

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 19th April, 2016

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: Hon. Members, we have with us today in the Speaker's Gallery, 34 officers from the National Intelligence Service (NIS) who are on a study tour of Parliament.

(Applause)

The delegation led by Dr. Velma Kusa is participating in a training programme at the National Intelligence Academy (NIA) in Ruaraka. Hon. Members, on my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful undertakings during the course of their tour of Parliament.

Thank you.

Next Order.

MESSAGE

APPROVAL OF THE MEDIATED VERSION OF THE MINING BILL BY THE SENATE

Hon. Speaker: This is Message No.5 from the Senate on approval of the mediated version of the Mining Bill, No.9/2014 by the Senate. Hon. Members, pursuant to the provisions of Standing Order No.41(4), I wish to report to the House that I have received a Message from the Senate regarding the approval by the Senate of the mediated version of the Mining Bill, No. 9/2014. The Message reads in part and I quote:-

“That the Senate, by way of a resolution passed on Thursday, 12th April 2016, approves the mediated version of the said Bill in the form developed by the Mediation Committee.”

Hon. Members, you may recall that on Wednesday, 15th March 2016, the National Assembly considered and approved the same version of the said Bill in the form developed by the Mediation Committee. Therefore, this marks the end of the bicameral consideration of the said Bill by Parliament.

In this regard, I will proceed to present the Bill to His Excellency the President for assent in accordance to the provisions of Article 113(3) of the Constitution.

Thank you. Next Order. Members making your way into the Chamber, please do so quickly.

PETITION

MEASURES TO CURB CRIMINAL ACTIVITIES IN KIBRA SLUMS

Hon. Speaker: Hon. Members, this is Petition No. 8/2016. It is conveyance of a Petition to the National Assembly on alleged illegal, unlawful, corrupt and criminal activities in Kibra slums.

Hon. Members, in accordance with the provisions of Standing Order No.225(2)(b), I wish to convey to the House that my office is in receipt of a Petition signed by one, Ms. Zubeida Waziri regarding illegal, unlawful, corrupt and criminal activities in the slums of Kibra. Hon. Members, in her Petition, she highlights illegal electricity and water connections, the supply and sale of illicit brews and drugs and the existence of many unlicensed businesses and premises in the area. The Petitioner also avers that the said criminal activities have become a norm and are acceptable by the community, thereby making the wanton state of anarchy and impunity difficult to resolve.

Hon. Members, the Petitioner prays that the National Assembly, through the relevant departmental committee:-

- (i) Recommends and ensures the immediate disconnection of illegal electricity and water connections.
- (ii) Recommends and ensures closure of all businesses operating without valid licences or those operating illegal businesses.
- (iii) Recommends that other relevant bodies investigate this matter and take action against any public officer found culpable or allowing the state of anarchy to persist.
- (iv) Make any other order or direction that it deems fit in the circumstances of the case.

Hon. Members, this Petition contains what appears to be a very solemn prayer cutting across various sectors such as security, trade and energy. Indeed, some of the concerns relate to matters under the purview of the Nairobi City County Government. In the circumstances, I will refer the Petition to the Departmental Committee on Administration and National Security for consideration. I wish to remind the House that pursuant to Standing Order No.227(2), the Committee should report its findings to the House within 60 days from the date hereof. The Committee should engage all the other sectors in its efforts to resolve the concerns of the Petitioner.

I thank you.

I see the Member for Kibra desirous of expressing something on this Petition. I think it is only fair that Hon. Ken Okoth gets a chance.

Hon. Okoth: Thank you, Hon. Speaker. I am glad that one of my constituents has brought a petition which is an issue of concern for safety and quality of life. The said illegal water connections are under the purview of Nairobi City County Water and Sewerage Company. This has really affected many people who have legal water connections, but cannot access it because of illegal connections.

We have lost many lives due to illegal electricity connections and yet, in the last three years, we have been working very closely with Kenya Power and Lighting Company (KPLC) to bring legal, cheap, affordable and safe power connections to the community. So as to reduce the number of incidences in which people lose lives, properties and their savings because of fires, I will be engaging with the Committee to see what is fair and doable in a quick manner. I will also liaise with the Community Chair to participate in this and make sure that the Petitioner, if necessary, feels welcome to engage the Committee and help them find a solution.

Thank you, Hon. Speaker.

Hon. Speaker: Very well, Hon. Onesmus Njuki.

Hon. Njuki: Thank you, Hon. Speaker, for giving me an opportunity to comment on this Petition. Very decent people live in Kibera and I have friends there. There are a few gangs that have made that place a “banana republic”. You will be surprised to see a broom hanging on an electric wire. Do not touch it. That is not a broom. That is what they normally use for illegal connections of electricity. That broom has a live electric wire passing through it into the House. It is that bad.

The problem with this is not the people who are doing the illegal connections, but the ones who block those who want legal connections from doing so. That is where they miss the point. Even decent Kenyans who want to have a decent life are forced by gangsters to go the wrong way because they are threatened. Therefore, it will be a worthy thing for this Parliament, through the Committee, to bring sanity to that area. Those people want to live a decent life especially now that we have tarmac roads, good toilets and street lighting by the Jubilee Government. You can only imagine how it used to be like before the street lights came. It is just a small thing that is left out and Kibera will be a safe place like any other in Nairobi.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Gideon Ochanda.

Hon. Ogallo: Thank you, Hon. Speaker. I support the Petition. Definitely, the biggest problem is not the people who do the illegal connections, but the recipients down the line who have no idea that somebody has connected power illegally. The Government needs to take the necessary action and check this out. There are those who are doing illegal water connections. One would wonder whether that water is safe or it is something that can affect the bigger population in that slum area.

This is something which, in my view, needs to be looked at deeply. It is not only in Kibera, but also in different slum areas in Kisumu, Meru, Mombasa and other towns. Those kinds of connections - and particularly of power - are really dangerous and sometimes cause the problems that we see in slum areas.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Robert Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Speaker. At the outset, I want to support the Petitioner. This House must consider this as a very sensitive matter. The Petitioner has alluded to the fact that within the system, there are officers who are abetting those things.

As you will remember, about two weeks ago, the former Member of Parliament for Naivasha, Hon. John Mututho, alluded that officers within the Central Police Station were colluding with students from the University of Nairobi (UON) to sell illicit drugs within the campuses. The Inspector-General came up very vehemently and asked Mr. Mututho to record a

statement. A few days later, there was an inspection at Hall 9 within UoN and drugs were found in that hostel.

Therefore, we need to ensure that the officers concerned, who are supposed to enforce law and order, are held responsible for those kinds of eventualities. The citizens who have written this Petition must also be protected. It is important that the protection unit which protects witnesses comes in to protect such witnesses who come out very openly and name those kinds of vice which are happening within the community.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Silverse Anami.

Hon. Anami: Thank you, Hon. Speaker. I would like to support the Petitioner. The risk that runs through such unqualified connections is that people lose lives. We saw that recently in Nakuru. Two young men lost their lives because of interacting with electrical connections that were live. We have heard cases of people dying through electric shocks. I also want to underline the issue of corruption because we could be having people from the Inspection Unit of KPLC who are not doing their bit. It is good that we have this Petition. It is better that the Committee takes over the case over and beyond Kibra.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Florence Kajuju.

Hon. (Ms.) Kajuju: Thank you, Hon. Speaker. I just want to say that the Petition really reflects on all of us. These are issues that affect each and every slum area within the counties. To give the devil its due, we know it is because of the efforts of the former Cabinet Secretary that Kibra happened. Through the National Youth Service, we were able to see young men and women do a lot to ensure that Kibera is clean. That shows the power of a woman. What she did changed the face of Kibera. Before, we saw the kind of insecurity that was there and many bad things were happening. This Petition is very serious and I believe the Committee on Administration and National Security is going to ensure that we get a solution, so that our young men and women and the people of Kibera have a better place to live. I repeat: Give the devil its due.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, let me recognise the Members of the Committee on Implementation of Siaya County Assembly, who have come to observe the proceedings in the House. They include the following:-

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|------------------------------------|---|-----------------------------|
| (i) Mr. Leonard Otieno Oriaro, MCA | – | Committee Chair; |
| (ii) Mr. Pius Ombiyo Ogutu, MCA | – | Vice-Chair; |
| (iii) Mr. Peter Muhula, MCA | – | Member; |
| (iv) Ms. Rose Okite, MCA | – | Member; |
| (v) Mr. Walter Okello, MCA | – | Member; |
| (vi) Ms. Angeline Odhiambo, MCA | – | Member; |
| (vii) Mr. Agolla Sylvester | – | Committee Secretariat; and, |
| (viii) Mr. Kennedy Opiyo | – | Serjeant-at-Arms. |

They are welcome to observe the proceedings of this House.

Hon. Speaker: Did I hear Hon. Olago Aluoch seek an intervention? What is out of order?

Hon. Aluoch: Hon. Speaker, this has nothing to do with the Siaya County Assembly Members. I want to draw your attention to the manner of dressing of my friend, Hon. Chanzu.

He appears to be dressed in what looks to me from here like an Elder of the Burning Spear (EBS) decoration. I believe that we are all familiar with the manner of dressing in the House. I would like to have your direction. Is it proper for a Member to come to the House dressed in a decoration? I say so because in the last Parliament, I came to the House dressed in the High Court attire and I was ruled out of order. That was a decoration as well.

Hon. Speaker: The Member for Vihiga, Hon. Yusuf Chanzu Kifuma, is appropriately enjoying his insignia. He is an EBS, First Class Moran, is he not?

Hon. Members: Yes!

Hon. Speaker: It is only fair that he enjoys that insignia. I must allow him to enjoy it. He does not wear it every day.

Proceed, Hon Duale.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, as a Member of the Honours Committee that you chair, Hon. Olago Aluoch has nothing else to do apart from sending his application and seeing whether the House can give him that decoration next year. This morning, you had the privilege, on behalf of the President, to give among many other Members of Parliament and Senators, Hon. Yusuf Chanzu those honours.

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

The Report of the Auditor-General on the Financial Statements of the Forum for the Restoration of Democracy–People (FORD-People) for the year ended 30th June, 2013 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Forum for the Restoration of Democracy–Kenya (FORD-Kenya) for the year ended 30th June 2013 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Orange Democratic Movement (ODM) for the year ended 30th June, 2010 and the Certificate therein.

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

- (i) Kenyatta National Hospital;
- (ii) National Quality Control Laboratory;
- (iii) Local Authorities Provident Fund;
- (iv) Commission for the Implementation of the Constitution;
- (v) Kenya Citizens and Foreign Nationals Management Service;
- (vi) South Eastern Kenya University;
- (vii) Retirement Benefits Authority;
- (viii) Kenya National Commission on Human Rights;
- (ix) National Land Commission;
- (x) National Construction Authority;
- (xi) Kenyatta University;
- (xii) Office of the Director of Public Prosecutions; and,
- (xiii) Kenya Scouts Association.

Hon. Speaker, you will note that for the ODM, as a party, the Auditor-General has just given us the report of audited accounts for 2010. I cannot see the party chairman, Hon. John

Mbadi. This report is late by five years. Either the Auditor-General is late by five years in submitting this report or the party did not submit their accounts to the auditor for five years.

Hon. Speaker, I am tabling the audited accounts for the ODM for the year ended 30th June, 2010. For FORD-Kenya, I am tabling the audited accounts for 2013. For FORD-People, I am tabling the audited accounts for 2013. So, I am only saying that either the Auditor-General or the ODM delayed in submitting the accounts. I cannot see the party chairman and the secretary-general.

When the Auditor-General brings his reports on the PNU and other parties, I will comment on them. For now, my comments are only on ODM.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Deputy Speaker.

Hon. (Dr.) Laboso: Thank you, Hon. Speaker. As you are aware, we continue to hold the brief for the Budget and Appropriations Committee. Therefore, I beg to lay the following Paper on the Table of the House:-

The Report of the Liaison Committee on its consideration of the First Supplementary Estimates for 2015/2016

Thank you.

Hon. Speaker: The Chairperson, Bunge Sports Club, Hon. Wafula Wamunyinyi!

Hon. Wamunyinyi: Hon. Speaker, you will recall that last year, there was the East African Community Summit held in Rwanda. One of the activities that took place was the games. Therefore, I beg to lay the following Paper on the Table of the House:-

Report on the East African Community Inter-Parliamentary Games held in Kigali, Rwanda, from 4th to 11th December, 2015.

Hon. Speaker, as earlier reported, the Parliament of Kenya won the overall trophy and out of the seven disciplines that were presented, Kenya won five disciplines that were played by Members of Parliament. So, I thank you, the Clerk of the National Assembly and the staff of Parliament for the support that has been given to Bunge Sports Club.

Thank you, Hon. Speaker.

Hon. Speaker: It is good for Hon. Members to read the Report for noting, so that the Captain of the Football Club, Hon. Victor Munyaka, can appreciate what they did.

Next is the Chairperson of the Departmental Committee on Labour and Social Welfare, Hon. Were.

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

Report of the Departmental Committee on Labour and Social Welfare on its consideration of the Anti-Doping Bill, 2016.

Thank you.

Hon. Speaker: Obviously, it was important that the Chair of Bunge Sports Club tabled his Report just before you considered the Anti-Doping Bill. It is pertinent.

Next Order!

Hon. Speaker: The Deputy Speaker.

NOTICE OF MOTION

ADOPTION OF REPORT ON FIRST SUPPLEMENTARY ESTIMATES 2015/2016

Hon. (Dr.) Laboso: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Liaison Committee on the first Supplementary Estimates for the 2015/2016 Financial Year laid on the Table of the House on Tuesday, 19th April, 2016.

Hon. Speaker: Next Order!

MOTION

PRESIDENTIAL ADDRESS

Hon. Speaker: Hon. Members, the debate on this Motion was concluded and what remained was for the Question to be put, which I hereby do.

(Question put and agreed to)

BILLS

Second Reading

THE BANKING (AMENDMENT) BILL

(Several Hon. Members stood up in their places)

Hon. Speaker: Hon. Members, please take your seats. I am sure all of you remember that the debate on this Bill was also concluded and what remains is for the Question to be put.

(Question put and agreed to)

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

Next Order!

