about their safety.

(5) Despite any other provision set out in this Act, the victim impact statement shall be prepared by the investigating officer in consultation with other agencies in the manner prescribed in this Act.

Hon. Chairlady, the reason why we are making these proposals is that when the courts are considering sentencing victims, it is important that the victims are given the right to make statements or to allow third parties, including the police in those circumstances, to record those impact statements on their behalf so that the court can make a determination that is both fair and just.

Thank you, hon. Chairlady.

Hon. Chairlady: In the Order Paper, it is on pages 372 and 373 at the top. Hon. Members, before our guests leave, I want to recognise the presence of Sergoit Primary School, Elgeyo Marakwet County, Keiyo North Constituency. You are welcome to the National Assembly.

(Applause)

Let me allow the two to consult and be on the same page.

(Question of the further amendment proposed)

Hon. Chairlady: Hon. Ochieng, do you have an issue?

Hon. Ochieng: Hon. Chairlady, I want to agree with my Chair, but the problem with this Bill is to do with coherence because if you look at the proposals being made by my Chair now, and what we have now at Clause 10(2), the current Clause 10(2) says that

if a victim wishes to make a statement, a procedural agency shall refer the victim to an appropriate victims' services agency.

However, at (5) we are now proposing that this should be done by the investigating officer. If you look at (5) we are now saying that despite any provisions in this Act, the victim's statement shall be prepared by the investigating officer and yet, if you look at the nature of this Report, I think the body better suited is the victims' services agency. So, the coherence of this Bill is going to be a problem if we just pass some of these amendments and I would like my Chair to consider this.

Hon. Chairlady, I am just trying to request my Chair to consider dropping Sub-Clause 5 because it is coherent with the current (2).

Hon. Chairlady: Is that amendment by the Chair?

Hon. Ochieng: Yes, by the Chair at 10. Parts (3) and (4) are okay, but (5) basically is a contradiction of the current (2). The current (2) sorts out the issue better because it allows the victims agency, which should then have the expertise to help the victim prepare this statement instead of an investigating officer preparing the statement.

Hon. Chairlady: Okay. Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, hon. Chairlady. I totally concur with hon. Ochieng. Of course, you know he is also a member of the Departmental Committee on Justice and Legal Affairs and we share---

Hon. Chairlady: We cannot hear you Chair.

Hon. Chepkong'a: Unfortunately, I have a flu and so, I keep on losing my voice. I was saying that, as you know, hon. Ochieng is a member of the Departmental Committee on Justice and Legal Affairs and he has been part and parcel of this process. I think this was an oversight because Clause 5 contradicts Clause 2 and, therefore, I withdraw that proposed amendment; sub-Clause 5.

*(Proposed amendment to Clause 10(a)(5)
by hon. Chepkong'a withdrawn)*

The Chairlady (Dr. Laboso): Hon. Millie, do you want to make a comment on this?

Hon. (Ms.) Odhiambo-Mabona: Hon. Chairlady, I am sorry. I think I am losing track of where we are because the amendment that we were dealing with was an inclusion and which in the Order Paper is on pages 372, 373 and 374 and that is inclusion of 10(a).

Hon. Chairlady: At the moment, we are only looking at the insertion of sub-Clause 2 which is (3),(4) and (5) and the Chair is concurring with hon. Ochieng and agreeing that sub-Clause 5 should be deleted or withdrawn. He has withdrawn sub-Clause 5. Is that okay?

Hon. (Ms.) Odhiambo-Mabona: Yes, that is okay.

Hon. Chairlady: Now, the honourable Member, you have a further insertion. Can you prosecute both of them so that we move on? That is 10(a) and 10(b) and several others. But before you do that, hon. Gikaria, you seem to have a concern or a contribution.

Hon. Gikaria: Yes, hon. Chairlady. I seem to agree with what hon. Ochieng is saying. But sub-Clause (c) says that it goes to the victims services agency but at the same

time it is saying here that it is the investigating officer with other agencies in a manner prescribed in this law. I do not see any contradiction because the investigating officer will go to that agency and be able to give it. I mean there must be somebody who will write the statement. So, even if it is the victims services agency, I do not see any contradiction because there must be somebody who will do the statement. But it is said under sub-Clause 5 that it must be in consultation with other agencies. I do not see any contradiction at all.

Hon. Chairlady: But because the Chair has withdrawn it, let us leave it. It is tidier to leave it as it is and that is after consultations. Hon. Chepkong'a, can you please prosecute the other insertions that you have made and then we can put the Question for all the amendments you are making and explain yourself?

Hon. Chepkong'a: Yes, thank you hon. Chairlady. We are making further proposals for inclusion in Clause 10. Again, those will be drafting issues in terms of cleaning so that it will be numbered so that it follows naturally as it is proposed.

Hon. Chairlady, I beg to move:-

- THAT, the Bill be amended in Clause 10-
- (b) by inserting the following new Clauses immediately after Clause 10-

Purpose of
Support
and welfare
services

10A. (1) In addition to the enforcement of rights provided under section 8, the Board shall provide support services as may be appropriate.

(2) The services to be accorded to the victims under this Act shall be accorded so as to assist victims-

- (a) deal with physical injury and emotional trauma;
- (b) access and participate in the criminal justice process;
- (c) participate in restorative justice to obtain reparations; or
- (d) cope with problems associated with victimisation.

Hon. Chairlady, the reason why this is being proposed is because it supports the welfare of the victim and it makes it clear how the victim will be dealt with by all the agencies, particularly those who have injuries and emotional trauma on how they should be allowed to access medical services and it also deals with issues of restorative justice in terms of obtaining reparations by victims.

Hon. Chairlady, I beg to move:-

- THAT, the Bill be amended in Clause 10-
- (b) by inserting the following new Clauses immediately after Clause 10-

Right to choose
Whether or not to
Participate in restorative
justice

10B. (1) A victim has a right to restorative justice.

(2) Where the victim elects to participate in any process towards restorative justice, the process shall proceed on condition that—

(a) the participation of the offender shall not prejudice any of the offender's rights under any law or be deemed as evidence of admission or proof of guilt in respect of the offence complained of;

(b) any of the parties may withdraw their participation to the process at any time;

(c) where a process for restorative justice fails, the criminal trial of the offender shall proceed to final determination, but without prejudice to the right of the victim to seek appropriate relief in civil proceedings; and

(d) The process towards restorative justice does not violate the provisions of Article 159(3) of the Constitution.

(3) Any agreement for restoration or other redress agreed between the victim and the offender shall be recorded and enforced as an order of the Court and may be enforced as a decree of the Court.

(4) Any restorative justice process shall be for a period of six (6) months and may only be extended with the leave of the court.

Right to a Prompt release of victim's property held as exhibits .

10C. Where a law enforcement agency is in possession of any property of a victim, the head of the law enforcement agency shall, where the Agency is satisfied that the property is no longer needed as evidence for an investigation or prosecution, ensure that the property is returned to the victim promptly.”

Rights of vulnerable victims .

10D.(1) A court or competent authority may, on its own motion or at the request of the prosecution or the victim officer declare a victim a vulnerable victim, where in the opinion of the court or competent authority, the victim is likely to be vulnerable on account of—

(a) physical, intellectual, or psychological impairment;

(b) age;

(c) dependency on the accused;

(d) trauma;

(e) disability;

(f) cultural differences;

(g) religious differences;

(h) gender;

(i) language; race;

(j) the nature of the offence committed against them; or

(k) health status;

(2) Where the court or competent authority has doubts as to whether a victim should be declared a vulnerable victim in terms of this Act, the court may summon an expert to appear before it and advise it on the vulnerability of the victim.

(3) Upon the declaration that a victim is a vulnerable victim for the purposes of this Act, the court or competent authority shall direct that a representative be appointed in respect of such a victim.

(4) A representative so appointed under this section shall be summoned to appear before the court or competent authority on a specified date and time to act as a representative and shall upon failure to appear as directed, appear before the court or competent authority to advance reasons for such failure upon which the court or competent authority may act as it deems fit.

(5) A victim who is a person considered to be vulnerable as defined under this Act, shall be accorded all the rights conferred to them in the Constitution and shall—

- (a) receive special consideration from the criminal justice agencies and victim support service providers in matters related to victim protection and welfare services;
- (b) be provided by the Director with programs designed to ensure their enjoyment of the benefits provided for victims under this Act; and.
- (c) in the case of a child, ensure that the best interest of the child is of paramount consideration and all the rights accorded in the Children's Act are observed.

(6) Despite the above provisions, where a victim who is a person considered as a vulnerable victim is not able to act under this Act in person, the victim shall—

- (a) appoint a representative to act on their behalf;
- (b) request the victim officer to act on their behalf; or
- (c) in the case of a child, have the parent, guardian or legal representative acting on their behalf.

Rights of a
child
victim.

10E. (1) Where it appears to any police officer or the Director of Public Prosecutions public officer presiding in a case where there is a or any vulnerable child victim, and it appears that it would not be prudent to place the victim with the parents, guardians, or care-givers, the child victim shall be committed to a place of safety until the court makes a decision in relation to the matter.

(2) A child victim who is held in any institution shall be accorded treatment in accordance with the Children's Act.

10(B) deals with the rights to choose whether or not to participate in restorative justice. That is again a right of a victim. It is giving the victim the right whether he or she would wish to participate in that particular system. That is whether they wish to be restored or they do not want. Again, that is in line with Article 159(3) of the Constitution.

Hon. Chairlady, on what we have done, we do not want that process to continue endlessly. We are providing in Clause 10B (4) that, that sort of process should not go on for more than six months unless, of course, it is extended by the court. We have known of many cases where the accused persons have used those systems just to delay the process of concluding trial by claiming that they would like to conduct some sought of Alternative Dispute Resolution (ADR) with the victim and so, they may endlessly continue negotiating and engaging the victim who may be, at that time, extremely vulnerable. They are promised all sorts of things. So, we are saying that, that process must end within six months and, if it has to continue, the court must come in.

With regard to Clause 10C, we are proposing that this be included because it provides for the right to prompt release of victim's property held as exhibit. As you know, hon. Chairlady, many a times, the properties of the victims that are being used as exhibits are always held in court forever. The victim does not have any right to take away the exhibit and so, we are providing that the property of a victim may be released by court upon request, so that they are not held forever in courts. So, that is Clause 10C which gives the rights to the victim to claim back his or her property.

Then, Clause 10D is on the rights of vulnerable victims and, again, I would like to move a further amendment here, on Clause 10D(1), which talks about a court or a competent authority. There is no other competent authority other than courts. So, I am proposing that “or competent authority” may be deleted and the rest flows.

With regard to 10E, rights of a child victim, again this is providing for an assessment in the unlikely event that a child who is vulnerable appears to those authorities, including the Director of Public Prosecution and the police that, that child may need to be housed in a different place other than where they normally live with the parents, guardians or caregivers. Then that child will be taken to a different place for safe custody and the courts will have to come in to make a decision, with respect to that. Again, we have made reference to the Children Act because it is more comprehensive in dealing with the Children’s rights.

Thank you, hon. Chairlady.

Hon. Chairlady: Okay, that is the explanation.

(Question of the further amendment proposed)

Hon. Chairlady: We just want contributors at the moment. Hon. Grace Kiptui, are you contributing on what hon. Chepkong’a has just presented? Please remove your card. Hon. David Gikaria.

Hon. Gikaria: Maybe the Chair can clarify on page 373, Clause 10A(d), “to cope with problems associated with victimization.” He has already specified some of them, such as injury, emotional trauma, access and participating in criminal justice process and participating in restorative justice. I hope the problems associated with victimization will not form part of where we will use this system to bribe the people who are concerned; to give bribes to the victims, for example, and say: “I cannot work now. I need you to maintain me for the coming two to three years or within the period of the trial.”

So, we need to be very specific, so that we do not just start paying people because they have become witnesses in a court and they want their upkeep to be paid for. It is important to them. I know, it has been specified but---

Hon. Chairlady: Okay, hon. David Ochieng.

Hon. Ochieng: Hon. Chairlady, I just want to sympathize with my Chairperson because he is going through these pains because of one very important issue in this country; that officers we charge with work do not work. So, we are being forced to reinstate a law in every other Act that we do. We have to reinstate rights, obligations and responsibilities. If people are going to be charged with implementing this law, they must use the kind of energy we are using in just reinstating this law. I want to support my Chair in doing that to ensure that the rights of the victims are upheld. I support.

Hon. Chairlady: Okay. Hon. Millie Odhiambo.

