

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 3<sup>rd</sup> May, 2016

The House met at 2.30 p.m.

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

### PRAYERS

### MESSAGE

#### MEDIATED VERSION OF CLIMATE CHANGE BILL

**Hon. Speaker:** Order, Members! There is a Message from the Senate. It is Message No.008 of 2016 regarding the approval by the Senate of the mediated version of the Climate Change Bill.

Hon. Members, pursuant to 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 Climate Change Bill, National Assembly Bill No.1 of 2014.

The Message reads:-

“The Senate, by resolution passed on Tuesday, 26<sup>th</sup> April, 2016, approved the mediated version of the Climate Change Bill, National Assembly Bill No.1 of 2014”.

Hon. Members, you may recall that the National Assembly considered the Report of the Mediation Committee and approved the same version of the same Bill on 20<sup>th</sup> April, 2016. In this regard, I will now 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.

### PETITION

#### ENACTMENT OF LEGISLATION FOR IMPLEMENTATION OF AU RESOLUTIONS

**Hon. Speaker:** Hon. Members, this is Petition No.9 of 2016 relating to the enactment of legislation to provide for the implementation of the resolutions of the African Union (AU).

Hon. Members, Standing Order No.225(2)(b) requires that the Speaker reports to the House any petition other than those presented through a Member. I, therefore, wish to convey to the House that my office is in receipt of one such Petition.

The Petition is signed by one David Gesicho, a Kenyan citizen, regarding enactment for legislation to provide for implementation of the resolutions of the AU. In the Petition, he prays that the National Assembly initiates the process of enacting legislation with regard to

implementation of resolutions of the AU in the Republic of Kenya, and in particular, concerning the proposed formulae for division and allocation of revenue towards the realisation of the Sustainable Development Goals (SDGs). The petitioner has further tabulated the proposed allocation of revenue as follows:-

1. Fifteen per cent to the health sector
2. Ten per cent to the agriculture sector to implement the Maputo Declaration
3. Twenty per cent to agriculture including water, irrigation, sanitation and rural development
4. Five per cent to the national annual deficit

Hon. Members, pursuant to the provisions of Standing Order No.227, this Petition stands committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee is requested to consider the Petition and report its findings to the petitioner and the House in accordance with the provisions of Standing Order No.227(2). The Committee is at liberty to introduce a Bill to the House proposing to make the amendments as proposed by the petitioner.

Thank you.

### PAPERS LAID

**Hon. Speaker:** Yes, the Leader of the Majority Party

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today Tuesday, 3<sup>rd</sup> May, 2016:-

The Report of the Auditor-General on the Financial Statements of the National Authority for the Campaign Against Alcohol and Drug Abuse, Alcoholic Drinks Control Fund for the year ended 30<sup>th</sup> June 2015 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Kenya Re-Insurance Corporation Limited for the year ended 31<sup>st</sup> December, 2015 and the Certificate therein.

The Annual Report and Financial Statements of the Capital Markets Authority for the year ended 30<sup>th</sup> June, 2015 and the Certificate therein.

The Annual Report and Financial Statements of the Anti-Female Genital Mutilation Board for the Year ended 30<sup>th</sup> June 2015.

A list of nominees to the National Government Constituencies Development Fund Committees from the National Constituencies Development Fund Board.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Chairperson, Departmental Committee on Administration and National Security.

**Hon. Abongotum:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today Tuesday, 3<sup>rd</sup> May, 2016:-

Reports of the Departmental Committee on Administration and National Security on its consideration of the following Petitions:-

(i) The residents of Chuka/Igambang'ombe Constituency regarding delayed creation of a new administrative unit in Kiringani Location, Meru South Sub-County.

(ii) The Kasikeu Ward village managers regarding the recognition and compensation for services rendered by village elders.

(iii) Three inmates from Naivasha Maximum Prison on radicalisation of inmates, review of the Penal Code and amnesty for inmates who have served for a jail term of more than seven years.

Thank you. I wish to lay the documents on the Table.

**Hon. Speaker:** Next Order!

## BILL

### *Third Reading*

#### THE ENERGY BILL

**Hon. Speaker:** Hon. Members making their way in can take their seats. Hon. Members, as you are aware, debate on this Bill concluded last week and the Question was not put which I hereby do.

*(Question put and agreed to)*

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

Let us move on to the 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 PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Members! What is it Hon. Leader for the Majority Party? We have not even started.

**Hon. A.B Duale:** Before you start, Hon. Members please pick the list that I have tabled on the ---

**The Temporary Deputy Chairman** (Hon. Cheboi): No! You know you cannot address the Members directly here. You would only ask me to do it for you.

**Hon. A.B Duale:** On a point of order, through you, Hon. Temporary Deputy Chairman. I have tabled 101 constituencies. Check whether your constituency's name has not been submitted. We are going to approve them on Thursday, being the last day, before we go on recess.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. Hon. Members, be informed

that 101 Member constituencies have been tabled by the Leader of the Majority Party and, therefore, the Members can check. What is your point of order, Hon. Wamalwa?

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Chairman. In line with Standing Order No.1 where you can exercise your discretion, may I humbly request that because of the importance of the matter, can you allow the Hon. Leader of the Majority Party to read out the names on the 101 list?

**The Temporary Deputy Chairman (Hon. Cheboi):** No! I will not allow that. We are already in the Committee of the whole House, and this is not a very suitable place for us to canvass those kinds of issues. Anybody who would like to have that should go back to the main House and proceed. So, we will start quickly.

### *Clause 3*

**The Temporary Deputy Chairman (Hon. Cheboi):** I see there is a proposition for an amendment by Hon. Emanikor. You have just logged in. So, you will have the microphone.

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

THAT, Clause 3 of the Bill be amended in Sub-clause (2) by deleting the words “midstream or” appearing immediately after the words “not include”.

Clause 3 as it is, excludes midstream operations. I want it included because midstream operations include transportation, storage and refining natural gas. Kenya is about to construct a pipeline. We are just about to spend close to Kshs200 billion to construct the pipeline. This will fall under the midstream operations, which are excluded in this Bill.

### *(Question of the amendment proposed)*

**The Temporary Deputy Chairman (Hon. Cheboi):** I will give only two Members a chance. I will start with Hon. Lomenen from Turkana South Constituency and Hon. Makali Mulu if he is in the House.

**Hon. Ekomwa:** Hon. Temporary Deputy Chairman, I support the amendment so that those communities found with resources can benefit maximally.

I support.

**The Temporary Deputy Chairman (Hon. Cheboi):** Okay. Let us have Hon. Makali Mulu. I thought you are not in because normally, you sit in a particular place. Today, you have decided to become a pastoralist.

**Hon. Mulu:** Hon. Temporary Deputy Chairman, we are consulting on important Kamba issues with Hon. Muluvi.

**The Temporary Deputy Chairman (Hon. Cheboi):** You can discuss Kamba issues outside the Chamber.

Proceed.

**Hon. Mulu:** I support this amendment because as explained by the Mover, it makes a lot of sense to have this included.

**The Temporary Deputy Chairman (Hon. Cheboi):** Well. Ordinarily, we give only two Members a chance but since the Chair seems to be interested in speaking to it, let him proceed.

**Hon. Kamau:** I oppose this amendment for a very simple reason. Midstream operations are governed by the Energy Act which we have just passed. So, if we talk about midstream, we will be

repeating the same thing that is covered in the Energy Act.

**The Temporary Deputy Chairman** (Hon. Cheboi): We will see if you will have convinced yourself. The two Members have supported and the Chair is opposing. It is up to the membership to make a decision. The Leader of the Majority Party, you want to speak to this one? This is very exceptional. We are giving too many Members a chance to contribute.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, we can convince Hon. Emanikor who was not here last week when we were dealing with the Energy Bill. We can build consensus. That provision is provided for in the Energy Bill as has just been read by the Chairman. So, instead of putting it to the vote I can confirm that she can withdraw. That is how we want to work. I cannot oppose Hon. Emanikor's amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Emanikor, what do you have to say? We will listen to her. If she wants to withdraw that will be fine but if she does not then we will put it to the vote. Hon. Emanikor, do you have anything to say?

**Hon. (Ms.) Emanikor:** I wish it could be confirmed by quoting the exact clause in the Energy Bill so that I withdraw. As long as there is other law that governs this---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members can trust themselves if the Chair has confirmed beyond doubt. Hon. Emanikor, I am looking at the Long Title of the Energy Bill, 2015. Unfortunately, you may not have it. It deals with that bit which you have just prosecuted. So, if you insist on proceeding then we will put the Question. Do you want to withdraw or proceed?

**Hon. (Ms.) Emanikor:** I withdraw, Hon. Temporary Deputy Chairman.

*(Proposed amendment by Hon. Emanikor withdrawn)*

*(Clause 3 agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Emanikor has been convinced to withdraw which is okay, so let us proceed.

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

*Clause 8*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have a proposal by Hon. Jamleck Kamau, the Chair.

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

THAT, Clause 8 of the Bill be amended in Sub-clause (3) by inserting the words "on its own" immediately before the words "through the" appearing in paragraph (a);

The amendment seeks to create clarity by providing that the national Government conducts upstream petroleum operations either on its own or through the National Oil Corporation of Kenya (NOCK).

*(Hon. Simba consulted loudly)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, the Member for Dagoretti, Hon. Simba Arati! Can you please resume your seat? You are consulting loudly and can be heard all over the Chamber. Proceed and consult outside the Chamber or in a better place. Hon. Chair, had you finalized?

**Hon. Kamau:** Yes, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): There is no request.

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

*(Clause 8 as amended agreed to)*

*(Clause 9 agreed to)*

*Clause 10*

**The Temporary Deputy Chairman** (Hon. Cheboi): In this particular one we have two proposed amendments by Hon. Jamleck Kamau and Hon. Joyce Emanikor. We will start with the Chair and then proceed to the next one.

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

THAT, Clause 10 of the Bill be amended—

- (a) in Sub-clause (1) by inserting the words “and the petroleum agreement” immediately after the words “in accordance with this Act” appearing in paragraph (h);
- (b) in Sub-clause (5) by inserting the words “to carry out his or her duties under
- (c) this Act” immediately after the words “and assistance”;
- (d) in Sub-clause (6) by deleting the closing paragraph appearing immediately after paragraph (b) and substituting therefor the following new closing paragraph—

“commits an offence and shall on conviction be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding five years or to both”.

The import of this amendment is to provide that the Cabinet Secretary (CS) shall upon the recommendation of the Upstream Petroleum Regulatory Authority (UPRA) approve the transfer or assignment of any interest in a petroleum agreement in accordance with the Act.

Further, the amendment also seeks to provide that an occupier of any building or vessel shall provide the CS with all reasonable facilities and assistance to carry out his or her duties under this Act. The amendment also seeks to create clarity in terms of spelling out the penalties for a person who obstructs the CS through an authorized officer; or knowingly or recklessly makes a statement or produces a false or misleading statement in material particular to the CS.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Incidentally, there are also no requests.

*(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)*

We will therefore, proceed to the second proposal by Hon. Emanikor. You have the Floor.

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

THAT, Clause 10 of the Bill be amended in paragraph (1) of Sub-clause (1) by inserting the words “is considered unsafe which” immediately after the words “or building that” in sub-paragraph (i).

The import of this amendment is to put a reason why the CS may order the cessation of any operations and withdraw all persons from any structure or building used in upstream operations. The addition is when those structures are considered unsafe. This goes well with the sub-clause which indicates the issue of safety.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): There are also no requests.

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

*(Clause 10 as amended agreed to)*

*(Clause 11 agreed to)*

*Clause 12*

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

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

THAT, Clause 12 of the Bill be amended in Sub-clause (2) by inserting the following new paragraph immediately after paragraph (h) —

“(hh) a representative of the Council of Governors.”

This amendment seeks to include the representative of the Council of Governors (CoG) in the National Upstream Petroleum Advisory Committee whose key role is to advise the CS on upstream petroleum operations. The CoG will nominate one person to sit in that Committee.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): There is the Member for Marakwet West.

**Hon. Kipsang:** Thank you, Hon. Temporary Deputy Chairman. I rise to support the amendment by the Chairman. It is prudent that we include the CoG in the Board because we are doing this business in the counties.

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

**Hon. (Prof.) Nyikal:** I also rise to support this, Hon. Temporary Deputy Chairman. It is important to get the county governments to have ownership of these processes.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I will put the Question. As I do so, it is good that you are clear on the decision which you will make. Ultimately, you are the ones who make the decision. Let me hear what you have to say.

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

*(Clause 12 as amended agreed to)*

*(Clauses 13 and 14 agreed to)*

*Clause 15*

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

THAT, Clause 15 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph (a)—

“(a) regulate, monitor and supervise upstream petroleum operations in Kenya in accordance with this Act, the regulations made thereunder and the relevant petroleum agreement”.

The import of this amendment is to clarify the functions of the UPRA. In particular, it seeks to provide that the regulation, monitoring and supervision of upstream petroleum operations in Kenya shall be made in accordance with the Act and regulations made there under.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to Members. The first is Hon. Birdi. Do you want to speak to this?

**Hon. (Ms.) Sunjeev:** Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity.

I support this amendment, in line with what the Departmental Committee Chair has said. This is because it touches on the relevant petroleum agreements.

I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): I see a belated request by the Member for Seme.



**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairman, I want to seek clarification because paragraph (a) of Clause 15 that is being deleted is not related to the new paragraph (a). It appears to me that we can add the amendments without having to delete anything. If I get an explanation on the amendment, I can support and make my decision.

**The Temporary Deputy Chairman** (Hon. Cheboi): Did you say that you will make your decision? What did you say?

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairman, I am requesting for some explanation on the proposed amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): What explanation do you require? It is fairly straightforward. I thought the better way is for you to make a decision now.

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairman, indulge me a bit. Paragraph (a) of the clause being deleted is not the same as what the new paragraph (a) provides. We can have both together.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Jamleck, could you respond?

**Hon. Kamau:** Hon. Temporary Deputy Chairman, the paragraph that we want to remove says that the functions of the Authority will be to monitor, regulate upstream petroleum in Kenya, including reserve estimation measurements and evaluation of produced oil and gas. That is what we want to delete and substitute therefor the following: “to regulate, monitor and supervise upstream petroleum operations in Kenya in accordance with this Act”. The regulations made are in the relevant petroleum agreements. We want to cover a wider scope, and not specifics.