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 ANTI-DOPING BILL

(Clauses 3, 4, 5, and 6 agreed to)

Clause 7

Hon. (Ms.) T. G. Ali: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 7 of the Bill be amended in Sub-clause (1) by inserting the following new paragraph immediately after paragraph (d) -
“(da) periodically gazette International Standards.”

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Ms.) T. G. Ali, it would be better if you gave us some description of what you want to achieve with that amendment.

Hon. (Ms.) T.G. Ali: The justification for change is to ensure that Anti-Doping Agency of Kenya (ADAK) constantly creates awareness among the athletes on the prohibited list of banned substances published by the World Anti-Doping Agency (WADA)

(Question of the amendment proposed)

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, these standards are the WADA Code and they are already gazzeted. Why do we need to gazzete them regularly yet they have already been gazzeted by the world standards?

The Temporary Deputy Chairman (Hon. Cheboi): Are you opposing?

Hon. (Prof.) Nyikal: Yes, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, kindly concentrate because after the second Member finishes his contribution, we will be putting it to Question.

Hon. Injendi: *(Inaudible)*

The Temporary Deputy Chairman (Hon. Cheboi): You are not audible at all. Maybe you are very tall and that is why you cannot speak well on your microphone. Can you bend a little lower? Speak on the next microphone.

Hon. Injendi: Hon. Temporary Deputy Chairman, I wanted the proposer to explain what “periodically” stands for because it can as well take 10 or 15 years. Can they be specific with a particular period within which we can gazette these international standards?

The Temporary Deputy Chairman (Hon. Cheboi): I will allow Hon. (Ms.) T.G. Ali to explain a bit, and then put the Question to vote.

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Chairman, I think “periodically” will be if there are some variations in terms of international standards and other emerging issues. We are just following international standards. We do not want to close ourselves out in case there are any changes.

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

(Clause 7 as amended agreed to)

(Clauses 8 and 9 agreed to)

Clause 10

The Temporary Deputy Chairman (Hon. Cheboi): There are three Members who want to amend Clause 10. I will give the first shot to the Vice Chairlady followed by the Member for Endeless. If his amendments go through, then we will drop Hon. Munyaka's amendments because they are the same.

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 10 of the Bill be amended —

(a) in Sub-clause (1)—

(i) by inserting the following new paragraph immediately after paragraph

(b)-

“(ba) The Attorney General or a representative designated in writing by the Attorney General;”

(ii) by inserting the words “who shall be the Secretary to the Board;” immediately after the words “Chief Executive Officer;” appearing in paragraph(d)

(b) in Sub-clause (2)—

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

“(a) holds a post-secondary school education qualification recognised in Kenya;”

(ii) by deleting the words ‘sports or administration’ appearing in paragraph (b) and substituting therefor the words ‘sports, management, administration or any other relevant field’

(c) in sub clause (3) by deleting the words ‘ensure the representation of women, youth and persons with disabilities’ and substituting therefor the words ‘ensure compliance with the Constitution’

(d) in sub clause (5) by deleting paragraph (c).

(Question of the amendment proposed)

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, the Vice Chairlady of the Committee must explain to us why they are amending the clause. The amendment is in the Order Paper and we have no problem with it. For example, we want to know the reasons why Clause 10 (d) in sub clause 5 is amended by deleting paragraph (c) because this Bill is very important. It is binding a number of countries. It is an internationally binding law. If our Parliament might do some deletion or addition, then that might lead to the banning of our team. I want the Vice Chairlady to explain to us because this is a Bill from the Government. We want to know why they are doing that.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Without doubt, the Leader of the Majority Party is very right. This is a very critical Bill. We are not getting good explanations from the Vice Chairlady. We also have a problem with the concentration in the House. The decibels are a bit very high, especially from the Member for Luanda. I do not know whom he is speaking to. It is very important that we maintain some quiet environment for Members to follow the debate. It is very critical, Hon. Members. Please keep your decibels a little lower.

I want to give an opportunity to contribute to two Members. Do you want to give an explanation Hon. Were? If you have it, it has to be brief. I had already given an opportunity to your Vice Chairlady. We cannot have two Members handling the same thing at the same time. I will give the first opportunity to the Chairman of the Committee but next I will be giving one opportunity to the Committee, that is the Vice Chairman or the Chairman. Please make sure that you consult well.

Hon. Were: Hon. Temporary Deputy Chairman, this is a question that has arisen from the Leader of the Majority Party. Clause 10 deals with the Board of the Agency. We are adding the Attorney-General after consultation with the stakeholders including the Ministry. We felt that the Attorney-General or his representative should be part of the Board.

The second amendment gives the Chief Executive Officer (CEO) an opportunity to be the secretary to the Board. Clause 10(2)(a) gives the qualifications for a person to become a Board member. The Bill says that a Board member must hold a degree from a university recognised in Kenya. It was felt that it is unfair for a Board member to be required to hold a degree. That is why we are amending it.

The final amendment is on Clause 10(5)(c). This is a requirement that a Board member should not hold office in a political party. We have so many political parties office holders who are in other boards. We felt that it should be the same in this Board. So, we should not have that condition.

The Temporary Deputy Chairman (Hon. Cheboi): That is the kind of explanation we would have expected. Let us have Member for Ndhiwa.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Chairman. I have listened to the Chairman give explanations as to why they want to delete some parts. I would like to oppose the amendment even though it tries to explain several things. One of the reasons why I am opposing this particular amendment is because of what the Committee seeks to do in Clause 10(3). This Clause is very specific in the sense that it says the Cabinet Secretary shall, in appointing members of the Board, ensure the representation of women, youth and persons with disabilities. That is an expressed provision. The Chairman is telling us to be in compliance with the Constitution which could mean anything. With that kind of amendment in mind, they will deny the youth, women and persons with disabilities an express right. I oppose the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, make your decision.

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

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

(Question, that the words to be inserted in place thereof be inserted,

put and agreed to)

The second amendment is by Hon. (Dr.) Pukose. Hon. Members, be keen because we will giving an opportunity to only two Members to contribute. What is your point of order, Hon. Nyikal? I hope that it is not about the amendment we have just voted for.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, would it not be in order that where there are several amendments, you take them one by one because one may support some of the amendments and not others? That has been a practice before. For example in my case, I know that it is overtaken by events. I would have supported and opposed some amendments. I would have responded differently. That is my point.

The Temporary Deputy Chairman (Hon. Cheboi): That makes sense. When we find that almost every other part will be almost similar, we will still put it as one but when we think that it is something that Members would want to ventilate on specific parts, we will do it.

What is it Hon. Rasso?

Hon. Dido: Thank you very much, Hon. Temporary Deputy Chairman. You have put a ruling that is very dangerous in this House. You have said only two Members will contribute to an amendment. There are diverse ideas in this House. By cutting that to two Members, it appears that the Chair is stifling debate in the House and diverse ideas. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): You are very active Member of this House, Hon. Rasso. You know that this is something that has been on for the last few weeks. That was the ruling that was made by the Speaker. If you needed to challenge it, you should have done it at that particular point. That is going to be the position because it was passed.

Hon.(Dr.) Pukose.

Hon. (Dr.) Pukose: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 10(1) be amended by—

(a) inserting the following new paragraph immediately after paragraph (c)—

“(ca) a representative of the Pharmacy and Poisons Board”;

(b) deleting the word “five” appearing in paragraph (e) and substituting therefor the word “four”.

The reason is that in Clause 10 (c), they have given not more than five other persons appointed by the virtue of their knowledge and experience in sports by the Cabinet Secretary. I feel that we need to bring in the regulator for drugs, that is the Pharmacy and Poisons Board because it is the one which monitors the pharmacovigilance. Some of the drugs that are taken by athletes are used for human treatment. If we do not have anybody to monitor those drugs, then it becomes a challenge. I want to bring in the Pharmacy and Poisons Board.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, this is how we will proceed on this amendment. I will give two Members an opportunity to contribute. I will start with the Chairman of the Committee.

Just hold on. I will give two members an opportunity. One is going to be the Chair of the Committee. We will start with the Chair of the Committee. We want to get the feeling of the Committee.

Hon. Were: Hon. Temporary Deputy Chairman, we considered that proposal. You know that this is a very technical Bill. After a lot of consideration together with all the stakeholders, we felt that we should leave the Bill the way it is in terms of composition of the Board when it comes to appointment by the Cabinet Secretary (CS). So, we oppose that amendment.

The Temporary Deputy Chairman (Hon. Cheboi): The Chair opposes the amendment. Let us have somebody from the other side. Let us have Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. This amendment makes a lot of sense. In this country, the Pharmacy and Poisons Board controls all the drugs we use. It determines whether they are good for human use or not. I cannot understand anybody who will oppose such an important amendment. I support this amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, the ruling is, obviously, going to stand that we are only to give only two members a chance. The reasoning is that Members can easily participate inside the Committees so that when we come to the Committee Stage, we will dispose of clauses very quickly. However, on this particular one, which I consider extremely exciting to the members, I will give two more members a chance. I will start with the Leader of the Majority Party.

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, I want to bring to the attention of the House that this is not one of the ordinary Bills we pass in this House. It was prepared in consultation with international bodies like the World Anti-Doping Agency. We can do something and when the President assents to it and is taken back to that international body, our athletes are banned.

Why am I saying so? If you read the Bill, the World Anti-Doping Agency identifies the types of laboratories that will deal with the analysis. It is them to identify the doctors. This is not a local matter where you bring in the Pharmacy and Poisons Board as a regulator. This is an international issue. The Pharmacy and Poisons Board deal with the drugs that are used by the Kenyan people.

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

Hon. A.B. Duale: I oppose it. I think we must be very careful in this because we already have a timeline of 2nd May 2016. We might bring things to this Bill that will, ultimately, lock out all our athletes. I oppose and I am sure the Chair of the Committee, who met the Ministry and the stakeholders, did not agree to that amendment. So, Hon. (Dr.) Pukose, with a lot of respect---

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Members!

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, in this House, whether you are a lawyer, medic or an economist, you are a Member of Parliament. So, we should not only listen to the medics here. In fact, that is a conflict of interest.

The Temporary Deputy Chairman (Hon. Cheboi): Order! Order! Hon. Duale, you know I had already given Hon. Kangogo a chance. Let us proceed. You will then make your decisions, Hon. Members. It is up to you.

Hon. Bowen: Thank you, Hon. Temporary Deputy Chairman. I stand to oppose the amendment by Hon. Pukose. Like the Leader of the Majority Party has said, this is not an ordinary Bill. When we met last time, the Speaker made the ruling that this is an international

Bill. It is not binding Kenya alone. It is an international Bill. Bringing many amendments is going to dilute the Bill.

Secondly, the World Anti-Doping Agency has its own doctors. They also have their own medical reports to approve.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I can see the excitement. Let me have Hon. Wanyama.

Hon. Sitati: Thank you, Hon. Temporary Deputy Chairman. I rise to oppose the amendment by Hon. Pukose because whatever Hon. Pukose is suggesting to cure in this Bill has already been taken care of by another sub-committee within it called "The Therapeutic Committee." That Committee will take care of those technical issues of the substances that he wants another person to look at.

I stand to oppose that because it has already been taken care of within the Bill.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I will put the Question. Concentrate, Hon. Members.

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

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Munyaka, if you are in the House, you are aware that the amendment you have is similar to this one. So, I do not know whether I really need to give you an opportunity. Do you really want to proceed with it? We have just lost this one. Let us hear Hon. Munyaka.

Hon. (Dr.) Munyaka: Hon. Temporary Deputy Chairman, I wish to drop this amendment since it is similar to the one which has been negatived.

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

The Temporary Deputy Chairman (Hon. Cheboi): That is a better way to do it.

(Clause 10 as amended agreed to)

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

Clause 17

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 17 of the Bill be amended in sub-clause (2) by deleting the word "ten" appearing in paragraph (a) and substituting therefor the word "five"

This is on the qualification of the Chief Executive Officer (CEO). On this one, the Bill says that we should have 10 years. However, the Committee proposes that we should have five years because this is a new field. Many of the people who will apply will be locked out. So, for that purpose, the Committee decided that we have five years' experience for the CEO and not 10.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I give the first chance to the Member for Tinderet.

Hon. Melly: Thank you, Hon. Temporary Deputy Chairman. I rise to support the proposed amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Member for Rangwe.

Hon. Ogalo: Hon. Temporary Deputy Chairman, I am worried about debating this Bill in this House because if we are told that somebody has passed it internationally and we should be ratifying what they are saying then, in essence, we are saying---

The Temporary Deputy Chairman (Hon. Cheboi): You are out of order, Member for Rangwe.

Hon. Ogalo: I am not out of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Member, I have given you an opportunity to contribute but now you are discussing something which is already water under the bridge. Member for Rangwe, you have the opportunity. Please proceed.

If you rose on a point of order, it would be different. Now, I have given you an opportunity to contribute. You are free, immediately thereafter, to intervene and raise your concerns. We will be able to listen to you.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Chairman. I oppose this amendment because the international community wants 10 years.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I want you to make your decision.

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

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

(Clause 17 as amended agreed to)

(Clauses 18, 19, 20, 21 and 22 agreed to)

Clause 23

The Temporary Deputy Chairman (Hon. Cheboi): On this clause, we have three Members who want to propose amendments. We will obviously start with the amendment by the Chairperson of the Departmental Committee on Labour and Social Welfare.

For the information of Hon. (Dr.) Pukose and Hon. (Dr.) Munyaka who are interested in amending the same clause, if the Chair's amendment is carried, then it means the two of you will have your proposals dropped.

Hon. (Ms.) T. G. Ali: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 23 of the Bill be amended in sub clause (2) by deleting paragraph (b) and substituting therefor the following new paragraphs—

“(b) a medical doctor of not less than five years’ experience in matters relating to sports;
(ba) a clinical pharmacist of not less than five years’ experience in matters relating to sports;”

Hon. Temporary Deputy Chairman, instead of having two medical doctors of not less than five years’ experience, we propose to have a medical doctor and a pharmacist of not less than five years’ experience.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give opportunity to two Members. Let us hear the Member for South Imenti. Do you want to speak to this amendment? Are you sure?

Hon. Murungi: Yes.