Hon (Ms.) Odhiambo-Mabona: Thank you, hon. Chairlady. The amendments that are being proposed by the Chair are in order. That is because some of the things he is taking into account are that our criminal justice system is always only punitive. So, what we are trying to introduce in the African setup is that sometimes we are not only looking for punitive but restorative means, so that the person is placed as near as possible to

where they were before. So, the Chairman is very positive and has also classified vulnerable victims such as children and persons with disability. So, I support.

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

New Clause

Hon. Chairlady: Now, we have the last amendment by hon. Kang'ata on the same Clause 10.

Hon. Kang'ata: Thank you, hon. Chairlady. I beg to move:-

THAT, the following new Clause be inserted immediately after Clause 10—

Victim as a
Complainant

10A. Where the victim is a complainant in a criminal case, the victim shall, either in person or through an advocate, be entitled

to—

(a) cross-examine defence witnesses;

Cap.80 (b) subject to provisions of the Evidence Act, adduce additional evidence that had been left out or withheld by the prosecution;

(c) give oral or written submissions; and

(d) be supplied with copies of defence witness statements and evidence before the commencement of the trial.

I am proposing to amend Clause 10 by introducing four amendments but I would like to drop two of these proposals. The first one, which is the right to cross examine defence witnesses, that can be left to the State prosecution. I also want to drop part (d), the one relating to the supply of statements because this one has already been captured by the Chair in his earlier amendment to Clause 9.

*(Proposed amendments to parts (a) and (d)
by hon. Kang'ata withdrawn)*

So, therefore, the one I am asking this House to consider is parts (b) and (c). For, part (b) I am asking this Committee to consider because the greatest injustice that we see in our criminal justice system is where the prosecutor acts in cahoots with the suspect and withholds or hides some evidence. That is because you, as a victim, do not have recourse to introduce that additional evidence. Let us say for instance, it is a knife that was used to injure a victim. I have seen instances where those knives are thrown away or even in cases of defilement, the police fail to probably bring evidence relating to defilement and you see that case being thrown out.

So, therefore, we need to create a legal provision which enables the victims to probably bring in that additional evidence. But, the questions there should be: What if the victim probably brings wrong evidence? This Committee should not worry about that because the court has a mechanism of ensuring that the evidence that is being tabled there

is correct. No wonder, I am saying that right is subject to the provisions of Evidence Act; to ensure the evidence is only admissible in law.

In part (c), it is about submissions. In court proceedings, ideally, submission is not something that is binding *per se*. Submission is an issue of just giving your own position or the interpretation of the law and the facts, which have been adduced by the court. In fact, anyone ideally can submit. It does not necessarily have to be the parties in any case. It is just helping the court to understand the legal procedures or positions regarding the matters before the court. So, therefore, there is no prejudice that is going to be occasioned on the accused person in the event a victim is given the right to give submissions.

Thank you, hon. Chairlady.

(Question of the new Clause proposed)

(New Clause read the First Time)

*(Question, that the new Clause
be read a Second Time, proposed)*

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Chairlady. I strongly support what hon. Kang'ata is suggesting. I know I have seen him speaking at length about this, and the reason I know he is speaking at length is that, should we pass this, I know many lawyers may challenge this because many of us have a mind-frame of the positivists where we believe that the law should be done the way we inherited it from the white man. What most people will tell you is this: With the Commonwealth system, we do not know that. But I am a natural. I come from the natural law school where I believe the law is made for man and not man for the law. If you are making the law for man, in most of my practice, I have been a lawyer for victims of crime. What happens sometimes is that when you go to a court as a lawyer for the victims, you sit down and you see the prosecutors messing up the case. I have been trained, I have legal expertise and I cannot do anything. I just sit and observe. We actually intervene and the hon. Attorney General allowed some limited leeway where they can now gazette lawyers as private prosecutors to deal with cases. What we are saying is this: It should not be given as a discretionary lead onto the Attorney-General. You should allow us where a victim has the ability to hire a lawyer, their lawyer can also cross-examine, can also adduce evidence so that the prosecutor does not mess up the case. We have seen cases of young girls who have been raped. Then there is a prosecutor who does not bring the panties for evidence. They tell you that the house has been burnt. You end up traumatizing the victims when you know the evidence is there and because they have been compromised, they do not present it. So, it is good to give lawyers a chance where the prosecutor is not willing to do a good job to present. I think it is an excellent amendment and I support.

Hon. Chairlady: Okay. Hon. Ochieng.

Hon. Ochieng': Hon. Chair, I also rise to support. I agree with what hon. (Ms.) Odhiambo- Mabona has said. I was just looking at part (b) and I think our public authorities have the benefit of doubt. I was just requesting hon. Kang'ata to leave out the

words 'withheld by the prosecution' so that the evidence that had been withheld means something that is already negative. Somebody is already doing something wrong. But if you left it at 'left out' we will be curing the mischief. I hope hon. Kang'ata accepts that.

Hon. Chairlady: Is hon. Kang'ata okay with that?

Hon. Kang'ata: Yes, I am okay.

Hon. Chepkong'a: Thank you hon. Chairlady, I must thank hon. Kang'ata. He has withdrawn what I thought to myself was a completely new law that he intended to introduce here, particularly to parts (a) and (b). I am trying to persuade him because of two things. Where a victim is a complainant in a criminal case, that victim who is a complainant must have given evidence in the first instance. To allow the victim again to submit at the close of the prosecution, that is prejudicial to the rights of the accused person. What I am suggesting hon. Chairlady is that the only person who can possibly be allowed to submit both orally and in writing, should be the advocate so that it is incumbent upon the victim or the complainant to hire an advocate to assist him or her in submitting. Again, you will be submitting not only the evidence, but including points of law. I do not assume that there may be some instances where the victim or the complainant may be advocates. But more often than not, the victims are not normally lawyers. It will be against the rights of the accused persons to allow a victim or a complainant who has already given evidence and participated in the trial, at the conclusion of the proceedings, the victim or the complainant wakes up and says that he or she has something to submit in regard to the case. I think we should divorce this because our nature of proceedings is adversarial, they are not friendly. So, I suggest - and I have suggested here to my colleague here who is my good friend - that we leave out the victim himself or herself giving evidence. But they can give submissions, both oral and written, at the conclusion of the trial.

Hon. Chairlady: So, is yours just on the issue of Part (c) or even (b) as well?

Hon. Chepkong'a: The amendment is on the first one; 10A so that it reads as follows:-

"Where the victim is a complainant in a criminal case, the advocate may be entitled to give oral or written submissions".

I hope he has no objection to that.

Hon. Chairlady: Hon. (Ms) Odhiambo-Mabona, let us hear your thoughts on this.

Hon. (Ms.) Odhiambo-Mabona: Hon. Chairlady, I think what the hon. Chair is worried about, just for your information, is cured by the provision subject to the provision of the evidence Act unless you dropped (b). If it is subject to the evidence Act, then it means even when you have a magistrate dealing with the matter, they will not hear the evidence of the victim at the tail end. It has to follow the process of evidence giving. The evidence giving is not at the tail end. If we close out the victim unless they have an advocate, then it would also be prejudicial to victims who cannot hire advocates. So, I want to encourage the Chair that we make it subject to the provisions of the Evidence Act. The Evidence Act has a very clear process that a trial goes through, unless I do not know, if you can clarify--- I do not know which ones you have dropped. I do not know whether you dropped (b). But if (b) is there, then it cures it because it is subject to the Evidence Act.

Hon. Chepkong'a: Thank you, hon. Chairlady. I do not have a problem with (b) because the substantive 10A is subject to (b). But with regard to (c), which I suppose is going to be (b), that is not subject to the Evidence Act. The reason why I was saying that the victim or the complainant can obtain an advocate is this: There are very many organizations that provide free legal aid, including Clarion. I have done that before myself, in which I have given *pro bono* services to a number of those victims. If you request from those institutions, they will always be happy to represent you particularly on cases that are personal, including rape and the rest of that class. I am proposing and persuading my colleague here, that it should not be the victim himself or herself giving oral evidence of himself or herself, or giving oral submission and written submission at the close of the proceedings. There should be an advocate. That would be cleaner and neater.

Hon. Chairlady: Since it is “the victim shall in person or through an advocate”, does that not cover, “completely excluded”? What happens about the (b) if you remove the victim from your first 10A? Hon. Irungu Kang'ata.

Hon. Kang'ata: Yes it is true, when you tamper with 10A up there, it is going to have a major effect on (d) which my Chair has no opposition to. I am of the view that he just accepts because it is a give and take affair. Number two and most importantly, the issue is about what is a submission. Submission can never at any stage prejudice the accused persons. It may include the victim being told to comment on an issue like an application for an adjournment. You are asked: What is your view? Can we submit of this application by the accused person to adjourn the case? So, the point here is: There is no prejudice, particularly if we take that route. Victims who cannot afford advocates are the majority in Kenya. So, I am asking my Chair to agree to my proposal.

Hon. Chairlady: Members, I will now leave it to the Floor to decide on this amendment. What is your point of order hon. Member?

I thought that was already passed, but it is only you who can carry that amendment. It is not from hon. Ochieng. It is you, the owner of the amendment, which is the amendment to remove “withheld by the prosecution”. That amendment had already been passed, hon. Ochieng.

Yes, hon. Chepkong'a!

Hon. Chepkong'a: Hon. Chairlady, on further reflection, I do not wish to oppose my colleague, who is a very able Member of my Committee. But I want to assure him that this is going to be a very contentious provision. If I were the one who is being subjected to this kind of treatment, of course, I would raise very many constitutional issues and we leave it to the court to decide.

Hon. Chairlady: Do you have something different on this one, hon. Gideon Irea?

Hon. Irea: Yes, hon. Chairlady. My colleague, the Chairman of the Committee, who is a lawyer, said that when the witness or the complainant gives evidence, he or she should be denied a chance to give submissions. I think it is wrong because you cannot say that it is only a lawyer who can submit on your behalf. Some of the accused persons may be lawyers. Therefore, it should be left open so that a complainant who is a witness can give final submissions at the close of a case. Therefore, the witness should not be denied a change to make final submissions.

Hon. Chairlady: So, you are supporting the amendment?

Hon. Irea: Yes, hon. Chairlady.

Hon. Chairlady: Hon. Members, with that I want to put the Question, which is that Clause 10 be further amended as proposed by hon. Irungu Kangata.

*(Question, that the new Clause be read
a Second Time, put and agreed to)*

(The new Clause was read a Second Time)

*(Question, that the new Clause be added
to the Bill, put and agreed to)*

Title of Part III

Hon. Chairlady: Hon. Members, I declare that the Title of Part III be renamed as “Rights, Responsibilities and Protection of Victims”.

(Question of the amendment proposed)

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

(Title of Part III as amended agreed to)

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

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

Clause 11

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by-

(a) deleting Clause 11 and substituting therefor the following new Clause 11-

Right to
Information

11(1) A victim has the right to information under Article 35 of the Constitution, this Act or any other written law.

(2)The information referred to in subsection (1) shall be such information as is necessary for the realisation by the victim of their rights under this Act.

(3)The right to obtain information under this Act shall not unreasonably delay or prejudice the investigation or prosecution or affect the safety or security of any person or in any way, interfere with the course of justice.

(4) The Board shall within six months of the commencement of this Act, in consultation with the Director of Public Prosecution, develop a victims' rights charter which shall include-

- (a) the structure and operation of the justice system;
- (b) the rights of victims in the justice system;
- (c) the rights of the accused in the justice system;
- (d) the role of lawyers and other officers of the court in the case;
- (e) victim services;
- (f) the status of the police investigations;
- (g) the specific offences the accused is charged with as relates to the victim and the reasons therefor;
- (h) the name or names of the accused;
- (i) the dates and locations for hearings of the case;
- (j) any interim or final decisions as relates to the case including decisions on bail or any final judgment;
- (k) where the accused is in custody, information as to where he or she is detained;
- (l) where the accused is due to be released from custody, the due dates of release and any conditions attached to the release pending hearing;
- (m) the means for the victim to report any threat by the accused before, during or after the finalization of the case;
- (n) the Board on the Power of Mercy and the means to contact the Committee for purposes of giving the perspective of the victim in accordance with Article 133 (4) of the Constitution; and,
- (o) where an offender is convicted to serve a non-custodial sentence, including community service orders under the Community Service Orders Act, or probation under the Probation of Offenders Act, the area where the offender is likely to serve the term and whether the offender will be in the vicinity of the victim.