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

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

*(Clause 15 as amended agreed to)*

#### Clause 16

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

THAT, Clause 16 of the Bill be amended in Sub-clause (1) —

(a) by deleting the words “being not less than ten thousand shillings” appearing in paragraph (m) and substituting therefor the words “not exceeding five hundred thousand shillings”;

(b) by deleting the words “National Transparency and Accountability Standards” appearing in paragraph (p) and substituting therefor the words “national values and principles”.

Hon. Temporary Deputy Chairman, this amendment seeks to align the provisions with the sentencing guidelines, which set out the ceiling with no minimum penalties. For example, when you talk about a fine of not less than Kshs10,000 it means that the fine can go up to Kshs20 million or a billion shillings. We want to set specifics. In this particular case, the penalty will not exceed Kshs500,000. We did this in the previous Bill. It is a standard practice in enacting laws.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to two Members to briefly comment on the amendment.

Let us start with Hon. Mulu

**Hon. Mulu:** Hon. Temporary Deputy Chairman, I would like the Chairman to explain what paragraph (b) of Clause 16 means before we make a decision. It is not clear.

**Hon. Kamau:** Hon. Temporary Deputy Chairman, paragraph (P) talks about National Transparency and Accountability Standards. We are replacing those words with the words “national values and principles”, which are contained in our Constitution.

*(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)*

#### *Clause 17*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, we have a series of amendments on Clause 17. Hon. Jamleck, we will not start with your amendment. We will start with Hon. Musimba’s amendment in order to take care of the sequence of the amendments. Hon. Musimba, your card is not reflecting on my screen.

You are now okay.

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

THAT, Clause 17 of the Bill be amended in Sub-clause (1) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) five other members appointed by the Cabinet Secretary from persons nominated by the top governance organs of each of the following bodies—

- (i) the Consumers Federation of Kenya;
- (ii) the Law Society of Kenya;
- (iii) the Petroleum Industry Association of Kenya;
- (iv) the Kenya Private Sector Alliance; and
- (v) the National Environment Management Authority.

Hon. Temporary Deputy Chairman, the import of this amendment is that we do not leave this carte blanche to the CS to appoint people from different disciplines. We have targeted people for purposes of governance. As we all know, this Bill is very important to this nation as this sector involves a lot of money.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, there is a series of Members who want to amend this particular clause.

*(Question of the amendment proposed)*

There is a lot of interest in this amendment. Therefore, I will give leeway to some Members, starting with the Member for Turkana East, Hon. Ngikor.

**Hon. Ngikor:** Hon. Temporary Deputy Chairman, I support the amendment because we cannot leave the CS to do everything. We need to include other relevant bodies, so that decisions can be made as per the requirements of the petroleum industry.

Thank you.

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

**Hon. Kisang:** Hon. Temporary Deputy Chairman, I rise to oppose this amendment because in the earlier Bills, we had given the CS a leeway to appoint. I do not know why we are denying the CS that opportunity in this Bill.

I oppose.

**The Temporary Deputy Chairman** (Hon. Cheboi): I give the Floor to the Chair of the Departmental Committee.

**Hon. Kamau:** Hon. Temporary Deputy Chairman, talking about the Consumers Federation of Kenya, it is not clear what body it is. With regard to the five other members to be nominated and appointed by the CS, you will realise that the CS's hands are tied since those are members nominated by those bodies. We are talking about very technical things such as petroleum and upstream. To be frank, I wonder why we are specifically talking about people from the Kenya Private Sector Alliance and the Petroleum Industry Association of Kenya. I would prefer that we give the CS the authority to appoint, just like we have done in other legislations.

**The Temporary Deputy Chairman** (Hon. Cheboi): Lastly on this one, I will give the Floor to Hon. Abbas.

**Hon. Abass:** Thank you, Hon. Temporary Deputy Chairman. I rise to oppose this amendment for the simple reason that, among the proposed nominating bodies to deal with technical issues, the Law Society of Kenya and others will not add any value. It is good to give the CS authority to appoint all the technical people.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, let us go to the amendment by Hon. Jamleck Kamau.

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

THAT, Clause 17 of the Bill be amended in Sub-clause (2) —

(a) by inserting the words “any of the following fields” immediately after the words “Kenya in” appearing in paragraph (b);

(b) by inserting the following new sub-paragraph immediately after subparagraph (vi) —

“(vii) any other relevant degree”.

Hon. Temporary Deputy Chairman, the import of this amendment is to ensure that a person who possesses any of the fields and other related degrees qualify for appointment as the

chairperson or member of the board of directors of the Upstream Petroleum Regulatory Authority. This is to broaden the list of people who qualify for appointment in these positions such that it is not specific to few disciplines.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give two Members a chance to speak on this amendment. I will start with the Member for Kiminini, Hon. Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Chairman. I rise to oppose the proposed amendment because the Upstream Petroleum Regulatory Authority is an autonomous organisation and a parastatal. According to the Parastatal Act, it is already provided for that the chairman of the parastatal must have a degree. This is just a repetition. I do not see the value added as far as this is concerned. It meant well but I do not know why we should do a repetition because it will be guided under the Parastatal Act.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kamau, do you want to explain?

**Hon. Kamau:** Yes, Hon. Temporary Deputy Chairman. The current provision in this Bill talks about a person who holds a degree from a recognised university in Kenya in engineering, physical sciences, law, finance, economics or energy. We want to add the words “any other relevant field.”

**The Temporary Deputy Chairman** (Hon. Cheboi): I do not want it to be an exchange between two Members.

Yes, Hon. Lomenen.

**Hon. Ekomwa:** Thank you, Hon. Temporary Deputy Chairman. I support the proposed amendment by the Chairman. We are not looking for an engineer but a person who is qualified to be in the board.

I support.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): If that amendment has been carried, then part two of the proposed amendment by Hon. Mwaita will be dropped.

**Hon. Mwaita:** Hon. Temporary Deputy Chairman, I agree that part (2) should be dropped because the Chairman’s amendment has carried it. However, part (1) should be carried because it is an insertion of “social sciences” which is to make it wider to get many disciplines and expertise to be in this board. In any case, we are appointing members of the board and we should not restrict.

**The Temporary Deputy Chairman** (Hon. Cheboi): Would you bother to explain in better terms the meaning of social sciences?

**Hon. Mwaita:** Hon. Temporary Deputy Chairman, social sciences will include fields like Bachelor of Arts. As it is now in the Bill, a person with a Bachelor’s degree in Arts with vast managerial skills cannot be appointed as a member of the board. I want to make it wider so that they can be appointed, and to also include Bachelor of Education. For instance, Prof. Magoha,

the former Vice-Chancellor of the University of Nairobi was a medical doctor and yet the Bill will lock out such good skills.

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

**Hon. Kiptanui:** Thank you, Hon. Temporary Deputy Chairman. I want to persuade my good friend, Hon. Mwaita to withdraw his amendment because if we carry the amendment by the Chairperson which includes “any other degree” I believe social sciences is covered.

**The Temporary Deputy Chairman** (Hon. Cheboi): From where I sit, I think social sciences is covered under any other relevant field. Hon. Mwaita, what do you have to say?

**Hon. Mwaita:** Hon. Temporary Deputy Chairman, making it social sciences will make it very open but in the interest of---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Mwaita, the Committee’s amendment has been carried which include “any other relevant field”. In the opinion of the Vice-Chairman of the Committee, this covers even the social sciences.

**Hon. Mwaita:** Hon. Temporary Deputy Chairman, I formally withdraw my amendment.

*(Proposed amendment by Hon. Mwaita dropped)*

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

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

THAT, Clause 17 of the Bill be amended in Sub-clause (1) by inserting the words “appointed under section 23 of this Act” immediately after the words “the Director-General” appearing in paragraph (d).

Hon. Temporary Deputy Chairman, Clause 17(1)(d) enlists the Director-General (DG) as a member of the board of directors using a definite article when at this point, the DG is not even known because he falls under Section 23 of the Bill. I want to add those words to make clarification.

*(Question of the amendment proposed)*

**Hon. Wakhungu:** It is a straightforward amendment for purposes of clarity. I support.

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

*(Clause 17 as amended agreed to)*

*(Clauses 18, 19, 20, 21, 22, and 23 agreed to)*

*Clause 24*

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

THAT, Clause 24 of the Bill be amended in Sub-clause (2) by inserting the words “to the Authority” immediately after the words “made against him or her” appearing in Paragraph (a).

This is for the purpose of concurrence in language so that the complaint is made to the appropriate person.

*(Question of the amendment proposed)*

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

*(Clause 24 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): We also have an amendment on the same by the Chairman.

**Hon. Kamau:** I do not have an amendment on Clause 24.

*(Clauses 25, 26, 27, 28, 29, 30, 31, 32 and 33 agreed to)*

*Clause 34*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have two proposals for amendment to this clause. We will start with the one by Hon. Musimba.

*(Loud consultations)*

Order, Members! There are Members who are interfering with the concentration of Hon. Musimba.

**Hon. Musimba:** Hon. Temporary Deputy Chairman, I am under siege.

I beg to move:-

THAT, Clause 34 of the Bill be amended in Sub-clause (1) by inserting the words "and further upon issuance of sufficient notice" immediately after the words "of appointment" appearing in the opening paragraph.

The purpose of this amendment is to give the licensees time to open up for the inspection. Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us start with the Member for Keiyo South. Hon. Kiptanui, do you want to contribute to this amendment?

**Hon. Kiptanui:** Thank you, Hon. Temporary Deputy Chairman. I oppose this amendment. If we were to do normal audit, it would be fine to give business people some notice. If you are doing an investigative audit, you do not have to give someone time to prepare. If you want to find out whether one has a permit or licence, why should one be given notice?

With those few remarks, I oppose the amendment.

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

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Chairman. It is indeed true. If you are doing the normal audit, you need to give a notice. An investigative audit, especially

something that negates the good governance practices, should be done randomly and abruptly so that you do not give the victim time to circumvent the exercise.

I oppose the amendment.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us proceed to the proposal by Hon. Kamau.

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

THAT, Clause 34 of the Bill be amended —

(a) in Sub-clause (5) by deleting the words “of not less than five hundred thousand shillings or to a term of imprisonment of not less than six months or both” and substituting therefor the words “not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both”; and,

(b) in Sub-clause (6) by deleting the words “of not less than five thousand shillings” and substituting therefor the words “not exceeding one hundred thousand shillings”.

This amendment seeks to align the provisions of the sentencing guidelines, which set out the ceiling and not minimums for penalties. We talked about it earlier on. For example, under Clause 34(6):

“A person who resists, hinders or obstructs any committee, officer, employee or agent acting in the course of the committee’s or agent’s duty under this section or who willfully fails to comply with any requirements lawfully made thereunder commits an offence and shall, on conviction, be liable to a fine of not less than five thousand shillings for each day or part thereof that the obstruction occurs.”

I want to amend that and bring the minimums but not maximums.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give opportunity to two Members, starting with the Member for Kitui South.

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment by the Chair because it increases the fine. I believe that this is an offence whose penalty should be stiffer.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): The Member for Wajir South, do you want to contribute to this amendment? You have removed your card. I am trying to get Members who are on the left side of the Chair.

I will give the opportunity to Hon. Onyango Oyoo.

**Hon. Oyoo:** I am sorry, Hon. Temporary Deputy Chairman. I am not prepared to contribute to this amendment.

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

**Hon. Aden:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment. It is proper for the Chair of the Departmental Committee to propose a more punitive penalty than the one that was proposed earlier on. It is important to do so.

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 34 as amended agreed to)*

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

**Hon. Wakhungu:** Hon. Temporary Deputy Chairman, for purposes of clarity, the Departmental Committee Chair moved Clause 34(a) but he did not move Clause 34 (b).

**The Temporary Deputy Chairman** (Hon. Cheboi): He stated that it is per the Order Paper, which dealt with that particular bit. It is already on record.

Let us proceed to the next clause.

*(Clauses 35 and 36 agreed to)*

*Clause 37*

**The Temporary Deputy Chairman** (Hon. Cheboi): I do not know why Hon. Musimba is an extremely popular Member today. He is having one consultation after another. I do not know whether it is on the same clause or on different issues.

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

THAT, the Bill be amended by deleting Clause 37.

Five years ago, the Government, through the Communication Authority, set up the National Data Centre to incorporate all Government Ministries and house their data at one point. This will avoid replication by every agency, which would make them incur a similar expense. For the benefit of the House, one data centre can cost Kshs5 billion. If you replicate it across the line agencies of the Government, it would become a very expensive venture, and the utilisation of each data centre would be limited. The current National Data Centre is in a very secure location, and it accords the country great savings in this regard. That is why I want Clause 37 of the Bill deleted.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I can see a lot of interest in this amendment. I do not know why.

Let us start with the Leader of the Majority Party.



**Hon. A.B. Duale:** Thank you, Hon. Temporary Deputy Chairman. I believe in consensus. I want to ask my good friend, Hon. (Dr.) Musimba, to withdraw his amendment.

Clause 37 of the Bill says that the Authority shall establish a national data centre, which shall be used for storage, analysis, interpretation and management of petroleum data and information from sedimentary basins and field operations. After we established the special economic zones, we harmonised the taxation regime in our country. For example, an investor in Singapore needs only to press a button to know our Value Added Tax (VAT) rate, Income Tax and Pay as You Earn (PAYE). This clause is saying that any investor who wants to invest in this sector will not go to the huge database, but will get the information he wants. From there, he can make an informed decision. It is like you have been told to look for a book in a library where there is no catalogue. You will get confused. Clause 37 is saying that there is a catalogue and there is a certain section where you can get the information. So, I ask my good friend to withdraw his amendment. He won elections twice in a region which has euphoria and came to this House as an independent candidate.

**The Temporary Deputy Chairman (Hon. Cheboi):** I will give a few more members a chance. I will start with Hon. James Rege, the Member for Karachuonyo.