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

Hon. Murungi: Why are you doubting, Hon. Temporary Deputy Chairman?

The Temporary Deputy Chairman (Hon. Cheboi): Proceed. I am the one who has given you the opportunity.

Hon. Murungi: I know you have a lot of---

The Temporary Deputy Chairman (Hon. Cheboi): You see, since there are too many Members making requests, sometimes they want to speak to certain clauses and not others. That is why I have to be very sure.

Hon. Murungi: Hon. Temporary Deputy Chairman, I want to support this amendment. It is a well thought out amendment. It is actually one of the best amendments.

The Temporary Deputy Chairman (Hon. Cheboi): That is why I was not very sure you wanted to speak to this particular amendment.

(Laughter)

Hon. Gumbo, do you want to speak to this amendment? I am looking for somebody on the left. Hon. Fatima Ibrahim.

Hon. (Ms.) F.I. Ali: *(Inaudible)*

The Temporary Deputy Chairman (Hon. Cheboi): Then I will proceed and put the Question.

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

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

Therefore, we will drop the intentions of Hon. (Dr.) Pukose and Hon. (Dr.) Munyaka.

*(Proposed amendments by Hon. (Dr.) Pukose and
Hon. (Dr.) Munyaka dropped)*

(Clause 23 as amended agreed to)

(Clauses 24, 25 and 26 agreed to)

Clause 27

The Temporary Deputy Chairman (Hon. Cheboi): I see the Committee has an amendment to this clause. Let us hear Hon. Tiya Galgalo.

Hon. (Ms.) T. G. Ali: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 27 of the Bill be amended in sub clause (5) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) shall comply with the Anti-Doping Rules;”

The justification for this amendment is that it will give clarity that athletes have a duty under the Bill to comply with the anti-doping rules to be adopted under subsidiary legislation.

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, the Leader of the Majority Party?

Hon. A.B. Duale: The point of order, Hon. Temporary Deputy Chairman, is that I do not know why the Committee dropped the provision in the Bill. Maybe I will speak after you propose the Question. It is not really a point of order. I want to oppose the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Your point of order is okay. The only thing is that you are the one I should be asking because you are directly responsible for all the Committees.

Hon. A.B. Duale: I know it is my Bill.

The Temporary Deputy Chairman (Hon. Cheboi): That is why I am saying you are the one who should be asking why the explanations are not very clear.

Hon. A. B. Duale: No, I am not in charge of Committees. There is a Directorate of Committees.

The Temporary Deputy Chairman (Hon. Cheboi): No, you are in charge of your team. The Chairs of Committees are mostly from the coalition which you lead in Parliament.

Hon. A.B. Duale: I am in charge of the coalition. Members of Committees are from both sides of the House and there is a Directorate of Committees which reports to the Clerk. I am the owner of the Bill and the Committee was scrutinising it.

The Temporary Deputy Chairman (Hon. Cheboi): That is it, the Leader of the Majority Party. However, if it was the Public Accounts Committee (PAC) or the Public Investments Committee (PIC), I would have other thoughts. You realise that PIC and PAC do not have amendments to this Bill.

(Question of the amendment proposed)

I want to give two Members opportunity to speak to this amendment. The Leader of the Majority Party, you have had your time. Do you want to speak to the amendment?

Hon. A. B. Duale: Yes.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, speak to it and then I will give opportunity to two other Members. I will take your contribution as the mandatory one.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I want to oppose this amendment by the Committee for simple reason. The provision in the Bill says:

“An athlete shall be knowledgeable of and comply with anti-doping rules.”

That looks like a very good statement because it gives an athlete some right to have knowledge of the rules. But the Committee is saying very dictatorially that an athlete shall comply with anti-doping rules. I think the provision of the framers of the Bill sounds better.

I ask the Chair to let us retain the provision which is in the Bill. As we comply with anti-doping rules, we should also protect our men and women. They should be knowledgeable. Why are you removing the word “knowledgeable” and only saying the athlete must comply with the rules?

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear Hon. Rasso.

Hon. Dido: Thank you very much, Hon. Temporary Deputy Chairman. I rise to oppose this amendment. If our athletes are not knowledgeable, then we cannot hold them culpable in case they are involved in any misdemeanour. How will they comply with the rules if they do not have the very basic knowledge to understand the rules? I oppose.

The Temporary Deputy Chairman (Hon. Cheboi): It reminds me of a Latin maxim: “Ignorance of the law is no defence.” But that is not for this particular sitting.

I want to put the Question. No more contribution, Chair, unless you want to take a very drastic action like withdrawing the amendment. Hon. Members, this is something that we can deal with. I will put the Question.

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

(Clause 27 agreed to)

Clause 28

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): We have Hon. (Dr.) Munyaka on this.

Hon. (Dr.) Munyaka: Hon. Temporary Deputy Chairman, I wish to drop this amendment. It is because I have been informed that the World Anti-Doping Agency (WADA) may wish to have independent laboratories.

(Hon. (Dr.) Munyaka dropped his amendment)

(Clause 28 agreed to)

Clause 29

The Temporary Deputy Chairman (Hon. Cheboi): We have the Vice Chairlady of the Committee on Labour and Social Welfare, Hon. Tiyah Galalo.

Hon. (Ms.) T. G. Ali: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, clause 29 of the Bill be amended in sub clause (2) —

(a) by deleting the word "have" appearing in paragraph (b) and substituting therefor the words "with permission authorized in writing by the Inspector General of Police exercise

(b) by deleting the words "subject to the direction of the Director of Public Prosecution" appearing in paragraph (c) and substituting therefor the words "may cooperate with the Office of the Director of Public Prosecutions to"

This amendment was done because powers to arrest must be authorised by the Inspector General of Police (IG). Unless they are given powers to arrest, officers of WADA cannot do it. That is why we gave this amendment. It was not given in the previous clause. We are seeking the powers by the IG to the officers so that they are authorised to do arrests.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give chance to two Members. I will start with Hon. Serut.

Hon. Serut: All criminal cases are supposed to be prosecuted by the Director of Public Prosecutions (DPP). In this case, the clause seeks a donation of those powers to arrest from the DPP so that it can effect arrests on behalf of the DPP just like the agency of environment and others have arresting powers donated to them.

I support.

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

Let us have Hon. M'eruaki. I see you stepped out. Let me see if we can have Hon. Tobiko or Hon. (Dr.) Enoch Kibunguchy comment on this.

(Hon. (Ms.) Tobiko stood in her place)

Proceed, Hon. Tobiko. I thought you had stepped out.

Hon. (Ms.) Tobiko: I am sorry. I wanted to contribute to another amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. We will have the Member of Parliament for Likuyani.

Hon. (Dr.) Kibunguchy: Thank you, Hon. Temporary Deputy Chairman. Mine is very brief.

I support the 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)*

(Clause 29 as amended agreed to)

Clause 30

The Temporary Deputy Chairman (Hon. Cheboi): Can we have the Vice Chairlady of the Committee?

Hon. (Ms.) T.G. Ali: I beg to move:-

THAT, clause 30 of the Bill be amended—

(a) in sub clause (1) by deleting the prefatory statement and substituting therefor the following prefatory statement—

“(1) An authorised Anti-Doping compliance officer acting in accordance with the enabling statutory provisions may—”

(b) in sub clause (4) by deleting the words “ or without” appearing immediately after the word “may with.”

As discussed, the justification for this was that the amendment brings the Bill into compliance with the Constitution and Section 29 of the Criminal Procedure Code Act by permitting the officer of the Agency, who will exercise police powers of arrest, seizure and search, do so within the permitted legal framework and with a warrant.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I am having a problem because I cannot be sure who wants to contribute on what. So, let me follow the list.

Do we have the Hon. Member of Parliament Emurua Dikirr? Do we have Hon. Kombe? Does he want to speak to this?

Hon. Kombe: Thank you, Hon. Temporary Deputy Chairman. I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Do we have Hon. Gumbo? He is also absent.

Let us see somebody else. It will be Hon. Ogalo.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Chairman. I agree with the amendment because giving an anti-doping compliance officer power to arrest, search or seizure without warrant is infringing on the rights of Kenyans for fair administration of justice.

I agree with the Committee on Labour and Social Welfare that there must be warrants for people to be arrested.

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

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

(Clause 30 as amended agreed to)

(Clauses 31 and 32 agreed to)

Clause 33

The Temporary Deputy Chairman (Hon. Cheboi): Wait a minute Hon. Tiyah, let me consult.

*(The Temporary Deputy Chairman consulted
the Clerks-at-the-Table)*

Hon. Tiyah Galgalo, you will be moving the amendment in an amended form up to where the phrase “National Assembly” is.

Hon. Members, I want you to be keen. It is in an amended form. There is a bit of wording which will not be included in what she will be proposing.

Hon. Tiyah Galgalo, I will want you to be very clear on this. It is important for Members to be up to speed with what you are proposing.

Hon. (Ms.) T. G. Ali: Thank you, Hon. Temporary Deputy Chairman.

I beg to move:-

THAT, clause 33 of the Bill be amended in sub clause (1) by deleting the words “Parliament for the purposes of the Agency” appearing in paragraph (a) and substituting therefor the words “National Assembly.”

The Temporary Deputy Chairman (Hon. Cheboi): I hope Members are with you. Do you want to give some justification?

Hon. (Ms.) T.G. Ali: Yes. The justification for this is that the Agency---

The Temporary Deputy Chairman (Hon. Cheboi): You have indicated that it is in the amended form. I want you to read it up to where it ends so that it is extremely clear to the Members.

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 33 of the Bill be amended in sub-clause (1) by deleting the words “Parliament for the purposes of the Agency” appearing in paragraph (a) and substituting therefor with the words “National Assembly”

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

Hon. (Ms.) T.G. Ali: Yes. The justification for this is that the Agency is expected to be independent, both financially and in its operation in order to meet international standard as precondition of compliance and removal of threat of ban.

Two, the agency is modelled in line with the World Anti-Doping Agency (WADA). The WADA has been clear that the budget for the Agency must be guaranteed to enable it to function effectively.

Three, the Agency being created must maintain a lot of international linkages for example, with the WADA in Canada, USA, France, International Olympic Committee, International Sports Federation and the Court of Arbitration for Sports, Interpol and other similar national organisations countrywide and internationally.

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

The Temporary Deputy Chairman (Hon. Cheboi): What is it Hon. Neto, Member for Ndhiwa. Do you have a point of order?

Hon. Oyugi: Hon. Temporary Deputy Chairman, we respect that she is trying to give justifications but the justification she is reading with regard to Clause 33, I do not think is applicable. The reason for this amendment in Clause 33 is very basic. The National Assembly is the one in charge of appropriation of funds and it remains like that. So, she can give these other stories in another amendment.

The Temporary Deputy Chairman (Hon. Cheboi): That makes a lot of sense. Hon. Tiyah, it is as straightforward as that.

(Question of the amendment proposed)

I will give two Members an opportunity starting with Hon. Abdinoor.

Hon. Abdinoor: Thank you, Hon. Temporary Deputy Chairman. It is a straightforward amendment. It is just removing the word “Parliament” and replacing it with “National Assembly” because the National Assembly does the appropriation of the money.

I support. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): I see nobody on this other side.

Hon. Ogalo: I am here.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Ogalo, I do not see you here.

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

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

(Clause 33 as amended agreed to)

(Clauses 34,35,36,37,38,39,40 and 41 agreed to)

Clause 42

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Chairman, I beg to move:-

THAT Clause 42 of the Bill be amended—

(a) in sub clause (1)—

(i) by deleting the words “or body” appearing immediately after the word “person” in the prefatory statement;

(ii) by deleting paragraph (d);

(iii) by deleting paragraph (g);

(iv) by deleting paragraph (h).

(b) in sub clause (2)—

(i) by deleting the words “or body” appearing in the prefatory statement;

(ii) in paragraph (b) by deleting the words “stocks” and substituting therefor the words “sells, stocks or transports”;

(iii) by deleting the words “not less than three million shillings or imprisonment of not less than three years” and substituting therefor the

following words “not exceeding five million shillings or imprisonment for a period not exceeding five years” appearing immediately after the words “fine of” appearing in the closing statement.

(c) in sub clause (3)—

(i) by deleting the words “sells, stocks, transports” appearing in paragraph (d):

(ii) by deleting the words “not less than one hundred thousand shillings or imprisonment of not less than one year” and substituting therefor the following words “not exceeding five hundred thousand shillings or imprisonment for a period not exceeding one year” appearing immediately after the words “fine of” appearing in the closing statement;

(iii) by inserting the words “found guilty of wilfully committing any of the offences prescribed under this section,” immediately after the word “personnel” appearing in the proviso

(iv) by inserting the following new sub clause immediately after sub clause (3)—

“(3A) A person who violates the rules relating to confidentiality, public disclosure and privacy of data commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.”

(d) in sub clause (4)—

(i) by deleting the prefatory statement and substituting therefor the following prefatory statement—

“A healthcare practitioner who—”

(ii) by deleting the words “not less than three million shillings or imprisonment of not less than three years” and substituting therefor the following words “not exceeding three million shillings or imprisonment for a term not exceeding three years” appearing immediately after the words “fine of” appearing in the closing statement;

(e) in sub clause (6) by deleting the words “this Act” and substituting therefor the words “the Anti- Doping Rules”

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Tiyah, since you might leave out some words, it is easier to say “as per the Order Paper.” Because you have some grasp of what you want, give us the justification. What we are interested in is the justification, not what is in the Order Paper because once you state that, it is obvious to the Members. Put it as “per the Order Paper” so that we do not leave out anything.

The justification for this is that the amendment brings clarity in reference as person under the law may be understood as the natural or legal, or corporate person. That is why we are removing the word “body” and replacing it with the word “person.”

On (b), it also brings clarity in referencing and also makes interpretation of the said sub-clause clearer than what is there in the previous statement.

On (c), it brings in clarity in referencing and also making interpretation of the said subject clearer.

The last amendment provides for a stiffer penalty and defines the category of offences that are subject to anti-doping rules to be adopted later as subsidiary legislation.

Those are the three amendments that the Committee made.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let me give two Members a chance to speak. Hon. Neto.