(b) by inserting the following new Clause immediately after Clause 11-

Right to
submit
information

11A (1) A victim has a right to submit any information for consideration to the-

(a) police or prosecution on a decision whether or not to lay a charge, or to appeal or withdrawal;

(b) court during plea bargaining, bail hearing and sentencing;

(c) Advisory Committee on the Power of Mercy established under the Power of Mercy Act, 2011, on the release or pardon of a convict.

(2) Where a victim gives any information to a law enforcement officer, the officer shall inform the victim that-

- (a) the information shall be ascertained for submission on the court;
- (b) the victim shall ensure that any information that the victim gives is true; and,
- (c) the information may be recorded and signed by the victim.

(3) The collection of any views from a victim under this section shall not prejudice or delay any proceedings relating to the offence complained of.

Hon. Temporary Deputy Chairman, the reason as to why we are providing this very comprehensive amendment--

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Millie, what is your point of order?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I just wanted to inform hon. Members that this is a Bill which has constitutional timelines. If we do not pass this Bill today, then any Member of the public can go to court and urge that this Parliament be sent home. I am saying this to encourage hon. Members to stay a little more, so that we finish with it. That is actually why it has been prioritised. So, even as hon. Members leave, I would like them to have that information.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Millie, a bit of your statement is true, a bit of it is not. What you are doing is encouraging hon. Members to move quickly and pass the Bill. I agree with that bit.

Hon. Members, be aware that we will also be having Statements, and we will be moving very quickly.

Proceed, hon. Chepkong'a!

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman. What I have just said is that we are proposing that Clause 11 be amended by including Clause 11(1)(A) to provide for the rights to information by a victim. As hon. Members may know, Article 35 of the Constitution gives every person the right to obtain any information that they may require, and which may be in the custody of any person, particularly those in authority. So, we are restating that particular Article 35 in this legislation to ensure that it clarifies the issues, so that we do not need to make references all over the place when dealing with the particular issue of providing information.

Secondly, it provides for the procedure of obtaining the information by a victim or their lawyer. Therefore, we propose that Clause 11 be amended as indicated in the Order Paper, together with Clause 11A, which deals with the right to submit information. As hon. Members know, at times the police may take too long in submitting the information. So, under Clause 11A, this amendment obligates the police to provide the information that has been requested and requisitioned by a victim.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Millie, do you want to comment on that one or can I give the Floor straight to hon. Makali? Let me give hon. Makali, first.

Hon. Mulu: Hon. Temporary Deputy Chairman, I rise to support the amendment, and more so the situation where information is provided to the victims, because information is power. My only concern would be the issue of "unreasonable delay". We are using these words unreasonably. There should either be delay or otherwise. Maybe, the Chair could help those of us who are not lawyers. When you say "unreasonably not long", what do you mean? We have seen victims who have been round in circles for between five and 10 years, and they have never gotten justice. So, when we say "not unreasonably long", is there a timeframe. I wish we could be talking about a timeframe.

Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): Let me give hon. Kajuju a quick shot.

Hon. (Ms.) Kajuju: Thank you, hon. Temporary Deputy Chairman. I support the proposed amendment because in the Constitution we talk about access to justice. We cannot talk about access to justice if we are not able to allow a victim who has suffered some injustice to be able give information to any department that is established. I am particularly impressed by this amendment, in view of the fact that one can approach the Power of Mercy Committee that is established under Article 133, where I was honoured to serve. This shows that any victim who has suffered is able to approach whatever institution and be able to disclose the information that he has, if it is being unnecessarily withheld by any other person who could be interested.

Therefore, this is a proper amendment, and we support it.

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

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

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

(Clause 11 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I am also informed that we have, in the Gallery, pupils from Utafiti Primary School from Kepkelion East; and pupils from Kiukani Primary School from Chogoria, in Tharaka Nithi. They are welcome.

Hon. Members, there is Clause 12 which we are trying to correct in the proposed Bill. We do not seem to have Clause 12. It is indicated as (f).

Therefore, for good reference, go to page 1299 of the Bill. So, that is a correction.

(Clause 12 agreed to)

Clause 13

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

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 13.

13A. (1) A victim has a right to restitution or compensation
 Right to from the offender and the enforcement thereof in accordance
 Compensation with this Act.

(2) Subject to any limitations and conditions set out in this Act, the victim has a right to compensation by the offender for—

- (a) economic loss occasioned by the offence;
- (b) loss of or damage to property;
- (c) loss of user over the property;
- (d) personal injury;
- (e) costs of any medical or psychological treatment; and
- (f) costs of necessary transportation and accommodation suffered or incurred as a result of an offence.

(3) A victim has the right to restitution of any property or right to property of which the victim is deprived as a result of an offence in respect of which the victim is entitled to the rights and remedies specified in this Act.

(4) A compensation order made against a convicted offender may be enforced as a judgment in civil proceedings.

13 B. The court may award compensation under this Act and such compensation may include financial compensation for expenses incurred as a result of the loss or injury resulting from the offence complained of which shall be charged from the Fund.

by Court

13 C. A compensation or restitution order made by a court against a convicted offender—
orders not
part of a

- (a) is in addition to any other sentence or order the court may make against a person;
- (b) is not, for any purpose, to be taken to be part of a sentence passed against the person and;
- (c) is not a bar to civil proceedings.

Hon. Temporary Deputy Chairman, for clarity, we are not seeking the deletion of Clause 13. It remains. But immediately after Clause 13, we are proposing to provide for the right to compensation. As you know, many a times, victims have not been compensated in criminal proceedings. In this case, we are proposing that the courts can make awards in criminal proceedings and those awards be converted into judgments as if they were from a civil court and they are recoverable in accordance with the Civil Procedure Code.

Therefore, that is the tenure of that particular amendment.

With regard to Clause 13B, it deals with award of compensation. As you know, this particular legislation seeks to set up a victim's trust fund. In the unlikely event that the victim is unable to obtain any compensation from the offender, the court has recourse to award such victim costs or compensation that is recoverable from that particular fund and it will be charged there. That is the proposed amendment.

With regard to Clause 13C, we are proposing that this be included also. It deals with compensation and institution orders as may be awarded by the courts and provided

by the procedure. One of the things that we are saying is that, any compensation that the courts may give in criminal proceedings shall not bar the victim from commencing civil proceeding in another court. This would be in addition to any rights that the victim is entitled to in law.

Thank you, hon. Temporary Deputy Chairman.

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

(Question of the amendment proposed)

I can see some interest from hon. (Ms.) Gathecha.

Hon. (Ms.) Gathecha: Thank you, hon. Chairman. I rise to support that inclusion. As recent as yesterday, I retrieved the body of one of my constituents, a domestic worker; who had been strangled in Saudi Arabia. Our constituents are suffering out there and we need to ensure that we have legislation that protects our citizens---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Ms.) Gathecha, I am hearing you but, kindly, stick to the amendment.

Hon. (Ms.) Gathecha: I agree hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Tell us how this amendment would be useful, for example, in favour of your constituents.

Hon. (Ms.) Gathecha: The victim is late and there is no way we will be able to follow up and ensure that she has a lawyer who would provide for her young child. But if we take a look at this case, in terms of personal injury, cost of transport of the body back to the country---- The employer had been missing in action, given that she was head of security in Saudi Arabia. The body had been there for two years and we were not able to retrieve it.

Therefore, I am hoping with this particular amendment, we will make a provision to follow up and ensure that the victim is compensated as well as her family. That is because no wages have been received for that particular victim and yet, for the last two years, her body has been lying in a mortuary in Saudi Arabia.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. I will give this opportunity to hon. Member for Imenti North. I know one may be thinking of hon. Kajuju. Imenti North is still part of Meru County.

Hon. Dawood: Thank you, hon. Temporary Deputy Chairman. I represent North Imenti in this House and not Imenti North.

I would want to support this amendment because I think it is following on the lines of the Muslim tradition where in the Quran it states that a victim has to be compensated. I think it is right because what happens is that many people or victims do not get anything from any act which is done, be it the court fines and all that. Therefore, I think this is the right direction. It should go even further if the compensation is not forthcoming. Whatever the property that offender has should be forfeited to the victim, if he cannot afford to pay. That will go further and enrich that law. I do know if the Chairman would put up an extra amendment to that Clause.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): I know your constituency is Imenti North but the district is North Imenti.

Let us have hon. (Ms.) Millie Odhiambo-Mabona.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairman. I wish to support because, as I had said before, when I was practising the majority of my clients were extremely poor people. When they were taken to court for criminal matters, they subsequently did not follow up because they did not have means. Therefore, when we provide that the court can give some token of compensation, then for those who are able to go to civil courts, they would be given proper compensation.

For me, it is really just a token of compensation at the end of the day by the court. Therefore, as lawyers, we create too many technicalities. I do not want to cast aspersions on lawyers, but we create too many technicalities that deny access to justice to most needy people.

Therefore, I support.

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

(Clause 13 as amended agreed to)

Clause 14

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

THAT, the Bill be amended by deleting Clause 14 and inserting the following new Clause-

restitution. Victim 14 (1) Where a person is convicted of an offence under any written law, the court may, in addition to any other penalty prescribed under that law, order the person to make restitution or compensate the victim for—

- (a) the cost of any damage to the property of the victim;
- (b) the costs of any medical or psychological treatment incurred the victim;
- (c) the costs of necessary transportation, accommodation and other living expenses relating to the court proceedings leading to the conviction; or
- (d) any other relief that the court may consider necessary.

(2) Where the Court orders payment of both a fine and compensation, the enforcement of the compensation order shall take precedence.

(3) In every case, the enforcement of an order for compensation, restitution or restoration shall be governed by the Civil Procedure Rules.

This Clause deals with victim restitution and is quite different from compensation. What we are proposing is that, in addition to the sentence that the court may have issued against an offender or a convicted person, the court may give further orders with regard to restoring the victim to a state - in as much as possible - in which he was before the commission of the offence.

Therefore, we are providing that the court may order the convicted person to restore the property that has been damaged or pay the cost of any medical expenses that have been incurred by the victim or any other relief that the court may deem fit to grant in the circumstances.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I can see the hon. Member for Molo showing interest. Hon. Macharia, do you want to contribute to this one?

Hon. Macharia: No, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us hear from hon. (Ms.) Kajuju. Hon. Members, let us be straight to the point so that we can make progress.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Chairman, this is a good proposal by the Committee in the sense that at times, after conviction in criminal proceedings, it becomes a little bit rough for the victim to pursue compensation through a civil process. We have seen situations where, immediately after conviction, the court file cannot be traced for purposes of getting the court proceedings and filing for civil proceedings. Therefore, restitution, at the point where there is a conviction, is very important because it saves a lot of trouble, judicial time, the victim's time and expenses. We should just have a one-off resolution of the dispute before the court of law.

The Temporary Deputy Chairman (Hon. Cheboi): What is it today with Members from the *Miraa* eating Meru? They are extremely active. I can see hon. Iringo is also interested in contributing to this one.

Hon. (Ms.) Kajuju: On a point of order, hon. Temporary Deputy Chairman.

Hon. Iringo: Thank you, hon. Temporary Deputy Chairman. Do not bring the issue of *Miraa* here because once it is mentioned, it brings some jittery to some people. It is quite a sensitive matter not only in Meru, but the rest of Kenya.

In a situation where the offender is supposed to compensate the victim and, maybe, he or she is incapacitated in one way or the other, what is the recourse to the victim? Maybe, we need to have a Clause which can provide that the State should take care of that.

The Temporary Deputy Chairman (Hon. Cheboi): I hear you but you have avenues of addressing that, including proposing quietly an amendment. But I think it will be covered in the next one.

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

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

(Clause 14 as amended agreed to)

(Clause 15 agreed to)

Clause 16

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

THAT, Clause 16 of the Bill be amended in Clause 16, Sub-Clause (1) by inserting the words “appropriated by the National Assembly,” immediately after the word “monies” appearing in paragraph (a).

This is a very important Bill. It is in fact as required under Article 50 of the Constitution. So, for Parliament not to appropriate any money to the Trust Fund, it would be unfair. So, the Committee felt that the National Assembly should appropriate some funds to this Fund. So, it includes the money that will be received by the Fund after Clause 16(d). So, we need to introduce: “Appropriated by the National Assembly.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, just for information, there has been requisite consultations as per the Constitution and this proposed amendment even came through the Budget and Appropriations Committee. So, we followed the constitutional process.

The Temporary Deputy Chairman (Hon. Cheboi): Seeing no other interest, I put the Question.