**Hon. (Eng.) Rege:** Thank you, Hon. Temporary Deputy Chairman. I completely concur with the previous speaker in requesting the Mover, my friend, Hon. Patrick Musimba, to withdraw this amendment. Just as he said, this is a very important institution which cannot be included with the rest of the national database. The national database is accessed from within. This particular database will be accessed by foreigners and we do not want them to get---

**Hon. (Eng.) Gumbo:** On a point of order, Hon. Temporary Deputy Chairman.

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

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, these are fairly technical terms. As we debate, let us not get into confusion. Hon. Musimba is not talking about a database but a data centre. In fact, the Bill does not talk about database. So, let us not confuse the two. A data centre and a database are not the same thing. Database is stored in a data centre and not the other way round. It is not only in a data centre where you can store data.

**The Temporary Deputy Chairman (Hon. Cheboi):** Now that you have the Floor, are you supporting or opposing. Other than the point of order, I give you an opportunity to contribute.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I was in that profession before I came here. I designed many data centres and what we do in a situation like this is---

**The Temporary Deputy Chairman (Hon. Cheboi):** Hon. Gumbo, you can state that without having to shake the entire body, including the chest.

*(Laughter)*

Hon. Gumbo, we already recognise your very good credentials. Proceed. Let us hear the credentials.

**Hon. (Eng.) Gumbo:** What Hon. Musimba is trying to do is to save on costs. This is because within the data centre, you can create compartments. A compartment can be dedicated to this particular facility. I persuade him not to delete it but allow for a dedicated compartment within the National Data Centre for petroleum only. We should not delete Clause 37.

**The Temporary Deputy Chairman** (Hon. Cheboi): You must make the decision. Are you opposing or supporting Hon. Musimba's position? This is because at one point I heard you supporting him. Towards the tail end, you were opposing him without saying it.

**Hon. (Eng.) Gumbo:** I request him to make a further amendment to allow for a dedicated compartment within the National Data Centre so that the data for petroleum is completely distinct from other national data.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. (Eng.) Rege, you had the Floor. I actually got carried away in the battle of engineers.

**Hon. (Eng.) Rege:** My colleague in the sector was just making a comment. I request Hon. Musimba, if he wants to clarify this, to go on. However, I suggest that the petroleum sector be allowed to establish its own database. I would also like to request them to have a backup which is not real time.

In the United States of America (USA), a state which I will not mention completely brought its own power system down using cybercrime. So, I request the Ministry of Energy and Petroleum to ensure that their backup is not in real time. Otherwise, when cybercrime interferes with their system, everything will be wiped out and Kenya will be in trouble.

**The Temporary Deputy Chairman** (Hon. Cheboi): I give the Floor to Hon. Nakara.

**Hon. Nakara:** Thank you, Hon. Temporary Deputy Chairman. Last week, we passed a Bill here to make information accessible to the public. By having the database in the data centre, you will have electronic and catalogue information. A person who is settled within the locality can access any information. So, we better have the database within the centre.

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

**Hon. Nakara:** I oppose.

**The Temporary Deputy Chairman** (Hon. Cheboi): Lastly on that, let us have the Member for Marakwet East. I have given a chance to two members to the left of the Temporary Deputy Chairman. I will give two members on the right a chance. I will consider the Committee Chairman.

**Hon. Bowen:** Thank you, Hon. Temporary Deputy Chairman. I support Hon. Musimba. The reason is that the Information and Communication Technology Authority and the Communications Authority (CA) set up a data centre purposely for Government information. What we are saying is that this institution can also be accommodated there on a virtual data centre in such a way that its information is separate from other information. They will have encryption and their own code which can be accessed locally and internationally. There is no need to have another data centre when we have one which is funded by Government with a lot of money.

**The Temporary Deputy Chairman** (Hon. Cheboi): The last one is the Chair of the Committee and then we will make a decision on it.

**Hon. Kamau:** Thank you very much, Hon. Temporary Deputy Chairman. I really want to pursue this matter with my colleague, Hon. Musimba. The fact that the CA has a data centre does not mean that the CA can handle issues to do with petroleum. That is why it is important to create this data centre within the petroleum industry which will deal specifically with the management of petroleum data and information from sedimentary basins and field operations. It is important for Hon. Musimba to agree so that we move faster. It is a small unit within the petroleum industry specifically for that purpose. I urge my good friend, Hon. Musimba, to withdraw that. I am sure he is going to do that.

**The Temporary Deputy Chairman** (Hon. Cheboi): I see he is shaking his head in the negative. So, we will proceed and put the Question.

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

*(Clause 37 agreed to)*

*(Clauses 38, 39, 40, 41 and 42 agreed to)*

*Clause 43*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us hear the Chair of the Committee.

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

THAT, Clause 43 of the Bill be amended in Sub-clause (4) by deleting the words “of not less than ten million shillings or to a term of imprisonment of not less than two years or both” and substituting thereof the words “not exceeding twenty million shillings or to imprisonment for a term not exceeding ten years or to both”.

The reason for the amendment is to align the provision of the sentencing guidelines. This particular clause deals with the oil blocks, somebody who engages in upstream petroleum operations without the licensing and the subsequent penalty for that. A fine of not less than Kshs10 million is ambiguous. It can be anything upward of that figure. Therefore, we want to delete it.

*(Question of the amendment proposed)*

**Hon. (Ms.) Sunjeev:** On a point of order, Hon. Temporary Deputy Chairman.

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

**Hon. (Ms.) Sunjeev:** Thank you, Hon. Temporary Deputy Chairman. I would like a bit of clarification from Hon. Jamleck. Clause 43 talks about “not less than Kshs10 million”. We are deleting that and replacing it with “not exceeding Kshs20 million”. It gives discretion to the judge to make a decision between Kshs10 million and Kshs20 million, but it does not make much of a difference. Can I have more explanation from the Chair?

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. As the Chair prepares to give you some explanation, I will give opportunity to two Members, starting with Hon. Tim Wanyonyi, if he is interested to speak to this amendment.

**Hon. Wetangula:** Hon. Temporary Deputy Chairman, I want to support the Chair’s position. He is actually removing ambiguity because “not less than” and “not exceeding” are two different things. In legal terminology, “not exceeding” is better than “not less than”. When you say “not less than”, you give a lot of discretion to the courts to award even much lesser sentence. So, I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the Chair this opportunity to clarify in brief.

**Hon. Kamau:** Hon. Temporary Deputy Chairman, the provision in the Bill talks about a fine “not less than Kshs10 million”. We are not talking about small people, but we are talking about big corporations like Tullow Oil who are now doing exploration. If somebody goes to explore without a licence from the Government, what this Bill is saying is that they should be charged a fine of not less than Kshs10 million, which can be Kshs1 billion or Kshs50 billion. We now want to put a curb of not more than Kshs20 million. That is the essence of the amendment.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I hear a lot of murmurs from both sides. I will give you the opportunity to make a decision.

What is it, Hon. Nyikal?

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairman, this amendment is protecting culprits. If you say “not exceeding”, the fine can be as low as Kshs5, but if you say “not less than Kshs10 million” then you are sure that at worst it will be Kshs10 million.

I think the original provision is better. I oppose this amendment vehemently. I have been listening to this and since my opinion about economic crimes is known, I would have gone for something bigger. So, I oppose.

**The Temporary Deputy Chairman** (Hon. Cheboi): Your opposition will be recorded in terms of how you vote.

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

*(Clause 43 agreed to)*

That is why it is important for Members to pursue whatever decision they make. The meaning of that is the amendment is taken. That is the position. It is gone. It is only one Member who actually said “Aye”. It is not the business of the Chair to explain every bit. Members are now three-and-a-half years into their term. Therefore, I will basically be guided by the way you vote. We will proceed to the next clause. The amendment to that clause has failed. Let us proceed.

*Clause 44*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us hear the Chair.

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

THAT, Clause 44 of the Bill be amended in Sub-clause (2) by deleting the word “contract” and substituting therefor the words “petroleum agreement”.

The word “contract” is part and parcel of the petroleum agreement. We simply want to delete that and replace it with the words “petroleum agreement”.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give opportunity to two Members. We will start with the Member for Kiminini and then the Member for Turkana Central, in that order.

**Hon. Wakhungu:** Hon. Temporary Deputy Chairman, I do not want to speak to this amendment.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Yes, Hon. Nakara.

**Hon. Nakara:** Hon. Temporary Deputy Chairman, as it has been explained by the Chairperson, this amendment will protect the Government. We better maintain the contract than the agreement. The contract is more binding than the agreement.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): That is why Members, especially Committee members, must be keen.

*(Clause 44 agreed to)*

There is an issue on which Members will have to consult better and make decisions appropriately.

*Clause 45*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have Hon. Emanikor on this amendment.

Please proceed.

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

THAT, Clause 45 of the Bill be amended by deleting sub-clause (3).

This is a very serious amendment. As it is, the clause allows the Cabinet Secretary (CS) to execute an agreement on petroleum. That is the case when there are no bids or when the received bids do not meet the minimum requirements for a petroleum agreement. It is also the case when there is insufficient data in relation to a block. This is a recipe for corruption and manipulation. Giving sole discretion to the CS is too much. It is open to abuse and manipulation. It negates the principle of consultation and participation.

I propose that, that sub-clause be deleted.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give chance to two Members to speak on this amendment, starting with Hon. Moroto. Do you want to speak to this amendment?

**Hon. Chumel:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment proposed by the Member for Turkana County. This is something that can help. The issue she has raised cuts across the board. It is not for a small area. It also covers a bigger area.

I support the amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us hear the Member for Balambala Constituency.

**Hon. Aden:** Thank you, Hon. Temporary Deputy Chairman. I stand to support Hon. Joyce Emanikor's amendments. Indeed, the absolute power being given to the CS through that sub-clause is not in line with the spirit and the intent of the current Constitution. There is no way we can give the CS a freehand to make those decisions alone. If not checked, those powers are bound to be abused.

I very much agree with Hon. Joyce. I support the amendment and urge my colleagues to do the same.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to the Chairman of the Departmental Committee on Energy, Communication and Information. Let us hear what they have to say.

**Hon. Kamau:** Thank you, Hon. Temporary Deputy Speaker. The concern of the amendment is taken care of, especially sub-section 3. If Members go through the Bill, they will note that Clause 45(3) says:-

“Despite sub-section (2), the Cabinet Secretary may execute a petroleum agreement with a contractor after direct negotiations with that contractor on the recommendations of the Advisory Committee-

- (a) where no bids have been received during the bidding round;
- (b) where the bids that have been received do not satisfy the minimum criteria for the execution of a petroleum agreement; or,
- (c) where there is insufficient data in relation to a block.”

This comes in due to cases of no bids. Whoever wants to come for petroleum contracts should be allowed to negotiate with the CS.

**The Temporary Deputy Chairman** (Hon. Cheboi): Are you opposing or supporting Hon. Emanikor?

**Hon. Kamau:** No, I am not supporting. I am pleading that we drop that amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): There are only two things you can do at this point, you either oppose or support.

**Hon. Kamau:** I am opposing.

**The Temporary Deputy Chairman** (Hon. Cheboi): I want to see Hon. Lessonet. I have gone out of my way to accommodate him severally this afternoon.

**Hon. Lessonet:** Thank you, Hon. Temporary Deputy Chairman. I stand to support the position of the Committee. This sub-section is very necessary. I am opposing Hon. Emanikor for exactly the reason that the Chairman of the Committee has given. This sub-clause is necessary where there is no response on bids, or where the bids do not meet the minimum requirements.

Therefore, I oppose the amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): We will leave it there, unless Hon. Emanikor wants to say something. If she does not, we will put it to vote.

When the Leader of the Majority Party wants to speak, our Standing Orders ask us to give him an opportunity. That is what we do. As we give a chance to the Leader of the Majority Party, we will also give an opportunity to the Leader of the Minority Party.

*(Hon. Wakhungu gestured to the Temporary Deputy Chairman)*

Obviously, the Leader of the Minority Party is not Hon. (Dr.) Wamalwa.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, Hon. Wamalwa is the Deputy Whip of the Minority Party. The Leader of the Minority Party is Hon. Nyenze, who is not in the Chamber.

Hon. Musimba is a good friend of mine, but he is just leaving.

*(Hon. Musimba walked back into the Chamber)*

That means he has accepted.

What we are saying is on the discretion of the Cabinet Secretary. It is when there is insufficient data in relation to a particular block – where bids have not been received or the received bids do not satisfy certain minimum criteria for execution. Clause 45(4) says:-

“Where the Cabinet Secretary intends to negotiate directly with a contractor in accordance with this section, the Cabinet Secretary shall publish a notice of thirty days in the Gazette and in, at least, two newspapers of national circulation.”

There is enough transparency and accountability. Local people and active Members of Parliament like Hon. Lomenen, I and others will receive invitations to give our opinions. Those minerals are mainly found in pastoralists’ areas. We are not people who sleep. We are serious guys. If the CS has been given 30 days to gazette the matter and publish it in two daily newspapers by the Advisory Committee, it will not escape us. That is enough check.

Hon. Musimba, you are a serious guy. We cannot delete this sub-section.

**Hon. Musimba:** It is not my amendment. It belongs to Hon. Emanikor.

**Hon. A.B. Duale:** It is by Hon. Emanikor! She is one of the top ladies from the pastoralist community that we have in this House. As the leader of pastoralists, I beg you to drop your amendment to this clause.

**The Temporary Deputy Chairman (Hon. Cheboi):** The Leader of the Majority Party uses so many avenues to convince Members to change positions.

I am giving a chance to Hon. Wamalwa. It is not as per the Standing Orders, but in his own right. I have not been informed that he is standing in for the Leader of the Minority Party. I am giving you a leeway to convince yourself.

**Hon. Wakhungu:** Hon. Temporary Deputy Chairman, I was initially convinced by Hon. Emanikor but after the Chairman has explained the matter to us, I realised that this will only apply in cases where we have insufficient data. In fact, the word being used is “may”. With those conditions in place, it qualifies that the CS can have that leeway.

I oppose Hon. Emanikor and support what the Chairman of the Committee has said.

Thank you.

**The Temporary Deputy Chairman (Hon. Cheboi):** Hon. Members, make your decision. I will not give any more chances. I know the Chairman wants to speak to it. However, Members have spoken to each other amply.