Hon. Oyugi: Hon. Temporary Deputy Chairman, I would like to oppose the amendments that are being proposed by Hon. Tiyah Galgalo. I would like her to listen to me on the reasons why I am opposing.

We were talking about the Anti-Doping Bill being an international Bill. You agree that the persons who can engage in doping could be an individual or a body, that is corporate like Athletics Association of Kenya. So, you must understand this in a wholesome manner. You are not only dealing with an individual but even with body corporates which can engage in this sort of thing. By you deleting the “body” and leaving the “person” only, you narrow the sense and purview of the Bill. That is one reason.

The second reason is that if you look at the ones you are deleting in parts (a) (ii) (iii) and (iv), you are giving the Agency power. For example, why would you want to delete “someone who fails to comply with any lawful order or direction of the Agency?”

If you look at (g) “in any way interferes with functioning or operations of the Agency,” why would you want to delete that? You are trying to streamline and take away the powers of the agency that the law has already given it in a manner that is not very fair.

The third thing is the way the law has been constructed. The law is saying: “By deleting the words “not less than three million shillings or imprisonment of not less than three years.” It is setting a lower limit by giving a chance to the courts to enhance that particular penalty. By reducing and putting a finite amount, you also deny the court powers. So, it is for those reasons. I am not just opposing for purposes of opposing. I hope you find reason in my opposing and probably drop these amendments.

I oppose. Thank you.

Hon. Gichigi: Thank you, Hon. Temporary Deputy Chairman. With regard to the first proposed amendment, in law, the term “a person” incorporates both a natural person as well as a corporate body. Whether or not you insert the word “body”, even a company can be found to have committed an offence.

Secondly, and I hope the Members are going to listen to this, it is important for people to understand what the amendment proposed to delete Clauses 42 (1) (d), (g) and (h) means. How would you criminalise conduct such as the one in Clause 42 (1)(d) which states: “A person or body who fails to comply with any lawful order or direction of the Agency”?

If Parliament creates a law saying that any person who does not comply with any lawful order of a parliament commits an offence, it would mean that if a driver is told to pick bread somewhere and he fails to do that then he will be committing an offence. Offences must be very specific.

Clause 42(1)(g) states: “A person or body who in any way interferes with the functioning or operations of the Agency”. This means that if anybody closes the gates of the Agency then

that becomes a criminal offence. An offence must be very specific. I urge Members to support this amendment.

Clause 42(1)(h) is not being deleted. The Vice Chairlady should have indicated that it has been put elsewhere. We felt that violating the rules of confidentiality should not attract a mere penalty of Kshs100,000. Further in the Clause, you will find that it attracts a penalty of about Kshs1 million. It is not being deleted. We felt that it did not fit there.

The other amendments were clearing up the issue of the buyer. We removed the issue of the buyer being lumped together with people who deal, sell and transport in those substances and whose offences attract a penalty of millions of shillings. Buying only attracts a penalty of merely Kshs100, 000.

The issue of ceiling versus minimum---

The Temporary Deputy Chairman (Hon. Cheboi): You are taking too long on it, Hon. Gichigi.

Hon. Gichigi: Finally, Hon. Temporary Deputy Chairman, if you put in place a minimum penalty of Kshs3 million and a person is found with just a small amount of drugs and may not have intended to trade in those drugs, that person should not be fined Kshs1 million. It should be left to the discretion of the court to go by the gravity of the offence.

I support all these amendments.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I am going to put the Question. I will put the Question because we need to move fast. If we open this up to discussion, we may not be able to finish. Leader of Majority Party, are you on a point of order? If I give you an opportunity to speak, I will have to give an opportunity to another Member from the other side. Let us start with the Hon. Member for Rangwe then I will come to you.

Hon. Ogalo: Hon. Temporary Deputy Chairman, I would like to tell Hon. Gichigi that the amendment the Committee has proposed means that anybody found engaging in doping can get away scot free. If you say that the penalty should be a maximum of Kshs5 million, the judge has the discretion not to impose any penalty on the offender. But if you say that the penalty should be at least not less than a certain amount, it means that you cannot go below that amount. This amendment enables the judge to not award any penalty. These amendments should be rejected.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Leader of the Majority Party.

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, I humbly oppose the amendment. With a lot of respect to the Chair, Clause 42 talks about a person or a body. These are the rules and regulations. Clause 42(1)(d) lists as an offence, “a person or a body who fails to comply with any lawful order or direction of the Agency.” How do you insulate an athlete from that? Clause 42(1)(h) lists as an offence, a person or a body who violates the rules relating to confidentiality, public disclosure and privacy of data. These are the rules that govern the players. We cannot have our cake and eat it too.

I oppose the amendment and I want the Chair to withdraw.

The Temporary Deputy Chairman (Hon. Cheboi): We will proceed. There are too many lawyers in the House today. Let me put the Question.

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

The Temporary Deputy Chairman (Hon. Cheboi): There will be no points of order unless you want to drop the amendment. You do not have the capacity to do that, Hon. Gichigi. I will put the Question.

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

(Clause 42 agreed to)

(Clauses 43, 44 and 45 agreed to)

(Schedule agreed to)

Clause 2

The Temporary Deputy Chairman (Hon. Cheboi): The Chair has an amendment on this one. Chair, do you not have an amendment? Hon. Tiyah Galgallo, do you have an amendment on this one?

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 2 of the Bill, be amended by inserting the following new definitions in proper alphabetical sequence—

“athlete” means any person who competes in sport at the international level as defined by an international federation or at the national level as defined by the Agency;

“healthcare practitioner” includes any person who has obtained health professional qualifications and is licensed by the relevant regulatory body;”

“Anti-Doping Rules” includes the Regulations made under this Act;

We have included the definition of the word “athlete” and a further definition of the words “healthcare practitioner”. This has been lifted from the recently passed Health Bill. The amendment also states that Anti-Doping Rules include Regulations made under this Act.

(Question of the amendment proposed)

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

(Clause 2 as amended agreed to)

Clause 1

The Temporary Deputy Chairman (Hon. Cheboi): The Leader of the Majority Party has an amendment to this Clause, which has been circulated.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I have an amendment to this clause which is very important to this Bill.

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

THAT, Clause 1 of the Bill be amended by inserting the words “that shall come into force upon publication in the Gazette” immediately after the expression “2016”.

This is basically to beat the deadline. If we do not insert that transitional clause, this Bill will wait for another 14 days before it comes into force. That 14-day waiting period will stop us from meeting the 2nd May 2016 deadline. This is a very clear matter. We have done it so that the moment the Bill is assented to and the Act is published, it comes into force.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let me give an opportunity to Hon. (Dr.) Murgor.

Hon. Murgor: Thank you, Hon. Temporary Deputy Chairman. It is a straightforward amendment and I support it.

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

(Clause 1 as amended agreed to)

(Title agreed to)

(Clause 1 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 Anti-Doping Bill, National Assembly Bill No.6 of 2016, and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

Hon. Cheboi: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Anti-Doping Bill, National Assembly Bill No.6 of 2016, and approved the same with amendments.

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Chepkong'a to second.

Hon. Chepkong'a: Hon. Deputy Speaker, I totally second.

(Question proposed)

(Question put and agreed to)

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the Anti-Doping Bill, National Assembly Bill No.6 of 2016, be now read the Third Time. I request Hon. Chepkong'a to second.

Hon. Chepkong'a: Hon. Deputy Speaker, I second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Deputy Speaker: Is that the feeling of the House?

Hon. Members: Yes.

Hon. Deputy Speaker: Having confirmed that there is quorum in the House for purposes of this decision, I will put the Question.

(Question put and agreed to)

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

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE COMMUNITY LAND BILL

*Resumption of consideration in Committee
interrupted on 17.3.2016)*

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we are now in the Committee of the whole House to consider the Community Land Bill, National Assembly Bill No.45 of 2015.

Hon. Members, we had already considered this Bill up to Clause 4. So, we are now starting with Clause 5. Before we continue it is for the House to note that amendments brought by Hon. Tiyah Galgalo and Hon. Abdullahi Diriye were not subjected to the Committee's consideration. So, as we discuss these amendments, we will be giving first consideration to the Chair of the Committee.

Clause 5

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

THAT, Clause 5 of the Bill be amended—

- (a) in sub-clause (1), by inserting the words “of the Constitution” immediately after the words “with Article 40”;
- (b) in sub-clause (4), by inserting the words “or by negotiated settlement” at the end of the sentence; and
- (c) in sub-clause (5) by inserting the words “of this Act” immediately after the words “section 46”.

The gist of the matter is to give clarity as well as to add further conditions that would allow the State to compulsorily acquire community land especially for public use.

(Question of the amendment proposed)

Hon. (Ms.) T.G. Ali: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Tiyah.

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Chairlady, I heard you say that we did not submit the amendments to the Committee. I personally submitted the amendments to the Chair and also to the Clerk of the Committee. I do not understand when you say that this was not done. I do not see the reason why, for example, some of the amendments that I have proposed should not be included.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tiyah, I will ask the Chair of the Committee to give guidance or clarification whether your amendments were scrutinised by the Committee or whether you appeared before the Committee.

Hon. Mwiru: Thank you, Hon. Temporary Deputy Chairlady. Indeed, Hon. Galgalo did not bring these amendments to the Committee for consideration. What we said last time when we stopped discussion on this matter was that people who would have some issues would appear before the Committee, even the pastoralists, where she belongs and Coast Members of Parliament. They actually did. Whatever was subjected to the Committee is what was brought. Hers were not.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): So, Hon. Chair, I have said that we will consider the amendments but we will give priority to you as the Chair to give us direction of the Committee's position. So, can you give us the Committee's position on the amendments by Hon. Tiyah?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): So, can you give us the Committee's position on the amendments by Hon. Tiyah? Please let us have one.

Hon. Mwiru: The Committee's position is that it did not take on board what she is trying to amend or what it is she is trying to bring to the amendment. She was represented very ably by

her Chair, Hon. Kenta and Hon. Chachu who were from the caucus of the pastoralists group. Hon. Nassir was representing the Coast team. This is unless it is as an individual Hon. Member and not what the pastoralists were thinking and in line with what we were thinking as a Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. Hon. Tiyah, that is adequate explanation. We will now be considering the amendment brought by the Chair of the Committee.

I see two interventions. Before I put the Question, let us have Hon. David Kangongo of Marakwet East.

Hon. Bowen: Thank you, Hon. Temporary Deputy Chairlady. I wanted the Chairman of the Departmental Committee on Lands to clarify something. Is he moving the amendment as a whole because he is just saying Clause 5? We want him to explain to us what he seeks to amend under Sections (a)(b) and (c) in that order.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman of the Departmental Committee on Lands, could you give us the explanation of the amendments that you want?

Hon. Mwiru: Hon. Temporary Deputy Chairlady, that is the explanation that I had already done. It is only that I used fewer words by saying: “as per the Order Paper.” I also gave the gist and all the justification as to why we are amending.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman just read out your amendment on Sub-clause 1.

Hon. Mwiru: Thank you, Hon. Temporary Deputy Chairlady. We are proposing, as a Committee, to amend Sub-clause 1 by inserting the words “of the Constitution” immediately after the words “with Article 40”

The justification here is just to give clarity for avoidance of any doubt.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is straightforward because it is just improving on the understanding of the sentence.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mwiru, your amendment on Sub-clause 4?

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

THAT, Clause 4 of the Bill be amended—

(a) in sub-clause (1), by deleting the words “vest in “ and substituting therefor the words “be owned by”

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, we are still on Clause 5(4).

Hon. Mwiru: Thank you. Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 5 of the Bill be amended—

(a) in sub-clause (4), by inserting the words “or by negotiated settlement” at the end of the sentence; and

(b) in sub-clause (5) by inserting the words “of this Act” immediately after the words “section 46”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): No. Let us just finish Sub-Clause 4. I will put the Question and then you will go to Sub-Clause (5).

Hon. Mwiru: All right.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I see an intervention from Hon. Moses Sakuda. Is it on that Sub-clause?

Hon. ole Sakuda: No.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tiyah Galgallo.

Hon. (Ms.) T.G. Ali: Thank you, Hon Temporary Deputy Chairlady. If we have that amendment, we are going to leave out the community. According to my amendment, we were to include communities as the recipients and compensation upon compulsory acquisition. We do not have negotiated settlements in northern Kenya and that will affect the community land especially communities that have land which is not settlement. So, we should include my amendment. This is unfair. I want to go on record that on this issue we cannot leave out the community. We have community owned land, we have trust land and we have no settlement land.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tiyah, according to the explanation by the Chairman--- I would like him to clarify if the negotiated settlement is with the Government or between communities.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, it is a matter of semantics because we are not referring to any settlement here. We are using the word “settlement” to mean that they have already agreed as a community on what they are supposed to do.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. I will give Hon. ole Kenta a chance.

Hon. ole Kenta: Thank you, Hon. Temporary Deputy Chairlady. I agree with the Committee. We are the ones who suggested that we include the negotiated settlement. This is because the normal market value may not include places for ceremonies. So, the price cannot be fixed by market forces. So, the community is included throughout the Bill because more than two-thirds of the community must agree on anything. So, it is for the benefit of the communities.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you Hon. Kenta.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair, we will move to Clause 5(c).

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

THAT, Clause 5 of the Bill be amended—

(c) in sub-clause (5) by inserting the words “of this Act” immediately after the words “section 46”.

Again, this is for purposes of clarity because it is the Act that is supposed to---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair, I am sorry I gave you the opportunity before giving the other two Members who have amendments on Sub-clause 4. So, let us have Hon. Tiyah.

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Chairlady, are you talking about Clause 5(4)?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes.

Hon. (Ms.) T.G. Ali: I have already agreed with the Committee on that one.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. Please go on record and withdraw it.

Hon. (Ms.) T.G. Ali: I have withdrawn my amendment on that because I have been made to understand that “settlement” also includes community land.

(Proposed amendment by Hon. (Ms.) T.G. Ali withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. Let us have Hon. Diriye. Is he in the House? So, we assume that he has dropped his amendment.

(Proposed amendment by Hon. Mohamed Diriye dropped)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair, let us now hear your amendment to Sub-clause 5(5).