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

(Clause 16 as amended agreed to)

Clause 17

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

THAT, the Bill be amended in Clause 17 by deleting the word “finance” and substituting therefor the word ‘justice.’”

This is a minor amendment that we are proposing. The power to make regulations is vested in the Cabinet Secretary responsible for Justice. So, for good order, we are proposing that, at the end of Clause 17, the Cabinet Secretary responsible for Finance be replaced with the one responsible for Justice.

The Temporary Deputy Chairman (Hon. Cheboi): The Cabinet Secretary responsible for Justice. Is that so? That will be the Attorney-General.

(Question of the amendment proposed)

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

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

(Clause 17 as amended agreed to)

(Clause 18 agreed to)

Clause 19

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

THAT, the Bill be amended in Clause 19 by deleting Sub-Clause (2) and inserting the following new sub-Clause-

“(2) The Board shall consist of-

(a) a chairperson appointed by the Cabinet Secretary from among the members;

(b) the Director of the Witness Protection Agency who shall be the Secretary;

(c) the Principal Secretary of the Ministry for the time being responsible for matters relating to justice;

(d) the Principal Secretary of the Ministry for the time being responsible for correctional services;

(e) the Principal Secretary of the Ministry for the time being responsible for matters relating to children affairs;

(f) the Director of Public Prosecutions;

(g) the Inspector-General of Police or his or her representative;

(h) one person nominated by the National Gender and Equality Commission; and

(i) one representatives from civil society dealing with issues relating to child and women victims protection;”

We are proposing that Clause 19 be amended by deleting sub-Clause (2) and retaining sub-Clause (1). We are seeking to clean the Board to ensure that the relevant persons participate in it and we maintain it as lean as possible. So, it is just the introduction and reduction of the members as contained in the proposed Bill.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I wish to support but with a further amendment. Based on the meeting that we had with the Justice and Legal Affairs Committee, we had agreed in (i) that we have two representatives and not one, so that we have an organization that deals with women and an organization that deals with children. I am proposing that we put “two” instead of “one”.

I can see my brother is suggesting that one representing men. I do not mind if we put three, but based on the discussions that we had with the Chairman, I would request that the Chairman supports my amendment to include two and not one.

The Temporary Deputy Chairman (Hon. Cheboi): I do not think you are proposing an amendment. You are actually requesting the Chairman to---

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I am proposing a further amendment. As the Mover of the Bill, I am allowed to propose a further amendment on the Floor. It is me and the Chair of the Committee who are allowed to propose further amendments on the Floor.

The Temporary Deputy Chairman (Hon. Cheboi): Yes, I see the little confusion there. The real owner of the Bill is hon. Millie, but the Mover of the amendment is hon. Chepkong'a. But anyway, hon. Millie, the Mover of the amendment is hon. Chepkong'a and if you are going to achieve the same result, I think he will have no problem with it. Let us hear hon. Chepkong'a.

Hon. (Ms.) Odhiambo-Mabona: If he is agreeable, hon. Temporary Deputy Chairman---

The Temporary Deputy Chairman (Hon. Cheboi): No, let us hear hon. Chepkong'a first and then if we have issues, then we will come back to you. Hon. Chepkong'a.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, it is correct that we agreed on two representatives from the civil society dealing with issues relating to child and women victims protection. I think it was an oversight when it was being typed because there were too many amendments. I totally agree and I move a further amendment that we delete---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkong'a, if you have agreed we will consider the (1) to be a typographical mistake, then we will be substituting therefor (2). We do not have to proceed in the direction of an amendment. We will quickly replace it because it seems that is what has been agreed to here. Hon. (Ms.) Odhiambo-Mabona, do you have a problem with that?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, just in terms of records, I would want to request that even if he is saying that is a typographical error, it should go on record as a typographical error that is changing, so that is what goes on record.

The Temporary Deputy Chairman (Hon. Cheboi): To the best of my knowledge, he has already gone on record; Hon. Chepkong'a, for purposes of comfort of the gracious lady from Suba, let us hear you on record.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, of course, you know when I walked in with hon. (Ms.) Odhiambo-Mabona, she warned me not to call her sweetie; I said I agreed. But she is the gracious lady from Suba. I said that (1) was a typographical error and it should be (2).

The Temporary Deputy Chairman (Hon. Cheboi): Then I think that one is sorted out.

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

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

(Clause 19 as amended agreed to)

(Clauses 20 and 21 agreed to)

PART VII

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Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by deleting PART VII and inserting the following new PART.

PART VII-PROVISIONS ON DELEGATED POWERS

22. (1) The Cabinet Secretary may make regulations regarding procedures to be put in place to monitor and assess the proper application of and compliance with this Act.

(2) The regulations contemplated in subsection (1) may—

(a) provide that the implementation of this Act be monitored annually or at such other interval as may be prescribed, with the object of assessing the implications, effectiveness and proper application of and compliance with this Act;

(b) be made after consultation with the Cabinet Secretary for the time being responsible for matters relating to women and children.

(c) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfilment of the objectives of this Act; and

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(d) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013

This deals with regulations, the power to make regulations. First, we propose that we amend part VII of that Bill, which gives the Cabinet Secretary power to make regulations. We have stipulated what regulations can be made in Clause 22(2).

(Question of the amendment proposed)

Hon. Ochieng: Hon. Temporary Deputy Chairman, I want to support my good Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): As you do it, you do not need to go to the intervention slot at this point in time, because we do not have many requests. If you have a request, let it be a request, so that I can differentiate.

Hon. Ochieng: Hon. Temporary Deputy Chairman, I want to support my able Chairman on the proposals he has made. As my Chairman knows, this is one of the things that we want to let the Cabinet Secretary do as part of the duty to ensure that this Bill is implemented. I am just worried about the wording. May be we were pressed for time; the wording could be made better to make the Bill flow in terms of coherence, and so that we talk about providing that the process of implementation is done in a way that can be read coherently. I support this amendment.

The Temporary Deputy Chairman (Hon. Cheboi): I see no other request and so I will 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)

(Part VII as amended agreed to)

Clause 23

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkong'a because this is a deletion, be brief.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:- THAT, the Bill be amended by deleting Clause 23.

This is because it may be unconstitutional to limit the independence of the courts in the orders it should grant, secondly for attempting to regulate the appellate jurisdiction of the courts, in particular that of the Court of Appeal and the Supreme Court by providing that an order, sentence or conviction may not be appealed from that particular court. That itself is unconstitutional because the Constitution provides for procedures of appeal. So, you cannot limit the power of appeal.

(Question of the amendment proposed)

Hon. Ochieng: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): I do not know what is not in order because we agreed on the mode of--- Do you have an issue? What is out of order, or do you want to contribute? Your card is slotted as if you want to intervene.

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

(Clause 23 deleted)

Clause 24

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:- THAT, the Bill be amended by deleting Clause 24.

This is largely because Article 41 of the Constitution on labour relations is quite clear. On matters of employment, employment law is particularly provided for in that Article and other laws on employment. There is the Employment Act and so issues of employment cannot be regulated under this Bill.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see Hon. (Ms.) Odhiambo-Mabona. This is a deletion.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I wish to oppose this proposal and I wish the Chairman of the Committee could listen. When we sat with the Committee and proposed the deletion of Clause 24, it was on the basis that it was going to be catered for elsewhere as part of coherent flow. It was supposed to form part of another section of this Bill. However, it has not come through. I do not know if the Chairman is changing his mind, or whether it is just an oversight; we agreed that it is an important clause.

When you are a victim of crime, sometimes you find that if you go to court for your matter to be heard, your employer puts huddles on your way. You are not given time. Some people have even been dismissed for going to court. So, it is a very important clause that we should not lose. I would encourage the Chairman; I think it is an oversight of the drafters because I know we were working overtime on this Bill, and they may have forgotten to put it in the appropriate place. We basically said that instead of putting it under miscellaneous provisions we provide for it under a substantive section. I want to encourage the Chairman to, please, consider withdrawing the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Before I go to the Chairman, let me hear from Hon. Ochieng.

Hon. Ochieng: Hon. Temporary Deputy Chairman, I think all of us agree that this Bill is important. But just like 23, Clause 24 is trying to bring in issues that are well taken care of elsewhere. If a person is going to give evidence, he can just ask for permission. We do not need to put these things here. I would like to request my sister to allow this to go through. I support my Chair on this.

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

Hon. Ochieng: Yes!

The Temporary Deputy Chairman (Hon. Cheboi): Let me hear from the Chair before we get to know what the House is thinking.

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman. I will say it after further consultation.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chair, as you contribute, I want you to respond to the concerns of hon. Millie Odhiambo.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, you know the clause as contained in the proposed Bill deals with employers who deny permission, or who after a person has gone to give evidence he or she is dismissed from work or certain penalties are visited upon them. We are saying that this is not the proper place to deal with disputes in employment. There is the Employment Act and a proper court set up under Article 162 of the Constitution. This court deals with employment and labour relations. That is the proper place whenever there are any disputes. They cannot be taken before a court dealing with issues of victims. This is because the person who gives evidence is not a victim but a witness.

We are saying that this contravenes the procedures of dealing with employment disputes or labour relations which are dealt with under the Employment and Labour Relations Court.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): I think hon. Millie has withdrawn her request. So, I will proceed and put the question.

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

(Clause 24 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkonga, that is a very spirited move.

Clause 25

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, of course, you know I won against the ladies but I was lonely.

Hon. temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting Clause 25 and inserting the following new Clause-

General Penalties 25. A person who contravenes any provision of this Act for which no penalty is specified shall be liable, upon conviction, to a fine not exceeding one million or to imprisonment for a term not exceeding ten years.

We are proposing that Clause 25 be deleted in the light of the fact that Clause 22 has already become part of the Bill. This provides for powers to make regulations by the Cabinet Secretary.

The Temporary Deputy Chairman (Hon. Cheboi): Let us be clear hon. Chepkong'a. What are you proposing?

Hon. Chepkong'a: We are proposing the deletion of Clause 25 because of Clause 22, which is already in the Bill.

The Temporary Deputy Chairman (Hon. Cheboi): You will allow us a minute to consult. I thought there was a substantive amendment. If you are proposing a deletion, that should be a different thing altogether.

Hon. Chepkong'a: I am sorry, hon. Temporary Deputy Chairman. As a result of the spirited fight by hon. Millie, I may have lost touch with my Order Paper.

I propose that Clause 25 of the Bill be amended by inserting the following new Clause 25A, which provides for general penalties in the unlikely event that there is no penalty that is provided for an offence that has been committed by an offender under this particular Act, then there is an omnibus provision that deals with that.

Thank you, hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Again, there is the Meru trio. So, I will give one of them a chance. We will start with the one who spoke first. That is going to be hon. Kajuju.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Chairman, I know you love the Meru. This is a good thing because they are good people. We welcome you to Meru County anytime, especially because you were my classmate.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kajuju, please let us not bring emotions to this. Let us stick to the law.

(Laughter)

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Chairman, I support the proposed amendment to the Bill because we know that there are various statutes that deal with penalties. We have the Penal Code and the Sexual Offences Act. However, in the unlikely event, as it has been stated, that there is no penalty that has been specified for an offence against a victim under this Bill, it is important that we impose a fine. It should not just be a Kshs100,000 but a fine that makes an offender think of consequences before he commits an offence; he must know the repercussions that come with the commission of such an offence. Therefore, I support the imposition of a fine not exceeding Kshs1 million. As we pass the law, we should also be careful, so that we deter crime. This amendment is very important and should be accepted.

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

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

(Clause 25 as amended agreed to)

Clause 2

Hon. Chepkonga: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 2 of the Bill be amended in sub-Clause (1) by:-
(a) deleting the following definitions-
"parent," "spouse," "victim," "victim service"
(b) inserting the following new definition in their proper alphabetical sequence-
"agency" means the Witness Protection Agency established under Section 3A of the Witness Protection Act;
"child" has the meaning assigned to it under the Children Act and includes a child of a victim born after the death of the victim;"
"compensation" means an award granted by a court to a victim who has suffered economic or emotional loss, damage of property, or physical injury or harm as a result of an offence after the victim is found to qualify for the same in accordance with the criteria prescribed under this Act;
"crisis intervention" means the provision of emergency psychosocial, legal and other services to traumatized victims, so as to help them return to an adaptive level of

functioning and to prevent or mitigate the negative impact of psychological and emotional trauma;

“community service” means an instance where the offender performs some community service under the Community Service Orders Act, 1998.

