

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 1<sup>st</sup> December, 2015

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

**Hon. Speaker:** We do not have a quorum. Ring the Quorum Bell.

*(The Quorum Bell was rung)*

Hon. Members, we have a quorum now. We can now proceed.

### PETITION

#### INADEQUATE/DEPLORABLE STATE OF MENTAL HEALTHCARE FACILITIES IN KENYA

**Hon. Speaker:** Hon. Members, I have Petition No. 30 of 2015 to present. The Petition relates to inadequacy and deplorable state of mental/psychiatric healthcare facilities in Kenya.

Pursuant to the provisions of Standing Order No. 225(2)(b), I wish to convey to the House that I am in receipt of a petition signed by Elijah King'ori Gathima regarding the inadequate and deplorable state of mental health facilities in Kenya. The Petitioner is concerned that the Government has neglected the only public mental healthcare facility. That Parliament has continuously failed to allocate funds for the operations of the facility. The Petitioner contends that the entire country is served by Mathare Mental Hospital. He further states that mental wards located at the Level 5 hospitals are under-staffed and the accommodation infrastructure is inappropriate for psychiatric patients considering that many mental patients are suicidal.

The Petitioner prays that the National Assembly, through the Departmental Committee on Health:-

- (i) Recommends establishment of more mental healthcare facilities in the country.

- (ii) Ensures provision of adequate budgetary allocation to enable smooth running of those medical facilities.
- (iii) Makes any other order or direction that it deems fit in the circumstances of the prayers sought.

Hon. Members, pursuant to Standing Order No. 227(1), this petition stands committed to the Departmental Committee on Health for consideration. I urge the Committee to engage the Petitioner and report to the House within 60 days.

Next Order!

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today, 1<sup>st</sup> December, 2015:-

The Reports of the Auditor-General on the Financial Statements in respect of New Democrats for the years ended 30<sup>th</sup> June 2011 and 2012 and the certificates therein.

The Report of the Auditor-General on the Financial Statements of the People Democratic Party for the year ended 30<sup>th</sup> June 2012 and the certificate therein.

The Reports of the Auditor-General on the Financial Statements in respect of The National Alliance Party of Kenya for the years ended 30<sup>th</sup> June 2011, 2012, 2013, 2014 and the certificates therein.

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions, for the year ended 30<sup>th</sup> June 2014, and the certificates therein:-

- (i) The Ministry of Lands, Housing and Urban Development;
- (ii) Kirinyaga University College;
- (iii) The Kenya Dairy Board;
- (iv) Rivatex East Africa Limited;
- (v) IDB Capital Limited;
- (vi) Wiper Democratic Movement-Kenya;
- (vii) Kenya National Highways Authority; and,
- (viii) Kenya Ferries Services Limited.

The Annual Report and Financial Statements of the Independent Electoral and Boundaries Commission for the year ended 30<sup>th</sup> June 2014 and the certificate therein.

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June, 2015 and the certificates therein:-

- (i) Kenya Power and Lighting Company Limited; and,
- (ii) Kenya Electricity Generating Company Limited.

The Status Report of the Ministry of Devolution and Planning for the period 2013/2015.

**Hon. Keynan:** Hon. Speaker, I beg to lay the following Paper on the Table of the House today, 1<sup>st</sup> December, 2015:-

The Special Report of the Public Investments Committee on the Kenya Airports Authority duty free shops contract at Jomo Kenyatta International Airport and Moi International Airport: 1989 to 2015.

### NOTICES OF MOTIONS

## ADOPTION OF SPECIAL REPORT ON DUTY FREE SHOPS CONTRACT

**Hon. Keynan:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Special Report of the Public Investments Committee on the Kenya Airport Authority duty free shops contract at the Jomo Kenyatta International Airport and Moi International Airport: 1989 to 2015.

**Hon. Speaker:** Very well. It will be good that Members have a look at that Report, which is very comprehensive. I took the liberty to go through it and it is a very comprehensive Report, indeed.

Hon. Dan Kazungu!

*(Applause)*

## FORMULATION OF POLICY ON PUNISHMENT IN SCHOOLS

**Hon. Muzee:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that there has been an alarming increase in indiscipline cases in learning centres across the country and, in particular in primary and high schools; further aware that the steady rise in indiscipline cases in those learning centres has been linked to the abolition of corporal punishment in 2001; noting that there seems to be a correlation between lack of proper disciplinary mechanisms and the rise in indiscipline in schools, coupled with the fact that teachers have lesser say when it comes to disciplining of students under their care leading to strikes, destruction of property and embarrassing incidents in the full glare of the public; this House urges the Government to formulate a comprehensive policy on punishment in schools to check this worrying trend.

**Hon. Speaker:** Well, that is a proposed Motion by Hon. Dan Kazungu. Next Order!

## MOTION

MEDIATED VERSION OF COUNTY GOVERNMENTS  
(AMENDMENT) BILL (SENATE BILL NO. 1 OF 2014)

**Hon. Speaker:** Who is the Chairperson of the Mediation Committee? Hon. Members, the Members of the Mediation Committee, with respect to this particular legislative proposal from the Senate, were Hon. Wanjiku Muhia, Hon. Dan Maanzo, Hon. Timothy Bosire and Hon. Joseph Limo from the National Assembly. Those are the four Members appointed from the National Assembly to mediate the contentious issues in the Bill. In fact, there is a mediated version of the Bill. So, who among those ones is the

Chair? She is very migratory. Hon. Wanjiku Muhia, I thought I saw you next to Hon. Maanzo a while ago. You can also walk to the Dispatch Box and speak from there.

**Hon. (Ms.) Muhia:** Hon. Speaker, I am very sorry. I was looking for my Secunder and he seems not to be in. So, I was negotiating with Hon. Maanzo to second me and he is in agreement.

I am the Vice-Chair of the Mediation Committee on the County Governments (Amendment) Bill, Senate Bill No.1 of 2014. The Senate appointed Senator (Dr.) Bonny Khalwale, Senator Billow Kerrow, Senator Janet Ong'era and Senator Kipchumba Murkomen. This House appointed Hon. Daniel Maanzo, Hon. Timothy Bosire, Hon. Limo and I.

The aim of the Mediation Committee was to try to bring a framework which could guide the county governments to remain within the Third Schedule of the Constitution, so that one day they do not wake up and transfer county headquarters from town "A" to town "B".

We found the following:-

THAT, the Transition Authority had failed to classify urban areas and cities as they were leaving office as per Section 54 of the Urban Areas and Cities Act.

THAT, the physical locations specified in the Schedule of the County Governments (Amendment) Bill are currently not urban areas since they are not yet classified as such by the Urban Areas and Cities Act, 2011. The determination of the physical location of the headquarters of a county government should not only be a preserve of the respective county government, but also the people's representatives at the national level. The Mediation Committee identified Clauses 2 and 3 as being contentious and agreed on the following:-

(1) Clause 2 be amended by inserting the following new definition on "city" and "urban" areas to mean the same as defined under the Urban Areas and Cities Act, 2011.

(2) Clause 3 be amended to provide that each of the county government shall be located in the respective physical location set out in the Third Schedule of our Constitution. A county assembly may, by a resolution supported by, at least, two-thirds of the members of the county assembly, and with the approval of Parliament, transfer the headquarters of the county government from the physical location specified in the Third Schedule to such other physical location as it may consider appropriate.

Hon. Speaker, this is the framework that we found most appropriate, so that in terms of transferring the county assembly, it remains a preserve of the people and the representatives at the national level, so that at no one time would the county government or the governor decide where the county government would be. We found it fit to put a framework in place which shall guide the transfer of any county headquarters in the event that the county government wishes to do so. A county assembly should, before passing this resolution, facilitate public participation as provided for by the Constitution. The county government should confer the status of an urban area to the seat of the physical location of the county government in accordance with the provisions that are set out in the Urban Areas and Cities Act, 2011. From the foregoing, the Mediation Committee recommends that a mediated version of the Bill - attached herewith - should be approved by the National Assembly, having set the framework as I have defined.

Hon. Speaker, I wish to thank you most sincerely, your office and that of the Clerk, for giving the Members that you appointed, an opportunity to mediate between the Senate and the National Assembly.

I move and request Hon. Maanzo to second.

**Hon. Maanzo:** Hon. Speaker, I would like to second this Motion. First of all, I want to thank you for giving us the opportunity to serve in this very important Mediation Committee.

The contentious issues have been where there have been proposals for changing the county headquarters. In some counties, there have been serious issues and there have been attempts to shift the county headquarters, especially where governors feel that they need to move the headquarters to areas where they have more votes. Therefore, the assembly tends to intervene. The Transition Authority did not complete this exercise. Therefore, we need to have a legal framework so that, in the event any county wishes to change its headquarters, there has to be a process where the people can participate, the county assembly is part of it and the Executive Committee is also involved. Most importantly, the National Assembly and the Senate, which supervises the activities of the counties, should be involved. We need to have a proper law. We should also enforce the Urban Areas and Cities Act which can be very useful in guiding the process, so that we do not have this matter going to courts and causing confusion in the counties. This wastes time and distracts the Executive and the county assemblies from concentrating on development in the counties.

We have emphasized that public participation is very important and also the approval by the National Assembly. Before the county headquarters were fixed, a serious process was undertaken. This is a matter that is fixed in the Constitution. Therefore, it is only fair that we have a proper mechanism to do it.

I beg to second.

*(Hon. Nooru consulted loudly)*

**Hon. Speaker:** Order, Hon. Nooru! Just participate in the proceedings.

*(Question proposed)*

Hon. Members, even as the debate, perhaps, for a short while may continue, it is good to draw your attention to the fact that the contention is with regard to the Third Schedule. This is what the mediation team has ironed out. Therefore, debate is only on that particular aspect. At the same time, I need to inform the House that if you look at the provisions of Article 113 of the Constitution, both Houses must approve a mediated version of a Bill for it to pass. Therefore, if one House does not approve the mediated version, the Bill collapses or fails. Therefore, it is just to draw your attention to the fact that your own Members who took part and the membership of the Senate have come up with a version that is agreeable, at least, to them, and they seek to persuade you to similarly be in agreement. Of course, it is not taken for granted that you will agree but, at least, your own membership has agreed with the Senate.

**Hon. Wamunyinyi:** Thank you, Hon. Speaker. I rise to support what has been arrived at in this report. There was a serious gap in the legislation, which did not provide for the area which is designated as county headquarters. For example, the Governor of Kiambu County rose one day and said that Thika was the headquarters of Kiambu County. This was not in the interest of the general population of the county. Majority of the people of Kiambu thought that the headquarters ought to have been at Kiambu Town. So, there was conflict between the Governor, the leadership and the people of Kiambu County. This has occasioned trouble and there has been a lot of acrimony. If we had a law that clearly provided how to establish the headquarters of a county, this would have prevented the problem. This law is timely. It is important. We need to prosecute this to ensure that it goes through, so that we do not go through this problem again.

With regard to the management of urban centres in our country, we have towns which were municipalities and urban centres. There has to be a clear framework on how those towns are managed. To date, some counties have already established management boards while others have not. For example, Bungoma has those towns and nothing happens. Bungoma Town had a municipal council and now there is nothing in existence to manage the town. This law is going to guide the establishment of management boards of our towns.

This is a straightforward law and I do not want to dwell much on it. We should move on and harmonize all the provisions, so that we do not allow such situations to recur. I thank you for giving me the opportunity to make my remarks.

**Hon. Limo:** Thank you, Hon. Speaker for giving me this chance. First, I thank you for giving me the opportunity to sit in this Mediation Committee. I thank the Members for the support they gave us during our work.

The mediated version of the Bill is very good. Whereas the initial Bill was mentioning the headquarters, the contention was that it was framed in a way that it was fixed and, therefore, there was no exit route. In this Bill, once the people in the county decide that the headquarters are not appropriate, there is a way of changing it. A two-thirds majority of the MCAs of that county will simply come up with a report and the report comes to Parliament, namely, the two Houses. We thought that both Houses have a stake in our counties. The way the headquarters are placed is directly related to the services being offered to the people. Therefore, it is important for the leadership of the county to have a say. We have representative from the counties in both Houses and this will guide the Houses on how the process will go.

The current version has no problem. Whereas it indicates where the headquarters are, it provides a leeway to change it. I urge my colleagues to support this Bill.

**Hon. Ogolla:** Thank you, Hon. Speaker. I support the Report. However, there are one or two things that we need to be careful about.

First, I consider many of our governors to be out of their minds when they think of changing the location of the headquarters of a county. There was a basis upon which some of those headquarters were located.

In our Constitution, the counties were districts in 1992. By 1992, those districts had their headquarters which had a lot of infrastructural arrangements. They were the seat of the district government. One would get into a lot of problems if he or she were to change headquarters of a district. In as much as we are providing ways of how this can be

done, moving headquarters of a county from one constituency to another will not be simple, when we have legislation in place. It will be a big challenge because no constituency or community had an arrangement where the headquarters were placed in their midst. When infrastructure is put in place, you want to move the headquarters to another location in the name of making room for legislation like this.

In as much as the Mediation Committee has given us very good alternatives and ways of doing it, I want to plead that nobody in their sound mind will move the headquarters of counties away from where they were in 1992. The Constitution placed a lot of objectivity in terms of districts remaining where they were.

**Hon. Speaker:** Hon. Francis Waititu.

**Hon. Francis Waititu:** Thank you, Hon. Speaker for giving me this chance to support this Motion.

As my colleague, Hon. Wamunyinyi has said, we had a problem in Kiambu County where the Governor said that county offices should go to Thika. We tried to intervene as lawmakers from Kiambu County, but we could not relocate the headquarters to Kiambu. Unless we amend this law, the governors will abuse their powers. I thank the Committee for taking the initiative to discuss this.

Some governors change their offices and there is no central place where people can go and see them. It is a very important office. If we have a central place where governor's offices are located, this will help the county governments, especially the Members of County Assembly (MCAs) and the executives to know where they can get their governor.