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

THAT, Clause 5 of the Bill be amended—

(c) in sub-clause (5) by inserting the words “of this Act” immediately after the words “section 46”.

This is to give clarity for purposes of operationalisation of this Act.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I can see two interventions. Hon. Aghostinho Neto, did you want to speak to this amendment?

Hon. Oyugi: Hon. Temporary Deputy Chairlady, I would like to support the Committee’s amendment.

Thank you.

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

(Clause 5 as amended agreed to)

Clause 6

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

THAT, Clause 6 of the Bill be amended—

(a) by inserting the following new sub-clauses immediately after sub-clause (1)-

“(1A) The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.”;

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair, sorry. I am going to ask you to indulge me to ask Hon. Tiyah to first move her amendment on Sub-clause 1 before we come to that.

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 6 of the Bill be amended in sub-clause (1) by deleting the words “for which it is held” and substituting therefor the words “traditionally entitled to or resident on the land”.

The County Government holds a register on Clause 6(1). My recommendation or amendment to it is “traditionally entitled to or resident of the land” be included. This is because we have traditional owners of land and if they are not included then they will be vulnerable. They will not have an opportunity to protect the land where they buried their forefathers.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Chair, comment on the amendment by Hon. Tiyah.

Hon. Mwiru: Thank you, Hon. Temporary Deputy Chairlady. I am opposing her amendment because within the Bill, we have already taken care of the tenure system of ownership by the community itself. Therefore, we are not going to deprive anyone at any given stage registration of community land.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Chair, you are opposing her amendment?

Hon. Mwiru: Yes, I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I also want to hear from Hon. Ken Okoth on that amendment.

Hon. Okoth: Thank you, Hon. Temporary Deputy Chairlady. I want to propose an amendment that I had canvassed with the Chair on Clause 6 about inserting sub-clause (2).

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We are in sub-clause (1). Yes, Hon. George Ogalo.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Chairlady. I oppose because the text on community land is picked directly from the Constitution. I do not know why we need to amend it in the statute.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You also oppose.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair, move Clause 6.

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

THAT, Clause 6 of the Bill be amended –

(a) by inserting the following new sub-clauses immediately after sub-clause (1)-

“(1A) The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.”;

“(1B) Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition”; and

“(1C) Any such monies shall be deposited in a special interest earning account by the county government.”

(b) in sub-clause (4) by inserting the words “sell, dispose, transfer, convert for private purposes or in any other way” immediately after the words “A county government shall not”.

We are introducing this new sub-clause because currently as per the Constitution, community land is vested to counties which are managing that land. We are looking at an area like Turkana where land has not yet been registered but Tullow Oil Company is doing some business there. It is necessary that the county gets the money accruing from the interest and keeps it for the community. Once that land is registered they can transfer that money to the community to manage it. That is the essence of this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Wamalwa, you have the Floor.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairlady. It is true community land is vested in counties. My worry is that the Chair did not clarify in (1C), that such monies should be deposited in a special interest earning account. Without clarity, it can be abused. When talking about special interest earning account, is it current or fixed account? I was just trying to draw the attention of the Chair for purposes of clarity so that it is not abused. We have seen this happen especially when it comes to parastatals when they get money from the Exchequer and put it in a fixed account. Some have put it in a current account and this has led to corruption like what has happened in Chase Bank. We have a guideline from the National Treasury that such monies should be put in Treasury Bills or invested in Government Bonds. My worry is in terms of clarity pertaining to this. From experience, we have already seen the special interest earning account being abused. It will be better if we could get some clarity.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair, you want to respond to that?

Hon. Mwiru: Yes, because it is a worry from the Hon. Member. There could be an abuse as Hon. Wamalwa has suggested, but we may not be able to set the regulations now. We are doing the principal Act and the regulations will follow. We have suggested that the regulations be made so that they cushion the community from the dangers the Hon. Members has pointed out.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Serut, take the Floor.

Hon. Serut: Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose that amendment. I want the Chair to listen to me. A community is never defined by the registration of land; a community stands on its own and lives on land. Therefore, the first person to be defined is the community and then the land. If that is the case, I want to speak from experience that these monies are being given as compensation to a definite community. Why should the county government hold it? It cannot hold it on the basis that the land is not registered.

Therefore, I oppose the amendment. Let this money go to the community directly because the land can be registered after 100 years.

Thank you, Hon. Temporary Deputy Chairlady.

Hon. Nassir: Thank you, Hon. Temporary Deputy Chairlady. This is important and that is why I sat down with the Departmental Committee on Lands. I would like to just enlighten my colleagues that the issue of land vesting with the county governments is constitutional. We all know that land, unless it has already been registered, belongs to the community. Before that it becomes a constitutional issue and the custodian of that land is the county government and not any other element. I would like to enlighten my colleagues that it is not an issue of us talking about the people. The powers, as per the Constitution, are in the county government where vested interest for that land lies.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I call upon Hon. Joyce Emanikor to move her amendment if she is in the House. Is she in the House?

Hon. Members: She is not in the House.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): So, we will drop her amendment

(Proposed amendment by Hon. (Ms.) Emanikor dropped)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Kangongo what is it?

Hon. Bowen: Thank you, Hon. Temporary Deputy Chairlady. We need to look at this Bill very carefully.

Hon. Temporary Deputy Chairlady, back in 1985 when Kenya Power Company was building a huge power line in my constituency, they displaced many people who lived along the line. Going by this Bill, the county governments will hold the monies which are paid to the communities until the land is registered, and that can take a very long time. Though it is a constitutional provision that the county government manages community land, I would like to request the Chair to drop Part (1) or come out clearly in the regulations, which will be passed by this House. We would like to see money going to the community directly.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, Hon. Chachu. Members, I hope you are listening to the points that are being put forward because we will put it to a vote.

Hon. Ganya: Hon. Temporary Deputy Chairlady, I strongly support the Committee's amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Are you supporting or opposing?

Hon. Ganya: I support this amendment because we cannot operate in a vacuum. For now---

(Hon. Kaluma and Hon. (Ms.) Odhiambo-Mabona consulted loudly)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members from Homa Bay, Hon. Kaluma and Hon. Millie, please reduce your level of consultation.

Hon. Ganya: Hon. Temporary Deputy Chairlady, I strongly support this amendment on the ground that it cannot operate in a vacuum. For now community lands are neither under the national Government nor the county governments. Therefore, during the transition period,

community lands should be held in trust by county governments. It is just during the transition period. It is our responsibility to ensure that they are registered. Of late, registration has been done at the county level. It should not be that difficult. For now, the alternative is the institutional arrangement given by the Constitution. It is as simple as that.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, you have heard debate from both sides. Hon. Chairman, did you want to give a final word on it? There have been many interventions before.

Hon. Mwiru: Yes, Hon. Temporary Deputy Chairlady. One thing which is very important to note is that we might have shot ourselves to begin with, because the Constitution is very clear. There is no way we can make a law that is repugnant with the Constitution. We can also not live in a vacuum. For now, the only option we have for clarity on how these monies can be managed is through the regulations that we are proposing.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, Hon. Diriye and Hon. Emanikor are not in the House. We will, therefore, drop their amendments.

(Proposed amendments by Hon. Diriye and Hon. Emanikor dropped)

(Clause 6 as amended agreed to)

Clause 7

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

THAT, Clause 7 of the Bill be deleted and substituted therefor the following new clause—

Procedure for
Registration of
Communities

7. (1) A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section.

(2) A community shall, by notice in at least one newspaper of nationwide circulation, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee, which notice shall also be given to the deputy county commissioner in charge of the area or the relevant sub-county administrator.

(3) The community shall elect between seven and fifteen members from among themselves to be the members of the community land management committee as provided in section 16, who shall come up with a comprehensive register of communal interest holders.

(4) The community land management committee shall come up with the name of the community and shall submit the name,

register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration.

Hon. Temporary Deputy Chairlady, this amendment provides a comprehensive procedure for registration of a community claiming an interest or right in community land. The amendment allows the committees to come up with their own governing procedures and rules and other structures as opposed to having to abide by the provisions of the Societies Act. You will realise that the “Societies Act” are complicated words. Hon. Members will remember the group representative issues that were brought about by the Group Representative Act that failed us. That is why we need to look for ways of registering community land.

Thank you, Hon. Temporary Deputy Chairlady.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I give the Floor to Hon. Sakuda.

Hon. Sakuda: Thank you very much, Hon. Temporary Deputy Chairlady. I rise to support this amendment. As my able Chair has explained, it gives the procedure for registration. Before then, we had group ranches out there. Unfortunately, when it was time to do something on their land, some challenges came up because of the Societies Act that was in existence. I support this amendment and ask Members to support it so that we can move on.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Mohamed Maalim.

Hon. (Eng.) Mahamud: Hon. Temporary Deputy Chairlady, I support the amendment by the Committee though I had put the request for an earlier one.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. James Nyikal, you have the Floor.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairlady, I rise to support this amendment because it provides for serious community participation. It also puts in place very clear processes that will ensure that communities are involved from the beginning to the end. I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, if you want to speak on the amendments that we are passing, please press the intervention button because I have too many other names on the list. I will be using the list of those who have put their requests on the intervention list.

Yes, Hon. Wamalwa.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairlady. I am looking at the recommendation in terms of the notice to be published in at least one newspaper of nationwide circulation. We do not have a specific criterion. Right now we have the Nation Media Group newspapers, *The Standard* and a new newspaper called *The Star*. Some newspapers have nationwide circulation, while others are not. The issue of community land is very serious. How I

had wished that the Chair would have, at least, specified the *Daily Nation* because of its nationwide circulation. *The Star* is claimed to have a nationwide circulation but I have been to various parts of this country and I have not found that newspaper. This is a matter that people can take advantage of and take away community land. That is why I have a problem in terms of giving notice. We must ensure that a particular notice reaches as many stakeholders as possible. We should specify if it is a specific community in a given county.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Wakhungu, you have made your point.

I now give the Floor to Hon. Kamoti.

Hon. Mwamkale: Thank you, Hon. Temporary Deputy Chairlady. I support this amendment. A previous amendment put some dependence on the Cabinet Secretary on this matter. However, this amendment has put everything in the hands of the community. This will go a long way in promoting transparency and putting the community in charge of the whole process. The amendment is worth taking on board.

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

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

(Clause 7 as amended agreed to)

Clause 8

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, under Clause 8, we have two amendments. We will start with the Chairman's amendments, and if they are carried, then we will drop the amendments by Hon. Tiyah Galgallo.

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

THAT, Clause 8 of the Bill be deleted and substituted therefor the following new clause—

Procedure for recognition and adjudication of community land.

8. (1) Subject to this Act and any law relating to adjudication of titles to land, the Cabinet Secretary shall, in consultation with the respective county governments, develop and publish in the Gazette a comprehensive adjudication programme for purposes of registration of community land.

(2) The Cabinet Secretary shall ensure that the process of documenting, mapping and developing of the inventory of community land shall be transparent, cost effective and participatory and shall involve the following steps—

(3) The Cabinet Secretary shall issue a public notice of intention to survey, demarcate and register community land.

(4) The notice shall—

- (a) contain the name of the community;
- (b) state which land is to be adjudicated;

- (c) invite all interested persons with overriding interests or any other claim on the land, to lodge their claims;
 - (d) specify an area or areas of land to be a community land registration unit; and
 - (e) be for a period of sixty days.
- (5) The Cabinet Secretary shall cause the land to be adequately surveyed but such survey shall exclude—
- (a) all parcels already in use for public purposes; and
 - (b) adjudicated private land.
- (6) A cadastral map of the land shall then be produced and presented to the Registrar for registration.

Hon. Temporary Deputy Chairlady, we want to give simpler mechanisms or procedures for adjudication of community land other than complicating it. The amendment ensures that adequate notice is given by the CS to the public of the intention to survey, demarcate and register community land. Therefore, the CS must consult with the respective county government in that area.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, you wanted to move Clause 8 in an amended form. Have you done that? This is because there is a sentence at the end of Sub-clause 2.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, under Sub-clause (2), there is an amendment that: “The Cabinet Secretary shall ensure that the process of documenting, mapping and developing of the inventory of community land shall be transparent, cost effective and participatory.” I have deleted the last part of the sentence because it does not make any sense.

(Question of the amendment proposed)

Hon. Ogalo: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ogalo, what is your point of order?

Hon. Ogalo: On a point of order, Hon. Temporary Deputy Chairlady. There is a mistake. I am not a Member of that Committee and so I am new to these amendments. What is listed as (3), (4), (5), and (6) are sub-clauses of 2. The entire section should not be deleted. It should remain as it is.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ogalo, are you saying that the part of the sentence that the Chairman has done away with should remain so that it can make sense in terms of these being sub-clauses of 2? Hon. Chairman, can you clarify whether that is what it is?

Hon. Mwiru: In terms of listing, in our amendments we are repeating (2), when we ought to have enumerated the steps whether (a), (b), or (c). It is not flowing.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ogalo has said that (3), (4), (5), and (6) are sub-clauses of 2. Do you agree with that?

Hon. Mwiru: Let me consult.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. ole Lemein, you have the Floor.

Hon. ole Lemein: Hon. Temporary Deputy Chairlady, I want to concur with Hon. Oner that it is clearly shown that (3), (4), (5), and (6) are sub-clauses of 2.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. (Ms.) Tiyah Galgallo, do you want to speak on this?

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Chairlady, I think the amendment I had is already included in the Bill. I am satisfied.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Kimaru.

Hon. J.K. Bett: Hon. Temporary Deputy Chairlady, I want to concur with Hon. Oner. If you look at (2) and make those others to be sub-clauses, then it will make sense. The involvement of the CS for Land, Housing and Urban Development and the community makes it more participatory. The procedure is very clear.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. (Ms.) Shaban.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairlady, I agree with Hon. Oner that it is just the renumbering so that the three can read (i) and (ii). Those are the steps that are going to be taken by the CS. It is quite clear if you read it through. I support the Hon. Member.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, can you give us the final guidance?

Hon. Mwiru: There is still a flow on the steps to be taken.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): It remains as it is?

Hon. Mwiru: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Including the sentence, “and shall involve the following steps-”?

Hon. Mwiru: Yes. We can only renumber because those are steps from Sub-clause 2.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, that is still not clear.