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

*(Several Hon. Members stood up in their places)*

Hon. Members, I will take a count. Can you kindly confirm your number, please?

*(Hon. Wamalwa and Hon. Wangamati walked into the Chamber)*

Hon. Wamalwa and that senior Member of Parliament, are you walking or standing?

Those of you standing for a division are only 15. Your quest is, therefore, not carried. Unfortunately, the numbers do not meet the threshold. We will have to proceed. The request to have a division fails on its face.

*(Clause 45 agreed to)*

*(Clauses 46, 47 and 48 agreed to)*

*Clause 49*

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

THAT, Clause 49 of the Bill be amended in sub-clause (6) by deleting the words “of not less than ten million or to a term of imprisonment of not less than ten years or both” and substituting therefor the words “not exceeding ten million shillings or to imprisonment for a term not exceeding ten years or to both”.

This is to align the provisions with the sentencing guidelines by setting the ceiling for the penalties.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I see quite a number of Members who have put in requests. I will start with Hon. Gumbo. Do you want to speak to this one?

**Hon. (Eng.) Gumbo:** No.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. (Prof.) Nyikal!

**Hon. (Prof.) Nyikal:** I stand to oppose this amendment. These amendments of “not exceeding” are protecting culprits. If you say “not exceeding,” it can be as low as one shilling. But if you say “not less than,” at least you are sure that there will be some sentencing.

I oppose.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the next opportunity to Hon. Nicholas Ngikor.

**Hon. Ngikor:** Hon. Temporary Deputy Chairman, I agree with Hon. Nyikal. If we go the route of saying “not more than”, we will be protecting the Government because we are now dealing with the maximum and leaving out the minimum.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let me have the Chairman and I will put the Question. We are already exceeding the two Members we have been giving time to speak all the time.

**Hon. Kamau:** Hon. Temporary Deputy Chairman, I want to plead with my colleagues here. Until we understand the mechanisms of this thing, we may not appreciate very well. What



we have right now is the law that is prescribing the minimum fine of Kshs10 million for a big multi-billion corporation. If you prescribe a minimum of Kshs10 million in the law, when those people are taken to court for violation of the same law, the courts will have authority to charge them any amount, for example, Kshs1 billion or Kshs2 billion. In this culture today as we speak, that is how we will encourage more graft in this country. But when we talk about a fine which is not exceeding this amount of money, then the courts will be limited. In essence, we will be transferring many problems and decision-making to the courts and give them unlimited jurisdiction with respect to the much they want to charge. That is not good for this country.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, we will proceed. There is something that is not coming out clearly as far as I am concerned. Let me have Hon. Mwaura and then I will proceed to put the Question.

**Hon. Mwaura:** Thank you, Hon. Temporary Deputy Chairman. I stand to oppose this amendment. You need to ensure that the courts have the latitude to determine what would amount to proper fines for whatever offence committed and, of course, proper sentences. When you limit, as years go by, you will find that some of these figures will reduce in value and the laws become obsolete. This will allow a lot of offences to be committed. I oppose.

**The Temporary Deputy Chairman** (Hon. Cheboi): Excuse me for a minute. Let me consult.

*(Hon. Temporary Deputy Chairman consulted with Hon. Kamau)*

Order, Hon. Members! I am giving Members some two minutes to consult because we need clarity on this clause.

*(Hon. Members consulted)*

Order, Hon. Members! We will now proceed. I do not think you are making any headway. So, you will make a decision. Resume your seats now. Listen carefully so that you make the decision properly.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): I am not giving anybody an opportunity to speak, Hon. Gumbo. We will proceed and make the decision.

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

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

**Hon. Kamau:** Hon. Temporary Deputy Chairman, after consultations with my colleagues here, I want to drop that amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Jamleck, you are actually withdrawing it. Be on record as withdrawing it.

**Hon. Kamau:** Hon. Temporary Deputy Chairman, I want to withdraw this.

**The Temporary Deputy Chairman** (Hon. Cheboi): That one is withdrawn.

*(Proposed amendment by Hon. Kamau withdrawn)*

*(Clause 49 agreed to)*

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon. Cheboi): I cannot understand you, Hon. Nyikal. You are the greatest proponent of that one. For me to hear it from your end, it is---

*(Clause 50 agreed to)*

*Clause 51*

**Hon. Kamau:** Hon. Temporary Deputy Chairman, I also want to withdraw this clause.

**The Temporary Deputy Chairman** (Hon. Cheboi): That one is withdrawn.

*(Proposed amendment by Hon. Kamau withdrawn)*

*(Clause 51 agreed to)*

*(Clauses 52 and 53 agreed to)*

*Clause 54*

**Hon. Kamau:** Hon. Temporary Deputy Chairman, on the basis of the same agreement made with my colleagues, I withdraw the amendment.

*(Proposed amendment by Hon. Kamau withdrawn)*

*(Clause 54 agreed to)*

*Clause 55*

**Hon. Kamau:** Hon. Temporary Deputy Chairman, I withdraw the amendment.

*(Proposed amendment by Hon. Kamau withdrawn)*

*(Clause 55 agreed to)*

*(Clause 56 agreed to)*

*Clause 57*

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

THAT, Clause 57 of the Bill be amended—

(a) in sub-clause (3) by deleting the words “which shall advise the Cabinet Secretary for approval” and substituting therefor the words “in accordance with the petroleum agreement”;

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

“(3A) The Authority shall advise the Cabinet Secretary before approval of the field development plan”.

This amendment seeks to create clarity by re-drafting the clause and separating the idea of submission of the field development plans by a contracting authority, in accordance with the petroleum agreement. It also states that the authority shall advise the Cabinet Secretary before approval of the field development plans.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give an opportunity to two Members to contribute. I will start with Hon. Kour Birdi.

**Hon. (Ms.) Sunjeev:** Thank you, Hon. Temporary Deputy Chairman. I had an intervention. I seek clarification from the Chair. Had we not just agreed that the term of use shall be “petroleum contract” and not “petroleum agreement”? In that case, the amendment should read: “in accordance with the petroleum contract”?

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have Hon. Gumbo from this other side. Hon. Gumbo is not there. Let us have Hon. Wanyonyi.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Chairman, this amendment is important. The initial clause created ambiguity. This one shows that the Cabinet Secretary will be bound by the advice of the Authority. It is an important amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): There was one clarification sought by Hon. Birdi on the issue of the use of the words “contract” and “agreement”.

**Hon. Kamau:** Hon. Temporary Deputy Chairman, we intend to amend Clause 57(3). Currently, it says:

“The field development plan shall be submitted by the contractor to the Authority for review, and which shall advise the Cabinet Secretary for approval.”

We want to delete the words “which shall advise the Cabinet Secretary for approval” and substitute therefor the words “in accordance with the petroleum agreement”. That covers what she is talking about.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us proceed and dispense with that 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)*

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

*(Clause 57 as amended agreed to)*

Clause 58

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

THAT, Clause 58 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “upon a declaration of commerciality by the contractor, and the submission adoption and approval of the Field Development Plan, submit to Parliament the Field Development Plan for ratification” and substituting therefor the words “within thirty days of receipt of production sharing contract submit to Parliament for ratification all production sharing contracts entered into pursuant to this Act and regulations made under this Act”;

(b) in sub-clause (2) —

(i) by deleting the words “the Field Development Plan” appearing immediately after the words “receipt of” in the opening paragraph and substituting therefor the words “the production sharing contract”;

(ii) in paragraph (a) by deleting the words “Field Development Plan” and substituting therefore the words “ production sharing contract”;

(iii) in paragraph (b) by deleting the words “Field Development Plan” and substituting therefore the words “production sharing contract”; and,

(c) in sub-clause (4) by deleting the words “Field Development Plan” and substituting therefor the words “ production sharing contract”.

This is, perhaps, the most controversial clause. It would be very good if Members paid attention to this. This clause seeks to provide that all production sharing contracts be ratified by Parliament, in accordance with Article 71 of the Constitution. The amendment also seeks to delete the words “Field Development Plan” and substitute them with the words “production sharing contract.”

The current Bill provides that the field development plans are supposed to come to the House for ratification. There is a difference between the field development plan and the production sharing agreement. The production sharing agreement is the stage where the Ministry gets into an agreement with a contractor. That is where the sharing between the Government and the contractor comes in. That is the point when the production sharing agreement should come to Parliament for ratification. I hope that it is now clear to the Members. That will be the best way to go.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give chances to Hon. Lomenen and Hon. Gumbo. Let us start with Hon. Gumbo and then we will go to Hon. Lomenen.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, while I agree with the Chair of the Committee, this is a very important clause. I request that we amend it part by part. We should start with part (a) then (b) and (c). In my view, the Chair has only talked on part (a). I would have requested your indulgence so that we amend the clause in that order, if the Chair is in agreement.

**The Temporary Deputy Chairman** (Hon. Cheboi): Why do we not allow the Chair to explain better and then we make a decision as to whether we have issues with specific sub-clauses? You have just requested that you be given an opportunity to vote sub-clause by sub-

clause. You are not saying which part you are opposing or supporting, which will be made clearer if we were to go sub-clause by sub-clause.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I request your indulgence to allow the Committee Chair to decide the sequence in which he would like us to amend this clause before you give me a substantive opportunity to speak.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to Hon. Jamleck to explain the amendments, sub-clause by sub-clause, to see if there are any contentious bits. We will then put the Question to specific ones.

**Hon. Kamau:** Thank you very much, Hon. Temporary Deputy Chairman. I would like to start with sub-clause (1).

Clause 58 (1) says:-

“Pursuant to Article 71 of the Constitution, the Cabinet Secretary shall, upon a declaration of commerciality by the contractor, and the submission adoption and approval of the Field Development Plan, submit to Parliament the Field Development Plan for ratification.”

We want to delete the words “upon a declaration of commerciality by the contractor, and the submission adoption and approval of the Field Development Plan, submit to Parliament the Field Development Plan for ratification” and substitute therefore the words “within thirty days of receipt of production sharing contract submit to Parliament for ratification all production sharing contracts entered into pursuant to this Act and regulations made under this Act.”

Clause 58 (1) will then read: “Pursuant to Article 71 of the Constitution, the Cabinet Secretary shall, within thirty days of receipt of a production sharing contract, submit to Parliament for ratification all production sharing contracts entered into pursuant to this Act and regulations made under this Act.” That is the amendment to sub-clause (1).

In sub-clause (2), we intend to delete the words “the Field Development Plan”. Clause 58 (2) says:-

“Parliament shall, within sixty days after receipt of the Field Development Plan –”

We do not want “the Field Development Plan”; we want “the production sharing agreement”. That is the second amendment.

Paragraph (a) says that Parliament shall ratify the Field Development Plan. Instead of ratifying that plan, we now want to ratify the production sharing contract. In paragraph (a) again, we want to delete the words “Field Development Plan”. That is to say that Parliament, within 60 days after receipt of the Field Development Plan, shall refuse to ratify and refer the Field Development Plan back to the Cabinet Secretary for reconsideration. We want to say the production sharing agreement is marked to the Cabinet Secretary.

Hon. Temporary Deputy Chairman, we are substituting the words “Field Development Plan” with the words “production sharing contract”. In essence, for clarity, the field development plan comes long after the production sharing agreement has been signed and commercial basis found. That is when the plan of how that field is going to be developed comes in. This Bill provides that, that is the particular time that the plan should come to Parliament. We thought that, that is way long after because that will not change the production sharing agreement which details the agreements and the sharing ratios between the Government and the contractor. That is why we thought it is important to have the production sharing agreement brought for ratification.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay, that clarifies. So, we will proceed with Hon. Lomenen and then I will give one more Member.

**Hon. Ekomwa:** Hon. Temporary Deputy Chairman, I support the amendment but, there is something I want to inform Members. A field development plan is supposed to be a sub-set of the production sharing contract. Why? What happens in the field if we do not see either the Cabinet Secretary or the committee? If we do not actually analyse the field development plan which has the cost implication, it can be an exaggeration. For example, if Tullow Oil brings their plans and they have exaggerated them, that cost will be recovered by the Government. So, it has to be assessed to see whether it is cost-effective.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay, let us have Hon. Gumbo.

**Hon. (Eng.) Gumbo:** This is important, Hon. Temporary Deputy Chairman. Production sharing contracts are so important because they are the game-changers. If we cannot get it right so that we bring it to the representatives of the people to approve them, we would have got it wrong from the beginning and that is when petroleum becomes a curse instead of a blessing. Therefore, I support the amendment by the Chair.

*(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 58 as amended agreed to)*

*(Clauses 59, 60 and 61 agreed to)*

#### Clause 62

**Hon. Kamau:** Hon. Temporary Deputy Chairman, Clause 62 talks about the provisions of the sentencing guidelines. I want to, again, withdraw that amendment.

*(Proposed amendment by Hon. Kamau withdrawn)*

*(Clause 62 agreed to)*

#### Clause 63

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

THAT, Clause 63 of the Bill be amended in sub-clause (1) by deleting the word "two" appearing immediately after the words "Cabinet Secretary within" and substituting therefor the word "seven".

The reason for this amendment is to increase the period within which a contractor is supposed to inform the Cabinet Secretary if he or she discovers petroleum or any other resource beyond the area the contractor is authorised to conduct. In this Bill, the contractor is given two

days to inform the Cabinet Secretary in case of any discovery. We want to increase the two days to seven days because two days are very few.

That is the import of the amendment.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give two Members. We will start with Hon. Ogalo, Member for Rangwe.

**Hon. Ogalo:** Hon. Temporary Deputy Chairman, I do not have a problem with the proposal by the Chair. In this day and age, what would stop any contractor anywhere in Kenya from notifying the Cabinet Secretary that they have discovered oil? Why do you need seven days? I do not have a problem with it but I do not know the merit why you want to give it seven days if the proposers of the Bill intended two days.

I will not disagree with you. I will support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us use the right terms. “Not disagreeing” will not be used. You either support or you do not.

**Hon. Ogalo:** I support, subject to him giving the rationale.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay, I hear you. Member for Bonchari, Hon. Opore.

**Hon. Opore:** Hon. Temporary Deputy Chairman, I support the amendment. Two days is too short a time. For example, it may happen on a Saturday and you need to report this on a working day.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Having saved time on it, I can give Hon. Ngikor Nicholas.