There was a case where some governors stayed in hotels. We saw and heard it. That is because they did not have a central place of operation. Our Constitution allows for public participation where citizens of a county would sit down and agree where their headquarters would be.

Looking at what this Committee has done, it is true we are getting somewhere. The office of the governor is the second most powerful office, after the office of the President. A county office is very important to the locals. In Kiambu County, Lari is at the far end of the County, next to Naivasha. The other county offices are in Thika which is on the opposite end of the county. People have difficulties accessing the county offices but, as lawmakers, there is nothing that we could do.

Therefore, I fully support that we should have those offices located in one central point. As my colleagues have said, in 1992, we had those offices. That is where commissioners used to sit. Those offices had working systems. I thank this Committee for doing a tireless job to bring this into order.

**Hon. M'uthari:** Thank you, Hon. Speaker. I rise to support this report by the Mediation Committee. This report is important because it clarifies the location of the headquarters of counties and puts it into law. This will stop some governors from waking up and deciding to change the headquarters of the counties at will.

The Bill, through the Mediation Committee, has expanded the scope of the people who are involved in the process of ratifying. This will ensure the National Assembly and the Senate, together with the county assemblies, are involved in the process of identification of the location of the county headquarters. In this way, there will be greater

participation and the matter is not left to a single individual to decide where the headquarters will be located.

With those few remarks, I support the Motion.

**Hon. F.K. Wanyonyi:** Thank you, Hon. Speaker for giving me the chance to contribute to this Motion. I support the report by the Mediation Committee.

Apart from Kiambu County which has been in the newspapers for quite some time, we also have governors who do not even stay in their own areas. This report is good because it will bring some order in the county. Sometimes, you will find a governor moving from one place to another because he did not get a lot of votes in that area. He establishes headquarters in an area where he thinks he is more popular.

This is a good report and I support it so that individuals do not get away with doing things that do not help the community. I have a case where the governor of my area has moved from Trans Nzoia and is now elsewhere. This is good because we will be able to get him back to Trans Nzoia so that he can do the work that is supposed to be done.

Thank you and I support the Report.

**Hon. Speaker:** Hon. Samuel Gichigi.

**Hon. Gichigi:** Nashukuru sana Mhe. Spika. Ningependa kuunga mkono uamuzi wa Kamati iliyoteuliwa kuleta maridhiano kati ya Bunge la Seneti na Bunge la Kitaifa. Ni kweli kwamba kumekuwa na matatizo kuhusu makao makuu ya serikali za ugatuzi. Ni muhimu sheria hii ipitishwe ili kuwe na uwazi na uhakika kuhusu mahali ambapo makao makuu yatajengwa. Sehemu zingine kama katika serikali ya Kaunti ya Nyandarua, hatujakuwa na makazi hayo. Tumekuwa tukikodisha ofisi za serikali za Kaunti juu ya maduka. Ni muhimu kuwe na uamuzi wazi kuwa makao makuu ya serikali ya ugatuzi inapatikana mahali fulani. Hii ni kwasababu rasilmali zinazotakikana kujenga hayo makao makuu zitumike. Hii itatusaidia kujua kwamba hapa ndipo makao makuu yataendelea kwa muda mrefu na hayatabadilishwa leo au kesho.

Pia, naunga mkono sheria hii inayosema kuwa wananchi wenyewe wahusishwe katika uamuzi, iwapo kutakuwa na pendekezo la kuhamisha makao makuu.

Naomba serikali iendeleo kusaidia zile kaunti ambazo hazina rasilmali namijengo yakutosha ili kuwa na makao makuu ya kaunti.

Asante.

**Hon. Speaker:** Hon. Memusi Kanchori.

**Hon. Memusi:** Thank you, Hon. Speaker, for giving me the opportunity to add my voice to that of my colleagues in support of the mediated version of the County Governments (Amendment) Bill. We need very strong laws to protect the history of our country. County headquarters form part of the history of this country, which needs to be protected for future generations.

There are certain countries with very strong laws to the effect that you cannot even decide to change the design of a historic structure. To renovate a certain structure, you need approvals from very high levels. If you cannot change the design of a structure, how more so important is the headquarters of a county? So, I support this Bill and thank my colleagues who took time to consider the amendments.

Lastly, I want to send my condolences to the bereaved family of the Kenyan who died in the unfortunate security drill event at Strathmore University. That was a very



unfortunate event that does not need to be repeated in this country. As much as security drills are important, we do not want to see such drills killing our own people.

I support this Bill.

**Hon. Speaker:** Hon. Florence Kajuju!

**Hon. (Ms.) Kajuju:** Thank you, Hon. Speaker. I stand to support the mediated version of the Bill. I thank the Committee for coming up with a resolution that, on the face of it, is going to sort out many of the problems our counties have encountered while in the process of ensuring that they shape up and meet the constitutional requirements.

One of the important aspects I have noted is the fact that the mediated version of the Bill demands public participation. The county assemblies must undertake public participation so that whenever residents of a county agree on the headquarters of a county, the county assemblies must ensure implementation by the governor. It would be a setback if it is only governors who were left to decide where to take county headquarters. We know of situations where governors have resisted taking county headquarters to where members of the county have agreed.

I would ask the county assemblies to also ensure that they stick to their mandate under the law to ensure that the counties function and that county headquarters are designated as per the law. We shall be able to realise the growth that devolution is expected to give the counties through settlement in the county headquarters.

Hon. Speaker, with those remarks, I support the mediated version of the Bill.

**Hon. Wakhungu:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Wamalwa, what is it?

**Hon. Wakhungu:** Hon. Speaker, I rise under Standing Order No. 95. We are just debating the mediated clause and there is a lot of repetition. It is like everything has been exhausted. Therefore, I beg to move that the Mover be called upon to reply?

Thank you.

**Hon. Speaker:** Hon. Members, the proposal by Hon. Wamalwa is that since the issue is about urban areas and everybody seems to be repeating what has been said, the Mover be called upon to reply.

*(Question, that the Mover be called upon to reply, put and agreed to)*

**Hon. Speaker:** The Mover, Hon. Wanjiku!

**Hon. (Ms.) Muhia:** Thank you very much, Hon. Speaker. I thank all the Members who have contributed and found it fit to support this mediated version of the Bill. Indeed, there was not so much to say because we already debated this Bill during its Second Reading. We are all in agreement that this nation has to remain orderly. For us to remain orderly, we have to stick to the provisions of the Third Schedule of the Constitution.

I also thank Hon. Chris Wamalwa for saving the time of this House because we are all in agreement. Thank you, Hon. Speaker. I thank the whole House.

I beg to reply.

*(Question put and agreed to)*

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

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

## THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Members! You can resume your seats. We are now in the Committee of the whole House to consider the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 57 of 2015). Order, Members! We are starting right away.

*(Clause 2 agreed to)*

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

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it, Hon. Wamunyinyi?

**Hon. Wamunyinyi:** Thank you, Hon. Temporary Deputy Chairman. I wish to raise some fundamental issues on the amendments proposed in the Bill.

**The Temporary Deputy Chairman** (Hon. Cheboi): You are not audible. You are a tall man, Hon. Wamunyinyi. So, when you do not move closer to the microphone, you are not very clear.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Chairman, I wish to draw your attention to a number of issues regarding this Statute Law (Miscellaneous Amendments) Bill.

First, having looked at some of the provisions relating to the Communications Authority of Kenya, you will note that---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Wamunyinyi, if you are talking about the provisions relating to the Kenya Information and Communications Act, we are not yet there.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Chairman, I know we will reach there. I wish to draw your attention to some issues. Why am I saying this? I have some letters which, if you look at---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Wamunyinyi, when we reach there, I will give you a chance to raise those issues. Let us deal with the provisions which you do not have issues with. We are now dealing with provisions related to the Criminal Procedure Code. I am sure that you have no issue with those provisions, at least,

from what you have said. When we reach the particular provision you are talking about, I will give you an opportunity to raise your issues.

**Hon. Wamunyinyi:** I am much obliged.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong'a, can we hear you?

*Schedule*

*Provisions relating to the Criminal Procedure Code (Cap.75)*

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

THAT, the Bill be amended in the Schedule—

(a) in the proposed amendments to the Criminal Procedure Code by inserting the words “the Sexual Offences Act” immediately after the words “Laundering Act” in the proposed new section 364 (1)(c).

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Do we have any Member who wants to contribute on this amendment of the CPC? I see Hon. Gichigi. Do you want to contribute on the Criminal Procedure Code?

**Hon. Gichigi:** Yes.

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

**Hon. Gichigi:** Hon. Temporary Deputy Chairman, there is no justification that has been given for this specific amendment by the Chairman of the Departmental Committee on Justice and Legal Affairs.

We are all offended by the rate at which sexual offences are increasing in this country. The idea of bail as entrenched in the Constitution is to make sure that somebody comes to the courts and he does not abscond and cause harm when he is out there. So, I do not understand why you want to rate terrorism with this sort of offence. It is the constitutional right of everybody to be granted bail. We should not try to bring repression in this country.

I oppose the further amendment that the Chairman is bringing on this one because he has not justified it.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the opportunity to Hon. Maanzo and then I will come back to Hon. Chairman of the Committee to clarify, then Hon. Members will make their decision.

**Hon. Maanzo:** Thank you, Hon. Temporary Deputy Chairman for giving me an opportunity to contribute on this amendment.

First of all, I want to support the Criminal Procedure Code. It regulates many other crimes named in several other Acts of Parliament. Sexual offences are very serious and that is why we are including them in the Bill. Therefore, they should be treated with the seriousness they deserve. They should be categorised as has been proposed by the Chairman.

It is proper and I support it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. Can the Chairman, Hon. Chepkong'a, make some brief clarifications?

**Hon. Chepkong'a**: Thank you, Hon. Temporary Deputy Chairman. The manner in which I moved the amendment caused a little bit of confusion. If you look at the amendments as contained in the Statute Law (Miscellaneous Amendments) Bill, it states the instances in which bail can be granted before stay. What we have just done is to include sexual offences in the many other instances. For instance, what has been stated in the amendment is that it includes Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, and so many others that are contained in this particular amendment.

Therefore, we have included Sexual Offences Act. It is just expanding without necessarily tampering with the constitutional safeguards that are provided in the Constitution, that someone is entitled to bail as a matter of right. So, that is not being interfered with.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is sufficiently clear, Hon. Chepkong'a. Therefore, Members will make their decision.

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

*(Loud consultations)*

Order, Hon. Members! You need to make your decision one way or the other.

*(Provisions relating to the Criminal Procedure  
Code (Cap.75) as amended agreed to)*

*Provisions relating to the Prisons Act (Cap.90)*

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

THAT, the Bill be amended in the Schedule—

(b) in the proposed amendments to the Prisons Act —

(i) by deleting the word “office” appearing immediately after the words “or for an” in the proposed new section 46(1)(ii) and substituting therefor the word “offence”;

(ii) by deleting the words “or while malingering” appearing immediately after the word “fault” in the proposed new section 46(3)(a);

(iii) by deleting the word “if” appearing immediately after the words “considers that” in the proposed new section 46 (4)(b) and substituting therefor the word “it”;

(iv) by deleting the words “on the recommendation of the Commissioner, the CS” appearing immediately after the words “of this section” in the proposed new section 46 (5) and substituting therefor the words “the Commissioner”.

This is purely to correct grammatical errors that were contained in this Bill and to remove arbitrary conditions for loss of the right to remission.

The Act is seeking to remove the discretion of the Board of Mercy in granting remission to a prisoner who has reformed. Therefore, we are saying that that right should not be taken away from the Board of Mercy and that should be retained. So, we are making those proposals.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Midiwo, do you want to speak to this specific one? I can see that you are not interested.

*(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)*

*(Provisions relating to the Prisons Act (Cap.90) as amended agreed to)*

*(Provisions relating to the Registration of Persons Act (Cap.107) agreed to)*

*Provisions relating to the Firearms Act (Cap. 114)*

**Hon. Wamunyinyi:** On a point of order, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Wamunyinyi, you are shouting point of order and you have not placed your card in the intervention.

Hon. Member for Kiminini, you have the Floor.

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Chairman. These amendments are very critical and it is in order that we follow. Actually, the consistence is not there. We were just at the Prisons Act, after we had Criminal Procedure Code. We have jumped to the other one. It seems that it is not flowing in the Order Paper. Can we have that guidance so that we follow?

**The Temporary Deputy Chairman** (Hon. Cheboi): We are following the Bill, but not the Order Paper. You should have the Bill. We have a few copies here. You can have copies of the Bill, so that we can we proceed in an orderly manner.

*(Provisions relating to the Firearms Act (Cap. 114) agreed to)*

*Provisions relating to the Pharmacy and Poisons Act (Cap. 244)*

**The Temporary Deputy Chairman** (Hon. Cheboi): On this one, we have two amendments; one is by Hon. Ichung'wah and the next one is by Hon. Victor Munyaka.

This will fall, if the one by Hon. Ichung'wah is carried. Therefore, let us be very clear about that. I do not see Hon. Munyaka in the House.

Proceed Hon. Ichung'wah and prosecute your amendment.

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

THAT, the Bill be amended in the Schedule-

(a) in the proposed amendments to section 3(1) of the Pharmacy and Poisons Act (Cap. 244) by deleting the first row and substituting therefor the following new row-  
Delete the words "paragraph (d)" and substitute therefor the following new paragraph –  
(d) three Pharmacists representing the categories specified in this paragraph and appointed by the Minister from nine names competitively nominated by the Pharmaceutical Society of Kenya with due regard to gender, in which case the Society shall submit three names in respect of each of the following categories-

- (i) the public service;
- (ii) the community pharmacy; and
- (iii) the pharmaceutical industry

Basically, all I seek to do is to ensure that the pharmaceutical society which is critical in the Pharmacy and Poisonous Board is properly represented in this board. You remember the numerous cases including the one that was in the media last night where you saw pharmacists defrauding pharmacies and drugs being sold to other pharmacies without proper regulations.