Hon. Mwiru: The sentence remains as it is without any deletion, but we do renumbering, in Roman numbers. We should do renumbering of the subsequent numbering in Roman numbers as (i) where it is written (3) and (ii) where it is written (4).

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Do we have a contrary opinion to what the Chair is saying? Let us have the Deputy Leader of the Majority Party.

Hon.(Dr.) Shaban: Hon. Temporary Deputy Chairlady, there are two ways you can look at it; either borrow a leaf from what Hon. Oner had said, or alternatively go ahead and leave the way it has been numbered.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have two options; either we go by the way the Chairman has moved but we remove that sentence so that it will follow in sequence. It is not confusing once you do that. It is more of a drafting issue than content. Hon. Oner, what is your clarification?

Hon. Ogalo: Hon. Temporary Deputy Chairlady, the steps should be specified. These are the mistakes made in the 10th Parliament that made our Committee amend three laws. These are procedures to be followed. If they are not clear, then they are hanging. From (3) to (6) make them Sub-clauses of 2. That is the Committee’s amendment. A mistake was introduced when the Order Paper was being prepared or when the Clerks-at-the Table were bringing the amendments. It is Clause 8 (1) (2) (3), (4) and (5).

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Press the intervention button, Hon. Murugi.

Hon. (Ms.) Mathenge: Thank you, Hon. Temporary Deputy Chairlady. I want to agree with Hon. Oner because once you say under Clause 8 (2) that “The Cabinet Secretary shall ensure that the process of documenting, mapping and developing of the inventory of community land shall be transparent, cost effective and participatory and shall involve the following steps-”; you must lay down the steps. You cannot say the following steps and then move from Sub clause (2) to Sub clause (3). It can only be Sub clause (2) and then you itemise the steps. We cannot leave the amendment as it is.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We are clear. I want to give the Chairman an opportunity to make the last remarks on this amendment. Please be as clear as possible on which direction you want us to take because we will take a vote on it. I would like to advise Members that this is a drafting issue. We do not have an issue with the content.

Do you have another issue which is different from drafting, Hon. Chairman? Do you want us to clear with the drafting issue first and then we come back to your point?

Hon. Mwiru: Hon. Temporary Deputy Chairlady, having consulted properly, my first proposal of deleting the last part of the sentence remains so that the flow can now continue as it were.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): As is on the Order Paper, we should remove the last sentence of Clause 8(2) that says “and shall involve the following steps-”

Hon. Okoth: Hon. Temporary Deputy Chairlady, as Hon. Oner has proposed, it may seem to be a drafting issue but you guide the House on what is appropriate.

Hon. Abdinoor: Hon. Temporary Deputy Chairlady, I support the amendment. In Sub clause 3(i), which the Chairman has proposed, it says that the Cabinet Secretary shall issue a public notice of intention to survey, demarcate and register community land. “Survey” and “demarcation” are devolved functions. They are functions of the county governments and not the CS. Therefore, I urge the Chairman to either include consultation with the county government or put the county government. Survey and demarcation functions belong to county government.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, do you want to respond to that one?

Hon. Mwiru: We have already taken care of the county governments’ interest under Clause 8(1) of the Bill. Therefore, it is a procedure that the CS has to do after he has done the rest of the consultation.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, the Member for Voi.

Hon. Mlolwa: Thank you, Hon. Temporary Deputy Chairlady. We should include the consultation with the county government. If the CS is repeated under Clause 8(2), why are we not repeating the county governments? All of them should be repeated. Otherwise, we should also remove the CS and replace him with something else.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, I want to put the Question.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, this fear has already been taken care of under Clause 8 (1). After consulting the stakeholders, we have realised that some community land transcends across counties. That is why we are saying under Sub-clause 2, that the CS has to prepare regulations on how the land will be mapped out because it affects two counties. An

example is Wajir and Marsabit. That is why the two counties were talking about peace the other day. The CS, as an arbiter for the national Government, has to do that. That is the intention and it is a good one.

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

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

(Clause 8 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. (Ms.) T.G. Ali, the passage of the amendment by the Chairman renders your amendment irrelevant at this point. It is, therefore, dropped.

(Proposed amendment by Hon. (Ms.) T.G. Ali dropped)

(Clause 9 agreed to)

Clause 10

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, give me a minute.

Hon. Members, we have two sub-clauses. We will start with Sub-clause 1, which is the proposed amendment by the Chair.

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

THAT, Clause 10 of the Bill be amended in sub-clause (1) by deleting the words "every five years" appearing in paragraph (c) and substituting therefor the word "annually".

The reason for this amendment is that it involves the updating of registers. Five years is a long time. Sometimes, there can be deaths within a period of one year. Therefore, updating it every year is better so that we can always know the membership before the end of five years. It is important to update the registers annually rather than after five years because there could be divorces and deaths.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Do you want to contribute to this amendment, Hon. Kangongo?

Hon. Bowen: Thank you, Hon. Temporary Deputy Chairlady. This is a very straightforward amendment. I wanted to propose one thing, which is on regulations. The Departmental Committee on Lands should start with the title deeds of those communities which have never seen or held one.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, please do me a favour. If you have pressed the button for request to contribute, please remove it and press the button for request to raise a point of order. So, do not press two buttons at the same time because they are crowding us here and we are not able to see the other members who want to speak. Can we agree on which button to use? Can we use the intervention button? Let us use the first one. Use the button for requesting because the space for the intervention button is very small. We are not able to see members in totality.

Hon. Members, we have heard the proposed amendment by the Committee Chair. I can see the Member for Narok South.

Hon. ole Lemein: Thank you, Hon. Temporary Deputy Chairlady. This is an important amendment. Shifting it from every five years to annually will prevent abuse of the process.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu, do you want to speak to this?

Hon. Ganya: Hon. Temporary Deputy Chairlady, I support the amendment. Making it annual is very important.

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Is Hon. Joyce Emanikor in the House now? You have an amendment on sub-clause (1) on deletion of paragraph (d). Go ahead.

Hon. (Ms.) Emanikor: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 10 of the Bill be amended in sub-clause (1) by deleting paragraph (d).

I am sorry I had stepped out for a meeting. I missed my first two amendments. Paragraph (d) says “the user of the land.” This is a vague sub-clause that could be interpreted to indicate that one person’s name may go on a community’s registration certificate. The user should actually be the community. The remedy to that is indicated in my next amendment.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the Committee Chair.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, after this amendment was proposed, we looked at it and canvassed with the Member for Kibra who is here. If you look at paragraph (b), you will find that already there is a description of the community that is supposed to use the land – that is the user. The name of the registered community is there. Paragraph (d), where the amendment is, should have read “the use of the land” and not “the user of the land.” This is because the user is already described up there.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): So, instead of “user of the land,” it should be “use of the land”?

Hon. Mwiru: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Joyce, do you agree with that?

Hon. (Ms.) Emanikor: I agree with the new change by the Committee Chair.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): So, are you dropping your amendment?

Hon. (Ms.) Emanikor: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Please say it on the HANSARD.

Hon. (Ms.) Emanikor: With the new change from the Committee Chair, I drop my amendment.

(Proposed amendment by Hon. (Ms.) Emanikor dropped)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you, Hon. Member.

Hon. (Prof.) Nyikal: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Nyikal.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairlady, if that is so, then we really need a further amendment because the document we have is talking about “user”. I do not think the explanation by the Committee Chair will be adequate as an amendment. So, there should be a further amendment by the Committee Chair, which amends paragraph (d) to say “use of the land” and not “the user of the land”.

Hon. Ogalo: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Ogalo.

Hon. Ogalo: Hon. Temporary Deputy Chairlady, I know you have heard something called “change of user.”

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes.

Hon. Ogalo: That is a planning term. “User” is not who is using the land. “User” is the land use zoning attributed to it. So, “user” is perfectly in order and does not mean the person actually using the land. It is the land use zoning to which the land is supposed to be used. I know you have heard that. If you read newspapers, you will see “notice for change of user.” That is a planning term.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Committee Chair, are you in agreement with Hon. Ogalo?

Hon. Mwiru: Hon. Temporary Deputy Chairlady, actually, that is a legal term but sometimes when we leave these things very open even to the layman, there is always abuse. I also deal with land but the way it is here it is semantics. Another person may not interpret the way it has been put as a sentence. He may not interpret that it is the change of user or whatever the land is being utilised for. Therefore, it is good to put it in clear English other than using jargon.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Even as we argue on the merits and demerits, there is no amendment before us because Hon. Joyce has dropped her amendment. There is really no change. Hon. Serut, what clarity do you have? Explain.

Hon. Serut: Hon. Temporary Deputy Chairlady, we are dealing with a legal document and it is not about English. So, I agree with Hon. Oner that let us use the legal language and not English.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Committee Chair, I still keep coming back to you. I know you want us to leave no ambiguity in the law that we are creating.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, you will realise that the ones who are opposing me are serious people in land matters and transactions. We can use the word that is already in the Bill so that the sub-clause stands as it is.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Since we have no amendment, it remains as it is.

Hon. Ganya: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Chachu.

Hon. Ganya: Hon. Temporary Deputy Chairlady, if that is the case, then it negates Hon. Joyce's amendment because she dropped her amendment on the basis that we are going to use the word "use" instead of "user." So, if the Committee Chair will leave the amendment as it is in the Order Paper then, honestly, it is not fair to Hon. Joyce.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Actually, you are right, Hon. Chachu. As she dropped her amendment, she clearly said that it is because of the change of the wording from "user" to "use." Hon. Emanikor, is that not what you said?

Hon. (Ms.) Emanikor: Yes, Hon. Temporary Deputy Chairlady. I also said that there is a subsequent amendment from me, which I thought was going to solve the concern I had – the ambiguity and vagueness of the word "user." It could be interpreted to be singular, an association or a group. So, I agree with the Committee Chair's change. I dropped my amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, there is no amendment we are debating because Hon. Emanikor has dropped hers. That is the process of the House and that is how we will move forward.

Let us move on to sub-clause (2).

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

THAT, Clause 10 of the Bill be amended in sub-clause (2) by deleting the words "or any other written law".

Hon. Temporary Deputy Chairman, in Sub-clause (2), the provisions suggest that an instrument may be registered in accordance with some law other than the community land law. That is the issue. I propose to amend it by deleting the words "any other written law" so that disposition of community land can only be in accordance with the Act.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Committee Chair, Hon. Tiyah's amendment is deleting the words "or any other written law."

Hon. Mwiru: Hon. Temporary Deputy Chairman, there are a number of laws that apply even when you are implementing another law or the likes of other laws. It should be like what happens in matrimonial property laws and other laws. They are supposed to come under the Community Land Bill. That is why we are saying "any other written law". They must be relevant for that particular purpose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I think that is clear.

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

(Clause 10 as amended agreed to)

Clause 11

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We will start with Sub-clause (1) to which Hon. Joyce Emanikor has an amendment.

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 11 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) –

“(1b) Community land may be registered in the name of–

- (a) a community;
- (b) a clan or family in accordance with the customary practices applicable; or
- (c) a community association in accordance with the document constituting the association.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Chair, I hope you have taken note of that proposed amendment.

Hon. Mwiru: Yes, I have taken note of what---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Sorry, let me propose the Question before debate.

(Question of the amendment proposed)

Hon. Wakhungu: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me give an opportunity to the Chair first then I will come to you.

Hon. Wakhungu: *(Inaudible)*

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Chair, let me allow Hon. Wamalwa to raise his point of order.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairlady. I assume my point of order takes precedence. Hon. Emanikor is supposed to explain the import of the proposed amendment she has moved before we contribute. She has not done that. She just read the amendment. We at least need some explanation on the import, the objective and the value the amendment is going to add so that we can debate from an informed perspective.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is a valid point of order. Hon. Emanikor, could you just give the import of your proposed amendment very briefly?

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Chairlady. We were actually struggling with who the users of the land are. I think this amendment brings home the fact that we are clear on which organisations or groups in the community would register a community land under their names. This to me would be a community, clan, family or community association.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I hope Hon. Wamalwa and other Members are now seized of the import of the amendment.

The Chair.

Hon. Mwiru: Thank you so much, Hon. Temporary Deputy Chairlady. I want to oppose the amendment proposed by Hon. Emanikor. Clause 12 of this Bill takes care of the fears that Hon. Emanikor is expressing. Therefore, it is a matter that is already taken care of by the same Bill.

Hon. Mwiru: Under which clause, Chair?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Under Clause 12 of the Bill. Hon. ole Kenta.

Hon. ole Kenta: I wish to state that I oppose this amendment. The Bill is very clear that it is about community land. It defines who a community is, which includes the family. We might encounter what we encountered in the group ranches whereby a family registered a group ranch in its name and disinherited the other families. So, I think it would be safer for a community to remain as it is and not to fragment it into small units because it will be risky.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Serut.

Hon. Serut: Thank you, Hon. Temporary Deputy Chairlady. I want to also join my colleague, Hon. ole Kenta, to oppose this amendment because you cannot even define the word “clan”. It would bring problems. Children who are born outside wedlock will have problems.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us now go to Sub-clause (2). The Chair and Hon. Tiyah have amendments. If the Chair’s proposed amendment is carried, Hon. Tiyah’s amendment will be rendered irrelevant.

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

THAT, Clause 11 of the Bill be amended in paragraph (a) of Sub-clause (2) by inserting the words “in consultation with the respective county governments” immediately after the word “facilitate”.

It is important, Hon. Temporary Deputy Chairlady, for an adjudication officer to work with the county structures so that he cannot become rogue. He or she will be working within the jurisdiction of a county and he or she cannot afford to do that work alone. He or she will need to be supported by and to consult the structures of the county he or she is working in. That is the essence of the amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ababu, do you want to speak to this amendment?

Hon. Ababu: Hon. Temporary Deputy Chairlady, I wanted to speak to an earlier amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I will assume that everybody whose name appears here wants to speak to this amendment.

Hon. Mwadime, do you want to speak to this particular amendment?

Hon. Mwandime: Hon. Temporary Deputy Chairlady, I have been waiting for long. I had some proposed amendments. I do not know how these amendments have been considered though quite a number of them are the same as the ones by the Chairman, but there are some which are not the same. I do not know whether you have dropped my amendments. I need your guidance.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mwandime, are you saying you had amendments that had been put forward?