**Hon. Ngikor:** I support.

*(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 63 as amended agreed to)*

*(Clauses 64, 65, 66, 67, 68 and 69 agreed to)*

*Clause 70*

**Hon. Kamau:** Hon. Temporary Deputy Chairman, again, in the spirit of understanding amongst Members, I withdraw Clause 70 which talks about the sentencing guidelines.

*(Proposed amendment by Hon. Kamau withdrawn)*

*(Clause 70 agreed to)*

(Clauses 71, 72, 73, 74, 75, 76, 77, 78, 79,  
80, 81, 82, 83 and 84 agreed to)

*Clause 85*

**The Temporary Deputy Chairman (Hon. Cheboi):** On this one, we have two proposals for amendment. Hon. Joyce Emanikor will start and Hon. Mwaita will follow. Can we start with Hon. Emanikor, Member for Turkana?

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

THAT, Clause 85 be amended—

(c) in sub-clause (2) by deleting the proviso;

(d) in sub-clause (4)—

(i) by deleting the words “ five percent” appearing immediately after the words “equivalent to” and substituting therefor the words “ten percent”;

(ii) by deleting the proviso;

This is to delete the proviso that is given there provided that the amount allocated in accordance to this sub-section shall not exceed twice the amount allocated to the county government by the National Assembly in the financial year under consideration. The reason why I want the proviso deleted is this: Supposing the accrued revenue is enormous and in trillions, are we going to limit the county share just because the allocation from the Kenya National Assembly is lower? That will be unfair.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman (Hon. Cheboi):** I will give two Members. I will give the Committee an opportunity, but let me see whom I should give to my left. Let me start with the Chair and then come to Hon. Gumbo.

**Hon. Kamau:** Hon. Temporary Deputy Chairman, I oppose this one. The import of this clause and especially the amendment will be far reaching. First, the current provision states:

“The local community’s share shall be equivalent to five per cent of the Government’s share and shall be payable to a trust fund managed by a board of trustees established by the county government in consultation with the local community.

The amendment seeks to increase this from five to ten per cent.

Secondly, the amendment intends to remove the proviso that the amount allocated ---

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

**Hon. (Ms.) Emanikor:** We are not in Sub-clause 4; we are still in Sub-clause 2 where we are deleting the proviso. Are they connected?

**The Temporary Deputy Chairman (Hon. Cheboi):** No! We are dealing with both. So, if you did not give a good explanation on it, that is why Members are beginning to speak to both of them at the same time. Provided that the amount allocated under subsection (4) above shall not exceed one quarter of the amount due to the County Government in the financial year under consideration.



**Hon. Kamau:** Hon. Temporary Deputy Chairman, the second one seeks to remove the proviso that:

“Provided that the amount allocated under Subsection (4) shall not exceed one quarter of the amount due to the county government in the financial year under consideration.”

The problem is that if you take ten per cent of the revenue from oil and give it to one local community, that amount is way too much. We must come up with an agreement. We have talked about this for a long time. It is something that we have tried to reason out. Moving from five to ten per cent of the share to within a local community will be setting a very bad precedent and I oppose this.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. I will give Hon. Gumbo.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, Hon. Emanikor is my good friend but I am not quite convinced that she has explained the import of her amendment clearly. This is because as is provided in the Bill, I personally do not see anything wrong with it and I would reluctantly oppose her amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the Member for West Pokot. Hon. Nyeris and that will be it Hon. Members, the rest we will make a decision. We ordinarily give two Members.

**Hon. (Ms.) Changarok:** I support what Hon. Joyce Emanikor has explained on that Bill. I have understood what she has explained and it is important that, that cause be the way she has explained.

I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let me give Hon. Lomenen and that will be it. Hon. Members, it is proper that way.

**Hon. Ekomwa:** Thank you, Hon. Temporary Deputy Chairman for this opportunity. I think this is why I am in this Parliament and I support this amendment.

First, those provisions are ambiguous. We are only saying ten per cent of the revenue collected from the oil and not what has been discovered from the whole nation. So, it has no connection.

Secondly, people should understand that oil is not only found in Turkana. It is in almost every part of Kenya. So, the rules you are putting here will solve our problems. Those who say that the ten per cent to the community is too much ought to understand that those communities have been marginalised for so long. They have been having too many problems and we have not pitied them. This is their only time that is God given and they must get that opportunity. There is no other time. People must understand that there is rampant corruption. The money that we are getting--- We do not trust whether whatever will remain in the national Government will reach that community. We do not trust whether whatever will go to the county will reach the community. We are here representing the community as Members of Parliament (MP) and we trust the ten per cent or whatever is given to the community. That is why we are here and so we support that amendment.

*(Applause)*

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

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

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Order! We still have Hon. Mwaita's amendment. Sorry Hon. Members, we are moving too fast. Let us have the Member for Baringo Central.

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

THAT, clause 85 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) —

“(4A) The registered owner of a freehold land on whose land a petroleum resource is located, shall be entitled to a one-off payment equivalent to one percent of the local community's share under Sub-Section (4).

This is what we have just passed as a House as ten per cent. So, the import of this is that where petroleum has been located, the normal law is that you acquire that parcel of land through compulsory acquisition and pay that person the market rate and chase him away. Then the neighbouring members who are neighbouring that person whose land has been acquired will continue benefitting as part of the community share. So, I am proposing a one-off payment for that person who will be kicked out of their land forever and for life.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will start with the Chair of the Committee.

**Hon. Kamau:** Hon. Temporary Deputy Chairman, I oppose this amendment by Hon. Mwaita for obvious reasons. If we agree that the owner of the land where we have gotten oil will get one percent of the proceeds, then we will be making billionaires overnight and people will start fighting over land. Therefore, there is nothing wrong with becoming a billionaire overnight, but it is wrong when people even start prospecting for that land when they think there is oil and start killing each other for nothing. I strongly oppose this amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I will give the last one on this. That would be Hon. Ogalo on my left. There seems to be less interest on this other side. So, I have to look out for names.

**Hon. Ogalo:** Hon. Temporary Deputy Chairman, I want to oppose this amendment vehemently. If you own land you should be compensated for the value of the land. The minerals or anything found in your land is described in the Constitution as public land. It is owned by the State. Kenya owns any minerals in any land. If you own land, you will be compensated for the piece of land. You cannot be compensated for the minerals in the land. This amendment will be unconstitutional. I indulge you. If you allow this amendment to be voted for and carried, we will be engaging in something that is contrary to the Constitution. The Constitution already defines public land to also include minerals and oil deposits.

**The Temporary Deputy Chairman** (Hon. Cheboi): Those are two differing voices from the same Committee. I thought Hon. Mwaita is also in that Committee. Let us have the Member for Dagoretti South.

**Hon. Waweru:** Thank you, Hon. Temporary Deputy Chairman. As we pass laws, it is good for us to be a bit more sober on the implications, especially on how much we attract investment flows for both exploration and eventual distribution.

We have to be very careful for that business to make economic sense. I want to support the Member of Parliament who has said that there is no point of passing laws here which are unconstitutional. On the basis of those two facts, it makes business sense for somebody to bring his money and resources to invest in that sector that dearly deserves.

We are in need of inflows to come into our country because even if we have resources down there, we still need to attract investors to accrue any benefits from those resources. It is important for us as a House, as we pass laws, to try and balance so that we do not discourage the inflows of investment and abide by the Constitution.

Thank you, Hon. Temporary Deputy Chairman, I oppose.

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

*(Clause 85 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, before I proceed to Clause 86, it is important that I explain. For clarity purposes, in Clause 85, what we have just placed is that Hon. Emanikor's amendment is carried, but that of Hon. Mwaita is not. Let me proceed to Clause 86.

*(Clause 86 agreed to)*

*Clause 87*

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

**Hon. Kamau:** Hon. Temporary Deputy Chairman, I wish to withdraw this amendment. It talks about sentencing guidelines.

*(Proposed amendment by Hon. Kamau withdrawn)*

*(Clauses 87 and 88 agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Who has placed a request here? Is it Hon. Mwaita? Let us proceed to the next one.

*Clause 89*

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

**Hon. Kamau:** Hon. Temporary Deputy Chairman, I rise to withdraw this amendment, for similar reasons.

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, it is withdrawn.

*(Proposed amendment by Hon. Kamau withdrawn)*

*(Clause 89 agreed to)*

*(Clauses 90, 91, 92, 93, 94, 95, 96, 97, 98, 99,  
100, 101, 102, 103, 104, 105, 106, 107,  
108, 109, 110, 111 and 112 agreed to)*

*Clause 113*

**Hon. Kamau:** Hon. Temporary Deputy Chairman, The amendment is to align the provision of sentencing guidelines and I withdraw it.

**The Temporary Deputy Chairman** (Hon. Cheboi): It is withdrawn.

*(Proposed amendment by Hon. Kamau withdrawn)*

*(Clause 113 agreed to)*

*(Clauses 114, 115, 116, 117, 118, 119 and 120 agreed to)*

*(First Schedule agreed to)*

*(Second Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

*Clause 2*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kamau, you have an amendment to this one.

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

THAT, clause 2 of the Bill be amended—

(a) by deleting the definition of the term “petroleum agreement” and substituting therefor the following new definition—

“petroleum agreement” means any agreement, license, contract or other arrangement between the Government and a contractor to conduct upstream petroleum operations in accordance with the provisions of this Act, and may include —

(a) production sharing contracts;

(b) concession agreements; and,

(c) service contracts;

(b) by inserting the following new definitions in proper alphabetical sequence—

“commercial field” means a geological structure or feature which hosts one or more reservoirs from which petroleum production may be commercially undertaken through a defined set of facilities”;

“common user facility” means petroleum infrastructure owned and maintained by any person which may be used by third parties”;

“community land” has the meaning assigned to it under Article 63 of the Constitution;

“compulsory acquisition” has the same meaning as assigned to it under the Land Act, 2012;

“contract area” means a block in respect of which a contractor has entered into a petroleum agreement with the Government to conduct upstream petroleum operations;

“private land” has the meaning assigned to it under Article 64 of the Constitution;

“public land” has the meaning assigned to it under Article 62 of the Constitution;

“unitization agreement” means an agreement between contractors, who hold separate petroleum agreements on blocks that are adjacent or contiguous to each other for purposes of joint development or production of petroleum from a field straddling two or more different contract areas”

This is to simply amend the definitions and to remove ambiguity of definitions used in the Bill. The clause also introduces new definitions for terms to create clarity. There are quite a number of definitions in the Order Paper.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Nyikal was consulting and, therefore, distracted my concentration from your proceedings. For clarity purposes, let me hear you again, so that I make the right decision. This is because I am seeing something else here on the Table.

**Hon. Kamau:** Hon. Temporary Deputy Chairman, the reasons for the amendment are to give definitions, remove ambiguities and realign definitions as used in the Bill. The Clause introduces some new definitions for terms for clarity. In Clause 2(a), I have a further amendment. Please, advise me what time to bring it.

**The Temporary Deputy Chairman** (Hon. Cheboi): If you have a further amendment, the best way to do this is for us to dispose of the further amendment first then we can come to this one.

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

THAT, Clause 2 of the Bill be further amended —

(a) by deleting the definition of the term “petroleum agreement” and substituting therefor the following new definition—

“petroleum agreement” means any agreement, licence, contract or other arrangement between the Government and a contractor to conduct

upstream petroleum operations in accordance with the provisions of this Act.”

Hon. Temporary Deputy Chairman, Hon. Members will realise that this further amendment omits all the words that come after the word “Act” in the original part (a) of the Departmental Committee’s amendment to Clause (2). We basically want the definition of “petroleum agreement” to mean “any agreement, licence, contract or other arrangements between the Government and a contractor to conduct upstream petroleum operations in accordance to the provisions of this Act.”

We have left out the section of the original amendment that went on to say “and may include –

- (a) production sharing contracts;
- (b) concession agreements; and
- (c) service contracts.”

**The Temporary Deputy Chairman** (Hon. Cheboi): Just give us a minute to consult and see how to go about it. You are trying to further amend something which has not yet been amended. There would be a problem. The better way is for us to, first, amend the original amendment and then we can further amend it. Let us dispose of the original amendment first.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give an opportunity to two Members, starting with Hon. Janet Wanyama, to comment on the proposed amendment.

**Hon. (Ms.) Wanyama:** Hon. Temporary Deputy Chairman, the Departmental Committee Chair has clearly explained the meanings of the various proposed definitions.

I support him.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let me dispose of this amendment, since it is fairly straightforward.

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

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

**The Temporary Deputy Chairman** (Hon. Cheboi): Departmental Committee Chairman, let us now look at your further amendment. You are now going to amend what has already been amended.

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

THAT, Clause 2 of the Bill be further amended by deleting the definitions “compulsory acquisition” and “contact area”, and deleting the words “and may include production sharing contracts, concession agreement and service contracts” appearing immediately after the words “provisions of this Act” in the proposed new definition of “petroleum agreements”

The purpose of this amendment is to be clear. “Production sharing contract” is different from “concession agreement” and “service contract”. In Kenya, we are currently only doing production sharing contracts such that if there will be need for concession agreements and service contracts to be done by the Government in future, the Executive will have to bring to Parliament Bills for enactment of new laws to allow for concession agreements and service contracts.

Thank you.

*(Question of the further amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to the Members for Turkana and Marakwet West.

**Hon. (Ms.) Chebet:** Thank you, Hon. Temporary Deputy Chairman. I rise to support the amendment, which is quite in order.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Yes, Hon. Kisang.

**Hon. Kisang:** Hon. Temporary Deputy Chairman, I also rise to support the amendment because the Departmental Committee Chairman is trying to ensure that there is clarity in the law that we are making. He is trying to ensure that it is not ambiguous, as was case in the past.

I support.

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

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. Kamau:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Petroleum (Exploration, Development and Production) Bill, (National Assembly Bill No. 44 of 2015) and its approval thereof with amendments.

*(Question proposed)*

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Speaker, I want a re-committal of Clause 43 which I do not think will be a problem because the same principle had been earlier applied on all the other clauses.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. (Prof.) Nyikal, you are jumping the gun. You will have your opportunity.