There are people who are better placed to look into issues that have to do with drugs and dispensation of drugs in pharmacies as opposed to people in the Pharmacy and Poisons Board of Kenya. I beg honourable Members to support this amendment because we are putting the right professionals in the right board at the right time.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): If Hon. Munyaka is present, I will give him the first shot. However, I think he is not present. Hon. Wamalwa, I can see your request.

**Hon. Wakhungu:** Hon. Temporary Deputy Chairman, what Hon. Ichung'wah has mentioned is true. With regard to the Pharmacy and Poisons Board, it is the pharmacists who are critical. He has proposed three names with regard to gender. We, however, need some clarity because the first clause talks of the public service and the second one talks about the community pharmacy and the pharmaceutical industry. I rise to support because it makes a lot of sense.

**The Temporary Deputy Chairman** (Hon. Cheboi): Since I see no other Member who is interested in this particular amendment, I will go ahead and put the Question.

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

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

*(Proposed amendment by Hon. (Dr.) Munyaka dropped)*

*(Provisions relating to the Pharmacy and Poisons Act  
(Cap. 244) as amended agreed to)*

*(Provisions relating to the Valuation for Rating Act (Cap. 266) agreed to)*

*(Provisions relating to the Rent Restriction Act (Cap. 296) agreed to)*

*(Provisions relating to the Landlord and Tenant (Shops, Hotels and  
Catering Establishments) Act (Cap.301) agreed to)*

*(Provisions relating to the State Corporations Act (Cap.446)  
agreed to)*

*(Provisions relating to the Air Passenger Service Charge Act  
(Cap.475) agreed to)*

*Provisions relating to the Kenya Information and  
Communications Act, 1998 (No.2 of 1998)*

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order, Hon. Chepkong'a?

**Hon. Chepkong'a:** I must thank you, Hon. Temporary Deputy Chairman for giving me this opportunity. I wish to make the following further amendment in consultation with---

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, I had promised to give an opportunity to Hon. Wamunyinyi, but let me listen to you and then I will give him an opportunity also.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, those are fundamental amendments. As you know, I am a former regulator. You know I am the first regulator of telecommunications in this country, having started the Communications Commission of Kenya (CCK).

The proposals here are okay. However, with respect to Section 84W(4) and Section 84W(5) you are actually taking away the powers of the Communication Authority of Kenya which is a constitutional body, and giving them to the Competition Authority. I wish, therefore, to make the following amendment---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong'a, I am not giving you an opportunity as a Mover. You have a further amendment which you want to propose.

**Hon. Chepkong'a:** I have a further amendment which I am proposing now with the approval of the Mover. Of course, the Departmental Committee on Justice and Legal Affairs is ordinarily the owner of this Bill. It is just that the Leader of the Majority Party is the sponsor.

Hon. Temporary Deputy Chairman, I beg to move the following further amendment:-

THAT, the deletion under Section 84W be deleted and be substituted therefor with the following---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong'a, what you are proposing is that the deletion be deleted. Obviously, therefore, you must be having a substitution.

**Hon. Chepkong'a:** Yes, I have a substitution.

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

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I wish to substitute the deletion under Section 84W (4) with the following words:-

“The Commission may, in consultation with the Competition Authority and after due process, declare a person or institution by notice in the Gazette to be a dominant telecommunication service provider for the purposes of this Act”.

Hon. Temporary Deputy Chairman, I beg to move the following further amendment:-

THAT, Section 84W(5) be deleted and substituted therefor with the following new section in the proper sequence:

“In consultation with the Competition Authority” immediately after the words, “Commission shall” in the prefatory statement.

The reason I am making those proposals is to ensure that this is in line with international best practice. For instance, in the USA, under the Federal Communications Commission (FCC) what is contained in my further amendment is what happens. This is to ensure that it is not done by one single body but rather, there should be consultation between the bodies. It is not left to one particular player. This is a dual function of the two authorities.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, the further amendment I have proposed regards Section 84W(4) and Section 84W(5). However, before I open that to anybody else, there was an issue raised by Hon. Wamunyinyi. I would like to hear his version.

**Hon. Wamunyinyi:** Thank you, Hon. Temporary Deputy Chairman for giving me the chance again to raise the issue that I was putting across initially. Hon. Chepkong'a is attempting to remedy the situation but he is still doing it the wrong way. The issue I am raising is that the amendments being brought forward in this Statute Law (Miscellaneous Amendments) Bill relating to the Kenya Information and Communication Act, is a major overhaul of an enabling Act. This is also confirmed by a letter from the Attorney-General of the Republic of Kenya who is the Chief Legal Advisor of the Government. I will just quote a section of the letter from the Attorney-General.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is perfect. You have a letter. We do not have the benefit of having seen the letter you are talking about. Who is this letter addressed to?



**Hon. Wamunyinyi:** This letter is in response to another one from the parent Ministry.

**The Temporary Deputy Chairman** (Hon. Cheboi): Whom is it addressed to?

**Hon. Wamunyinyi:** It is addressed to Hon. Fred Matiang'i, the Cabinet Secretary for the Ministry of Information. This is what the Attorney-General is saying in one paragraph. I am going to table this for your scrutiny. The Attorney-General is saying:- "It is important to note that Parliament is vested with the constitutional mandate of developing legislation which includes Government-sponsored Bills as well as Private Members' Bills. Consequently, Parliament has developed the necessary legal resources to prepare Bills and amendments to legislation for purposes of enacting laws."

More importantly, the Attorney-General says:-

"We wish to categorically state without contradiction that the Office of the Attorney-General's submission of the Statute Law (Miscellaneous Amendments) Act, 2015 did not include amendments to the Kenya Information and Communications Act."

This is the letter from the Attorney-General to the Cabinet Secretary and he is responding to an inquiry, in fact, a complaint by the parent Ministry. The parent Ministry states that it did not author those particular amendments. It disassociated itself from the amendments. You need to get this since it is very important.

**Hon. Chepkong'a:** (*Inaudible*)

**The Temporary Deputy Chairman** (Hon. Cheboi): Order. I will give you an opportunity Hon. Chepkong'a, Hon. Ichung'wah and of course the Leader of the Majority Party. Let him wind up his arguments. He is on a point of order. Wind up, Hon. Wamunyinyi, so that I can give opportunities to the rest of the Members. It is healthy to debate. I will give you an opportunity Hon. Chepkong'a.

**Hon. Wamunyinyi:** Regulation is very important.

**Hon. A.B. Duale:** (*Inaudible*)

**Hon. Wamunyinyi:** The Leader of the Majority Party, you are my friend. I always give you time. I do not know what is troubling you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Wamunyinyi! I am actually protecting you. So, I will have to protect everybody else. Hon. Chepkong'a will have an opportunity to make his submissions. Let us give Hon. Wamunyinyi an opportunity. He is an old Member of this House.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Chairman, I am going to table both letters, one from the Cabinet Secretary and the other which is a response. The Attorney-General is saying that those amendments are also an overhaul of the entire Act. While this is so, there are proposed amendments to the enabling Act. He is asking why this Parliament has decided to bring those amendments which the parent Ministry and the State Corporation concerned, which is the institutional Commission, do not know.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have given you the opportunity Hon. Wamunyinyi because I would be wondering aloud whether it is---Table the letter as I give the opportunity to Hon. Chepkong'a.

**Hon. Wamunyinyi:** The Attorney-General proposes that this Bill be subjected to stakeholder's scrutiny before it is further processed in Parliament. I will table those letters.

*(Hon. Wamunyinyi laid the documents on the Table)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us hear you Hon. Chepkong'a. I will give Members an opportunity to ventilate on this particular one, but we will find---

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, you know Hon. Wamunyinyi is a very good friend for mine.

**The Temporary Deputy Chairman** (Hon. Cheboi): The problem with this House, and I have been here for some time, is Members referring to themselves as very good friends and then throw very hard jabs on each other. It is one of those kinds of Houses--- So, let us hear what you are throwing.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, on this one, we are on one side with him. In fact, we are seeking to protect the Communications Authority of Kenya (CAK) on this one. The only departure point I have with him is that he is making an attempt to gag this House from debating any Bill.

I want to remind Hon. Wamunyinyi, and this is what we will not cede and accept, that I am speaking as the Chairman of the Departmental Committee on Justice and Legal Affairs. Article 95 of the Constitution states very clearly that the National Assembly enacts legislation in accordance with Part IV of this Act. Part IV states in Article 109 (5) that:-

“A Bill may be introduced by any member or committee of the relevant House of Parliament.”

In fact, the Attorney-General has no standing here completely. In fact, it is Hon. Jakoyo Midiwo, Hon. Wamunyinyi and every Member that has been elected. In fact, that opportunity was denied to Cabinet Secretaries. So, when somebody rises and says: “Oh, it did not pass through us”, it is not his responsibility and he has no business trying to lecture this House on what this House can do or may not do. We are the ones to convince one another on what we think is right and what we think is wrong. I was making a way forward. As much as I do not agree with those amendments, it is our job to make proposals where we do not agree. I have not agreed with this proposal that the Competitions Authority be denied an opportunity to declare a person a dominant market player; what we call in telecommunications “a significant market player.” Let me just give you the history of where telecommunications started. It started from the United States of America (USA).

**The Temporary Deputy Chairman** (Hon. Cheboi): You will not go that direction. You have prosecuted your case very well in terms of a point of order. If you go to the history, you will be debating. I would rather give you an opportunity--- Members will persuade each other. Let us hear the Leader of the Opposition, I mean the Leader of the Majority Party here and then we will come back. You will have an opportunity Members.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I have no intention of becoming the Leader of the Opposition in the near future. Hon. Chepkong'a was one time the Chief Executive Officer of CAK. So, when he says he has the history, it is not just because he is a pedestrian but he knows how the organisation runs.

One, Hon. Jakoyo, Hon. Wamalwa and many Members are here. When we were dealing with Article 115 on the Presidential Memoranda, our argument was that this House has legislative powers. That is why we have got Members of Parliament who bring their own private Bills. That is why before I sign a Government Bill, Parliament has the powers to withdraw a number of amendments that are brought by the Government. I want Hon. Wamunyinyi to listen to me. In this same Bill, I have dropped all the amendments pertaining to the Independent Policing Oversight Authority (IPOA). Nobody told me to do it. Parliament in its wisdom, felt that the Attorney-General cannot sneak serious amendments on IPOA on the Statute Law. We did the same to the Universities Act. They were a number. They were very substantive.

Last year on the same law, we removed the National Intelligence Service (NIS) and Kenya Defence Forces (KDF) in your own Committee. Before we sign a Bill, if a Member of Parliament has an amendment that is relevant to that Bill under the presidential system of Government, Parliament and my office is under obligation to allow that Member to insert it. It has happened with the Departmental Committee on Education, Research and Technology and many others. So, there is no crime. The letters from the Attorney-General and Fred Matiang'i who work for the Executive are part of public participation.

Hon. Temporary Deputy Chairman, after I finish, you will allow me to listen to the compromised text, because I was away. What is the history of this text? I will provide it to the House the way he provided it. It is a communication between the Communications Authority and the Competition Authority. They signed an MOU under the chair of the Attorney-General. What were they looking for? They were seeking to amend the Kenya Information and Communication Act to align it with the Competition Act, 2014 in respect of the criteria for dealing with a dominant market undertaking. Sections 4 and 23 of the Competition Act, 2014 provide for designation of a dominant telecommunication provider. The same is found in the Kenya Information and Communications Act. It is the business of this House to harmonise the two. One of the agencies is a regulator while the other one deals with business entities. One should therefore declare that "this one is more dominant." This Bill seeks to harmonise the regulation-making powers.

Going to the element of regulations, under the Statutory Act, regulations can only be brought by Cabinet Secretaries. Once they are gazetted, they are tabled here. They then go to the Committee on Delegated Legislation, which shall then bring a Report to the House. The only authority that can bring regulations is not the Competition Authority but the Cabinet Secretary in charge of ICT.

Before I go further, if you could allow a harmonization---

**The Temporary Deputy Chairman** (Hon. Cheboi): That has already been canvassed, Hon. Duale.

**Hon. A.B. Duale:** If it is taking care of the compromise, then I can agree, but that is where I am coming from.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, even as we debate, this letter will be of persuasive value only. It is for Members to persuade themselves. The letter being referred to, which I have seen, has not been written to Parliament. So, it is something between two areas.

Let me hear Hon. Wamalwa first and then Hon. Ichung'wah will follow. We will transact business well. This letter can only be of persuasive value. It will not bind us at all. Members, use the opportunity to convince yourselves one way or the other.

**Hon. Wakhungu:** Hon. Temporary Deputy Chairman, it is true. Article 95 is clear that the legislative authority is vested in this House. However, looking at the Statute Law (Miscellaneous Amendments) Bill, particularly the amendments to the Kenya Information and Communications Act, we know very well that the history of the Kenya Information and Communications Act amendments has been very controversial. Therefore, I agree with what Hon. Wamunyinyi said, because the amendment is substantive. It even comes under the Statute Law (Miscellaneous Amendments) Bill. Even the substantive committee in charge of communication – the one chaired by Hon. Jamleck Kamau – has not tabled any report concerning this matter.

On the same issue of the Competition Authority and the Communications Authority, none of the two agencies is superior to the other because both of them are regulators. What Hon. Wamunyinyi said is, indeed, very important. On the AG's advice, it is important that we isolate this issue for further consultation. Hon. Jamleck Kamau has not tabled a report about this matter.

**The Temporary Deputy Chairman (Hon. Cheboi):** Okay. Let us hear Hon. Ichung'wah. Those of you who have requested chance to speak will speak but if you insist, you might be gagged.

*(Laughter)*

**Hon. Ichung'wah:** Hon. Temporary Deputy Chairman, hon. Members must, indeed, recognise your authority as the Chair.

Most of what I wanted to say has been canvassed by Hon. Chepkong'a and the Leader of the Majority Party. It is important for this House to appreciate that we are elected by the people of Kenya to come here to not only represent them but also to legislate on their behalf. The AG of the Republic of Kenya is given that job and also approved by this House to advise the Executive. As you said, he has clearly guided the Executive. I am also reading from the same letter, because Hon. Wamunyinyi read it very selectively.