Hon. Mwandime: Yes, I had amendments which passed through the Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): All the amendments are in the Order Paper.

Hon. Mwandime: They are in the Order Paper, but I wonder what is happening because quite a number of my amendments are just the same as the Chairman's amendments. But some are different. I do not know whether the Committee considered my amendments as falling under the Committee's amendments.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mwandime, I am looking at the Order Paper and I do not see amendments by you.

Hon. (Prof.) Nyikal: On page 408.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, page 408 of the Order Paper contains something very different from what we are considering.

Hon. Nyikal, are you saying the Order Paper you have contains amendments by Hon. Mwandime?

Hon. (Prof.) Nyikal: On page 408.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Give us a minute, please, to consult at the Table.

*(The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh)
consulted the Clerks-at-the Table)*

Hon. Mwandime, we will consider your amendments. We do not have the same Order Paper as you. We will find out what happened such that we ended up having different Order Papers. As per the rules of this House, we can only consider your amendments from Clauses 22 and 27 onwards. Unfortunately, we cannot go backwards. The Departmental Committee Chairman, we asked you to comment on the amendment by Hon. Mwandime.

Hon. Mwiru: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Is it on your amendment?

Hon. Mwiru: Not really. I do not know whether I am holding a different Order Paper.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You might because we have noticed that there are two different Order Papers.

Hon. Mwiru: In that case, being the Departmental Committee Chair who is supposed to look at whatever Hon. Mwandime would have put here, not having the amendment on my Order Paper puts me in a very precarious position. I am not sure how we should make progress on this one. Page 408 of my Order Paper reads something totally different.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Departmental Committee Chair, have you been given the Order Paper that has amendments from Hon. Mwandime? Do you have it?

Hon. Mwiru: The one I am holding is Order Paper No. 041, Fourth Session (388). It does not have Hon. Mwandime's amendments.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay, approach the Table so that we can give you a copy of the Order Paper that has the amendments from Hon. Mwandime.

(Hon. Mwiru approached the Table)

The Departmental Committee Chair, we were looking at Sub-clause 2 of Clause 11.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I earlier on explained that we are avoiding a scenario where an officer of the Government can become rogue and decide to do his own work without consulting the people from within. A county government is a representative of the people. It is, therefore, necessary that such an officer consults with the structures of the county in question.

That is where we were looking at.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I will give a chance to a few Members to speak on this amendment. I will start with Hon. Wamalwa.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairlady.

I do not have the Order Paper with the correction but I was listening keenly to the Departmental Committee Chair. I agree with him that it should be in consultation with the county government in question but would it not add value, in the same spirit, if we are talking about the Cabinet Secretary? At the county level, would it not be appropriate to consult with the County Executive Committee Member for Land instead of “the county government” for specificity?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the Departmental Committee Chairman.

Hon. Mwiru: Indeed, the suggestion by Hon. Wamalwa is okay but I do not want to take the whole thing he is trying to do. The county government has its own structures. It is not the governor who is going to do it. It could be the County Executive Committee Member or even a director of survey within a particular county. That is why we are saying “the county government”. The governor or the structure of a particular county government can also apply.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tiyah, your amendment is dropped since the amendment by the Departmental Committee Chair has been adopted.

(Proposed amendment by Hon. (Ms.) T.G. Ali dropped)

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, once again, we have an amendment by the Departmental Committee Chair and Hon. (Ms.) Tiyah Galgalo. Again, if the amendment of the Departmental Committee Chair is carried, Hon. (Ms.) Tiyah Galgalo's amendment will be dropped.

We will start with the Departmental Committee Chair.

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

THAT, Clause 13 of the Bill be amended by-

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

“(1) A registered community may by a resolution of the majority members of that community in a general meeting, reserve a portion of the community land for communal purposes.”

The import of this amendment is to ensure that the reservation of a portion of a community land for communal purposes is supported by the majority of the members of that community. In that case we have proposed what is called “the majority membership of a community” in this Bill. It is two-thirds of their number. We are doing this so that this system or structure is not abused.

(Question of the amendment proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Proceed, Hon. George.

Hon. Ogalo: Hon. Temporary Deputy Chairlady, I agree with the Chairman and support the amendment because the original Bill was very ambiguous. It just said “a registered community will recommend to members.” What does that mean? What threshold will be required to approve such a recommendation?

This amendment clearly says that in a meeting, the majority of members may, by a vote, decide that certain areas shall be reserved for communal purposes.

I support.

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tiyah, your amendment has been dropped.

(Proposed amendment by Hon. (Ms.) T. G. Ali dropped)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I note your requests for points of order. I will take the requests one at a time. I can see your hands.

What is your point of order, Hon. George Ogalo?

Hon. Ogalo: Hon. Temporary Deputy Chairlady, I am just concerned with the procedure we have used. We were prosecuting 13(1) and I expected that after we are done with it, we would go to 13(2) but now---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, did you move all your sub-clauses or you moved only sub-clause (1)?

Hon. Mwiru: Not really. I wanted to go in sequence so that Members can understand.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): So the Member has a valid point?

Hon. Mwiru: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Can you move the other sub-clauses?

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

THAT, Clause 13 of the Bill be amended by-

- b) deleting sub-clause (2) and substituting therefor the following new sub-clause—
“(2) Any land which has been used communally, for public purpose, before the commencement of this Act shall upon commencement of this Act be deemed to be public land vested in the national or county government, according to the use it was put for.”; and
- (c) inserting the following new sub-clauses immediately after sub-clause (2)—
“(3) A registered community may reserve special purpose areas including areas for—
 - (a) farming;
 - (b) settlement;
 - (c) community conservation;
 - (d) cultural and heritage sites;
 - (e) urban development; and
 - (f) any other purposes as may be determined by the community, respective County Government or National Government for the promotion or upgrading of public interest.

The import of (b) is to ensure that public land which was used by several communities as a whole before the enactment of the Act remains public land so that the community does not claim that public land belongs to them. For example, if it was a school, it means this is a school that was being used by several other people.

The other import is that the amendment also seeks to provide for the object for which a registered community may reserve special purpose areas in that community land. For example, they can afford to set aside an area where there could be a dip for themselves or they can set aside an area where maybe they would like to settle as a cluster. That is what we are trying to do here.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Have you moved all the clauses now so that we can open all of them for debate?

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

THAT, Clause 13 f the Bill be amended by-

“(4) An area reserved for special purposes under subsection (3) shall be exclusively for the intended purpose.”

So if it a school, it will just be a school; if it is a dip, it is just a dip.

(c) deleting sub-clause (3).

The import of the whole amendment is that the deletion of subsection 3 ensures that land is classified only as provided for under Article 61 (2) of our Constitution. That is public, community or private.

(Question of the amendment proposed)

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairlady. I want to support the amendments proposed by the Chairman of the Departmental Committee on Lands. I especially support the registered community reserving the purposes for which land might be reserved.

It is a good idea that most of them are captured including the cultural and heritage sites. It is going to be important for our communities to continue conserving cultural and heritage sites some of which are used for religious purposes. I want to support the amendments.

Thank you.

Hon. ole Ntutu: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment. This is a very important definition of how a community can reserve their land. This will bring to an end to cases where people force a community to throw away their land.

I support. Thank you.

Hon. ole Lemein: I oppose.

Hon. Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Are you giving a contrary view?

Hon. ole Lemein: Yes.

Hon. Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. I will start with the Member for Narok South.

Hon. ole Lemein: Thank you, Hon. Temporary Deputy Chairlady. As much as I support the amendment by the Chairman, when it comes to 3(f) I oppose the part which says: "Any other purposes as may be determined by the community, respective County Government or National Government for the promotion or upgrading of public interest,"

I propose, and I wish the Chairman could listen, that it should read; "any other purposes as may be determined by the community" and we delete "respective county government or national Government".

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, you either support the amendment or oppose it. You cannot bring proposals for a change of the text unless it has already been put on the Order Paper. We should know whether you are opposing or supporting.

Hon. ole Lemein: Hon. Temporary Deputy Chairlady, I oppose because of that particular area.

Hon. ole Kenta: Thank you, Hon. Temporary Deputy Chairlady. Like my colleague who has just spoken, I agree with all the other issues but there is an issue that must be looked at but I do not know how we will do it. It has to be reintroduced; that is 3(f). You are, again, giving power to the national Government and the county government when it is supposed to be a community decision. It is a matter of just doing away with part of the sentence so that it reads:

“Any other purpose as may be determined by the community” the way they did with the other. It is just a matter of ---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, I would like to hear your input. Are we together or you would like the Member to repeat his contention?

Hon. Mwiru: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let him repeat. Please pay attention.

Hon. ole Kenta: Thank you, Hon. Temporary Deputy Chairlady. In fact, all the changes are very good except the issue of giving authority to the national Government and county government to decide any other purposes that community land may be useful. It is totally unconstitutional and illegal. As he did with the other ones, it is just a matter of cutting out “respective County Government or National Government for the promotion or upgrading of public interest.”

That will be the best.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, let us listen to the Member for Laikipia North then you can give us direction.

Hon. Lempurkel: Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendments because the communities will be able to manage their own land especially grazing lands. If you look at the Constitution, you will find that the issue of the community land is vested in the county government. So, I want to urge my colleagues to get rid of this fear of the county government and the national Government because on the county government, we still have the representative from this community.

I rise to support because it is giving a clear way on how the community will utilise their land.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us now hear from the Chairman.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I can draw the attention of the Members to the proposed amendment under Sub-clause (b) where we are saying: “(2) Any land which has been used communally, for public purpose, before the commencement of this Act shall upon commencement of this Act be deemed to be public land vested in the national or county government, according to the use it was put for.”

What we are trying to say here, and what we are trying to cure, is that even the community itself can afford to set aside a public land which they can negotiate even for purposes of development with the respective county government. They can say this is for public purposes. What we are saying is that even if the community has set aside that land for public use, it is only necessary for that particular entity that has been given that authority to plan for it. That is the import of this.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we have heard both sides of the argument. I gave the Chair the last word so that he can direct us.

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

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

(Clause 13 as amended agreed to)

Clause 14

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Only the Chair has an amendment to Clause 14(1). Both the Chair and Hon. Tiyah Galgallo have amendments to Clause 14(2). Hon. Tiyah's amendment will be dropped if the Chair's amendment is carried. Hon. Chair, can you move both your amendments?

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

THAT, Clause 14 of the Bill be amended –

(a) in sub-clause (1)–

(a) by deleting paragraph (b);

(b) deleting paragraph (e); and

(c) deleting paragraph (f).

(b) in sub-clause (2) by inserting the words “Subject to Article 40(6) of the Constitution” at the end of the sentence.

The amendment is necessary to avoid repetition of requirements of payment of just compensation upon compulsory acquisition, or any compensation provided for in Article 40(3)(b)(i) of the Constitution as community land is owned by the community as a whole. Land cannot be inherited or transmitted through a will. Community land is owned communally. It is not owned by an individual. Unless such a time that the community decides to either subdivide or do anything else, we cannot afford to vest any justifiable compensation in an individual. That is what we are trying to cure.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ndiritu, do you want to speak to this amendment?

Hon. Ndiritu: I support the amendment by the Chairman. What he has said is true. I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu, do you want to speak to this amendment?

Hon. Ganya: Hon. Temporary Deputy Chairlady, I support the Chair's amendment.

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

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

(Clause 14 as amended agreed to)

(Proposed amendment by Hon. (Ms.) T.G. Ali dropped)

Clause 15

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): If the amendment by the Hon. Chair is carried, Hon. Tiyah's amendment will be dropped. Go ahead.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 15 of the Bill be deleted.

The purpose for this is because the manner and procedure of registration of community land is already provided for in the proposed new Clause 7. That Clause takes care of the procedure of registration. Therefore, Clause 15 is rendered null and void. It is a repetition of the same. We do not need it.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. George.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Chairlady. I agree. In the original Bill, Clause 15 says that the Cabinet Secretary shall make regulations prescribing the manner and procedure for registration of community land for the purposes of this Act. That manner and procedure has been written into law. There is no need to make new regulations. In any case, the Cabinet Secretary has the role to make regulations for all clauses in this Bill at the end. Clause 15 does not make sense and so I support the deletion.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Mishi.

Hon. (Ms.) Khamisi: Thank you, Hon. Temporary Deputy Chairlady. I concur with the sentiments of the Chair of the Departmental Committee on Lands on the deletion of Clause 15. It is in order. I support it.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Ababu.

Hon. Ababu: Hon. Temporary Deputy Chairlady, I support this amendment. I also want to tell the Chair that I am a very good friend of this Committee. There has been an obsession to have the name of the Cabinet Secretary dot every page of this Bill. It is a good amendment to delete this one and reduce the obsession with the Cabinet Secretary dominating this Bill and the affairs of management and administration of community land.

I support the deletion.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Nassir. Hon. Member, when you do not have your card it is a bit tricky. Can we hear you from the next microphone? Let him use Hon. Tiyah's microphone.

Hon. Nassir: Thank you, Hon. Temporary Deputy Chairlady. This is the beauty of consultation. We sat down with the Committee and agreed that issues that are devolved should be left with county governments. Therefore, this whole clause was deleted. We appreciate the good faith.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Do you support it?

Hon. Nassir: We definitely support it.

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

(Clause 15 deleted)

(Proposed amendment by Hon. (Ms.) T.G. Ali dropped)

Clause 16

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Chair has an amendment to this clause. Just give me one minute, Hon. Chair so that I can give direction. We also have amendments by Hon. Joyce Emanikor and Hon. Tiyah Galgallo. If the amendments by the Chair are carried, we will drop those amendments.

Go ahead, Hon. Chair.

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

THAT, Clause 16 of the Bill be deleted and substituted therefor with the following new clause—

Functions and powers of the community land management committee.

16. (1) A registered community shall have a community assembly which shall consist of all members of the community.

(2) The community assembly shall elect between seven and fifteen members of the community assembly to constitute the community land management committee.