“dependant” has the meaning assigned to it under the Law of Succession Act, 1981;

“financial restitution” means payment of money by the offender to the actual victim of the offence;

“financial community restitution” means payment of money by the offender to community programs;

“health professional” means a nurse registered under section 12(1) of the Nurses Act, a clinical officer registered under section 7 of the Clinical Officers Act or a medical practitioner registered in accordance with section 6 of the Medical Practitioners and Dentists Act, and includes a registered counselling psychologists and recognized physical therapists;

“individual service restitution” means where the offender, with the victims consent, performs a service to the actual victim which may include the repair of damage to the victim’s property;

“immediate family” includes the victim’s spouse, children, parent, grandparent, step child, step sister, step brother, or step parent and where the victim is a child, the guardian;

“injury” means actual bodily harm, emotional distress, trauma, pregnancy resulting from sexual assault, mental or nervous shock, actual economic loss or loss of property.

“law enforcement officer” means an officer from a law enforcement agency and includes a probation and prison officer;

“law enforcement agency” includes—

(a) the National Police Service;

(b) the office of the Director of Public Prosecution; and

(c) any other department, office or agency of the State or statutory body that is responsible for investigating or taking any action in relation to an offence punishable under any written law;

“parent” means a biological or adoptive parent and includes a guardian.

“place of safety” means any institution, hospital, children’s institutions or other suitable place the occupier of which is willing to accept the temporary care of vulnerable victim’

“rehabilitation” includes psychosocial interventions, medical treatment, legal aid and social services designed to assist victims recover from loss, injury or damage suffered as a consequence of the offence;

“restitution” means the act of restoring the victim, to the extent possible, to the status prior to the offence resulting in loss or injury;

“restorative justice” includes –

(a) the promotion of reconciliation, restitution and responsibility through the involvement of the offender, the victim, their parents, if the victim and offender are children, and their communities; or

(b) a systematic legal response to victims or immediate community that emphasises healing the injuries resulting from the offence;

“rights of victims” means any rights to which a victim is entitled under the Constitution this Act or any other written law;

“spouse” means a husband or wife;

“surcharge” means a sum additional to the fine payable by the offender as provided for under this Act;

“support person” means an immediate family member, a social worker, a counsellor or victim of offences officer, or law enforcement officer, or a person designated as such in this Act;

“trauma” includes physical injury, psychological or emotional distress;

“trial” includes a proceeding in which a person is sentenced;

“victim” means any natural person who suffers injury, loss or damage as a consequence of an offence;

“victim impact statement” means a statement by the victim, or where incapacitated, the victim’s representative, on the psychological, emotional, physical, economic or social impact of the offence committed against the victim, and includes any recording, summary, transcript or copy thereof;

“victim officer” means a person who assists a victim through the various stages of a case;

“victim’s representative” means an individual designated by a victim or appointed by the Court to act in the best interests of the victim;

“victim support services” means all the services offered to the victim of an offence to secure restoration of their emotional, mental, physical, legal or economic status from any harm occasioned by the offence committed;

“victimization” means any act or omission that renders a person or community a victim within the meaning of this Act;

“welfare services” means all the victim support services aimed at assisting the victim.

We are proposing that Clause 2 be amended so as to provide for the interpretation of the various terms that have been used in the law, or in legislation with regard to what a parent, a spouse, a victim and the rest are as contained on the Order Paper.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I support.

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

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

(Clause 2 as amended agreed to)

(Clause 1 agreed to)

(Title agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Mover, hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move that the Committee does report to the House its consideration of the Victim Protection Bill, National Assembly Bill No.41 of 2013 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE VICTIM PROTECTION BILL

Hon. Cheboi: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Victim Protection Bill, National Assembly Bill No.41 of 2013, and approved the same with amendments.

Hon. (Ms.) Odhiambo-Mabona: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. Ochieng: seconded.

(Question proposed)

Hon. Ochieng: Hon. Deputy Speaker, thank you very much. The work done by this National Assembly on this Bill is very important. I want to thank hon. Millie Odhiambo for her thoughtfulness in this, and for ensuring that we met the deadline.

Hon. Deputy Speaker: That is coming at the Third Reading. We have not got there.

Hon. Ochieng: Hon. Deputy Speaker, I support. Thank you very much.

(Question put and agreed to)

Hon. (Ms.) Odhiambo-Mabona: Hon. Deputy Speaker, I beg to move that the Victim Protection Bill, National Assembly Bill No.41 of 2013, be now read the Third Time.

Hon. Ochieng: seconded.

(Question proposed)

Hon. Chanzu: Hon. Deputy Speaker, I want to commend this House for having gone this far with this Bill; as we have heard there are too many cases where victims on either side do not have protection. You remember I mentioned the case of a lady who had---

Hon. Deputy Speaker: Hon. Chanzu, please remember it is the Third Reading. Just make very brief comments since I want to put the question. Let us not go into debate again.

Hon. Chanzu: Hon. Deputy Speaker, I was saying that the work done by the House on this Bill is commendable. We should pass the Bill so that it can be implemented immediately.

Thank you.

Hon. Ogallo: Hon. Deputy Speaker, I want to commend Millie Odhiambo for this Bill. I propose that she be honoured under the Heroes Act, which we passed in this House.

Thank you, hon. Deputy Speaker.

(Question put and agreed to)

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

Hon. Deputy Speaker: Hon. Members, we are now going back to our Order Paper and taking on Statements.

Hon. Wandayi: On a point of order, hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, hon. Opiyo Wandayi?

Hon. Wandayi: Hon. Deputy Speaker, I am rising on a point of order because as you are aware, this morning we rushed through the Order Paper and skipped some Orders. However, that is not my issue. I am rising under Standing Order No.47(3)(b), which is well known. The substantive Speaker has over the time on a number of times ruled that we can rise under this Standing Order at any time.

Hon. Deputy Speaker, I stand under that Standing Order because in respect to what you call "the County Government (Amendment) Bill 2014", which was dealt with as Order No.9 today. This amendment Bill has been proposed by hon. Adan Keynan and I am aware that it is now past the First Reading, and it is due for Second Reading any time soon.

Hon. Deputy Speaker, I want to raise some issues, so that you can give some substantive ruling on this matter, because we risk developing a pattern of passing legislations that run contrary to the Constitution, and which put us at loggerheads with the counties and the people.

Hon. Deputy Speaker, this Amendment Bill, among other things - I want to be very brief - proposes to involve the National Assembly in the removal of Governors from office.

Hon. Deputy Speaker, I want to be very brief because I know time is not on our side. This Amendment Bill proposes to involve the National Assembly in the removal of

governors from office, which removal is, of course, clearly outlined under the relevant sections of the Constitution. Article 6(2) provides specifically that the national Government and county governments are supposed to be distinct; the operating word here is “distinct,” even if they are supposed to be interdependent. Again, if you look at the composition of the county government under Article 176(1), it has the county executive and the county assembly.

Hon. Deputy Speaker, in a nutshell, again the objects of devolution under Article 174--- Article 174(c) provides that:

“The objects of devolution of government are to give powers of self-governance to the people and enhance participation of the people in the exercise of the powers of the State and in making decisions affecting them.”

Article 174(d) states:-

“The objects of devolution of government are to recognise the right of communities to manage their own affairs and to further their development.”

Finally, Article 174(i) states that the objects of the devolution of government are to enhance checks and balances and the separation of powers.”

Hon. Deputy Speaker, the Constitution gives the Senate---

Hon. Deputy Speaker: Order! Order hon. Wandayi! This is not the first time you are raising arguments on whether or not this House is charged with introducing a Bill. Before this came on the Order Paper, it went through a process of determining whether it is constitutional or properly before the House. So, I see what you are really engaged in as points of argument. Can you please allow us to do the First Reading, and then you raise the arguments that you are now proposing? When we are on Seconding Reading, you will raise your arguments; for now, allow us to proceed.

If you look at Article 109(2) of the Constitution, it clearly says that any Bill may originate in the National Assembly. Let us give those arguments when we get to the Second Reading of this Bill.

Hon. Wandayi: Hon. Deputy Speaker, I get your point and I do not really want to argue against your ruling, but then the reason why I am raising these issues at this point is to enable you to make a substantive ruling on this matter before we go to the Second Reading. I was just about to conclude my point of order, if you indulge me.

Hon. Deputy Speaker: Yes, I will.

Hon. Wandayi: What I am saying, therefore, is that the Constitution under Article 96 gives the Senate the mandate to protect the interests of the counties and the county governments. The Constitution does not give National Assembly any mandate whatsoever over the county governments; therefore, this Bill, as currently formulated, is against the Constitution and runs the risk of putting this House at logger heads with the county governments and the people. Therefore, I would urge that you make a ruling as to whether it is in order that we continue to prosecute this Bill in its current form.

This is because, in my view, it would be in vain to purport that this House can be involved in the removal of county governors; this is really to stretch our imagination too far.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay; just to satisfy you that we are doing the right thing, a communication will be given before we begin debate at Second Reading of this Bill.

This will not be just for you but for any other hon. Member who may have doubts as to whether this Bill is properly before this House. Let us leave that matter and move now to Statements.

Hon. Members remember this is a day for responses to Statements; we had to dispense with the Victim Protection Bill before coming to Statements. We shall begin with the one by hon. Ewesit Akuja, and it was to be responded to by hon. David Were. I hope that Chairs did not leave when they realized that we were moving on. Hon. Akuja are you in the House? You saw me earlier?

Hon. Akuja is here, but is the Chair of the Committee on Labour and Social Welfare in the House? Well, now we are in a bit of a problem.

What about the Chair of the Committee on Lands to respond to the question by hon. David Wafula? Hon. Abbas Mohamed, is the Chair of the Committee on Energy, Communication and Information in the House?

Hon. Members, it seems to me that hon. Members must have assumed that this Order had been dispensed with when we moved to the Victim Protection Bill. I do see the Chair of the Committee on Transport, Public Works and Housing, but is hon. Elisha Busienei in the House for you to respond to his Statement request? He is also not in the House. Hon. Kamanda, since he is not here you can table the Statement. What about hon. Christopher Nakuleu? The Chair of the Committee on Energy, Communication and Information has several Statements for today and they may be tabled, if we cannot prosecute them now.

Yes, hon. Pukose.

Hon. (Dr.) Pukose: I want to contribute to the Motion.

Hon. Deputy Speaker: You are moving to the Motion?

Yes, hon. Simba Arati.

Hon. Simba: On a point of order, hon. Deputy Speaker. Given that the Chairpersons are supposed to be in the House when they know that there items lined up for them to deal with, would I be in order to insinuate that the leadership of the ruling coalition has failed in its work in the House?

(Applause)

Hon. Deputy Speaker: As much as I would like to accept that, we must know that we changed the Orders. We cannot determine that they were not here, when I changed the Orders and said that we would tackle the Victim Protection Bill. Today, I will be lenient and speak on their behalf; maybe they were here and may have thought that we dispensed with the Statements Order. I am sure hon. Simba Arati, if I remember well - my memory serves me well - was not in the House when we changed the Orders.

Hon. Members, we need understanding on the part of the Chairs because of the way we changed Orders on the Order Paper. We shall move from the Statements to the next Order.

MOTION

ISSUANCE OF NATIONAL IDENTITY CARDS

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TO ALL ELIGIBLE KENYANS

(Hon. Mohamed Diriye on 6.8.2014)

(Resumption of Debate interrupted on 6.8.2014)

Hon. Deputy Speaker: Okay, hon. Diriye.

Hon. Mohamed Diriye: Thank you, hon. Deputy Speaker. I wish to move amendments to this Motion by deleting all the words appearing immediately after the word "House" that appears in the last three lines---

Hon. Deputy Speaker: Order! Order hon. Diriye! Order! Can you move the Motion as it appears on the Order Paper; you can tell us other things later but move it as it appears on the Order Paper first.

Hon. Mohamed Diriye: Hon. Deputy Speaker, I beg to move:-

THAT, aware that every Kenyan having attained the age of 18 years is entitled to be issued with a national identity card (ID) upon registration; further aware that a national identity card represents proof of citizenship without which an individual may not have access to basic services, including exercising the right to vote; cognizant that the number of persons who are yet to be issued with the national identity cards has risen over the years and was recently estimated at 12,000 persons in Wajir, Garissa and Mandera counties alone, this House urges the Government to urgently put in place measures that will ensure that all eligible Kenyans are duly registered and issued with national identity cards.

Hon. Deputy Speaker: You seem to have a problem with this Motion, had it already been moved?