*(Loud consultations)*

**The Temporary Deputy Chairman (Hon. Cheboi):** Order! Let us listen to the text which Hon. Ichung'wah wants to read out because it is important. Hon. Members, if you do not concentrate, I might end this debate.

**Hon. Ichung'wah:** Hon. Temporary Deputy Chairman, I thank you for the protection. I would like to thank Hon. Wamunyinyi for reading out this letter very selectively. The conclusion of this letter is very insulting not just to the Cabinet Secretary but also to other public bodies. The author says:

“In conclusion, I implore upon your considered use of moderated, if not collegial tenure, in future engagements with this office and, indeed, any other office in the public service”.

Hon. Temporary Deputy Chairman, we cannot over emphasize – not just for Hon. Wamunyinyi but for the country – the fact that this is the legislative arm of the Government that is charged with the responsibility of legislating. Nobody, including the AG, can stop this House from performing its legislative mandate. Therefore, I implore upon Hon. Wamunyinyi to allow this House and the Committee of the whole House to do the work that we are mandated to do by the people of Kenya – to legislate. We have heard the advice of the AG. I implore this House to ignore that advice and legislate because that is the mandate we have been given.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have indicated that this letter is going to be of persuasive value. I will give more hon. Members chance to speak. Hon. Wamunyinyi, you might have to hold your horses, because I want to give the Floor to Hon. Wandayi, lest I gag him.

Proceed, Hon. Wandayi.

**Hon. Wandayi:** Hon. Temporary Deputy Chairman, let us not try to miss the point. No one is disputing the fact that the mandate of this House is to legislate. What we are saying is that the proposed amendment goes to the heart of the Act itself. Therefore, the manner in which it has been brought is not acceptable, and it cannot be allowed. This is because the mandates of the Communications Authority and the Competition Authority are very clear and distinct. Therefore, to attempt to water down the mandate of the Communication Authority through a miscellaneous amendment is being mischievous. I am of the view that the only route available to us in these circumstances is for us to shelve this debate and suspend this matter as suggested by my colleague, Hon. Wamunyinyi, in order for us to move this country forward without creating unnecessary emotions.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I will give opportunity to two other colleagues and then we will make a decision on this matter. I am trying to hear hon. Members who are hitting out specifically at the further amendment by Hon. Chepkong'a. Hon. Members are really not dealing with the substance of the further amendment. Let us hear Hon. Midiwo, after whom I will give a chance to two Members on my right and that will be it.

Hon. Midiwo, we might be having a problem with the microphone on your seat. So, proceed to the Dispatch Box.

**Hon. Midiwo:** Thank you, Hon. Temporary Deputy Chairman. I will be brief.

I like your last communication because we seem to be dealing with too many issues. The amendment proposed in the Bill is the one we are opposing. As I understand it, Hon. Chepkong'a has moved an amendment and proposed a deletion.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong'a has moved an amendment to delete some text and replace it with a specific text, which he has already read out to the House.

**Hon. Midiwo:** That is exactly what I am saying. Because he has proposed deletion of some text and substitution therefor with some other text, a neater way would be to deal with that thing in totality. This is because we now seem to be deliberating on the issue raised by Hon. Wamunyinyi, which I agree with.

Hon. Temporary Deputy Chairman, would it not mean that we move to Hon. Chepkonga's Bill? Whoever---

**The Temporary Deputy Chairman** (Hon. Cheboi): I want to understand you Hon. Midiwo. We are already dealing with Hon. Chepkonga's amendment. I want to advise Members to either accept or reject Hon. Chepkonga's version, then we can proceed from there. Let me hear from you.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, I support Hon. Chepkonga's version. He is deleting what is proposed in this Bill. It is wrong to---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Wamunyinyi, please be keen because this speaks to what you raised. You will, probably, have this resolved quickly.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, Hon. Chepkonga's amendment is deleting what I think is entirely offensive in the proposal. In his substitution, he says that Communications Authority of Kenya (CAK) may consult the Competition Authority. I agree with the argument by Hon. Wamalwa that the Competition Authority and the CAK are regulatory bodies. A balance must be struck. I think that balance is qualified by the word "may". The Competition Authority deals with issues which may not necessarily delve into issues of communication. That leaves room for the CAK to act independently. As per that amendment, I support it. It takes us away from the absolute negation of their powers of regulating people in the communications department.

**The Temporary Deputy Chairman** (Hon. Cheboi): Can we hear from the Vice-Chairman of the Committee, Hon. Kiptanui? We should take a decision now.

**Hon. Kiptanui:** Thank you, Hon. Temporary Deputy Chairman, I wish to inform my brother, Hon. Wamalwa that it is not a must for the Committee to table a report when dealing with such amendments. If, indeed, we did not agree on this compromised amendment, we would have rejected some of these provisions as a Committee. We consulted and agreed with the amendment by Hon. Chepkong'a. We support the amendment so long as the CAK, together with the Competition Authority, after following the due process, declare---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kiptanui, I like the bit that you consulted and are supporting the amendment. I am not happy with your statement that the Committee should not table reports. As much as possible, that should be the case.

I will give the last chance to Hon. Wamunyinyi, and then we make a decision. We cannot debate this the whole afternoon. You are free to vote one way or the other when the amendment is put to Question.

Hon. Wamunyinyi, please be brief.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Chairman, I will be very brief. I want to thank you for according us the opportunity to ventilate on this issue. It is an important issue. If we do not act well, it will set a bad precedent. It will be a major setback if we proceed the way these amendments are proposed. First, these amendments seek to move regulation from a specific regulatory body to the generalised body. That is an important point. Secondly, the amendments seek to overhaul the entire enabling Act of a State Corporation through a miscellaneous amendment. Thirdly, it is anonymous. The Ministry, State Corporation and the Attorney-General do not know about it yet someone in Parliament is insisting he knows where this came from. We should be told where it

came from. As far I am concerned, it is anonymous. In whose interest is it? This must be in somebody's interest. These are players in the industry.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Wamunyinyi, I advise my friends that when they are close to the circumstances you are in, they need to take water melon fruit as it calms the heart and the heartbeat. We have given you a lot of time.

**Hon. Wamunyinyi:** I think it is a major drawback. You are taking us where we came from, yet we do not want to go there. We do not want one player in the industry to dominate the others. Once the generalised regulator gets power, even if you want to have it for consultation, why consult yet this is a constitutional body? This amendment seeks to give due advantage to the dominant player in the industry. If this is the way to go---

**Hon. Ichung'wah:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order, Hon. Ichung'wah? You had the opportunity.

**Hon. (Eng.) Mahamud:** Hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Maalim, it is not you.

**Hon. (Eng.) Mahamud:** Hon. Temporary Deputy Chairman, I am at a loss.

**The Temporary Deputy Chairman** (Hon. Cheboi): You are at a loss because it came to you as loss.

**Hon. Ichung'wah:** On a point of order, Hon. Temporary Deputy Chairman. I want to implore you to put the Question because Hon. Wamunyinyi is safeguarding unknown peculiar interests on the Floor of this House. It is important for this House and the country to realise that we have institutions like the Competition Authority of Kenya (CAK), which is charged with the responsibility of determining the dominant player. It is not the business of this House to decide who is dominant and who is not. We should leave that responsibility to the CAK.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I am not allowing any more points of order. If it is in terms of interests, then every Bill and law that comes to this House must have specific interests. You are politicians and have interests. It is not a sin to have an interest. You are here because you have specific interests. That is why we have the Minority and the Majority.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the last chance to the Member for Dagoretti. I will put the Question after his contribution. Hon. Waweru, come to the Dispatch Box because we have a problem with our gadgets.

**Hon. Waweru:** On a point of order, Hon. Temporary Deputy Chairman. We had this discussion before. You cannot continue to accuse people who have built businesses over time, and who protect people who have failed to grow their businesses.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Waweru, You are now raising the sugar levels of Members again.

**Hon. Waweru:** It is time we proceeded on this issue. Please put the Question.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, the Question will be on the further amendment by Hon. Chepkong'a, which is supposed to be the middle ground as Members have said.

*(Question, that the words to be left out*

*be left out, put and agreed to)*

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Member for Kiharu, I know Mukurwe wa Nyagathanga is in your constituency, but that does not give you the right to perform rites in this House. You will be dealt with accordingly.

*(Provisions relating to the Kenya Information and Communications Act, 1998 (No. 2 of 1998) as amended agreed to)*

*(Provisions relating to the Environmental Management and Co-ordination Act, 1999 (No.8 of 1999) agreed to)*

*(Provisions relating to the National Cohesion and Integration Act, 2008 (No.12 of 2008) agreed to)*

*(Provisions relating to the Anti-Counterfeit Act, 2008 (No.13 of 2008) agreed to)*

*(Provisions relating to the Competition Act, (No.12 of 2010) agreed to)*

*Provisions relating to the Judicial Service Act, 2011 (No.1 of 2011)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong'a, you might have to use the Dispatch Box. We are having a problem with the microphone. It is okay now.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, the Bill be amended in the Schedule—

(c) in the proposed amendment to Section 30 of the Judicial Service Act, 2011 by deleting the proposed amendment to subsection (3) and substituting therefor the following new provision in its proper numerical sequence—

Provision	Amendment
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s. 30	Delete subsection (3) and substitute therefor the following—
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(3) The provisions of this section shall apply to the appointment of the Chief Justice and Deputy Chief Justice except that—

(a) the Secretary shall, within three days of the Commission's vote, forward the names of three qualified persons for each vacant position to the President;

(b) the President shall, within fourteen days of receipt of the names forwarded select the person to fill the each vacant position and forward the name of the person to the National Assembly for approval;



(c) the National Assembly shall, within twenty-one days of the day it next sits after receipt of the name of a person nominated for appointment to the post of Chief Justice or Deputy Chief Justice vet and consider the person;

(d) where the National Assembly approves of the appointment of a person to the post of Chief Justice or Deputy Chief Justice, the Speaker of the National Assembly shall forward the name of the person to the President for appointment;

(e) where the National Assembly rejects the nomination of a person for appointment to the post of Chief Justice or Deputy Chief Justice, the Speaker shall within three days communicate its decision to the President and request the President to submit a fresh nomination;

(f) where a nominee is rejected by the National Assembly the President shall within seven days, submit to the National Assembly a fresh nomination from amongst the three persons shortlisted and forwarded by the Commission under paragraph (a);and

(g) if the National Assembly rejects all of the subsequent nominees submitted by the President for approval the Commission shall constitute a different selection panel and conduct the recruitment afresh.

Basically, we are seeking to streamline the appointment process of the Chief Justice and the Deputy Chief Justice. When we did the approval of the Deputy Chief Justice in 2013, we had a lot of difficulties with that process. We wanted to reject the nominee but we found the process to be quite cumbersome.

As a Committee we are seeking to align this provision with the best practice in other legislations.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I see quite a number of Members want to contribute to this.

Hon. Kiptui, Member for Baringo, do you want to speak to this one? I think you are talking to the wrong person in this particular instance.

I can see many Members who want to contribute, but this might be on other amendments. Hon. Kiso, do you want to speak to this particular amendment?

**Hon. Kiso:** No, Hon. Temporary Deputy Chairman. I have no intention of speaking to this amendment.

*(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)*

*(Provisions relating to the Judicial Service Act, 2011  
(No.1 of 2011) as amended agreed to)*

*Provisions relating to the National Police Service Act, 2011(No.11A of 2011)*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have two proposals for amendment. We have Hon. Kamama, the Chairperson of the Departmental Committee on Administration and National Security. Proceed and prosecute your case.

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, first of all I want to say that I am in agreement with Sections 33, 88(4) and 110(1) of the Act, but on Section 112(1)---

I beg to move:-

(a) in the proposed amendments to the National Police Service Act, 2011 (No. 11A of 2011), by deleting the proposed amendment to section 10(1)(g) and substituting therefor the following-

Provision Amendment

s.10(1)(g) Delete and replace with the following new paragraph—

“(g) determine the distribution and deployment of officers in the Service in the rank of Superintendent and below;”

New Insert the following new paragraph immediately after paragraph (g)—

“(ga) recommend to the Commission and the County Policing Authorities for distribution and deployment of officers above the rank of Superintendent;”

We have consulted widely and confirmed that most of the Kenya Police Reserve Officers normally join this service when they are about 25 years old. Letting them serve for only five years will deny the Government the services of very energetic and experienced National Police Reservists. Let us push it to 10 years. We can re-engage them when we want.

Most of them will be serving in volatile and hardship areas of Suguta Valley, North Rift and North Eastern. So, we need people who are hardened and experienced.

*(Question of the amendment proposed)*

**Hon. (Eng.) Gumbo:** Thank you, Hon. Temporary Deputy Chairman. The amendment by Hon. Kamama makes a lot of sense. I wish to support it.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order, Hon. Chepkong’a? I am sure you understand that if this amendment passes then yours will fall. You do not have to withdraw. We will deal with Hon. Kamama’s amendment first and then yours will be automatically withdrawn.

*(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 of Hon. Chepkong’a’s amendment falls on the face of the passing of Hon. Kamama’s amendment. The rest stands.

Can we have Hon. Chepkong’a prosecuting the rest of the amendment?

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman. Most of the provisions of the amendment have been carried by Hon. Kamama's amendment.

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

THAT, the Bill be amended in the Schedule –

(a) in the proposed amendments relating to the National Police Service Act, 2011 (No. 11A of 2011) by inserting the following new rows in their proper alphabetical sequences-

s. 33            Insert the words “drawn from the Service” immediately after the word “officers”

s. 88 (4)        Delete

s. 110(1)        Insert the words “but not above the fifty five years” immediately after the word “years”.

s. 112(1)        Delete and substitute therefor the following—

(1) Every reserve police officer enrolled under this Act shall serve for a period of five years and shall not be re-engaged.