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT AND THIRD READING

### THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have the Chairperson of the Committee of the whole House.

**Hon. Kiptanui:** Thank you, Hon. Temporary Deputy Speaker. I beg to report that the Committee of the whole House has considered the Petroleum (Exploration, Development and Production) Bill and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Cheboi): The Mover of the Bill to move reporting.

**Hon. Kamau:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I want to request the Member for Dagoretti South to second the Motion.

**Hon. Waweru:** Hon. Temporary Deputy Speaker, I rise to second because this is a critical Bill in our petroleum and exploration sector.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Lomenen.

**Hon. Ekomwa:** Hon. Temporary Deputy Speaker, I want to take this opportunity to thank you, the Chairman and the Members for supporting this Bill. We have been waiting for this fundamental Bill since we discovered oil. There was no way we could appropriate oil when the law was not in place. Two weeks ago, we passed the Community Land Bill and today, we are happy because we have passed the Petroleum (Exploration, Development and Production) Bill. The marginalised communities are very happy about this law because they will not suffer the consequences suffered in Nigeria or other areas. That is because when the law is in place, they will not have problems. I want to thank him for biting the bullet with the amendments brought forward. We are here for the sake of the community.

**The Temporary Deputy Speaker** (Hon. Cheboi): Member for Balambala, Hon. Omar.

**Hon. Aden:** Thank you, Hon. Temporary Deputy Speaker. I want to take this opportunity to thank the Chairman of the Departmental Committee on Energy, Communication and Information for the good work they have done on this Bill. Much as oil is a blessing, it has proved in many situations in oil producing countries that it can be a curse through conflicts by the communities and the oil exploring companies which eventually spill over to the State and the local communities. It has even sent some countries to war. The recent conflicts in oil producing countries are a result of lack of proper laws that govern the production of that important commodity. What we did today is historic and important to our nation. We have put in place laws that will govern the production of those resources and the role of the communities therein. This entices me a lot particularly because it is believed that there is oil in the northern Kenya. It



has already been discovered in Turkana and it is a matter of time before the many parts of northern Kenya can enjoy this. Knowing the delicate situation of those parts of the country and their historical neglect, it is easy for them to pick up conflicts when they see companies coming to exploit without their consent or laws in place which cater for their interests. This law is good.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Ntutu.

**Hon. ole Ntutu:** Thank you, Hon. Temporary Deputy Speaker. I want to take this opportunity to thank the Chairman of the Departmental Committee on Energy, Communication and Information for doing a good job on this Bill. For a long time, we have not had laws that regulate minerals and oil exploration in our country. This Bill will go a long way in putting things straight. I want to thank our friends from Turkana County for bringing in good amendments that will help our communities, particularly the pastoralist who still have land that is thought to have oil. With the few amendments brought forward, the Communities will benefit. I want to thank the Committee in general. They did a lot of work consulting communities and stakeholders. As Members of Parliament, we should make laws that will go a long way in helping our people. I want to thank the Chairman because he was accommodative to some of our amendments.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. (Prof.) Nyikal.

**Hon. (Prof.) Nyikal:** Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to comment on this Bill. It is an important Bill considering that we have discovered oil in our country. In many countries, when oil is discovered, people suffer instead of benefiting. It is a technical Bill. I hope some areas will be looked into when the Bill goes to the Senate. We are one community and benefits that accrue in one of the country should benefit other members. Those in that area will benefit a little more. We did not agree to everything, but it is an important Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): The Chairman of the Departmental Committee on Energy, Communication and Information.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have the Chairman of the Committee.

**Hon. Kamau:** Hon. Temporary Deputy Speaker, I want to thank all the Members of the Committee of the whole House that went on very well. There were quite a number of agreements. Laws are made through give-and-take. I believe that we are heading in the right direction.

I cannot forget the officials from the Ministry who have been with us from morning, as well as the Clerks-at-the Table and the legal officers. This Bill will go to the Senate for their concurrence. In case of any issues that may need to be looked into, we will still look at them.

Thank you.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Kamau:** Hon. Temporary Deputy Speaker, I beg to move that the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015), be now read the Third Time.

I also request Hon. Dennis Waweru to second.

**The Temporary Deputy Speaker** (Hon. Cheboi): As we proceed, we will confirm a few things, Hon. Members. We will not move to the Third Reading because we do not have the requisite numbers. Therefore, we will move to the next Order. Before we do so, I will propose the Question, but I will not put it. I will then give opportunity to two Members to make some remarks.

*(Question proposed)*

Member for Turkana Central.

**Hon. Nakara:** Thank you, Hon. Temporary Deputy Speaker. As my fellow Members have said, this House has made history today by making this law. Since we have discovered oil, it is important that we make laws for regulation of production, processing and export of petroleum products. One thing I have admired in this Bill is the consideration of the communities where oil production will take place. As a community, we are grateful for the percentage that we have been given. This will improve the living standards of people in oil producing areas and bring them to the level of the rest of Kenyans. Those areas are marginalised and poor. They have no infrastructure, and the people are illiterate. We are happy because this House will be ratifying every agreement that will be made between the Government and the contractors who will be undertaking petroleum business. We are the representatives of the people. Therefore, we pass everything on behalf of our people. We also agree on something here on their behalf. When we go to them, we will be telling them why we accepted or rejected any contract.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Nakara, you cannot give a very long speech at this particular time. You have made your point. Let me give opportunity to another Member.

Proceed, Hon. Gumbo.

**Hon. (Eng.) Gumbo:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute.

I want to thank the Departmental Committee on Energy, Communication and Information. As we pass this Bill, I am very disappointed by the Legal Department of this Parliament. There are a lot of typographical and syntax errors in this Bill. It is not our business, as Members, to notice them. When you go to the Legal Department, they use big legal terms. For example, they say that the errors will be corrected when making the vellum. However, a lot of errors end up in the finished Bill. People must do the work for which they are being paid.

Those of us who follow closely must find either a comma or a full stop missing in every Bill that comes to this House. The Legal Department is sleeping on the job. We can no longer keep quiet. They must up their game because we are not here to recycle things. Drafting of Bills is not a copy-paste business. This is the National Assembly of the Parliament of Kenya. It is not our business to be correcting grammatical errors for the Legal Department. I request your office to take this matter seriously because I raise those issues in every Bill that comes here but nothing happens. The quality is getting lower. This is not a county assembly but the National Assembly. That has to be shown in the quality of work we do.

I want to thank the Chair of the Departmental Committee. There were some discussions this morning, particularly with regard to definitions, which I believe have been taken care of. This is a landmark Bill. I have said it before and I am saying it again that one of my landmark

experiences in this House was when I visited Nigeria to see how to exploit oil resources. Both Nigeria and Algeria discovered oil almost at the same time. Algeria is a model oil economy but Nigeria is the opposite. I pray that as we progress into an oil economy, oil will be a blessing and not a curse to our beloved country.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): Next Order!

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

### THE LAND LAWS (AMENDMENT) BILL

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, before we proceed to consider the Land Laws (Amendment) Bill, I would like to bring it to your attention that Hon. Jones Mlolwa's intended amendments have been captured wrongly. Therefore, they should be corrected. What is indicated in the Order Paper as Clause 1 should be indicated as Clause 12 and not Clause 1. Those are proposals for amending Clause 12 and not Clause 1. The second one which is indicated as Clause 5 should read as Clause 16. Also, there will be a Clause 20, which is not captured in the Order Paper.

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

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it, Chair of the Departmental Committee on Lands?

**Hon. Mwiru:** Hon. Temporary Deputy Chairman, it is good that you are guiding the House but it is also important that the changes should have been communicated to me so that I can canvass with Hon. Mlolwa, who has a right to bring the amendments. This is because what I see on the Order Paper is not what you are reading. So, could you guide us and me as the Chair so that we can canvass with Hon. Members? In doing so, we know where we can agree and where we can disagree. I have been caught pants down. I have been ambushed.

**The Temporary Deputy Chairman** (Hon. Cheboi): Probably what we need to do, Committee Chair, is, since we are going to handle them as Clause 12 and Clause 16--- What has happened is you already have the proposed amendments. The only thing is the renumbering. The clause you should have an issue with in your argument is Clause 20. Otherwise, we already have what Hon. Mlolwa has proposed, which is indicated as Clause 1 on the Order Paper but it is actually Clause 12. It is already on the Order Paper.

**Hon. Mwiru:** *(Inaudible)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will not allow you to guide me. I will only allow you to contribute. Let us have Hon. Nassir. What is it, Hon. Nassir? You have information that Hon. Mlolwa himself cannot speak to.

**Hon. Nassir:** Hon. Temporary Deputy Chairman, I beg your indulgence in this matter. What you were explaining is that the content of the amendment is the same. What varies is the numbering. That could have been a typographical error. It cannot be that the Committee Chair has been caught hands down. As a matter of fact, this should be a wake-up call that the Committee was not ready if they thought that that clause was referring to other things altogether.

**The Temporary Deputy Chairman** (Hon. Cheboi): You have actually come out okay but missed it somewhere along the line. As I have indicated, the truth of the matter is that the amendment is already on the Order Paper. We are only renumbering. That is not to say that the Committee is not prepared. They have not said that at all. They have always been prepared on this particular one. Let me hear what the Committee Chair has to say.

**Hon. Mwiru:** Thank you. I love my friend, Hon. Nassir. The Order Paper is a property of this House. It is not the property of the Committee. It is also important that the House should have been prepared on the clauses that are supposed to be amended. What is listed on the Order Paper, which you have to guide me and I seek your indulgence, is Clause 1 and not Clause 12, as you are reading. It is also important to realise that he has ambushed the House and not just the Committee. I am prepared for anything but it is important that we are guided properly. This is because what is on the Order Paper is not what you reading.

**The Temporary Deputy Chairman** (Hon. Cheboi): This is what is on the Order Paper. I am merely reporting the renumbering problems. Why do we not proceed and start it? This is because even if it were to be an amendment to Clause 1, that would be at the tail end. Technically, you cannot even propose to amend that clause at this point in time. Let us proceed. We will deal with every matter as it arises. Chair of the Departmental Committee on Lands, we will listen very carefully to whatever you will raise in due cause. So, if there will be an issue which you think we need to look at, you will raise it at that particular point and we will look at it and see how we can proceed.

### *Clause 3*

**The Temporary Deputy Chairman** (Hon. Cheboi): We have an amendment by Hon. Nassir. If it is carried, Hon. Mwiru's proposals will fail. Let us be very clear. Once the Question is proposed, I will give the Committee Chair an opportunity to have the first take. Let us have Hon. Nassir move his amendment.

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

THAT, Clause 3 of the Bill be deleted.

Hon. Temporary Deputy Chairman, as you rightfully put it, we need to be a bit careful and not get overly sentimental in these matters. The reason I propose that Clause 3 be deleted is so that the original clause can be maintained the way it is. This is an omnibus Bill. This clause proposes to amend Clause 6 (1) of the Land Registration Act, which says:-

“For the purposes of this Act, the Commission in consultation with national and county governments may, by order in the Gazette, constitute an area or areas of land to be a land registration unit and may at any time vary the limits of any such units.”

What the Bill has suggested is to totally alienate the country governments. They have proposed to delete the words “Commission in consultation with national and county governments may” and substitute therefor with the words “Cabinet Secretary in consultation with the Commission shall”.

This goes against the values of the Constitution. Whether we like it or not, the framers of this Constitution were very clear that the county government have a role to play in terms of land.

In sub-cause (b), the Committee proposes to amend Subsection 5 by deleting the word “Commission” appearing immediately after the words “by the” and substituting therefor with the word “Cabinet Secretary”.

When we look at Article 248 of the Constitution of Kenya, there are 10 commissions and two independent offices. One of those commissions is the National Land Commission (NLC). Let us not try and personalise offices. Let us understand that these are constitutional offices. The Committee is trying to remove a whole constitutional office. Article 67 of the Constitution of Kenya clearly states the role of the NLC. By removing the whole office of the NLC and substituting it with the Cabinet Secretary, what we are doing is we are removing someone who has the constitutional mandate and replacing him with someone who has been appointed. That is what is happening. This is the danger of amending Clause 3 as proposed by the Committee.

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

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

I repeat, let us not personalise these offices. Let us not say that it is because of this person or the person who is currently the governor or the commissioner. Let us remember that even in the absence of those individuals, those offices will still be there. The Constitution does not talk about individuals but offices that are there.

*(Question of the amendment proposed)*

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

**Hon. Mwiru:** Thank you, Hon. Temporary Deputy Chairlady. Hon. Nassir has referred to Article 248 of the Constitution, which is on independent offices. It is also important to realise that every independent office, including the National Land Commission (NLC), has its own work. Therefore, I have to take him back to Article 67 of the Constitution where the functions of the NLC are prescribed. Even before I give the justification of what I want to do here, I want us to look at Article 67 of the Constitution so that we appreciate that the NLC is also an independent body whose functions are listed in the Constitution. What we are trying to do is to align these functions to the new statute that we are making. That is why we bring these amendments so that there is no collision.

Number two, nowhere in Article 67 of the Constitution is the NLC supposed to do land registration.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Why do you not allow the Chair to complete?

**Hon. Nassir:** (*Inaudible*).

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay. Let me give you the microphone.

**Hon. Nassir:** The way the Chair is going, one misleading point will lead to another misleading point. Article 67(2) of the Constitution says:-

“The functions of the National Land Commission are—

- (a) to manage public land on behalf of the national and county governments;
- (b) to recommend a national land policy to the national government;---

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Allow Hon. Nassir to conclude his point.

**Hon. Nassir:** Members, when you start behaving like hyenas in the House---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): No, Hon. Nassir. I have switched off your microphone because you should speak through me. Do not deal directly with the Members. I am asking the Members to also, please, raise a point of order to speak. Let him complete what he was saying without interruption.

**Hon. Nassir:** Thank you. As I was saying in my point of order, one the functions of the NLC is to manage public land on behalf of the national and county governments;

First of all, if we are looking at the amendment from the perspective that you are removing duties from the Commission and giving them to the Cabinet Secretary (CS), then it is only fair that you show me where the Constitution says that these functions belong to the CS. That would be the reason for removing those functions from the Commission.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I think your point is made. Let the Chair continue because he has got your point.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, it is important that you protect me like you have protected him well so that we move forward and understand each other. We are saying that Article 67(2) of the Constitution, which we all passed, outlines the functions of the NLC. Let us not disagree on a matter that is very straight. Clause 67 (2)(c) says:-

“To advise the national government on a comprehensive programme for the registration of title in land throughout Kenya.”