Hon. Members: Yes and amended.

Hon. Deputy Speaker: It is already debated?

Hon. Member: Yes.

Hon. Deputy Speaker: It is resumption of debate and hon. Simba Arati has three more minutes. Can he continue first then you come and tell us about this new amendment, which you are just bringing now. Hon. Simba Arati had a balance of three minutes, and then other Members can contribute. Hon. Simba Arati, can you please use your remaining three minutes.

Hon. Simba: Thank you, hon. Deputy Speaker. I wanted to point out a number of issues here given that hon. Diriye tried to only single out three counties, namely Wajir, Garissa and Mandera. But you know very well that issuance of identity cards has been skewed in favour of regions that support those in power.

It is important for us, as Parliament, to relook into this and say that before students sit for Kenya Certificate of Secondary Education examination, they should be given a chance to register for identity cards. That is the only way we shall be able to stop this business of people who purport to have moved from other countries--- For example some people claim to have come from a neighbouring country; others pretend to be refugees then they leave the refugee camps for them to be issued with identity cards. It will help the Government to ease the burden of having a huge number of uncollected identity cards in offices.

I want to tell the Government that, indeed, we need to implement such measures and ask headteachers of secondary schools to make arrangements for people from the Registrar of Persons offices to issue students with identity cards. We believe that the Jubilee Government is keen on this. We warned them in advance that they should not skew the process of obtaining identity cards in their favour as they did before the last elections. We realized that some regions during the last elections had more voters than the number of registered voters. This is the only way in which we will be able to curb theft elections that we are experiencing. It is a perennial problem.

For us to be able to have a country with people who are responsible, especially---

Hon. Waititu: On a Point of Order, hon. Deputy Speaker.

Hon. Simba: There is nothing out of order!

Hon. Deputy Speaker: It is not for you to decide. Can I find out what is not in order from hon. Waititu and not from you, hon. Arati?

Hon. Waititu: Thank you hon. Deputy Speaker. Is my good friend, hon. Simba Arati, in order to allege that the Jubilee Government gave identity cards, when he knows very well that the Minister who was in charge of issuing identity cards was not from Jubilee? Is he in order?

Hon. Deputy Speaker: Order! Hon. Peris Tobiko, wants to say that which she thinks is out of order.

Hon. (Ms) Tobiko: On a point of order, hon. Deputy Speaker. Mine is related to the point of order that hon. Waititu has raised, but is on a different aspect. Is the hon. Arati in order to say that the Jubilee Government undertook a skewed registration exercise before the last elections when the Jubilee Government came into being after the elections?

Hon. Deputy Speaker: Order! Those are points of argument. Ignore that point of argument; it is not valid. Continue giving your arguments, but do not make comments that cannot be substantiated.

Hon. Simba: Thank you hon. Deputy Speaker. I assume there is nothing which was out of order.

Hon. Deputy Speaker: Do not assume.

Hon. Simba: That is good.

Hon. Deputy Speaker: Hon. Simba Arati, do you have more points to give in this debate?

Hon. Simba: Hon. Deputy Speaker, the only point I have for the Jubilee Government is that, let us not experience in the future the skewed issuance of identity cards we have seen around the country. It is the only way we will be able to develop this country into a country where there is transparency and people have their rights to vote.

On issues of refugees, we cannot accept to go the direction hon. Dhiriye is proposing. He is saying that we need to allow refugees who have been registered in the refugees camps to be given identity cards.

Hon. Deputy Speaker: I see hon. Robert Pukose,

Hon. (Dr) Pukose: Thank you hon. Deputy Speaker for allowing me to contribute to this very important Motion, although I think it should not be a question of urging the Government to urgently put in place measures, that will ensure that all eligible Kenyans are duly registered and issued with National identity cards. Issue of identity

cards to Kenyans is important; when it comes to people being given identity cards and they stay with waiting cards for a very long time I think this denies them opportunities to, for example, take up employment opportunities or join colleges.

Hon. Deputy Speaker, there is a crowd holding a Kamukunji within the House.

Hon. Deputy Speaker: Hon. Dhiriye, can you stop holding your Kamukunji at the back there!

Hon. (Dr) Pukose: They are shouting as if they were in Kibera

Hon. Deputy Speaker: Hon. (Dr) Pukose, can you leave the Chair to control the House? Just give your contribution.

Hon. (Dr) Pukose: Thank you hon. Deputy Speaker. Issuing of identity cards is very important; many Kenyans who have attained the age of 18 years and above, especially in rural Kenya--- One day, I found an old lady of about 70 years, who felt she should vote for me, but she had not gotten her identity card; she, therefore, could not participate in an election. This is a serious challenge because somebody who is more than 18 years of age has to produce an affidavit, which he swears as to why he is not able to get an identity card, yet we know very well that there are people in this country who live in areas that are hard to reach, and have never gone to big towns. It is a big challenge for them to get identity cards.

A large number of people was not able to participate in the last general election, because they did not have identity cards. More often than not you will find that officers who participate in issuing of identity cards do not have motor vehicles to be able to reach areas which they are supposed to reach. They are not well equipped to be able to deliver key services. These are the areas that need to be looked into. We purchase vehicles for police officers; I think even the officers who participate in issuing of identity cards need to be facilitated; they need motor vehicles to reach remote areas and issue identity cards. At times people who are in charge prefer places like Nairobi where an officer maybe able to walk to an identity cards issuing centre; When you go to remote areas like Endebbes, Wajir and other places where you travel several kilometers for you to reach a centre where identity cards are issued--- Officers need to be facilitated with motor vehicles and allowances, so that they can reach these areas and issue identity cards without any difficulty. The biggest challenge to the issuance of identity cards at the chiefs' and assistant chiefs' camps is that they demand bribes from people who issue identity cards. These are matters that we need to look into. Occasionally we talk of bribery at the police road blocks, but we never look at bribery where Kenyans have to bribe to get their national identity cards.

Other areas which we need to look at is the even the security of this country. Aliens should not be able to get identity cards and end up causing insecurity. The issue of terrorism, which we face as a country--- People talk of insecurity while others talk of terrorism. What we face is actually terrorism. It should just be classified as terrorism. We have aliens from a neighboring country, Somalia, and from other failed states; we should be very careful when we are issuing identity cards, so that these people do not get identity cards and cause insecurity in our country. Problems that hinder issuance of identity cards should be looked into; we should be able to have proper vetting and make sure that all those who are given identity cards are Kenyans, who have the right to serve this country and engage in meaningful and gainful activities.

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

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

Hon. Temporary Deputy Speaker, we have also had Kenyans who were internally displaced through fights. Some Kenyans have been evicted from forested areas and other areas, and have been displaced to other countries. Such Kenyans have a right to come back to their country and be issued with IDs, so that they can also engage in meaningful activities.

We need to look at the issue of issuance of IDs holistically. We need to bring an amendment. Instead of urging the Government, we should resolve, as a House, that the Government meets its various obligations; measures should be put in place to ensure that all eligible Kenyans – be they within our outside the country – are issued with national IDs without any problem.

With those few remarks, I beg to support the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Very well spoken.

Yes, hon. Gunga Mwinga!

Hon. Chea: Bi. Naibu Spika wa Muda, ahsante sana kwa kunipa fursa hii ili niweze kuchangia suala la vitambulisho. Kwanza kabisa, ningependa kuchukua fursa hii kusema kwamba ninaunga mkono suala hili. Pili, ningependa kupeana shukrani kwa mhe. Diriyeh Mohamed, ambaye ameleta Hoja hii Bungeni.

Ukweli ni kwamba suala la vitambulisho ni muhimu. Kama Hoja inavyosema, usipokuwa na kitambulisho, kuna mambo mengi ambayo huwezi kuyafanya. Kwa hivyo, kuna haja ya Serikali kuhakikisha kwamba vitambulisho vimewafikia watu wote kote nchini. Kuna haja ya kuhakikisha kwamba wasajili wamepelekwa katika sehemu ambako usajili unafaa kufanyika. Kuna baadhi ya maeneo humu nchini ambako mpaka sasa hakuna wasajili. Ni muhimu wasajili wapelekwe huko mara moja ili waweze kuzingatia suala hili na Wakenya wapate vitambulisho.

Tunapopeleka wasajili katika sehemu hizo, ni lazima pia tukumbuke kwamba sehemu nyingi humu nchini hazina magari. Mara nyingi tunaona watu wanafuatilia vitambulisho kutoka makao makuu ya wilaya. Kwa hivyo, Serikali inapaswa kujizatiti vilivyo na kuhakikisha kwamba imepeana magari na mafuta ya kutosha ili kuwawezesha wasajili kusafiri hadi kwenye kata ndogo ndipo wananchi waweze kupata vitambulisho.

Bi. Naibu Spika wa Muda, tukiendelea kuzungumzia suala la vitambulisho, ni lazima tukumbuke kwamba kuna kamati ambazo huteuliwa kuchuja na kuona iwapo watu fulani wanastahili kupewa vitambulisho. Ni maoni yangu kwamba kamati hizo zinafaa kukaguliwa kwa kina. Inafaa wanakamati wenyewe wawe wamechujwa kuhakikisha kwamba wanaweza kuchuja wenzao kwa uadilifu. Katika sehemu ninayowakilisha Bungeni ya Kaloleni kuna wananchi wanaoishi sehemu kama vile Mariakani, ambao mara kwa mara hubaguliwa vitambulisho vinapotolewa. Sababu za wao kubaguliwa si za msingi. Hili ni jambo ambalo hata sisi, tukiwa viongozi, tunashindwa kulielewa.

Ni muhimu tukubali kwamba wale wanaofanya kazi ya kuwakagua na kuwachuja wengine pia ni binadamu. Kwa hivyo, wanakuwa na vikao na wasajili, na wana mahitaji

kama binadamu wengine. Kuna umuhimu wa kuzingatia maslahi ya watu hao, ndipo wanapokuwa na vikao pia waweze kupata kiinua mgongo.

Kitambulisho ni stakabadhi muhimu sana. Tunazungumzia ugatuzi, na sielewi ni kwa nini bado Wakenya waendeleo kusafiri mwendo mrefu kufuatilia vitambulisho vyao. Inafaa Serikali iweke mikakati ya kuhakikisha kwamba watu wanafuatwa kusajiliwa mashinani ili kila mtu aweze kupata kitambulisho chake katika shule ya msingi ama katika zahanati. Tukifanya hivyo, tutarahisisha maisha ya Wakenya. Wananchi pia watakuwa wanaona faida ya ugatuzi.

Kwa hayo machache, ninaiunga mkono Hoja hii.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Ahsante sana, mhe. Mbunge wa Kaloleni.

Yes, Member for Mbooni.

Hon. Kisoi: Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity.

First and foremost, I would like to join my colleagues in thanking hon. Diriye for coming up with such a Motion at this critical hour, when this country is gearing up towards the coming elections. The national ID is a crucial document in this country. It is the lifeline of very many people, yet it has been one of the documents that have been completely difficult to access in this country. Issuing people with ID cards gives them the right to vote. When we deny our young people the right to access national ID cards, we deny them the right to exercise their constitutional right of voting.

This Motion is essential because certain parts of this country have never been favoured with this exercise. They still lag behind very much. For example, Makueni County has only one vehicle, which is used by the Registrar of Persons. With six constituencies, you can imagine how difficult such a task can be. The people of Makueni are being denied their right to vote, because they cannot vote without being issued with national IDs. Therefore, the passage of this Motion will reassure Kenyans that their constitutional rights are safeguarded.

I have some reservations about the three areas that hon. Diriye has narrowed down to – Wajir, Garissa and Mandera – and I would want him to widen the scope of his Motion to cover all the counties in the country. This is not an issue for only Wajir, Garissa and Mandera but an issue affecting the entire country. As we support this Motion, we should not forget that ID cards should be made easily accessible. The procedure and system that will be put in place has to be so effective that it will not, in any way, inconvenience any Kenyan. As many hon. Members alluded to in this House, this process has been used to victimise and extort money from young Kenyans, who are in dire need of getting registration certificates. It is through this Motion that we now want to put in place proper systems to ensure that this exercise is never used again by certain unscrupulous Kenyans to extort money from other Kenyans.

Hon. Temporary Deputy Speaker, in supporting this Bill, we must look for a way of providing the necessary infrastructure to facilitate the registration exercises. Without facilitating registration properly, we will not be doing anything that will be of any help. Some of these areas will require motor vehicles, offices and proper infrastructure. Without proper facilitation, we will not achieve our objective. Some Kenyans have to

travel for quite long distances to access this simple but important service. The process should be simple, so that any Kenyan can access the national identification card.