All the rest have been carried by Hon. Kamama's amendment.

Thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kamama, I thought you had further amendments to Hon. Chepkong'a's amendment. Did you agree with him? Probably you are not concentrating. Do you have a further amendment to what Hon. Chepkong'a is proposing?

**Hon. Abongotum:** I do not have other than the one that the officers should serve for 10 years and they can be re-engaged. I still have other amendments proposed by my Committee.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kamama, you are a very seasoned legislator and you know that unless you move the further amendment formally, it remains a wish.

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, I wish to move---

**Hon. A.B. Duale:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order, Leader of the Majority Party?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I have a problem with that amendment because it is of a money nature. It falls within Article 114 of the Constitution. This is because it will result in an expenditure by the Exchequer. If the Bill is passed and tomorrow the Attorney-General says the police reservists who have been serving for seven years have no job, then the Government has to pay gratuity.

Secondly, if the police reservists are performing very well, why peg their service to five years? In the end, we will have many people in this country with guns, which can cause chaos.

I want to ask the Chairperson of the Departmental Committee on Administration and National Security, as his party leader, to withdraw that amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Leader of the Majority Party, the only problem is that you seem to consult with your membership so much that sometimes you get wind of things before they even come to the Chair. We do not even know what Hon. Kamama was going to propose. Again, Hon. Kamama was not very sure whether he wanted to move any amendment.

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, this is a very serious amendment. I want my party leader to take into consideration the fact that if we recruit, train and deploy police reservists for five years, this presupposes that after five years we will recruit again, vet and look for money again. It is cost-effective to have them serve for 10 years and then re-engage them if the Government deems it fit. However, if the Government does not require their services, then it can do as it pleases.

**The Temporary Deputy Chairman** (Hon. Cheboi): You have gone to the argument without formally moving the further amendment.

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, I beg to move that the Bill be further amended in the Schedule in the proposed amendment to the National Police Service Act (No. 11A of 2011) by inserting the following new provision in its proper alphabetical sequence—

112(1) delete and substitute therefor the following—

(1) Every reserve police officer enrolled under this Act shall serve for a period of ten years and shall be paid gratuity upon completion of service.

Hon. Temporary Deputy Chairman, if we are going to be re-engaging them after every five years it means vetting and training, and that will be too costly to the Government. However, if we engage them for 10 years, it is going to be more cost effective and we will have officers with better experience. In that terrain, if you do not have experienced people, you will be training after every five years and the officers will not deliver.

**The Temporary Deputy Chairman** (Hon. Cheboi): Even as you move the amendment, Hon. Kamama, I want you to respond specifically to whether this further amendment has financial implications. You have to be very specific on this. For example, you are saying the officers will serve for 10 years and the gratuity that they will be paid is what they should have been paid after five years. That means it is something that has already been settled. However, if by extending their term of service by a further five years there will be financial implications, we will have to follow the ordinary route of referring the amendment to the Budget and Appropriations Committee. It is something that you need to be very clear about.

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, I have to be very clear. We can engage them for 10 years but the issue of gratuity upon completion of service is something that can be discussed.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kamama, you are actually making the amendment to be a money issue. I am trying to consult on it. As I consult, let me hear a renowned financial analyst called Hon. Jakoyo Midiwo, who comes from where the best financial analysts come from.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, thank you for giving me a chance. I do not always agree with Hon. Duale, but on this one I agree with him.

Hon. Kamama is the Chairperson of the Departmental Committee on Administration and National Security of the National Assembly. He knows better. We are talking about a very substantial amendment to the National Police Service Act. It was not here for debate. He is bringing it now. Further, the amendment has money implications because it is talking about gratuities.

That amendment should never have been allowed in the first place. However, in the bigger picture, what he is trying to do does not make sense to us; it has not been debated. When you come here and start telling us about police reservists, we have been questioning the number of police reservists this country has. His Committee has a responsibility to bring this debate before this House. This is how wrong things are done in this country through the backdoor.

Hon. Temporary Deputy Chairman, I beg you to reject this amendment based on the fact that it has money implications.

**The Temporary Deputy Chairman** (Hon. Cheboi): I reject it. So, it falls, Hon. Kamama. It is a money issue.

**Hon. Abongotum:** Because of that aspect of getting into---

**The Temporary Deputy Chairman** (Hon. Cheboi): I hope you do not want to say you are withdrawing because I have already rejected it.

**Hon. Abongotum:** Because of the money implications, I withdraw the amendment. However, I am happy that---

**The Temporary Deputy Chairman** (Hon. Cheboi): I have already dispensed with it. You can handle it through the normal process.

*(Proposed amendment by Hon. Abongotum dropped)*

*(Provisions relating to the National Police Service Act, 2011 (No.11A of 2011) as amended agreed to)*

*(Provisions relating to the Kenya Citizenship and Immigration Act, 2011 (No.12 of 2011) agreed to)*

*Provisions relating to the Environment and Land Court Act, 2011 (No.19 of 2011)*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have Hon. Chepkong'a moving an amendment. Let us have it from him.

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

THAT, the Bill be amended in the Schedule—

- (e) [A1] in the proposed amendments to the Environment and Land Court Act, 2011—
- (i) by deleting the word “our” appearing immediately after the words “be admitted” and substituting therefor the word “out” in the proposed new section 16A (2);
  - (ii) by deleting the words “of the Chief Magistrate as set out in section 5 of” appearing immediately after the words “pecuniary jurisdiction” and substituting therefor the words “as set out in” in the proposed new section 26 (4)(b).

We are seeking to do two things. One is to correct a grammatical error that is contained in the Bill. Two, is to align the proposed amendment to the enhanced jurisdiction of magistrates to handle court cases as proposed by the committee. When we passed the Magistrates' Courts Bill recently, we enhanced their jurisdiction to handle matters up to a maximum of Kshs20million. So, we are seeking to align this particular Act with the legislation that we passed.

Thank you.

*(Question of the amendment proposed)*

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

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

*(Provisions relating to the Environment and  
Land Court Act, 2011 (No.19, 2011) as amended agreed to)*

*Provisions relating to the Power of Mercy Act, 2011 (No.21 of 2011)*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have three amendments; two by Hon. Kamama and one by Hon. Chepkong'a. Therefore, we will start with Hon. Kamama. We have a delay in our system. Please, approach the Dispatch Box, Hon. Abongotum, Member for Tiaty.

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

THAT, the Bill be amended in the Schedule—

(a) in the proposed amendments to the National Police Service Act, 2011 (No. 11A of 2011)---

**The Temporary Deputy Chairman** (Hon. Cheboi): We are now at the one relating to the Power of Mercy Act, but not on the National Police Service Act; the one with two proposed amendments to the Act. Both of them are deletions to sections 2 and 25.

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

THAT, the Bill be amended in the Schedule—

(a) in the proposed amendments to the Power of Mercy Act, 2011 (No. 21 of 2011) by—

(i) deleting the proposed amendment to section 2;

(ii) deleting the proposed amendment to section 25.

We made these proposals to ensure that the Cabinet Secretary (CS) who handles this matter means the CS who for the time being is responsible for matters relating to correctional services. The Bill proposes to delete this and substitute a new definition to provide that the CS means the CS responsible for matters relating to justice.

Therefore, that is how I justify my amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Therefore, you have proposed that you want section 2 and 25 to be deleted. Hon. Members, I hope you are following.

Hon. Jakoyo Midiwo, you want to make a comment?

**Hon. Midiwo:** Hon. Temporary Deputy Chairman may I just request the Chairman of the Committee to come back and explain the deletions of these sections.

**The Temporary Deputy Chairman** (Hon. Cheboi): I thought that he was clear on the first one. The one which I think he was not fairly clear is on Section 25. Would you want it done for both?

**Hon. Midiwo:** Yes.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. Hon. Kamama, explain briefly your justification for your intention to delete.

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, do you want me go through them?

The Committee proposes to delete the proposed amendment to Sections 2 and 25 of the Power of Mercy Act, 2011, No. 21 of 2011. The Bill proposes to amend section 2 of the Power of Mercy Act, which provides that the CS means the CS for the time being responsible for matters relating to correctional services. The Bill proposes to delete this and substitute a new definition to provide that CS means the CS for the time being responsible for matters relating to justice.

The difficulty with this proposed amendment is that we do not have a Ministry of Justice. Even though the Attorney-General sits in the Cabinet and has a department of justice, there will be confusion as to who will be the CS.

Moreover, under Article 153 of the Constitution, CSs responsible are obligated to attend before committees and answer questions. So, who then will be the CS responsible in the current context?

Further under Article 133(2)(b) of the Constitution, among the members of the Advisory Committee on the Power of Mercy, is a CS responsible for correctional services. As the law stands now, the CS responsible for matters relating to correctional services is in the Ministry of Interior and Coordination of National Government. Therefore, the Committee proposes to delete the proposed amendment to section 2 of the Power of Mercy Act, 2011 (No. 21 of 2011).

The effect of this will be to retain the definition of the CS to be the one responsible for matters relating to correctional services. This will achieve certainty and will enable Parliament to hold the responsible CS accountable.

Lastly, the Committee is also proposing to delete the proposed amendment to section 25 of the Power of Mercy Act, No. 21 of 2011. The Bill proposes to insert a new subsection to provide that a pardon under Article 133 (1)(a) of the Constitution shall in addition to any specified conditions be deemed an order under Section 3 of the Community Service Order Act, and an Appropriation Order under section 4 of the Protection of Offenders Act. Article 133 of the Constitution provides for the power of mercy.

I hope that I have made it very clear to my friend.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is clearer now.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Hon. Cheboi): I will proceed to give the Floor to Hon. Chepkong'a who will prosecute his amendment relating to Section 23(1).

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman. As you know, I do not agree with Hon. Kamama that he does not think that the correction of prisoners has nothing to do with justice. He knows that we are the ones who jail people and then we give him to take care of them.

Therefore, at times, we still follow our people. The power of mercy is under the Attorney-General.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, the Bill be amended in the Schedule-

(f) in the proposed amendments to the Power of Mercy Act, 2011 by deleting the proposed amendment to section 23 (1) and substituting therefor the following new provision in its proper numerical sequence—

Provision	Amendment
s. 23 (1)	“Delete the word “thirty” appearing immediately after the word “within” and substitute therefor the word “sixty”.

Hon. Temporary Deputy Chairman, this is to give latitude to the President with regard to the period within which the Power of Mercy Board makes a decision and then recommends to the President. He will have 60 days within which to approve.

*(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)*

*(Provisions related to the Power of Mercy Act, 2011  
(No.21 of 2011) as amended agreed to)*

*(Provisions relating to the Ethics and Anti-Corruption  
Commission Act, 2015 (No.22 of 2011) agreed to)*

*Provisions relating to the Veterinary Surgeons and Veterinary Paraprofessionals Act  
2011 (No.29 of 2011)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I can see amendments that have been proposed by Hon. (Dr.) Munyaka. I am told that he has instructed Hon.



Ichun'gwah to prosecute these amendments on his behalf. We must, however, be sure about your specific instructions, Hon. Ichun'gwah. Are they verbal or written? Please, proceed, Hon. Ichun'gwah, for records purposes.

**Hon. Ichun'gwah:** Hon. Temporary Deputy Chairman, indeed, Hon. (Dr.) Munyaka has travelled to Rwanda. He wrote to me and I am sure he has also written to the Office of the Clerk. He requested me to prosecute the amendments for him.

**The Temporary Deputy Chairman** (Hon. Cheboi): So you are saying that the letter was seen. The Standing Orders are very clear that such instructions have to be written. The only curious bit is that you say that the letter was written to you. Well, it has come to our attention that the letter has been seen in the Speaker's Office. So, whether he wrote to you or otherwise is really not very important.

Proceed now and prosecute the amendments.

**Hon. Ichun'gwah:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, the Bill be amended in the Schedule—

(e) in the proposed amendments relating to the Veterinary Surgeons and Veterinary Para- Professionals Act, 2011(No. 29 of 2011) by-

(i) deleting the proposed amendment to section 23(3);

(ii) deleting the proposed amendment to section 44A

Hon. Temporary Deputy Chairman, as I said, Hon. (Dr.) Munyaka has travelled to Rwanda on official business. The amendment proposed deletes the provisions that have been shown on the Order Paper. I ask hon Members to support it.

**Hon. Members:** What amendments? What is that?

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Members! Members should not confuse the Chair by standing in between the Chair and the alleys.

*(Question of the amendment proposed)*

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

*(Provisions relating to the Veterinary Surgeons and Veterinary  
Paraprofessionals Act 2011 (No.29 of 2011) as amended agreed to)*

*Provisions relating to the Public Appointments (Parliamentary Approval) Act 2011  
(No.33 of 2011)*

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

THAT, the Bill be amended in the Schedule—

(g) in the proposed amendments to the Public Appointments (Parliamentary Approval) Act, 2011 by —

(i) deleting the proposed amendment to section 2;

(ii) deleting the proposed new section 7A.

We are proposing that Clause 7A be deleted completely from the Statute Law (Miscellaneous Amendments) Bill.

When someone has been approved by Parliament, he or she has been approved for a specific appointment. Now, for you to change employment in between, you must come

back to Parliament. We never know, you could have committed some atrocities and you are protected. So, we want it to be like the Monica Juma's case. When she was re-appointed, her name had to come back here. You all know that the House expressed itself on that matter. We do not want shortcuts. We are seeking that the proposed amendment that seeks to short-circuit this House be deleted.

*(Question of the amendment proposed)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I am wondering where Hon. Wamunyinyi is. He brought some letter from the Attorney-General. He is supposed to be here to also disagree with the Attorney-General. He must have been a passenger. I do not know who gave him that letter. He was holding brief---

**The Temporary Deputy Chairman** (Hon. Cheboi): Restrict yourself to this one.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, what the Attorney-General is trying to do here in a nutshell is that if you are vetted by this House even for a constitutional commission, say, the EACC, then the President has leeway to appoint you as the Cabinet Secretary and your name need not come back to this House. That is the spirit of this amendment. My good friend, for the first time today, was holding brief for the Attorney-General. He ought to have been here to agree with all the amendments here, including the one affecting IPOA.