My amendment reads:-

“Clause 3 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in subsection (1), by deleting the words “Commission in consultation with national and county governments may” and substituting therefor the words “Cabinet Secretary in consultation with the Commission shall”

This means that it is mandatory that the CS, in whatever he or she does in terms of registration, must consult the NLC because the NLC is supposed to advise the national government. In fact, I am only enriching Hon. Nassir’s idea because now it is not a “may” but a “shall”. The NLC shall be consulted.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Chair, your amendment will be valid once we are done with the amendment by Hon. Nassir.

**Hon. Mwiru:** I understand, Hon. Temporary Deputy Chairlady. Let me just explain my point. What we are trying to do is that we do not want--- Remember I was in the 10th Parliament just as you were. We passed these laws in a rush to make sure that we went to the campaigns. Today is the right time to rectify the same and make sure that every entity must play its role the way it is supposed, for the purposes of making sure that reforms on land are also taken. We have always cried of land issues. This is the only time we agreed that as a country, to be very sincere, the NLC be given its own role enshrined in the statutes and the national government be given its own roles. This will make sure that we anchor the reforms in the direction we want to move as a country.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I will give opportunity to two more Members before I put the Question.

Hon. Abdikadir.

**Hon. Aden:** Thank you, Hon. Temporary Deputy Chairlady. In my contribution to this Bill, I said very well that there is a clear intent to settle scores between the Ministry of Lands, Housing and Urban Development and the NLC.

*(Applause)*

There is a good reason why Kenyans decided to have the NLC in the Constitution. Let us be very careful not to shift power from where Kenyans wished it to be under the Constitution back to the Executive.

I support the amendment by Hon. Nassir because the amendment that the Chair is trying to propose, in my view, is unconstitutional. We have gone to school and where the word “shall” is placed matters very much. The word “shall” comes at the end of the sentence in the Chair’s amendment. So, there is no emphasis here whatsoever to mean that the CS must consult the NLC.

**Hon. ole Sakuda:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Sakuda, would you not allow him to conclude then I give you opportunity to raise your point? What is your point of order?

**Hon. ole Sakuda:** Is the Member in order to execute the Chair’s amendment and yet you ruled that we should be contributing on Hon. Nassir’s amendment?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): That is a valid point of order. Hon. Abdikadir, I am sure you have understood. We are on the amendment by Hon. Nassir. We have not reached the one by the Chair. So, speak to the amendment that is currently on the Floor.

**Hon. Aden:** Thank you, Hon. Temporary Deputy Chairlady. I am well guided. The amendment by Hon. Nassir is in order because the alternative to it, which is the amendment by the Committee, ignores Part II of the Fourth Schedule to the Constitution. Sub-section (8) gives powers to the county governments with regard to the management of land in this country. The attempt by the Committee to remove the county government from the management of the affairs of land is tantamount to removing an entity that is constitutionally mandated and given the powers to manage land, which is very unconstitutional. Hon. Nassir is very much in order and his amendment must be carried.

I thank you, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Member for Naivasha.

**Hon. Kihagi:** Thank you, Hon. Temporary Deputy Chairlady. I oppose the amendments by Hon. Nassir. The main problem this country has had is on land registration. The tussles in the Ministry of Land, Housing and Urban Development increased since the new Constitution was promulgated. The Constitution is very explicit that the role of land registration is given to the national Government and the national Government can only act through a Cabinet Secretary (CS). Unless Hon. Nassir wants the President to be the one gazetting – he has talked of “the mandate,” – his amendment is improper. The CS shall act through the advice of the National Land Commission (NLC). It is clearly given in the Constitution. The NLC is supposed to advise the national Government. The person to be advised is the CS.

To that extent, I oppose that amendment. The clause should be retained without being amended. We may want to amend it later so that we can streamline matters. We should go by the advice of the Supreme Court; that registration of land in this country is the preserve of the national Government.

When Hon. Nassir says county governments are being eliminated, he should consider that the NLC is acting and managing on their behalf. They are totally included.

I oppose.

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

Hon. Members, please remember that this is not the time to debate. We have already debated. We are in the Committee of the whole House. If you stand, it means you either support or oppose the proposal on the Floor. We will not open much discussion because it will be like going back to the debate. I had said I will give chance to two people. I have done that.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chairman of the Departmental Committee on Lands, you can move your amendments.

*(Loud consultation)*

Let us be orderly. I do not think there is anything that can go out of hand. I have given enough time to Hon. Members from both sides of the House. Everybody gets equal chance to speak.

Proceed, Hon. Chairman.

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

THAT, Clause 3 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in subsection (1), by deleting the words “Commission in consultation with national and county governments may” and substituting therefor the words “Cabinet Secretary in consultation with the Commission shall”

The import of this amendment is to make it mandatory for the Cabinet Secretary, who works for the national Government, to consult with the NLC in the constitution of registration



units. The whole essence of the amendment is to ensure that the CS does not do it unilaterally. He will have to consult the NLC.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will give a chance to the Member for Rangwe.

**Hon. Ogallo:** Thank you, Hon. Temporary Deputy Chairlady. Article 67(2) (c), which my colleagues have read, says that the role of registration of land falls under the national Government. It is the CS who represents the national Government in that function. We cannot just make a general argument that it is the NLC and must therefore do everything. There are things that are supposed to be done by the national Government, and other things that are supposed to be done by the NLC. Let us be sober and separate those functions. We even have an opinion by the Supreme Court. Even the NLC agrees with what we are saying. I do not understand why somebody should come to the Floor of the House and try to force things through.

I support the amendment of the Chairman.

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

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairlady. I also support the amendments of the Chairman.

The discussion on land law is not one that we get into quickly. Let me clearly note that the law must separate the functions of the CS and those of the NLC. In the first round of laws, we had clearly given the NLC powers that it cannot even work on. It is the national Government that can do some of these things. The amendments by the Chairman are in line. The NLC has its powers in advising the CS. In the nature of our country, commissions cannot replace the Government. The NLC cannot replace the Government. It can only work alongside the Government.

I support the amendments. In particular, the work of issuing title deeds and registration must go back to the national Government under the CS concerned. The commission will have no capacity to do that job even if we wished so.

Thank you, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I have just made it clear. Look at the number of amendments that we have to go through. I give time to Members on both sides of the House. What is the most important thing? It is the vote. Indulging so much in discussion is like going back to debate.

*(Several Hon. Members stood up in their places)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I know how I am going to run this. I want us to complete this work because it has a constitutional deadline. You know we are going on recess and we need to finish this work. Please, allow me to take the House through this process in a fair manner. Allow both sides of the House to speak so that I can put the Question. At the Committee of the whole House, the most important thing is not the debate, it is where the vote goes.

I have intervention requests from Hon. Abdikadir and another Member. I will give chance to the two of you. You will have to allow me to move this House as fast as we can.

Hon. Abdikadir, you are on a point of order. What is out of order?

**Hon. Aden:** Hon. Temporary Deputy Chairlady, my request is on the amendment that the Departmental Committee Chairman has moved. There is a fundamental error in it. There is a breach of the Constitution. I have said it earlier that the Fourth Schedule of the Constitution gives county governments a role in determining the management of land affairs. They have deleted that. If time could allow, I would have read out the original version. This is an amendment to the original Bill. The original Bill says: “For the purpose of this Act, the Commission, in consultation with the Government and the county governments may order, in the Gazette---” They have removed the county governments while the reason it is here is because it is a constitutional requirements for county governments to be here. It will be an effort in vain for us to make laws which will be challenged at the High Court and declared illegal. Let us heed this constitutional requirement. The amendment that the Departmental Committee Chairman is pushing through this House is unconstitutional. We should leave the Act as it originally was.

Thank you, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Because I have given chance for a point of order on this side, I will give chance to the other side.

Proceed, Hon. Dido.

**Hon. Dido:** Thank you, Hon. Temporary Deputy Chairlady. I respect the views we have in this House. The issue of land is the most contentious issue in this country. Even though this Bill has constitutional timelines, we must pass good laws to avoid conflict in this country. The Constitution says clearly that the county governments should be part and parcel of law making processes on matters of land. We suddenly sit in this House and say “remove the county governments.” We are going against that same Constitution we claim to defend.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chairman of the Departmental Committee on Lands, this is your amendment. I will give you chance to give your last word on it before I put the Question. You have heard the concerns from both sides of the House.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I want to draw the attention of Hon. Members to the same Fourth Schedule of the Constitution that my friend and neighbour of Balambala Constituency are talking about. It talks about mapping and surveying, not registration. It is important to note that. The Supreme Court has already ruled that issues to do with registration are for the national Government.

I am just begging my brother to give due functions to where they belong and leave the others to the other agencies. That is what we are trying to do.

*(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 3 as amended agreed to)*

*Clause 4*

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

THAT, Clause 4 of the Bill be deleted.

Since we have dealt with Clause 3 and we are supposed to know that registration is done in consultation with the National Land Commission (NLC) and the Cabinet Secretary (CS), it is consequential that we have to do regulations on how to do that. That is the only thing we are introducing here.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I give Hon. Chris Wamalwa a chance.

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Chairlady. I have been following keenly. I wished the Chairman could go through it for those of us who do not have the Bill. He needs to explain what it says and the import of deleting it. Unfortunately, he made an assumption and he did not do that. I request that he gives the import.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chairman, just take two minutes to explain the import of your deletion. I thought you did it but you can repeat.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, Dr. Chris might not be following very well but he is my brother and a great man.

In Clause 3, we have already known how the registration units are supposed to be done. We are saying now that other than having Clause 4 trying to prescribe, we need regulations which are supposed to come to this Parliament. That is the only thing.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chris, do you still want to speak on it or you are satisfied?

**Hon. Wakhungu:** I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Lomenen, are you okay?

**Hon. Ekomwa:** Yes.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Fatuma Ibrahim.

**Hon. (Ms.) F.I. Ali:** Thank you, Hon. Temporary Deputy Chairlady. I want to make a personal appeal to you. The issue of land has been a long battle for many people. Some of the amendments are very disastrous, in particular removal of the NLC from the work of land registration and titling will cause anarchy in this country. I want the Chairman, who was a member of the technical working committee on Lands, Environment and Natural Resources, to know that the NLC is an independent Commission. It is not owned by anybody. It is accountable to the Kenyan people and the Government of this country. I do not understand why we are removing the NLC in this clause. The NLC has been given in Article 67 all this mandate. Are we lying to the people who demanded the constitution of the NLC and its entrenchment in the Constitution? We need---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I have heard you and I have said what is clear in the Committee of the whole House. I have tried to give you guidance. The Committee of the whole House is not about debate, it is about the vote. I am trying to make it as

clear as possible. That is why I am giving people as much time as I can. I cannot make it a topic for debate because we already did that.

I will give an opportunity to one more person, Hon. Member for Igembe Central.

**Hon. Kubai Iringo:** Thank you, Hon. Temporary Deputy Chairlady for this opportunity. I stand to support. As the Chairman has said, this section is meant to give teeth to Section 3.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I believe I can put the Question.

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

*(Clause 4 deleted)*

*Clause 5*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): There is an amendment by Hon. Nassir.

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

THAT, Clause 5 of the Bill be deleted.

In the words of my colleagues who vehemently seem to be totally against this, Clause 5 wants to take a whole section in the Land Registration Act by deleting the word "Commission" wherever it appears and substituting therefor the word "Cabinet Secretary."

If my memory is not that of a Goldfish, my colleague was saying that the county governments can be represented by the NLC. We tend to wonder, if that is the case, why are we deleting a whole commission in the whole subsection? There have been talks here that this is something that has already been pre-empted by the Supreme Court and that there is a 167-page document. I just wish to re-emphasise that as much as we are trying---Someone was saying that the NLC has failed. I wish to remind him that it is the previous governments that caused historical injustices of land in this country. At that time, there was no NLC.

In as much as all historical injustices have been put in one clause in this omnibus Bill, it is wrong to start saying that the NLC cannot handle things and it is the one that has brought problems to this country. Each and every person who has grabbed public land in this country grabbed that land prior to the existence of the NLC. That needs to be clarified.

I wish, once again, to re-emphasise that we are going against the grain of the feelings of the Kenyans. We need to be here not for personal interest or anyone else's interest but for the interest of Kenyans. This country has seen bloodshed. Let us understand that.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): You have made your point. Let me now propose the Question.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will first propose the Question then I come to you Chairman.

**Hon. Mwiru:** *(Inaudible)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay, Hon. Chairman because you have insisted, say it.

**Hon. Mwiru:** Is it in order for an hon. Member of this House, whom we are legislating with and who has the rights of legislation as sent by his people, to say that there will be bloodshed? Does he know where the bloodshed will come from?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, you said that Hon. Nassir. I heard you clearly say it. You can stand up and defend yourself but you said it.

**Hon. Nassir:** I never said it. I wish to be on record. The HANSARD can as well be seen. I never said that this country is going to have bloodshed, I said land has caused bloodshed in this country. There is a difference between present tense, past tense and future tense - simple English. I never said that this country is going to have bloodshed.

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

**Hon. Nassir:** It is important, Hon. Duale, because someone has indicated that I said it. I want to be clear and on record, that this country has had bloodshed because of land issues. It has had. We will not turn a blind eye on those matters unless you tell me otherwise; that this country has not seen bloodshed because of land issues. Tell me that I am mistaken there.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, you have clarified. Let me now propose the Question.

*(Question of the amendment proposed)*

**Hon. Mwiru:** Thank you, Hon. Temporary Deputy Chairlady. I am happy that my brother has clarified that. He has talked of the past tense. I am happy to have that history. I am a historian as well. The import of his deleting that clause will take us back to what we were arguing about in Clause 3 and 4 with regard to registration of land. We have already cautioned ourselves in that particular line that, at any given time when there is creation of registration units, the Cabinet Secretary has to consult. The import of his trying to delete this clause will introduce the same thing that we had earlier argued, that the National Land Commission (NLC) plays no role in registration of land. It is the only the national Government which can issue titles deeds in this country.