When we look at all these things, we also realize that this identification document is critical. In fact, I would really suggest that hon. Diriye considers in his amendment that, immediately after being issued with an identification card (ID), one should be issued with a personal identification number (PIN), so that this is not taken to be double entry. Immediately someone acquires the ID that person's data should be deemed to have gone to the national registration bureau, where all details pertaining to that person can be accessed.

Hon. Temporary Deputy Speaker, we also look at the issue of issuing PINs when we are issuing a person with an ID; this can also help this country in terms of revenue collection. There is a lot of money that this country is losing because we cannot track every Kenyan through the corporate world, individually, formally or informally. If this exercise of registering Kenyans is fast-tracked then I can assure you that revenue collection in this country will go up.

Lastly, I wish to talk about the issue of security; if we are not able to trace every Kenyan and get their proper background, then we are at a loss as a country. This process of registering Kenyans has been abused in the past. People who were ineligible to get IDs now have them and that is why it has been very difficult for this country to identify every Kenyan; it has become possible for anyone from any country to access this document more easily than even a true Kenyan.

Therefore, if we want to be very serious with the issue of security in this country, we must access background details of every Kenyan, and know what is happens at whatever time.

With those few remarks, I support this Motion and say that it has come at the right time and we should support it.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you hon. Member for Mbooni Constituency.

Hon. Members, we have a proposed amendment by hon. Ibrahim Saney, Member of Parliament for Wajir North Constituency. For that reason, I call upon the hon. Member to move the amendment. It is an amendment to the Motion we have been debating. Therefore, he moves the amendment and it is seconded, we will propose it and it is approved we will debate the Motion as amended.

Hon. Saney, you have the Floor.

Hon. Saney: Thank you, hon. Temporary Deputy Speaker. With your guidance, I am also to give my contribution to the Motion. I request that I should be given my chance to contribute to the Motion as well.

The Temporary Deputy Speaker (Hon. (Ms) Mbalu): Hon. Saney, you can debate the Motion either as amended or originally as moved. For now, you are moving an amendment.

Hon. Saney: Hon. Temporary Deputy Speaker. I beg to move:-

THAT, the Motion be amended by deleting all the words immediately after the word "House" appearing in the last three lines and substituting therefor the following:-

“resolves that the Government puts in place measures that all eligible Kenyans are duly registered including setting up a taskforce by the Cabinet Secretary for Interior and Coordination of National Government in order to identify those Kenyans who were wrongly registered as refugees and fast-track their acquisition of national identity cards.”

I request my colleague, hon. Mule, to second the amendment.

Hon. Mule: Thank you, hon. Temporary Deputy Speaker. I would like to second the amendment as proposed by hon. Saney. The purpose of this amendment, for the sake of the hon. Members who might not get the gist of the matter, is--- If you go to the refugee camps and if you look at the trend which has been taking place in north eastern and some parts of this country--- The marginalized groups have been taking their children of the age of ten years to refugee camps where they can secure shelter and food.

When these children attain the age of 18 years, they are referred to as refugees, yet they were taken to those refugee camps--- Therefore, we need to give the Ministry a mandate to try and identify these children because they are Kenyans, and we fast-track their registration and give them identification cards.

Hon. Temporary Deputy Speaker, we need a taskforce because if we do not have it, it will be very difficult to differentiate between refugees and the Kenyans in those areas. The taskforce will also include the heads of the clans of the communities and chiefs, who will identify these people. We want to move this amendment, so that we do not allow issuing of IDS to aliens.

With those remarks, I support the amendment.

*(Question of the first part of
the amendment, that the words to be left
out be left out, proposed)*

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I want to give direction. If you are going to contribute, you should debate the amendment. I repeat, we are now going to debate the amendment that has been proposed by hon. Ibrahim Saney and seconded by hon. Mule.

I can see a lot of requests; I do not know whether they are for the original Motion or the amendment.

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

Hon. Chanzu: Thank you, hon. Temporary Deputy Speaker. In fact, I think the first person who should contribute to that amendment is the Chair of the Departmental Committee on Administration and National Security, because proposing a taskforce means that it will take a short time. When you talk about a taskforce, it means that it will be there for a certain period.

What the hon. Member is saying is that there are children who go there at the age of ten or something like that, and then they live there until they are of the age of 18 years, when need to be registered. That brings a lot of confusion; for how long is that taskforce going to be there? This complicates the whole thing.

The Temporary Deputy Speaker (Hon. (Ms) Mbalu): Hon. Chanzu, are you on a point of order or debating?

Hon. Chanzu: I am debating, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms) Mbalu): It was not time to debate. You were on an intervention.

Hon. Members, you are at liberty to either negate the amendment or support it. It is up to hon. Members--- We are debating the amendment, and the hon. Member has a right to propose an amendment in this House.

It is up to hon. Members to either negate or carry it when we put the question. Let us get direction. Let me get hon. Members who want to debate the amendment, and not the original Motion.

Hon. Chanzu, you were on an intervention; it was either a point of order or information. Let us not confuse our machines. We have hon. Members who have been here. I have 22 requests. Let us not get to the habit of requesting to be given a chance to speak when other hon. Members have not spoken. That is a ruling.

Let me get hon. Members who want to debate on the amendment. Hon. Member for Molo, the Floor is yours.

Hon. Macharia: Thank you very much, hon. Temporary Deputy Speaker. I rise to support the proposed amendment. The Constitution provides that every Kenyan, who was born or found to have been in Kenya even if they do not have parents, are assumed to be Kenya citizens. It is important for refugees who are in northern Kenya at the border with Somalia to be screened. Among the refugees, we have genuine Kenyans who have not been issued with identity cards. This is simply because as a country and for the right reasons, we are skeptical and would want to deal with the issue of identity cards in the north with a lot of caution following what we have been going through as a result of fraudulent issuance of identity cards.

The Ministry of Interior and Co-ordination of National Government has its own mechanisms to screen and identify genuine Kenyans and separate them from the aliens and given them identity cards. Therefore, we do not need a taskforce to do that. The Department of Immigration in the Ministry of Interior and Co-ordination of National Government can do this with the help of chiefs and elders. Therefore, we do not want to go to the route of having a taskforce. The idea of the amendment is very noble, but let us avoid having a taskforce, so that we can move faster and have Kenyans in the camps registered and issued with identity cards as required by law.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let me get the Members who want to speak on the amendment. I will just give a chance to about four and then we can put the question, and then see whether it will be carried or carried.

Hon. Abongotum: On a point of order, hon. Temporary Deputy Speaker. I totally support the Motion, but on the amendment, would I be in order to advise my good friend, hon. Ibrahim Saney, to come up with a substantive Motion on the issue of a taskforce. It is a broad issue and he needs to give us the details of how he wants us to go about the taskforce. We need to just approve the Motion, and that taskforce element should be separate. He should just come up with a Motion, so that we can debate it substantively in the House. That is my advice. So, would I be in order to advise my friend to come up with a Motion on the taskforce? That would really help to address the situation.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): That was a point of information. Hon. Members, there is an amendment to the Motion by hon. Diriye by hon. Ibrahim Saney. It is up to us, hon. Members, either to approve or negate it. When I put

the question, you will either carry or negate it; we will then either go back to the original Motion or continue debating the Motion as amended.

Hon. Onyango: Hon. Temporary Deputy Speaker, just to give more information on the debate, the last statement of this good Motion says that this House urges the Government to urgently put in place measures that will ensure that all eligible Kenyans are duly registered and issued with the national identity cards. The measures could include this taskforce and the underlying words are “all eligible Kenyans”, whether they are in refugee camps or elsewhere.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Silvance, are you supporting the amendment or what?

Hon. Onyango: Hon. Temporary Deputy Speaker, would I be in order to say that what the amendment seeks is already captured here?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Are you supporting the amendment or not? You oppose the amendment?

Hon. Onyango: I oppose the amendment vehemently.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): So, Members, even if you have an advice, you either support and then you give your arguments or oppose and then give your arguments. Let us get directions. Of course, we are one year five months in this House and I know we know how to do the right thing, unless we want to use the back door.

Hon. Patrick Makau, contribute, either opposing or supporting the amendment.

Hon. King’ola: Thank you, hon. Temporary Deputy Speaker, for giving me this chance. First of all, I stand to support the Motion by hon. Diriye. The issuance of identity cards in this county is really wanting. Having an identity card in this country is like having a ticket to Heaven. I support the issuance of identity cards, but the amendment is untimely. This is because the issue of the issuance of identity cards is not solved. The Motion is self explanatory that every eligible citizen in this country should be issued with an identity card. So, if you bring in the issue of a taskforce, we will be double tasking in the Motion. Are we in order to amend a Motion which is self explanatory at this stage?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Makau, you are in order to amend it. You either support the amendment by hon. Ibrahim Saney or you oppose it.

Hon. King’ola: Hon. Temporary Deputy Speaker, I oppose the amendment.

Hon. Oyoo: Thank you, hon. Temporary Deputy Speaker for giving me the opportunity. I had intended to stand and support the initial Motion, but I want to vehemently oppose the intended amendment. It is likely to downgrade this very good Motion. To the best of my understanding, refugee camps are meant for people who are seeking refuge after a serious war or other economic crimes, and they are put there as they wait for their fate to be decided. I do not know where refugee camps are set up for Kenyans who are supposed to be registered and they are not running away from any crime. To the best of my conception, an amendment should be urging or compelling the Government--

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): There is a point of order, from hon. Ibrahim Saney. What is the point of order? You are the Mover of the amendment. What is out of order?

Hon. Saney: On a point of order, hon. Temporary Deputy Speaker. Article 43(1)(c) stipulates that being free from hunger is one of the of the basic rights. Is it in order for the Members of Parliament to give the view that people who have gone hungry and have registered in refugee camps just because the State failed in its mandate to secure food for them cannot get back their citizenship? Is that in order?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member, you are the Mover of the amendment and you had the chance to put across your points. I listened to that, and you had the chance when you were moving your amendment; hon. Members can now buy your argument. So, it is up to the hon. Members to decide. It is at my discretion; hon. Members, when we are moving Motions or amendments, it is important for you to convince hon. Members to accept your position. That is why we call it moving. From there, the Members can either negate your Motion or support it.

Hon. Oyoo, carry on.

Hon. Oyoo: Hon. Temporary Deputy Speaker, thank you very much. I wish to state categorically that the amendment is not in good taste; I would rather that if there is to be any amendment, it be a concrete one, something that is going to look like the House is urging the Government, or it is forcing the Government to make it mandatory that anybody who has hit 18 years is registered with immediate effect; the Government should be forced to have registration points at secondary schools, so that anybody who is about to sit for his or her Form IV examination is registered at their school. I believe that there is a misconception in this country that ID cards are only necessary for the purpose of voting. This is a misplaced concept: ID cards are supposed to help people to identify themselves as Kenyans, and all efforts must be made to make sure that those who hit the registration age are properly assisted to be registered in good time.

The Government must make arrangements to make provisions for the necessary infrastructure---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, just for your information, we are debating the amendment and this does not mean you are going to get a chance to speak on the Motion.

Hon. Oyoo: Hon. Temporary Deputy Speaker, I want to say that I oppose the amendment vehemently, and that I intend to bring a proper amendment force the Government to make it mandatory for Kenyans to be registered at the age of 18 without favouring any Kenyan from any particular part of the country.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): So, you oppose the amendment?

Let me get the voice of Hon. (Prof.) Sambili.

Hon. (Prof.) Sambili: Hon. Temporary Deputy Speaker, thank you for this opportunity. I had wanted to contribute to the main Motion, but I want to say that I oppose the amendment because, as has been said, this Motion is self explanatory. It wants all Kenyans who are eligible to be registered. Besides, we have been given direction by the Chairman of the Departmental Committee in charge of security.

As my contribution, the ID card is a basic right of every Kenyan. I feel that Kenyans who need ID cards should be facilitated to obtain them. Officers who are currently registering people should know that we do not have enough awareness. We need those officers to work with other Government agencies like education officers, and

visit schools for registration, as has been said by the previous speaker. If they do not have vehicles, let them work with people who have vehicles within districts. They can also work with chiefs at their barazas. When chiefs hold barazas, registration officers can go there and register young people who do not have ID cards. When they get ID cards, then they can be facilitated to get jobs. Acquisition of ID cards will also enhance the security of this country.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. (Prof.) Sambili, thank you for your contribution. Please stick to the amendment.