I support that we delete this. If you are appointed as a Principal Secretary, your name has to come back to the House for vetting. If you are promoted you also come back here for vetting. This is because within the period you are a Principal Secretary or Cabinet Secretary, you could have committed grave economic crimes. The only thing you can go with to your grave is your certificate, if you went to school. You must come back to this House.

You know I am a pastoralist. When you are taking cows to a dip, you lock in the first cow once it is inside the dip. The next cow can only gain entry when there is space. So, those who want to be promoted must be sure that they will come back to the House stage after stage.

**Hon. Serut:** Hon. Temporary Deputy Chairman, I want to disagree with the Leader of the Majority Party. The question is: Why do we vet officers here? We vet them to establish their integrity and fitness for certain positions. Vetting is either an endorsement or disapproval.

Hon. Temporary Deputy Chairman, once somebody has been vetted for a certain office, for instance Principal Secretary we do not need that person to come here. I say so because this House has powers to recall any officer for re-vetting if there is any problem while on duty. We have powers to deal with any officer who goes outside there and misbehaves. So, I do not see why we should continue recalling this officer. Whatever language you want to use---

**Hon. Temporary Deputy Chairman** (Hon. Cheboi): Well, I do not want to be part of the debate, Hon. Serut, but I would ask you what I am wondering aloud. What was the need of approving persons in the first place? Why do we not wait if they make a mistake then we deal with them at that point? That is just wondering aloud and I do not want to be part of the debate. Hon. Member for Nakuru Town East.

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Chairman. I want to support what Hon. Chepkong'a has just said. It is true as he has just pointed out that we had an opportunity of doing that when we were vetting one PS, who was being promoted to another position. The question that we were asking ourselves was: Is it right for us to vet her for the second time? It was made very clear by the Public Appointments (Parliamentary Approval) Act for this position and other positions. We were looking at three major things which need to be looked at. As you have just said, if what Hon. Serut is saying---I do not agree with him because I do not know whether there is any law that tells us we can re-vet. I think we can do that only if somebody does a mistake. I totally support what Hon. Chepkong'a said.

Thank you.

**The Temporary Deputy Chairman (Hon. Cheboi):** Therefore, we will still go back to the same direction. I see Hon. Midiwo on this.

**Hon. Midiwo:** Thank you, Hon. Temporary Deputy Chairman. Politicians are always making noise when civil servants, or politicians who have been found culpable, are asked to step aside. To stop any mischief where somebody steps aside and is reappointed to go and continue with the looting spree, this particular amendment must be rejected. Whoever thought about it--- I am sure it is in the light of what this House did with the PS. You cannot go out there, imagine things and think you can go around this House. This House must vet you. The next thing this House needs to look at is the vetting law, so that it does not give the impression that people are always getting off easily. That is on us but for starters, what we have must not be made worse. It must be deleted. It must be supported.

I support.

**The Temporary Deputy Chairman (Hon. Cheboi):** Let us have Hon. Sakaja.

**Hon. Sakaja:** Thank you, Hon. Temporary Deputy Chairman. As much I agree with deleting this, one thing we must make clear as a House is that vetting is not punishment. Vetting is not about people getting away with something or not. It is about establishing suitability to hold a particular office. It is not that if somebody commits a crime somewhere---There are other provisions in the law through which we deal with someone who is not performing, or somebody who has been found corrupt; we cannot say in as much as we are passing this, the reason we are passing this is that no one gets away with it. Vetting is not about that. So, if you move from PS to Cabinet Secretary (CS), you should come, so that we see whether you are suitable for the new title; whether your experience, background and understanding are suitable, not as a punishment, Hon. Jakoyo. It is actually an endorsement that despite the fact that you are a PS, you can make a very good CS.

So, even as we remove this because we cannot try to go around Parliament, let it be clear that the reason we are doing that is because we want to affirm suitability for the new appointment you are getting. If you commit a corrupt act or not, we deal with you through the right procedures in the House.

**The Temporary Deputy Chairman (Hon. Cheboi):** Hon. M'ruaki.

**Hon. M'uthari:** Thank you, Hon. Temporary Deputy Chairman. I am supporting this amendment because I believe this Parliament has a responsibility and a role to verify the suitability of any candidate. Bypassing Parliament is the wrong thing. So, to assert the

authority of this Parliament, and to take our mandate seriously, it is important that any individual who has been moved from PS to CS should pass again through this House, so that we can verify and ascertain that the individual is capable and qualified according to the integrity provisions.

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

*(Provisions relating to the Public Appointments (Parliamentary Approval) Act 2011 (No.33 of 2011) as amended agreed to)*

*(Provisions relating to the Independent Policing Oversight Authority Act 2011 (No.35 of 2011) agreed to)*

*(Provisions relating to the Land Registration Act, 2012 (No. 3 of 2012) agreed to)*

*(Provisions relating to the Land Act, 2012 (No.6 of 2012) agreed to)*

*Provisions relating to the Kenya School of Law Act, 2012 (No.26 of 2012)*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have two proposals for amendments by Hon. Chepkong'a and Hon. Melly. Let us start with Hon. Chepkong'a.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman. I wish to withdraw my proposed amendment because the import of the amendment by the Vice-Chairman of Departmental Committee on Education, Research and Technology is to delete. I agree with him.

*(Proposed amendment by hon. Chepkong'a withdrawn)*

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

**Hon. Melly:** Thank you Hon. Temporary Deputy Chairman. First of all, I want to thank the Hon. Chairman of the Departmental Committee on Justice and Legal Affairs.

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

THAT, the Bill be amended in the Schedule by-

- (a) deleting the proposed amendments to the Kenya School of Law Act, 2012.
- (b) deleting the proposed amendments to the Universities Act, 2012.

The section proposes that the Commission Secretary of Higher Education be a member of Council for Legal Education. You know very well that the Commission Secretary is the regulator of the higher education system. If he sits again as a member of the Council of Legal Education, it will be difficult for him to act at a higher level as a regulator. Therefore, I propose that we delete his membership from that Commission.

*(Question of the amendment proposed)*

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

*(Provisions relating to the Kenya School of Law Act, 2012 (No.26 of 2012) as amended agreed to)*

*Provisions relating to the Prevention of Terrorism Act, 2012 (No. 30 of 2012)*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, the Bill be amended in the Schedule—

(i) in the proposed amendments to the Prevention of Terrorism Act, 2012 in section 12A (2) by deleting the word “improved” wherever it appears and substituting therefor the word “improvised”

What we are seeking to do is correct a grammatical error by replacing the word “improve” with the word “improvised”.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kamama, you will only move the part of the amendment related to Section 12(b)(i) because part (ii) has fallen since Hon. Chepkonga’s amendment has been carried.

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, the Bill be amended in the Schedule—

(b) in the proposed amendments to the Prevention of Terrorism Act, 2012 (No. 30 of 2012) in the proposed amendment to section 12A (2) by—

(i) deleting the word “prejuce” appearing at the beginning of the proposed new subsection (2) and substituting therefor the word “prejudice”.

The word “prejudice” is not well captured. I want it captured in this section.

*(Proposed amendment to part b (ii) dropped)*

*(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)*

*(Provisions relating to the Prevention of Terrorism Act,  
2012 (No. 30 of 2012) as amended agreed to)*

*Provisions relating to the Universities Act, 2012 (No.42 of 2012)*

**Hon. Chepkonga:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, the Bill be amended in the Schedule—

(j) in the proposed amendments to the Universities Act, 2012 by inserting the words “in regulations” immediately after the word “prescribed” in the proposed new section 39(1A)”;

This is to ensure that the Cabinet Secretary makes regulations. Once the Cabinet Secretary makes the regulations, those regulations will find their way to the House as required by Cap 2.

*(Question of the amendment proposed)*

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

**Hon. Ichung’wah:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, the Bill be amended in the Schedule-

(b) in the proposed amendments relating to the Universities Act, 2012 (No. 42 of 2012) by inserting the following new row immediately after the row relating to the proposed amendment to section 20(1) –

Amendment  
of section 22  
of No.42 of  
2012

Section 22 of the principal Act is amended-

(i) by deleting subsection (1) and substituting therefor the following new subsection-

(1) The President may, on the recommendation of the Cabinet Secretary, revoke a Charter if in the opinion of the President that the revocation is in the best interests of university education in Kenya.

(ii) by deleting subsection (2) and substituting therefor the following new subsection-

(2) The recommendation referred to under subsection (1) shall be made with the prior concurrence of the Commission which shall satisfy itself that the revocation is in the best interests of university education in Kenya.

*New s.22A* Inserting the following new section immediately after section 22-

Variation of Charter

22A. (1) The Cabinet Secretary may, upon an initiation made under Subsection (3), vary a Charter if in the opinion of the Cabinet Secretary that variation is in the best interests of university education in Kenya.

(2) The recommendation referred to under subsection (1) shall be made based on a need to-

(a) Align the particular Charter to the Constitution or any written law;  
(b) align the university to the training and research priority of the national Government that would develop expertise in a specified academic field, including instilling of skills with bias in employment creation;

(c) in the case of a private university, to reflect changes in sponsorship of the university; or,

(d) align the university to the dynamics in research, technology and prevailing academic requirements recommended by the body which by law represents employers;

(e) align the Charter to the best interests of university education in Kenya.

(3) A variation under subsection (1) may be initiated-

(a) by the Commission upon request by a university in the case of a public university; or

(b) by the sponsor in the case of a private university, and may include the introduction of such mechanisms as shall enable the university concerned to better carry out its functions.

(4) A decision for the variation by the Cabinet Secretary shall be made without unreasonable delay, but in any case-

(a) within three months from the date a recommendation for variation is made by the Commission, if the process is initiated by the Commission; or

(b) within six months from the date a formal request for variation is made by a university, if the process is initiated by a university;

(5) If a Charter is varied under sub section (1) the Cabinet Secretary shall forthwith cause a notice of the variation to be published in the *Gazette*, and the variation shall come into effect on such date as may be specified in the notice.

(6) Notwithstanding sub section (5) the variation of a Charter shall not affect the validity of any academic award made by the University before the variation.

(7) For the purposes of this section, “vary” includes a review or amendment.

Hon. Temporary Deputy Chairman, all that I am doing is to separate the revocation from a variation of a charter, which is very important, especially for the changing nature of our education system in this country.

I beg hon. Members to support the amendments.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Melly, consequently, your amendment falls. I hope you are with us.

*(Proposed amendment by Hon. Melly dropped)*

*(Provisions relating to the Universities Act, 2012  
(No.42 of 2012) as amended agreed to)*

*The Treaty Making and Ratification Act, 2012 (No. 45 of 2012)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, on this Act, we have a raft of amendments by Hon. Chepkong'a and Hon. Gethenji. On this particular one, I would like to exercise the powers bestowed on the Chair to give the Floor to Hon. Gethenji rather than Hon. Chepkong'a, to move the amendments.

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

THAT, the Bill be amended in the Schedule, in the proposed amendments relating to the Treaty Making and Ratification Act, 2012 (No 45 of 2012) by —

- (i) deleting the proposed amendment to section 2;
- (ii) deleting the proposed amendment to section 8(1);
- (iii) deleting the proposed amendment to section 8(4);
- (iv) deleting the proposed amendment to section 8(7);
- (v) deleting the proposed amendment to section 8(8);
- (vi) deleting the proposed amendment to section 9;
- (vii) deleting the proposed amendment to section 13(1);

Hon. Temporary Deputy Chairman, some of these are procedural while others are functional. So, I will point out the ones that are functional as I make the proposals. In part (i), we are deleting the proposed amendment to Section 2. This is just a definition of the "Cabinet Secretary". In part (ii), we are deleting the proposed amendment to Section 8(1), which refers to a Speaker of Parliament. There is no Speaker of Parliament. There is the Speaker of the National Assembly and the Speaker of the Senate.

In part (iii), we are deleting the proposed amendment to section 8(4). In part (vi) we are deleting the proposed amendment to section 8(7). This is actually the same as in the Principal Act. I do not know how this was done but we will look at it later. In part (v), we are deleting the proposed amendment to Section 8(8). This amendment is almost identical to the Principal Act. In part (vi), we are deleting the proposed amendment to Section 9. In part (vii), we are deleting the proposed amendment to Section 13(1).

Hon. Temporary Deputy Chairman, our justification is the fact that treaty and agreement making is a multilateral and bilateral function of the Executive. That function is fully bestowed on the Ministry of Foreign Affairs. The Attorney-General is the custodian of the legal instruments. We want to vest the treaty and agreement making powers to the Ministry of Foreign Affairs. That is the rationale behind the proposed amendments.

We will be looking at substantive amendments in the Principal Act because these amendments do not really cure many of the divisions therein.

*(Question of the amendment proposed)*



**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to the Leader of the Majority Party.

**Hon A.B. Duale:** Hon. Temporary Deputy Chairman, this is the same story again. I am looking for the guy who was holding brief for the Attorney-General (AG). I do not know where he is. He was the one who was bringing his letters. This is another place where the Attorney-General erred. He removed the functions of treaty-making and ratification from the Ministry of Foreign Affairs to his office. World over, from the Vienna Convention, treaties are done by the foreign office.

Secondly, the Attorney-General decided that ratification will be done by both Houses. But it is an exclusive function of the National Assembly. It has nothing to do with counties. There is nowhere treaties are ratified by counties. He is giving the function to the Senate. Well done, Chairperson of the Departmental Committee on Defence and Foreign Relations. At times it is important to defend your turf. That is why the presidential system of government has given you powers to defend your territory from the Attorney-General. I hope the people who are holding brief for him and others can listen from wherever they are sitting.

**The Temporary Deputy Chairman** (Hon. Cheboi): Leader of the Majority Party, you may not know, but Hon. Gethenji went to one of the most prestigious schools in Nairobi called St Mary's Boys' School. There is always a problem when somebody questions whether it is a boys' school. But that is on a light touch.