(3) The functions of the community land management committee shall be to—

- (a) have responsibility over the running of the day to day functions of the community;
- (b) manage and administer registered community land on behalf of the respective community;
- (c) coordinate the development of community land use plans in collaboration with the relevant authorities;
- (d) promote the co-operation and participation among community members in dealing with matters pertaining to the respective registered community land; and
- (e) prescribe rules and regulations, to be ratified by the community assembly, to govern the operations of the community.

(4) Any decision of a registered community to dispose of or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered members of the community, while any other minor decisions of the registered community shall be by a simple majority of the members present in a meeting.

The reason for the amendment is that already there is an established management committee in a community, which is supposed to manage and administer registered community land on behalf of that community.

Secondly, the community land management committee represents the community in all matters and transactions relating to community land. The reason we are deleting that clause and inserting this new clause is because the management committee is part and parcel of the structure of the community.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Do you want to speak on this, Hon. Kamoti?

Hon. Mwamkale: Hon. Temporary Deputy Chairlady, I support the Chairman's amendment. The previous clause was not very clear on how this management was supposed to be administered. With the amendment, everything is there and it is clear and not subjected to the Cabinet Secretary as it was previously.

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

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

(Clause 16 as amended agreed to)

(Proposed amendment by Hon. (Ms.) T.G. Ali dropped)

(Proposed amendment by Hon. (Ms.) Emanikor dropped)

(Clause 17 agreed to)

Clause 18

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We only have an amendment by the Chair.

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

THAT, clause 18 of the Bill be amended in sub-clause (1) by inserting the phrase "or any other written law" immediately after the words "in this Act".

The amendment ensures that the rights of a registered community are protected as provided for by this particular Bill or any other law. Because the community is already an entity, it must also be protected. It should not just be left to the vagaries of nature.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I wanted to give the chance to the Member for Tharaka-Nithi but she has removed her card. I will give Hon. Sakuda. Do you want to speak to this amendment?

Hon. ole Sakuda: Thank you, Hon. Temporary Deputy Chairlady. I completely support this amendment. Thank you.

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

(Clause 18 as amended agreed to)

Clause 19

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, on Clause 19, we have two amendments. We have amendments by the Chair and by Hon. Joyce Emanikor. So we start with that of the Chair.

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

THAT, clause 19 of the Bill be amended in sub-clause (1) by deleting the word “all”, immediately after the words “be considered”.

There is nothing much on this in my proposal. We are only trying to eliminate some typographical error. That particular word is repeated. That is why we want to remove it.

(Question of the amendment proposed)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Joyce Emanikor.

Hon. (Ms.) Emanikor: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 19 of the Bill be amended in sub-clause (1) by inserting the words “to a community” immediately after the word “registration”.

This amendment ensures that community land registration process will culminate in the awarding of a certificate of title in the name not just of the buyers but also the name of communities.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ababu, do you want to speak to this?

Hon. Ababu: No.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. Member for Laikipia North.

Hon. Lempurkel: Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose simply because in the county level we have the registries. We cannot just register a community in a name and put a certificate in a name. It will bring discrimination in the country. So, we need to have a single document or a single title for the registration.

So, I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ogalo.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Chairlady. I would like to invite Hon. Emanikor to look at what she is doing. If you say “a certificate or title issued by the registrar

upon registration to a community,” it means that you are stating what is already stated. The registrar being talked of here, as per the definitions, is the registrar of community land. So, any registration this registrar is doing is that of community land. So, adding “to a community” is tautological; adding what is already stated. It is unnecessary.

I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair.

Hon. Mwiru: Indeed, Hon. Temporary Deputy Chairlady, I oppose what Hon. Emanikor is introducing. What is likely to happen is that we are going to expose this community again to vagaries of nature which we were trying to cushion them from. So, the position is that if we throw them out there, it means that whatever we are trying to do in this Bill will be rendered nugatory. That is the reason.

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

(Clause 19 as amended agreed to)

Clause 20

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We again have amendments by Hon. Joyce Emanikor and Hon. Tiyah Galgalo. We start with that of Hon. Joyce Emanikor. Hon. Emanikor, move your amendment on Clause 20.

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Chairlady Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 20 of the Bill be amended in sub-clause (2) by deleting paragraph (f).

This mandate ensures that communities will have little say, as it is now, over the planning and zoning of their lands. As it is, it also opens the door for county and national Governments to set the land use requirements for communities who will have little power to make local land use planning decisions.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Who would like to speak on this issue? Hon. Ogalo.

Hon. Ogalo: Hon. Temporary Deputy Chairlady, Article 66 of the Constitution is very clear. On regulation of land use and property, the State may regulate the use of any land or any interest in or right over any land in the interest of defence, public safety and public order and goes ahead to mention many of them. The import of this provision is that the Physical Planning Act already enacted by this House, in fact, in existence since 1996, provides that there will be a relevant physical development plan of an area. If your community land falls in that area, surely, you must pay attention to the provisions of that physical development plan. So, deleting this will remove the power of the State including that of the county governments to regulate the use of land.

Therefore, I oppose again, Hon Emanikor’s amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ababu, do you want to speak to this? Do it briefly.

Hon. Ababu: The question of planning needs some standardisation. Therefore, you do not want to localise some of these critical services in such a way you remove that national oversight that ensures standards across the Republic. I also dare say that sometimes we forget that even though we have gone devolution, Kenya still remains very much a unitary state. We have not created separate little states out there. So, this amendment would deny the Bill that necessary role of the national standardisation.

I oppose the amendment.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tiyah, move your amendment now.

Hon. (Ms.) T.G. Ali: Thank you, Hon. Temporary Deputy Chairlady. I withdraw my amendment.

(Proposed amendment by Hon. (Ms.) T.G. Ali withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. Hon. Tiyah has withdrawn her amendment.

(Clauses 20 and 21 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I will now call the Mover of the Bill to report progress. We want to take care of the amendments that were proposed by Hon. Mwadime.

Hon. Mover of the Bill.

PROGRESS REPORTED

THE COMMUNITY LAND BILL

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairlady, I beg to move that the Committee does report to the House its consideration of the Community Land Bill, No. 45 of 2015 up to Clause 21 and its approval thereof with amendments and seek leave to sit again.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker

(Hon. (Ms.) Shebesh) in the Chair]

Hon. ole Kenta: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Community Land Bill, No.45 of 2015 up to Clause 21 and approved the same with amendments and seek leave to sit again.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Mover of the Bill.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report. I also request Hon. Sakuda to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. ole Sakuda seconded

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Next Order.

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Hon. A.B. Duale on 22.3.2016)

(Resumption of Debate interrupted on 24.3.2016)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): We are resuming debate that was interrupted on Thursday, 24th March 2016. We are debating the Constitution of Kenya (Amendment) (No.4) Bill (National Assembly No.38 of 2015). Could I see interventions of those who would like to contribute? There was nobody on the Floor. I will look at my request list and assume that if your name is there you want to speak to it. Hon. Naomi Shaban.

Hon. (Dr.) Shaban: Thank you, Hon. Temporary Deputy Speaker. I stand to speak on The Constitution of Kenya (Amendment) Bill . I also add my voice to congratulate the Leader of the Majority Party, Hon. Aden Duale for bringing this very important Constitution (Amendment) Bill which has been standing for along time awaiting us to debate and deliberate on it.

This has been a thorny issue, in the sense that the Constitution is very clear that any elective body or appointment must include both genders and should not surpass the two-thirds gender rule. This has been an issue that has been canvassed for a long time. It is not a good policy for people to be sitting in this August House and discussing issues when more than half of the population which is women is not involved because most of the membership happens to be of the male gender.

This can happen either way because I know it is not easy to force people to elect members from either gender. It has not been easy even in very old democracies. This time round with the affirmative action seats, it was possible for us to have special seats for women and 47

women came through that route. Even with the improvement in the number of elected women on the affirmative action seat, we still fall short of the required numbers. The Constitution talks about 33 per cent of this august House being made up of women yet they are slightly less than 20 per cent.

This Bill comes as a result of an advisory opinion that was given by the Supreme Court, the highest body which interprets the law. It also comes in following several interventions by the Judiciary. It is high time we looked at it very seriously. I am appealing to all my colleagues that we need to do something about the constitution of this august House. The law is very clear in Article 177 which refers to county assemblies and they have been given an opportunity to fill in the gender which has been left out. This is by making sure that not more than two-thirds of the Members happen to be from the same gender. Article 97 on the membership of the National Assembly and 98 on the membership of the Senate falls short of the numbers which are required. Article 98 tried to achieve the numbers by giving a party list of 16 women members and another two; one being a youth and another a disabled person who would fill in the numbers required in the Senate.

Hon. Temporary Deputy Speaker, looking at it, there is still a small shortfall in the membership of the Senate but the membership of the National Assembly needs to be looked at seriously as we seek a way forward. This is the only way out to have this constitutional amendment. Most people would want to refer to women as joyriders who want to come here through an easy way. That is not the case. It is not easy for women to be elected due to the cultural and traditional background where women were not meant to be leaders. Over the years, Kenyans started appreciating and accepting that even women can lead, and more so take political leadership positions. We just need to insert this and make sure that it is in the law for it to be realized.

I have no doubt that in the coming general election we will have more members of the female gender being elected from the constituency level. If so, then most likely, the party list will not be as long as people are anticipating it to be. Since we have been going from strength to strength, as you are aware, this is the third time I have been elected. Being elected the third time, I have seen the numbers grow. We have not been going backwards in increasing our numbers. As we make decisions about this country, it is important to have a voice from people who represent the 52 per cent of our population being heard in decision making. I am appealing to my colleagues; that, we cannot move on the way we are. We need to do something about it. I know there is the question of the wage bill. That question always comes when it comes to the issue of women. Generally, our Constitution has to be looked at this time when looking at the issue of gender. We need to re-evaluate everything and see if we need to reduce the number of constituencies in future but for the time being, we need to realize what is in the Constitution.

I know that women are as hard working as men. In future, men will also require this amendment so that in the event that we will have more women elected, then men---

(Loud consultations)

Hon. Temporary Deputy Speaker, please protect me from my colleagues. In the event that we might require more men to be elected in future, and once we have had women coming on board, then this amendment will be very useful.

Having more women in this House will actually add value. There is no doubt that the more balanced we are in terms of gender – as stated in Articles 81 and 27 on the Bill of Rights – the better. There is value in making this amendment. I just want to ask my colleagues to be patient with us and join us in making sure that this particular amendment is passed, so that we can have the required numbers come the next election.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Ken Okoth of Kibra.

Hon. Okoth: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill because it is an important constitutional amendment that will help us to show that we are a progressive country, and that we appreciate the contribution of our women not just in our families, societies and in fields such as peace building but we also appreciate their full participation, as mothers and sisters, in the leadership of the country and on the political decision making tables. The Constitution talks about no more than the two-thirds of one gender in public elected positions and appointed offices. This Bill has taken so long. We were supposed to do it last year. I beg the men and the women in this august House to do the honourable thing and pass it, so that it can go to the Senate within the required timeline.

Campaigning for office and preparing to participate in political leadership in this country is very costly, dangerous, time and energy consuming, and needs serious planning. The fact that this Bill is a year late puts women who were supposed to benefit and prepare for it, and our political parties that were supposed to organise and see how they will encourage and create the next generation of women coming into political leadership in this country, at a disadvantage. However, all is not lost. It is in our hands as leaders in the National Assembly to pass this Bill and take it to the Senate and give it enough time to pass it so that we can meet the August deadline and avoid a constitutional crisis. We are a litigious country where any citizen has a right to challenge the legality of this House if we do not pass this Bill by August. We do not want that type of constitutional crisis in our hands. We must do the right thing, and not just because we fear being taken to the High Court and someone requesting this House to be dissolved, but because it is the right thing and it has taken us too long. I hope even in the months and years that it has taken us to think about this have created a space for consensus.

I want to plead with the Members of this House, especially some of the men who have not spoken much on this and might quietly reject the Bill to support it. You need to look inside and think about yourself, grandchild, granddaughter and son, and they might need this Bill to help and give them a chance in the leadership. I love a provision of this Bill that it will be within 20 years. It is a sunset clause for affirmative action and within 20 years, we will have had two or three crops of leaders benefit to get their foot within the door.

We have seen nominated women leaders and nominated leaders in general, who come to the House and do exemplary work. For instance, Hon. Sakaja has passed two important Bills. That is not a joke because he came here as a Nominated Member. Some say tongue-in-cheek, he nominated himself but nominated nevertheless. I hope he runs for a bigger post soon and get the joy of winning votes. Hon. (Ms.) Mbarire first came in as a Nominated Member and she is doing well. You also first came in as a Nominated Member but right now, you are leading the House. People should not think that a woman coming in through nominations is a freebie. It is enrichment, a gift and a blessing to the leadership of this House and our nation.

I do not want to belabour the point but my personal intellectual point had been that we should find a formula in which they run for election and the formula is guaranteed but politics is

the art of compromise. This is the best we have in the circumstances. We are already seeing the benefits it is bringing to our county assemblies when we nominate women to participate in the devolution of this country. We should do the same at the national level.

With those few remarks, I am happy to support. I want to beg my colleagues to think about the same. We should pass this Bill on time before we go on recess in May.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I now give the Floor to Hon. (Ms.) Cecilia Ngetich.

Hon. (Ms.) Ngetich: Thank you, Hon. Temporary Deputy Speaker for this opportunity to add my voice to this Bill. At the outset, I want to say that I support the amendments of the Bill, and not necessarily because I am one of the affected gender. Our President took an oath to protect the Constitution which emphasises the need for gender equity and human rights. One of the clauses states that either gender should have one-third representation. This is in the spirit of implementing the Constitution that we all voted for. In an elective position, this can be difficult to achieve because of the perceptions and challenges that candidates might face particularly women. However, just like it was done at the county level, it is important that the gender that will be underrepresented be given the opportunity to serve through special created seats.

Secondly, we only have 19.6 per cent female representation but the 10th Parliament was allowed to proceed by the Supreme Court which advised that there should be a framework on how to meet the---

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. (Ms.) Ngetich, I am sorry to interrupt you but you still have a balance of eight minutes when this Bill comes back on the Order Paper.

The time being 6.30 p.m., this House stands adjourned until Wednesday, 20th April 2016, at 9.30 a.m.

The House rose at 6.30 p.m.