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

**Hon. (Ms.) Khamisi:** Thank you, Hon. Temporary Deputy Chairlady. The amendment to the Land Laws (Amendment) Bill goes against the spirit of the Constitution. In this country, we were yearning for land policy reforms. We also wanted decentralisation of powers from the Cabinet Secretary. Those powers were vested in an independent commission namely, the NLC. If we go back to having the Cabinet Secretary or the Executive involved in the issue of land, it will take the country back to the old dispensation. We have had a lot of problems in this country about the land issue for 53 years. The people of Kenya spoke during the promulgation of the new Constitution.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Do you support the amendment?

**Hon. (Ms.) Khamisi:** I support the amendment by Hon. Nassir.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I now give the Floor to the Member from Turkana Central.

**Hon. Nakara:** Hon. Temporary Deputy Chairlady, my appeal to this House is that as we make laws, we should practise the principle of give and take. We need to consider opinions from

both sides. In such laws where there is doubt and conflict, we have to talk so that we can agree on the way forward. The argument that is going on is not healthy for this House.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Kaloleni.

**Hon. Chea:** Hon. Temporary Deputy Chairlady, I support the proposed amendment by Hon. Nassir. It is important that we respect constitutional commissions. This amendment enforces the provisions of Article 67 of our Constitution.

I support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have the Hon. Member for Dagoretti South.

**Hon. Waweru:** Thank you, Hon. Temporary Deputy Chairlady. It is important for us, once and for all, to sort out these conflicts in the law, especially those between the Cabinet Secretary and the NLC. As per Article 67 (2) (c) of the Constitution, the role of the NLC is purely advisory. The policy maker is the Cabinet Secretary.

I oppose the amendment by the Member of Parliament for Mvita.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I can now put the Question. We have heard from both sides. Hon. Members, we agreed that we will try and move forward.

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

*(Clause 5 agreed to)*

#### *Clause 6*

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

THAT, Clause 6 of the Bill be deleted.

The gist and import of this is that it is not necessary to delete the word "Register" appearing in the marginal notes as Section 8 of the Land Registration Act, which is a standing statute, has already addressed the problem. Therefore, it is not necessary to introduce it in this Bill.

*(Question of the amendment proposed)*

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

**Hon. (Prof.) Nyikal:** No.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member for Voi, do you want to speak on this?

**Hon. Mlolwa:** No.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Guys, you will not tell me how to do my work. Relax. I do not want anybody saying that I did not give them an opportunity. Is there anybody who wants to speak from my right side? Hon. Sakuda?

**Hon. ole Sakuda:** Thank you, Hon. Temporary Deputy Chairlady. I support the amendment. As the Chair put it, what is in Clause 6 has already been covered by Section 8 of the Land Registration Act. I support the amendment.

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

*(Clause 6 deleted)*

*(Clauses 7 and 8 agreed to)*

*Clause 9*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): There is an amendment by Hon. Nassir.

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, with the permission of my colleagues, can I be given two minutes to consult with my colleagues?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We will give you one minute.

*(Hon. Nassir consulted with Hon. Members)*

Hon. Member, you have consulted enough. Could you go ahead with your amendment to Clause 9?

**Hon. Nassir:** I was consulting like-minded Members. This is not going against the Constitution. I would like to withdraw the amendment.

*(Proposed amendment by Hon. Nassir withdrawn)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We will now go to the amendment by Hon. William Kisang. Hon. William Kisang, please, move your amendment.

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

THAT, Clause 9 of the Bill be amended—

(c) in sub-section (1) of the proposed new section 13A, by inserting the words “ a land surveyor, a land economist or an expert in any other relevant field” at the end of the sentence;

(d) in sub-section (2) of the proposed new section 13A, by inserting the words “ a land surveyor, a land economist or an expert in any other relevant field” at the end of the sentence; and

(e) in sub-section (3) of the proposed new section 13A, by inserting the words “ a land surveyor, a land economist or an expert in any other relevant field” at the end of the sentence;

One of the reasons why I propose this amendment is because what the law is proposing is discriminatory. There are experts in the field of land who can also qualify to be registrars. The Bill indicates that the only person who can be a registrar is an advocate of the High Court. However, I propose that we amend the Bill to include land surveyors, land economists and experts in any other relevant field instead of just an advocate of the High Court. Just having advocates of the High Court would be discriminatory.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will give the first opportunity to the Chair of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I assure you that this is a good amendment. If Hon. Kisang had looked at the Committee's amendment, he would realise that we are moving together. It is only that his explanation is better. Therefore, Hon. Kisang should agree with my amendment because his proposed amendment is similar to the Committee's.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So, Chair, are you supporting the amendment?

**Hon. Mwiru:** I do not support his amendment because we are putting it in a better language. He has a very nice idea but I request him to drop it so that we can have it the way the Committee has proposed in a better language.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. William Kisang, are you convinced after hearing what the Chair has said?

**Hon. Kisang:** Let me see what the Chair has proposed.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Do you want to read the Chair's amendment first?

**Hon. Kisang:** Yes.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Why do you not look at what the Chair is proposing? He says it is a better version but in the same line with what you are proposing.

**Hon. Kisang:** I wanted the Chair to drop the word "advocate". He has not dropped it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So we can go ahead and discuss your amendment, Hon. Kisang.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay. Hon. James Nyikal.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Sorry, there is a point of order. Hon. Nyikal, give me a moment. Hon. Member, what is your point of order?

**Hon. Mwanyoha:** Mhe. Mwenyekiti wa Muda, mambo yanayozungumzwa hapa ni muhimu sana. Yanahitaji watu wa kutosha kwa sababu Wakenya wote wanaangalia siku ya leo.

Nikiangalia watu hawajatoshia; hakuna *quorum* kamili ya kuendelea na maneno haya. Kwa hivyo ifungike na watu wangoje mengine kwa sababu pana klabu hapa ambayo imejipanga makusudi kuhujumu maneno ambayo yametengenezwa na Wakenya wote.

Asante, Mhe. Mwenyekiti wa Muda.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, as per the Standing Orders, if a Member raises the issue of quorum--- Give me a minute for the clerks to confirm. I order the Quorum Bell to be rung.



*(Quorum Bell was rung)*

*(Hon. (Ms.) F. I. Ali withdrew from the Chamber)*

Hon. Fatuma, we cannot raise an issue of quorum and allow Members to leave the House. It is only the Whips who are supposed to go out to whip. Please, Hon. Fatuma, take your seat. The Whips can go and whip Members. Members in the House, please remain seated.

Hon. Members, we now have the quorum and so we can continue. We were on the amendment by Hon. Kisang. Please repeat your amendment and then we can debate and vote on it.

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

THAT, Clause 9 of the Bill be amended—

(c) in sub-section (1) of the proposed new section 13A, by inserting the words “ a land surveyor, a land economist or an expert in any other relevant field” at the end of the sentence;

(d) in sub-section (2) of the proposed new section 13A, by inserting the words “ a land surveyor, a land economist or an expert in any other relevant field” at the end of the sentence; and

(e) in sub-section (3) of the proposed new section 13A, by inserting the words “ a land surveyor, a land economist or an expert in any other relevant field” at the end of the sentence;

As I had said earlier, this clause as initially proposed was discriminative because it only suggested that a Land Registrar can only be an advocate of the High Court. I have indicated that we include other experts like land surveyors, land economists or other experts such as physical planners who have experience in land matters.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay. We had already heard from the Chair of the Committee. Would you like to quickly repeat on what your opinion was?

**Hon. Mwiru:** I have consulted with Hon. Kisang and several other Members. I want to take on board his amendment, but he is trying to amend it again by talking away physical planning and he talks of relevant field. I am ready to take it and drop mine.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): You have dropped yours.

*(Proposed amendment by Hon. Mwiru dropped)*

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

*(Clause 9 as amended agreed to)*

*(Clauses 10 and 11 agreed to)*

*Clause 12*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Member for Voi, Hon. Mlolwa you have an amendment?

**Hon. Mlolwa:** Hon. Temporary Deputy Chairlady, I beg to move:-  
THAT, Clause 12 of the Bill be deleted.

Hon. Temporary Deputy Chairlady, survey and marking of boundaries are county government functions. For separation of powers, it should remain as it in the original Bill. To avoid conflict between the county governments and national Government, it should remain as it is in the original Bill.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair, let me hear from you.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I am only a bit disturbed. I am sorry, I have to seek your indulgence. I think this is where you told me I will talk. What I can say in a few seconds is that if you remember at one time in the Community Land Bill, we had to drop some work for the purposes of having the right Order Paper. According to me, and I wish that you guide me, the Order Paper which Members have does not have an amendment to Clause 12 by Hon. Mlolwa.

Hon. Temporary Deputy Chairlady, please navigate me and I will get there when the boat gets there.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, the substantive Temporary Deputy Chairman, Hon. Cheboi, explained that we were renumbering because of a typo. The amendment by the Member is on Clause 12 and not Clause 1. Chair, please carry it as an amendment on Clause 12. So, can you give us your opinion now that you know it is Clause 12?

**Hon. Mwiru:** In that circumstance, I seek your indulgence so that he repeats the justification on Clause 12 and I will be able to oppose or support it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, kindly repeat your justification on Clause 12.

**Hon. Mlolwa:** My justification is that survey, boundaries and mapping are county functions under the Constitution. The new clause will conflict and inhibit survey functions, boundary work and dispute resolution. The Survey Act has been reviewed to conform to the Constitution. Survey functions are shared between counties and the national Government. We cannot remove county governments and leave the national Government alone. It is a shared function.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay, Chair do you now get the import so that you can comment and I give other Members.

**Hon. Mwiru:** Whereas I get the import, Clause 12 of this Bill is again dealing with registration in reference to the Registration Act. This is also in Clause 3 where there is an amendment on the Bill. The authority responsible for the survey of land shall submit to the Commission a copy. What he is trying to bring as an import is already taken care of in this particular clause. So, I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay, Hon. Otuoma, do you want to speak on this one?

**Hon. (Dr.) Nyongesa:** Thank you, Hon. Temporary Deputy Chairlady. I just want to appeal to some of my brothers; as much as you have been saying it is both sides of the House, you will find that it is the Coast caucus that is having a lot of issues with these amendments. It is important that we recognize that so that we try to see what exactly we want to achieve so that we move together. If you look at it carefully, you will appreciate that when it comes to matters of registration of land, it is only the State which can guarantee a title or any registration. However, we are saying that in the process of doing this, when it comes to the county governments, the NLC is there. In registering land, the Government does not deal with public land. That is a function of the NLC. It goes beyond public land.

There seems to be some confusion. We tried to engage our brothers from the Coast region but it seems like we did not make a lot of progress. The function of registration cannot be a county function. It is a function that is for the whole nation. There are certain roles which are supposed to be performed by the NLC, as the custodian of public land. When it comes to that, we will talk of the Cabinet Secretary (CS). When we try to amend the law to give powers or assign roles to institutions or say that certain institutions, like the NLC, should not perform certain roles, we are not necessarily taking those powers away from NLC. The Constitution is clear. The amendments are clear too. We are just trying to make it neat. Let the CS be responsible. That is the national Government, but we are saying that there shall be some consultations in areas that cover the county governments.

Hon. Temporary Deputy Chairlady, I want you to understand that the debate that has been going on here shows a clear contestation between the Coast caucus and the rest of the Members of this Committee of the whole House – which is not in our best interest.

I oppose the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I would like to give opportunity to the Member for Lugari.

**Hon. Angatia:** Thank you, Hon. Temporary Deputy Chairlady. I would like to oppose the amendment raised by my colleagues from the Coast region on the grounds that we are making laws in this House to serve the entire country. We happen to have lack of linkages between the county governments and the national Government. That is why we are saying the registration function should remain with the national Government. Survey units can be established at the county level but the reports should be handed over to the NLC, who will in turn hand them over to the CS with specific advice for registration. This is just a registration unit. There is nothing more.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I want to give an opportunity to the Leader of the Majority Party to comment on this amendment and I put the Question.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, let us make it clear. We are making laws for posterity. There are no laws for North Eastern, Coast, Nyanza or Western regions. That is not the spirit of the law that we are making. Let me give a good example. You could be legislating to protect Hon. Duale, as the Leader of the Majority Party but I can go tonight. What happens to the law if I die tonight? Secondly, I do not think from what we have seen in the county governments, particularly with corruption of public resources, they can be allowed to register our land. That we cannot agree on. I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, you have been standing for the last few minutes, which is out of order. Go ahead and then I will put the Question.

**Hon. Nassir:** Thank you, Hon. Temporary Deputy Chairlady. I have been moving around, looking for speakers and microphones. It reminds me why we are fighting for this as the Coastal caucus. The reason is very simple; we are the ones who have been hit the most.

*(Loud consultations)*

Let me tell you, the coastal people have the highest rate of squatters per acreage, depending on the size of land that is still there. We have people who live on pieces of land for long periods of time, but who are later on told that the land does not belong to them. We are here to represent the people who elected us. By the way, this does not just apply to the coastal people alone, your voters are also looking at you on television.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, we are not in debate.

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

*(Clause 12 agreed to)*

### PROGRESS REPORTED

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I want to call upon the Mover to report progress.

**Hon. A.B. Duale:** Hon. Chairman, I beg to move that the Committee doth report to the House its consideration of the Land Laws (Amendment) Bill up to Clause 12, 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. Cheboi) in the Chair]*

**Hon. (Ms.) Shebesh:** Hon. Speaker, I beg to report that the Committee of the whole House has considered the Land Laws (Amendment) Bill up to Clause 12, and approved the same with amendments and seeks leave to sit again.

**The Temporary Deputy Speaker** (Hon. Cheboi): Mover of the Bill.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I want to request Hon. Sakuda, a man of God to second the Motion for agreement with the Report of the Committee of the whole House. He was a man of God when he was in the United States of America.

**Hon. ole Sakuda:** Once a man of God, always a man of God. I second.

*(Question proposed)*

*(Question put and agreed to)*

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, the time being 6.30 p.m., this House stands adjourned until tomorrow, Wednesday, 4<sup>th</sup> May 2016 at 9.30 a.m.

The House rose at 6.30 p.m.