What is it, Hon. Gethenji?

**Hon Gethenji:** Hon. Temporary Deputy Chairman, what happens at The Hague stays at The Hague. Can you withdraw and apologise?

*(Laughter)*

**The Temporary Deputy Chairman** (Hon Cheboi): You know very well that the Chair does not apologise at all. St. Mary's Boys' School is one of the most prestigious schools in Kenya.

**Hon. Gethenji:** In defence of our great *alma mater*, St. Marys' School for Boys has produced none less than His Excellency, the President of the Republic of Kenya. I am very proud to be an alumni of that school. I am sure you would have loved to be there too.

**The Temporary Deputy Chairman** (Hon Cheboi):The English would say it all. Let us proceed, Hon. Members. Let us not open this to discussion. I can see the Hon. Member for Samburu West wants to say something, but I will not allow him. I know he is most likely going to drag us back into the issue of St Mary's Boys' School.

**Hon. Lati:** Hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon Cheboi):You are out of order, Hon. Lelelit.

Let us proceed.

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

*(Provisions relating to the Treaty-Making and Ratification Act (No.45 of 2012) as amended agreed to)*

*Provisions relating to the Kenya Medical Supplies Authority, 2013 (No.20 of 2013)*

**The Temporary Deputy Chairman** (Hon Cheboi): We have Hon. Chepkong'a and Hon. Munyaka who are proposing amendments. If Hon. Chepkong'a's amendment is carried then the other one falls.

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

THAT, the Bill be amended in the Schedule—

(k) in the proposed amendments to the Kenya Medical Supplies Authority Act, 2013 (No. 20 of 2013) by inserting a new row as follows:-

Delete the words "three years and shall be eligible for re-appointment for one further term of three years" and substitute therefor the words "four years and shall be eligible for re-appointment by the Cabinet Secretary for one further term"

As you know, appointments are made by the Board. This amendment is just to make it consistent.

Secondly, the appointee to the position of chief executive should not only be somebody with a background in medicine, but they should also have a background in pharmacy.

*(Question of the amendment proposed)*

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

*(Provisions relating to the Kenya Medical Supplies Authority Act, 2013 (No.20 of 2013) as amended agreed to)*

*(Proposed amendment by Hon. (Dr.) Munyaka dropped)*

*(Provisions relating to the Statutory Instrument Act, 2013 (No.23 of 2013) agreed to)*

*Clause 1*

**The Temporary Deputy Chairman** (Hon Cheboi): Hon. Chepkong'a you have an amendment to Clause 1? Let us hear it.

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

THAT Clause 1 of the Bill be amended by inserting the words "and shall come into force upon publication in the Gazette" immediately after the expression "2015".

*(Question of the amendment proposed)*

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

*(Clause 1 as amended agreed to)*

*(Title agreed to)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.57 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

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

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

#### THE TAX PROCEDURES BILL

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Order, Members! We are now in the Committee of the whole House to consider the Tax Procedures Bill (National Assembly Bill No.29 of 2015)

*(Clauses 3, 4, 5, 6, 7, 8 and 9 agreed to)*

*Clause 10*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The Chairman of the Departmental Committee on Finance, Planning and Trade has an amendment.

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

THAT, Clause 10 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (6)—

“(6A) Where the Commissioner fails to respond to the application for deregistration within six months, the applicant shall be deemed to be deregistered.”

The Bill does not give a timeline within which the commissioner is required to respond to any application for deregistration. This may create uncertainty on the part of the taxpayer, especially in the case of foreign entities that wish to exit from the Kenyan market. That is why we have decided to put that clause so that we have a timeline.

I request Members to support this amendment.

*(Question of the amendment proposed)*

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

**Hon. M'uthari:** I support the amendment.

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

*(Clause 10 as amended agreed to)*

*(Clauses 11, 12, 13, 14, 15, 16 and 17 agreed to)*

*Clause 18*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): There is an amendment by the Chairman of the Departmental Committee on Finance, Planning and Trade.

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 18 of the Bill be amended by deleting sub-clause (1).

The provision contradicts section 16(2) of the Companies Act and the concept of a registered company being a legal entity. A registered company should be treated as a company and an individual be treated as an individual. The provision says that a registered company must be treated like any other independent person with its own rights and liabilities appropriate to itself. This means that the company debts are not the debts of any member or directors. The only instance that could occasion personal liability to the directors should be where in the case of fraud the corporation's veil is lifted. Therefore, company creditors, including the Kenya Revenue Authority (KRA), cannot institute legal proceedings against a company member or in order to recover from him what the company owes.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Lelelit Lati, the Member for Samburu West.

**Hon. Lati:** Hon. Temporary Deputy Chairlady, I support the amendment.

Companies are legal entities, limited by liability and separate from the directors. This is a very good provision.

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

*(Clause 18 as amended agreed to)*

*(Clauses 19, 20, 21, 22, 23, 24, 25, 26, 27,  
28, 29, 30, 31, 32, 33 and 34 agreed to)*

*Clause 35*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): There is an amendment by the Chairperson of the Departmental Committee on Finance, Planning and Trade.

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 35 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)—

“(3) Where the penalty or interest payable under this section accrues, the aggregate payable penalty or interest shall not exceed the principal tax liability.”

The import of this amendment is that we have to invoke the in Duplum Rule which says that a taxpayer should not be required to pay more than double the interest of the tax due from him. If your tax due is around Kshs100,000, you should not pay interest that is more than Kshs100,000. It should just be the Kshs100,000 and not to double the interest.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): I see the Member for Samburu West has an interest.

**Hon. Lati:** Thank you, Hon. Temporary Deputy Chairlady. It makes sense because interest is an accrual and it should not exceed the tax liability. However, it does not make a lot of sense to have a penalty that exceeds the interest liability. That is still captured in Clause 38 in a better way. Interest accrues. So, there is a reason to put a ceiling on interest so that it does not exceed the tax liability. However, I do not see any reason why a penalty would be more than the tax itself unless it says “payable penalty and interest”, but it says “payable penalty or interest”.

I support but I do not think it makes a lot of sense.

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

*(Clause 35 as amended agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Gaichuhie, you have to present the amendment to the Table because you have moved it in an amended form.

*(Clauses 36 and 37 agreed to)*

*Clause 38*

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 38 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (7) —

“(8) The accrued late payment interest shall not, in aggregate, exceed the principal tax liability.”

That is what we had just said in the other amendment. It is just about the in Duplum Rule. Thank you.

*(Question of the amendment proposed)*

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

*(Clause 38 as amended agreed to)*

*(Clauses 39, 40, 41, 42, 43, 44, 45 and 46 agreed to)*

*Clause 47*

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, after further consultation with the Kenya Revenue Authority (KRA) and the National Treasury, we have decided to drop this amendment and maybe carry it forward to another date. So, we want to drop the amendment.

Thank you.

**The Temporary Deputy Chairlady** (Hon.( Ms.) Mbalu): Through the Chairman of the Committee, the proposed amendment has been dropped.

**Hon. Member:** I oppose the withdrawal. I am also a member of that Committee.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member, the Chairman who is the Mover of the amendment has withdrawn the amendment. It stands withdrawn.

*(Proposed amendment by Hon. Gaichuhie withdrawn)*

*(Clauses 47, 48 and 49 agreed to)*

*Clause 50*

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT Clause 50 of the Bill be amended in sub-clause (1) by deleting paragraph (a).

This provision attempts to preclude judicial review and powers of the High Court which are granted under the Constitution. This sub-section will hinder the taxpayers from accessing justice to the highest court. Therefore, it is unconstitutional. It should be removed in entirety because all the decisions should be available to higher courts. If we have this clause in the Bill, it means that we will be removing the constitutional rights of taxpayers. Therefore, we are proposing that we delete paragraph (a).

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon.( Ms.) Mbalu): I can that see that the Member for Rongai, Kipruto Moi wants to contribute.

**Hon. Moi:** Thank you very much, Hon. Temporary Deputy Chairlady. I did not understand what the Chairman of the Departmental Committee on Finance, Planning and

Trade did. Did he withdraw the amendment of Clause 47? That was a wonderful amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Thank you for the question. As a matter of procedure Hon. Kipruto Moi, Member for Rongai, we are past Clause 47. The House made a ruling.

**Hon. Moi:** I had intervened, but you did not give me a chance to speak. I wanted to say that the amendment was wonderful because it gives business persons an opportunity to get their money back.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member for Rongai, this is a House of voting. We voted and there were “Ayes” and “Noes”.

**Hon. Moi:** You did not check the board.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member, we are past Clause 47. You are out of order. You go to the intervention when you want to request again. Even now, look at your screen very well. Let us follow rules.

Hon. Members, sorry for the interruption, but it is important that we guide the Hon. Member on House procedures. When we pass a clause, we do not get back to it unless it is recommitted.

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

*(Clause 50 as amended agreed to)*

*(Clauses 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65 agreed to)*

#### *Clause 66*

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, after further consultation and clarifications we have, as a Committee, decided to drop that amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Again, from the communication from the Chairman who is the proposer and Mover of the amendment, the decision of the Committee was to delete the amendment. The amendment has been withdrawn.

*(Proposed amendment by Hon. Gaichuhie withdrawn)*

*(Clause 66 agreed to)*

*(Clauses 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, and 83 agreed to)*

#### *Clause 84*

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, I beg to move:-  
THAT clause 84 of the Bill be amended—

- (a) in sub-clause (1), paragraph (a)—
- (i) by inserting the word “knowingly” immediately after the words “if that person” ;
- (ii) by inserting the word “knowingly” immediately after the words “material particular or”
- (b) deleting sub-clause (6).

The import of this is to clarify that a taxpayer can be penalized if he or she knowingly makes false statements or omissions to the authorized officer. Where we are proposing to delete sub-clause (6) we have also decided to drop that amendment. So, we are only carrying the first amendment of that Clause 84, that is, Clause 84, sub-clause (1), paragraph (a). We are dropping (b) which states, “deleting sub-clause (6)”.

I hope that is clear.

*(Proposed amendment to part (b) dropped)*

*(Question of the amendment proposed)*

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

*(Clause 84 as amended agreed to)*

#### *Clause 85*

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, again, after further consultations we have decided to drop that amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The amendment stands withdrawn.

*(Proposed amendment by Hon. Gaichuhie withdrawn)*

*(Clause 85 agreed to)*

*(Clauses 86, 87, 88, 89, 90 and 91 agreed to)*

#### *Clause 92*

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, after withdrawing Clause 85, and since it is related to Clause 92 we do not see any justification of having that amendment. So, we also wish to drop amendment on Clause 92. So, Clause 92 still remains in the Bill as it is.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): From that explanation, the Chairman’s amendment to Clause 92 stands withdrawn.

*(Proposed amendment by Hon. Gaichuhie withdrawn)*

*(Clause 92 agreed to)*



*(Clauses 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, and 111 agreed to)*

*Clause 112*

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, I beg to move:-  
THAT clause 112 of the Bill be amended in sub-clause (2)—  
(a) by inserting the words “to be paid” immediately after the word “tax” in paragraph (b);  
(b) by deleting paragraph (c);  
(c) by deleting paragraph (g).’  
These are editorial amendments. We are proposing the deletion of 2(c) and (g), which are ambiguous.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member for Rongai, let me hear whether you support or not.

**Hon. Moi:** Yes, I would like to support and congratulate Hon. Lang’at who is the Chairman of the Departmental Committee on Finance, Planning and Trade for the wonderful amendments he has made. It has made the business environment to be extremely friendly to the business community. I support him wholeheartedly.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): I see no more interest.

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

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

*(Clause 112 as amended agreed to)*

*(Clause 113 agreed to)*

*(First Schedule agreed to)*  
*(Second Schedule agreed to)*

*Clause 2*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): There is an amendment to Clause 2. I cannot see you on the screen, Hon. Vice-Chairman.

**Hon. Gaichuhie:** Thank you, Hon. Temporary Deputy Chairlady. Having explained the matter about tax evasion and tax avoidance, we wish to drop that amendment and maintain it as it is in the Bill.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Did we hear that after consultations? Have you withdrawn it?

**Hon. Gaichuhie:** Yes, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): It is important to state it clearly. As stated by the Mover, after consultations amendments to Clause 2 are withdrawn. So, it remains as it is in the current Bill.

*(Proposed amendment to Clause 2 withdrawn)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): I now call upon the Mover to do the reporting. The Mover is none other than the Leader of the Majority Party.

**Hon. A.B. Duale:** The only one! Hon. Temporary Deputy Chairlady, the only person I would allow to go away with anything is Hon. Jakoyo because he will be in the Opposition for the next decade.

**Hon. Midiwo:** *(Inaudible)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, protect me from Hon. Jakoyo, Member for Gem.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): You are protected. I know you are very good friends. I know you will talk after this.

**Hon. A.B. Duale:** We are good friends during the day only.

Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Tax Procedures Bill (National Assembly Bill No. 29 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORTS

### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**The Temporary Deputy Speaker** (Hon. Kajwang’): Order! The veritable Member, Amina Abdalla, I can see you are trying to transfer the knowledge you have got in the House for the last 10 years or so that you have been around. We appreciate it.

**Hon. (Ms.) Abdalla:** It is 15!

**The Temporary Deputy Speaker** (Hon. Kajwang’): I will allow you at some point to lay your curriculum vitae. For now, let us see if we can begin. Members, we want to start with the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 57 of 2015).

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 57 of 2015) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Mover.

**Hon. A.B. Duale:** Thank you, Hon. Temporary Deputy Speaker. I beg to move that House doth agree with the Committee in the said report. I also request Hon. Benjamin Langat to second the Motion for agreement with the report of the Committee of the whole House.

**Hon. Gaichuhie seconded.**

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Speaker (Hon. Kajwang’): Yes Mover.**

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.57 of 2015) be now read the Third Time.

I request Hon. (Eng.) Mahamud to second.