Hon. (Prof.) Sambili: Hon. Temporary Deputy Speaker, on the amendment, I feel that it is better to bring a substantive Motion that will deal with the people who are wrongly in refugee camps, because we are not sure of them. If we accept this amendment, we are going to register--- There is a possibility of registering aliens. So, I oppose the amendment. As I end my contribution, I want to say that officers who are currently registering people should be facilitated. I know areas like my constituency, Mogotio, are very remote; however, if registration officers can work with other Government officers as well as chiefs, they will reach those who have not been registered faster than if they do not work with them.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Is there a different opinion? All those I have listened to are opposing the amendment. Is the mood of the House that I should put the Question?

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

(Debate on the original Motion resumed)

Hon. Members, we are back to the original Motion. We are going to debate the original Motion that we have on the Order Paper. We have negated the amendment; so, the original Motion stands. This is just for the information of the House. You have the right to debate the original Motion, even if you have debated the amendment.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, I rise to support the Motion as it is here. The Motion is urging the Government to put measures in place to speed up the registration of eligible Kenyans. For once, this weekend I am going to assist the Government to do mobile registration in Kwanza. I want to make it. The youth have a problem. For the youth to get ID cards, is a burden.

So, what I am going to do in Kwanza Constituency starting on 1st September, 2014 is to have mobile registration for ID cards. The County Commissioner has agreed to come with me. The only thing is that the Government should facilitate the officers on the ground; I am told that I have to provide for them lunches and other things. I have said that I will do it for the benefit of my people, because I know that ID cards are very important, particularly at this time when we have funds like those from Uwezo Fund going to the constituencies. More youth want to access the funds, and without ID cards, they will not do so. Of course, if we do not have them engaged in income generating

activities, some of them will start doing wrong things and getting themselves into thuggery.

The other thing is that the Government should look at the over age cases. Over age cases are so many. For instance, during the last general election, you would find some youth running around yet they were 29 years old, but not registered. What we are saying is that the Government should relax conditions, so that the youth who have finished Form IV can go with Leaving School Certificates to enable vetting elders to check if a person is from their area. The Government should help us to have as many Kenyans, particularly youths, registered.

The other thing is the waiting period. Out there, you will find people who have registered, both the old and the youth, going to the chiefs and finding that their ID cards are not ready. We are also urging the Government that as soon as the documents are ready – this should be done at the county level, if possible – they should be released on time. We have cases where you go to the chief and find that---

One hon. Member said - with due respect to the Jubilee Government--- I do not know whether ID is issued skewed to make sure that some people do not register.

I had a case where the national identification card (ID) picture was different from the original applicant's picture; when we asked the officers what had happened, they had no answer. There is a lot of carelessness at the time of registration.

(Loud consultations)

Hon. Temporary Deputy Speaker, could you protect me from the loud consultations? I am making a point, but I am being distracted by my good brother, the Mover of the Motion.

We find at times that the picture on the ID that comes out is different from the original applicant's picture. The pictures are different. This means that it is either done deliberately or--- Recently I had a meeting with the Registrar of Persons in Kitale and I realized that mistakes are done by the clerks. We ask the Government to be very careful at the time of registration, so that documents match the ID that comes out.

Vetting must be flexible. We have had cases, and I thank the Government for agreeing to remove the condition of having a title deed. Since a guy comes from a village and the father must come with a title deed to show that he is a Kenyan. I think this is frustrating to the youth and the people who want to get IDs. Vetting should be flexible, so that people are not scared of going to get the IDs.

There are cases where an applicant goes to get an ID and he is told to pay some money. This is the case, yet youths do not work. They are asked to pay money; where will they get it from? There are also cases where the youth have to produce baptism cards.

Hon. Temporary Deputy Speaker, you will agree with me that most of the rural folks do not even have birth certificates. You will find that those conditions are very difficult for youths. If a youth was born in an area or a village and the village headman proves that that guy, or youth, is from that particular village, he should easily get the ID. Youths are scared of going to register for IDs, because they will be asked for payment and be told to bring title deeds of their farms. These conditions should be relaxed.

Lastly, but not least, we will have a referendum and a general election. There is the tendency by people from neighbouring countries--- I have cases of people who crossed the border. The referendum will be there whether we like it or not.

An hon. Member: No!

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, that is neither here nor there. Relax *bwana*. I am making a point. The referendum will be there and the general election will also come. People are brought from the neighbouring countries. The amendment that my good brother was proposing was talking about people in the county. However, we have people from across the borders, that is from Tanzania and Uganda, for example.

Hon. Ekomwa: On a point of information, hon. Temporary Deputy Speaker.

Hon. F.K. Wanyonyi: I am helping you. What is wrong with you?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): No! No! He has a right to raise a point of order. Nothing can be wrong with him.

Yes, the Member for Turkana South.

Hon. Ekomwa: Hon. Temporary Deputy Speaker, this is a very important Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): No! Is it a point of information or a point of order?

Hon. Ekomwa: It is a point of information, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Does he want your information? Hon. Wanyonyi, do you want information from the hon. Member for Turkana South?

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, I think I am such a mature debater. I do not need his information.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Turkana South, hon. F.K. Wanyonyi does not need your information.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, all that I was saying before I was rudely interrupted was that we have a tendency here where Members of Parliament, or candidates, ferry people from neighbouring countries and the Government must be very careful about this.

The Government must be very careful on this because we have people coming here as mercenaries. They come and help people go through; by the way I have a warning for our people. If you get people from across the border to helping you go to Parliament, or get whatever position you want, the people who are going to suffer later are those of that area. This is because the wrong people will get elective posts, and the right people will not.

So, hon. Temporary Deputy Speaker, I am saying that the question of people crossing the border from Uganda, Tanzania and Somalia to vote and go back is an issue that the Government should be very careful about; we are saying it should actually be able to put measures in place for vetting at the borders to be done properly.

My neighbour from Sirisia is also saying he has the same problem.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I want to express the interest that hon. Members have in this Motion; my list has 16 requests and

one intervention. I think the hon. Member wants to move a further amendment, which is not possible because of time.

Hon. Members, today's debate had a balance of 60 minutes. We started at 12.02 p.m. So, this is the time for the Mover to reply.

Hon. Members, this is a House of procedures and rules and we might not want to break them today as much as I can see we have a lot of requests. Hon. Members, I now call upon the Mover to reply because it is the official time to do so. You can donate your ten minutes to one or two Members; your time is only ten minutes. Hon. Mohammed Diriye, you can reply.

Hon. Diriye Mohamed: Thank you, hon. Temporary Deputy Speaker. I wish to donate my balance of time to two hon. Members. I give two minutes each to hon. Saney and the Leader of the Minority Party.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu: The hon. Member has been philanthropic enough, and the sitting ends at 1.00 p.m. today.

Hon. Saney: Thank you, hon. Temporary Deputy Speaker. I thank hon. Diriye for his generosity.

Hon. Temporary Deputy Speaker, it is a reality that there are Kenyan Somalis. It is also a reality that there are also Somali refugees in this country. The presence of Somali refugees should not be an excuse to curtail the rights of native Somalis, who have all the rights like any other citizen of this country.

Hon. Temporary Deputy Speaker, the predicament that has befallen the Kenyan Somalis is as old as history. It is as old as marginalisation. It started with the colonialists who felt that pastoralists, given their nomadic lifestyle, were so independent that they could not be manipulated. They have the milk and meat. They have no interface with sedentary life. They felt these were people who were hard to manage and govern. So, they decided to shoot and kill their animals in order to subjugate them.

Hon. Temporary Deputy Speaker, successive governments after Independence have furthered marginalization; one of the tools that has been used to marginalise the Somali community---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu); Hon. Mover, you can reply. It is my discretion. It is replying time.

Hon. Leader of the Minority Party.

Hon. Nyenze: Thank you, hon. Temporary Deputy Speaker. I thank hon. Diriye for tabling this very important Motion; it has come at the right time. Kenyan Somali have every right like, any other tribe in this country, to get national identification cards (IDs). They have been marginalized, victimized and denied their rights. They should never be denied their rights. They have every right, like any other Kenyan.

The matters raised by this Motion are clearly covered by Chapter Three of the Constitution; it speaks about citizenship. The most important constitutional provision is found under Article 53 of the Constitution. Article 53(1)(a) says:-

“Every child has the right to a name and nationality from birth.”

This Article is reinforced by the UN Convention on the rights of the child dated 30th November, 1989. Kenya is a signatory to Articles 7 and 8 of the Convention.

Hon. Temporary Deputy Speaker, whether the Government is able to verify whether the people in northern Kenya are Somali from Somalia or Kenyan Somali is not the work of the Kenyan Somali. The Government has to put in place mechanisms to---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Your two minutes are over. This was a donation. I know you are the hon. Leader of the Minority.

Hon. Member, you can reply. You have only five minutes to reply. Hon. Members, at my discretion, the House will adjourn five minutes past 1.00 o'clock.

Hon. Mohamed Diriye: Thank you, hon. Temporary Deputy Speaker. This Motion, as many hon. Members have alluded to, is very important. It is important for all Kenyans and more important for people who have been marginalized like the people of Mandera, Wajir and Garissa.

As we speak, we have many Kenyan Somali who do not have IDs. They are not like the rest of Kenyans and I can attest to that fact. People in northern Kenya do not have equal rights to IDs and other national documents. This is what this Motion aims to correct.

Hon. Temporary Deputy Speaker, we are facing discrimination in this country. We have faced it historically through successive regimes, and we are disappointed that this discrimination continues even under the new Constitution. This is something which is very horrible.

I appeal to my colleagues, hon. Members, to be awake to the fact that even when they were opposing the amendment--- We were not saying that Somali from Somalia should be given IDs. We are also not saying that refugees in the refugee camps, who are not Kenyans, should be given IDs. What we are saying is that we have a section of Kenyans who, due to poverty caused by drought, loss of their source of livelihood and their animals, which are all they have in this country, and there is a refugee camp nearby, go there, pose as refugees and register in order to get food. It is a shame that the Kenyan Government, which could not provide food and basic services to its citizens, denies them IDs. This is a basic entitlement. Our people have done nothing wrong; it is the Government that has failed.

For example, when a petrol tanker pours fuel along the road, you see Kenyans scooping that fuel, yet they know the danger they are exposing themselves to. We have witnessed over the last few years Kenyans dying in large numbers when they try to draw fuel that pours on the road. They do this and risk their lives because they are poor.

So, hon. Temporary Deputy Speaker, this is the same way we have Kenyan Somalis who are genuine Kenyans, and who do not know anywhere else in this world apart from Kenya--- Because they are poor and the Government cannot provide for them, and also because they do not have alternatives, they are forced to go and register themselves as refugees. They then find themselves in the predicament of their fingers being captured in the data base of the United Nations High Commissioner for Refugees (UNHCR).

When they reach the age of 18 years they are denied identity cards. Right now they number thousands. What will be their fate? We are just inquiring and we want the help of other Members. What will be the fate of those Kenyans from my constituency, Wajir, Mandera and Garissa? What will be their fate? They are stateless.

Imagine if this refugee camp in Dadaab is closed and the Somalis, Ethiopians and Sudanese who are there go back to their countries; where will my people go back to? They will be left stateless. I want to inform the Cabinet Secretary in charge and the President, who is the highest authority in this country, that we have problems due to marginalisation and deprivation. When your own entitlement is denied--- We fear that youths who are denied identity cards will go, register themselves and join the *Al Shabaab*. Maybe that has happened. It is not our wish that they do that. We want to prevent the youth from joining *Al Shabaab*.

However, by continuing to deny them identity cards just because they registered in the refugee data base of the UNHCR will make them pose as criminals and look for other means of earning a livelihood. They cannot study do business or seek help; they cannot even access a Government office. That means you basically put them in---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Summarise since your time is up.

Hon. Mohamed Diriye: My summary is that these many youths are forced to be stateless by poverty. They registered as refugees and right now their lives are almost in tatters. Their hopes have been shattered. They finished Form Four. I beg to request the support of the hon. Members, so that we pass this Motion and the relevant Government Ministry ensures this anomaly is corrected.

Thank you, hon. Temporary Deputy Speaker.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Hon. Members; for obvious reasons I will not be able to put the question. I direct that the question be put at the appropriate time.

Hon. Members, there being no other business, this House stands adjourned until today, Wednesday, August 27th 2014 at 2.30 p.m.

The House rose at 1.10 p.m.