**Hon. (Eng.) Mahamud** seconded.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Kajwang’): I can see that both the Majority Whip and the Minority Whip are in the Chamber. Can you consult? I need to have this business running.

**Hon. Member :---** *(Off-record)*

**The Temporary Deputy Speaker** (Hon. Kajwang’): I do not recognise numbers emanating from the benches. I recognise numbers from the Serjeant-At-Arms and the Clerks-At-the-Table. Majority Whip and Minority Whip, I asked you to consult and give me information. Can you go and literally consult? I say so because I have got a different advice from the Clerks-At-the-Table.

*(Hon. Katoo and Hon. Mwadeghu consulted with the Chair)*

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, I was consulting with the Majority Whip and the Minority Whip so that I can be sure that we have a quorum. I have consulted with them and the Clerks-At-the-Table, having confirmed that we have a quorum in the House for purposes of making a decision, I will put the Question.

*(Question put and agreed to)*

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

#### THE TAX PROCEDURES BILL

**The Temporary Deputy Speaker** (Hon. Kajwang’): Let us have the Report of the Committee of the whole House on the Tax Procedures Bill (National Assembly Bill No.29 of 2015).

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Speaker, before I report, I must confirm to the Leader of the Majority Party that a Chairperson of a Committee of the whole House or a person presiding over the business of the House does not take sides. Therefore, I am well placed.

Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Tax Procedures Bill (National Assembly Bill No.29 of 2015) and approved the same with amendments.

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

I request the Member for Manderu West, Hon. Mahamud Maalim, to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. (Eng.) Mahamud** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the Tax Procedures Bill (National Assembly Bill No.29 of 2015) be now read the Third Time.

I request Hon. Benjamin Langat, who looks like a Somali, to second.

**Hon. Langat** seconded.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Langat, that one, coming from the Leader of the Majority Party, is a compliment. He wants you to change and face him off in Garissa Town Constituency next time. It will be a good duel to watch.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, I have confirmed that we have a quorum in the House for purposes of making a decision. I will, therefore, put the Question.

*(Question put and agreed to)*

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

## **BILL**

### *Second Reading*

#### THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, which seeks to give effect to Article 71 of the Constitution, be read the Second Time.

Article 71 of the Constitution requires Parliament to enact a legislation to provide for the natural resources, classes of transactions subject to ratification on account of the fact that such transactions involve the grant of a right or a concession by or on behalf of any person to another person for exploitation of the natural resources of Kenya. The national Government and the companies involved in such transactions have been signing contracts without agreements being ratified by Parliament. What Article 71 of the Constitution is saying is that as companies – be they local or international – sign contracts based on the usage of extracted natural resources, Parliament must be given an opportunity to ratify those agreements. Article 71 of the Constitution of Kenya changed this and requires us to ratify agreements relating to the usage of natural resources.

Part I of this Bill mainly deals with preliminary matters, namely the title and definition of terms. Clause 3 provides for the scope of the application of the Bill. This Bill shall only apply to transactions falling under Article 71 of the Constitution, entered into or after the effective date. Therefore, Clause 3 provides that all transactions that will be entered into upon the assent to this legislative proposal must be subjected to parliamentary ratification. This involves the national Government, the county government and other government entities such as parastatals.

Part II of the Bill deals with the different classes of transactions which are subject to ratification by Parliament under Clause 4(1) of the Bill. Those classes of transactions are set out in the Schedule which is attached to this Bill. Clause 4(2) of the Bill gives us the different classes of transactions that are exempted from ratification by Parliament.

Therefore, you will find specific transactions in this Bill which are exempted from ratification. It lies with the Committee and the House either to agree or disagree during the Committee of the whole House stage.

Part III of the Bill deals with submissions of agreements by the beneficiary to the Cabinet Secretary (CS) for Environment and Natural Resources. This is with regard to

resources which are subject to transactions. The beneficiary is required to submit the agreement within 14 days after entering into that transaction. This Part further states that agreements shall be accompanied by a memorandum which must provide specific particulars of what the agreement is all about. Therefore, there must be an element of clarity with regard to what has been signed.

Clause 6 of the Bill deals with the submission of agreements by the Cabinet Secretary for Environment and Natural Resources to both Houses of Parliament, for the purpose of only ratifying. The ratified agreement shall be valid and those not ratified shall be void in accordance with Clause 7 of the Bill. It provides for when ratification is void and when it is valid.

Clause 8 requires Parliament to make a decision on whether or not to ratify a transaction within 60 days of receipt. Parliament does not have an open-ended timeframe. This Bill states for now, as a proposal, that both Houses of Parliament shall deal with this matter for a period of 60 days.

I hope, and I want to go on record, that the Senate will abide by this time-frame of 60 days. I am sure the National Assembly will abide by it. This is very good. Parliament should be given timelines because we make laws for the people of Kenya.

Part IV of the Bill provides for the administrative arrangements. It deals with what is required of the Cabinet Secretary in charge of Environment and Natural Resources. It also deals with what the Registrar is supposed to keep in electronic form.

Clause 12 of the Bill deals with confidentiality. It provides that the Cabinet Secretary responsible for the environment must have some confidentiality in as far as the matter he or she is dealing with is concerned. The CS has the power to declare an agreement or portion of it confidential and not to make it available for public scrutiny. We need to look at that provision. The Chairperson of the Committee will explain at what stage the CS can declare part of an agreement confidential.

Part V mainly deals with miscellaneous provisions. Clause 13 of the Bill empowers the CS responsible for matters relating to the environment to make regulations. So, ultimately, regulations will be brought to the House by the CS in charge of the environment. Clause 14 of the Bill provides for the computation of time. Clause 15 of the Bill saves the transaction that was lawfully entered into after the effective date but before the commencement date.

This Bill shall occasion expenditure of public funds and it affects county governments. That is why the Bill talks about Parliament. The Bill will pass through both Houses.

That is a brief overview of the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015. I ask the Chairperson of the Departmental Committee on Environment and Natural Resources, Hon. Amina Abdalla, to second.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Chair of the Committee.

**Hon. (Ms.) Abdalla:** Thank you, Hon. Temporary Deputy Speaker. I beg to second the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015. This is one of the Bills that are required under the Constitution to have been passed by August 2015 and for which we extended the period to August 2016. So, this is a rather urgent Bill that needs to be passed by this House.

There is a great fear that if this Bill is not passed as soon as possible, the transactions that will have taken place between August 2015 and the time this Bill will commence will be brought to doubt. So, there is some urgency for this Bill to be passed. The Constitution requires that we pass this Bill within five years. If not, transactions done before the August 2015 constitutional deadline are covered by the Constitution and this Bill, but those that are done beyond the August 2015 deadline are a problem. So, this Bill is very urgent.

I can understand the time the drafters of this Bill took to bring it to the House. The fact that it is a negotiated Bill has ended up excluding some items that need ratification by the House. It has also brought a big question to this House. Since the Constitution does not acknowledge parliamentary approval and expect parliamentary ratification of these instruments, does it mean we amend all the statutes that we have so far passed that call for parliamentary approval and not ratification? For example, the Schedule to this Bill says that long term concessions of forests are part of the classes of natural resources transactions that must be ratified by Parliament. It also talks of excision or change of boundaries of wildlife parks. In the Forest Bill, the change of a forest boundary or relocation of wildlife requires parliamentary approval and yet in this Bill relocation of wildlife requires ratification while the change of forest boundary is excluded.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I beg your pardon. Which clause are you referring to?

**Hon. (Ms.) Abdalla:** Under Schedule, the classes of---

**The Temporary Deputy Speaker** (Hon. Kajwang'): I just want to follow you to understand where we are coming from.

**Hon. (Ms.) Abdalla:** Under the Schedule, it gives a list of transactions that are subject to ratification. Under the Wildlife Management and Conservation Bill, if you were to change the boundaries of a national park, the Cabinet Secretary (CS) proposes but it can only happen with the approval of the House and yet it is on this Bill. Under the Forest Management Act, the same is the case for situations where you want to change the boundaries of a forest reserve, and yet it is not part of this Bill.

Therefore, the question that it is begging is: Do we go back to all the natural resources transactions that require parliamentary approval and make them ratification or we list them in this schedule so that we are inclusive? The latter is more laborious.

In the past, concessions of forest lands for private management were not part of our Statute. So, even the court rejected a concession that the Kenya Forest Service wanted to enter into because of that reason. So, I am concerned about the transactions that have been left out in the Schedule that require parliamentary approval and involve natural resources. Therefore, do we change our Statute that call for parliamentary approval in the change of management of natural resources, such as, national parks and forest reserve, to read "ratification" or do we put the list here? That is the issue as a committee we have grappled with.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Forgive me. I will still engage you on this so that I can follow. I see that the time may not be there, but let me just engage you on this. Ratification is a consequence of the Constitution.

**Hon. (Ms.) Abdalla:** Yes.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Article 2(6) of the Constitution relates to instruments which are treaty in nature. The Constitution uses the language that a treaty which has been ratified will *ipso facto* become law in our jurisdiction.

These other pieces of legislation will in one way or the other, require approval by the House, like the wildlife situation, the Kenya Forest Service will require approval of the House. Is it the same case that natural resources, according to the Constitution require ratification or approval? What language does a Constitution use when it comes to the natural resources or these classes of transactions subject to ratification?

**Hon. (Ms.) Abdalla:** Hon. Temporary Deputy Speaker, the Constitution uses the words "Ratification of natural resources agreements." It is not the ratification of international instrument. It is ratifying agreements between private entities who want to use natural resources that are owned by the national Government, county government or a private---

**The Temporary Deputy Speaker** (Hon. Kajwang'): This language is crafted out of the Schedule of the Constitution.

**Hon. (Ms.) Abdalla:** Yes.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Fifth Schedule of the Constitution has given timeline within which some of these Bills should be brought to the House.

**Hon. (Ms.) Abdalla:** Yes, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I see. Since the Constitution has used the word "Ratification" it is, therefore, your submission that legislation also needs to use the word "Ratification" to be consistent with the Constitution.

**Hon. (Ms.) Abdalla:** Yes, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Therefore, your dilemma is all these pieces of legislation will contradict the Constitution if they do not use the same word which is "Ratification".

**Hon. (Ms.) Abdalla:** Yes, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I see.

**Hon. (Ms.) Abdalla:** So, Hon. Temporary Deputy Speaker, as a Committee, when we listened to the expert who came to talk to us, our concern was whether we should include all those legislations that we sought approval of the House, under the classification of transaction that needs ratification or we wait for an omnibus---

**The Temporary Deputy Speaker** (Hon. Kajwang'): Why do you not think of a Statute Law (Miscellaneous Amendments) and list all those things and bring them here for approval?

**Hon. (Ms.) Abdalla:** Hon. Temporary Deputy Chairman, this Bill was brought to the Floor before we concluded that discussion. We will, however, endeavor to do that.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Proceed then and cover some ground. I need to get your Bill seconded so that it becomes a property of the House.

**Hon. (Ms.) Abdalla:** Hon. Temporary Deputy Chairman, I also need to speak to Clause 4(b). Clause 4(1) speaks about classifications that are subject to ratification and because of that we believe that without an amendment to Clause (b) we shall be tying some of these transactions to the need for an approval and yet they do not require that.



We are more concerned about the possible impact on research that Clause 4 will bring if it is not amended at sub-clause 2.

Concessions regarding scientific research and exploitation of natural resources are excluded except those that involve taking natural resources out of the country. If we do not amend 2, anybody can stop research that does not involve taking something out of the country by using the argument that Clause 4(1) supersedes Clause 4(2). As a Committee we intend to bring a slight amendment to Clause 4(2)(b) so that we do not get into that situation.

On the question of 35, there is a dangerous precedent that has been set with regard to confidentiality agreement. As an individual who has had the privilege of seeing some of these agreements, I have fear that allowing the Cabinet Secretary to decide which components of an agreement can be confidential without giving access of that information to a Committee would be giving a blank cheque. My proposal would be to use the American example of the foreign relations committee where they are sworn to secrecy and they are given the full picture before they approve a transaction, rather than just being told that the Minister has agreed to part of that agreement being confidential and yet we do not know what is being hidden. Some of the things being hidden in the agreements are contrary to what we have sworn to uphold as Members of this House.

We, therefore, need to change Clause 12 to ensure that they have a right to keep their matters confidential to the full House, but the Committee that is looking at that transaction needs to look at it more exclusively so that they do not approve bad contents of an agreement blindly. We will be seeking an amendment to deal with that issue of confidentiality. Let us make sure that business competitors do not get the contents of the agreement, but let us not have committees of this House approving agreements blindly.

The other issue that has been mentioned by the Leader of the Majority Party is that of timelines. We know that the Senate has problems with passing Bills on time. We are concerned about them keeping the 60 days period of approving the amendment.

Clause 15 is about the transactions that have been entered into between August, 2010 and August, 2015. This Bill recognizes that all those agreements are valid because of there not having been a ratification instrument. We are calling for more stringent audit of those agreements because they have not gone through ratification and some of them are about huge investments in different sectors that involve natural resources.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I appreciate your concerted efforts to explain this very technical and yet very important Bill in the National Assembly. I want to suggest that when this Bill comes up for Second Reading again many of you in the Committee who have engaged with this Bill should get the first opportunity to speak to it so that Members are well informed and we understand the issues that we are dealing with. That way, when we get to the voting stage, we will be voting from an informed point of view.

I hate to think that I interrupted you when time is up and you are unable to complete your submission. I am sure you will bring as many Members as possible to contribute to this. Will it be fine if you beg to second now?

**Hon. (Ms.) Abdalla:** Hon. Temporary Deputy Speaker, I beg to second.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I appreciate you.

*(Question proposed)*

### ADJOURNMENT

**The Temporary Deputy Chairman** (Hon. Kajwang): Hon. Members, it is now time to interrupt the business of the House. This House stands adjourned until Wednesday, 2<sup>nd</sup> December, 2015 at 9.30 a.m.

The House rose at 6.30 p.m.