

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 16th March, 2016

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF SESSIONAL PAPER NO.1/2016

Hon. Speaker: Hon. Members, this Communication relates to consideration of Sessional Paper No. 1 of 2016. Hon. Members, on Thursday, 10th March, 2016, the Leader of the Majority Party laid on the Table of the House Sessional Paper No. 1 of 2016 on Government Guarantee on Borrowing for the Construction of the Second Container Terminal Phase II at the Port of Mombasa and further, gave notice of Motion of the same. This is an important matter as it relates to revenue raising by an agency of the national Government.

Hon. Members, pursuant to the provisions of Standing Order No. 1 and No. 245 of the National Assembly, I hereby direct that the Sessional Paper as well as the Notice of Motion be hereby committed to the Departmental Committee on Finance, Planning and Trade. It is expected that the Committee will expeditiously embark on consideration of the Sessional Paper and apprise the House, by way of a report, before the House proceeds on the short recess next week.

For the avoidance of doubt, the mandate of the Departmental Committee on Finance, Planning and Trade as set out in the Second Schedule of our Standing Orders includes, *inter alia*, public debt and revenue policies. It would, therefore, be apt that the Committee considers this matter in the absence of the Budget and Appropriations Committee (BAC) in the House. It is accordingly so directed.

DELEGATION OF YOUNG AFRICAN LEADERS

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation from the Young African Leaders Initiative (YALI) Regional Leadership Centre East Africa, which was launched by the President of the United States of America (USA), His Excellency Barack Obama, as a signature effort to invest in the next generation of African leaders.

(Applause)

The delegation which is seated in the Speaker's Gallery comprises of youth from Kenya, Uganda, Tanzania, Somalia, Ethiopia, Rwanda, and the Democratic Republic of Congo (DRC).

Hon. Members, the delegation is in the National Assembly to interact with Members of Parliament, particularly the young Parliamentarians and learn more on their experiences and leadership journeys that will enhance their ability to become transformational leaders.

I wish to welcome them to the National Assembly and wish them fruitful engagements.

Thank you.

(Applause)

Hon. Speaker: Next Order.

PAPERS LAID

Hon. A.B. Duale: Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House today Wednesday, 16th March, 2016:-

The Bilateral Air Service Agreement between the Republic of Kenya and the Republic of Liberia pursuant to Section 8 of the Treaty Making and Ratification Act, 2012.

The Reports of the African Parliamentarians Network against Corruption, the Kenyan Chapter, known as APNACK, Kenya.

The Report of the Sixth Annual Interpol Stolen Asset Recovery (STAR) Global Focal Point Conference held in New Delhi, India from 17th to 19th November, 2015.

The Report of the Sixth Global Conference of Parliamentarians against Corruption held in Indonesia from 5th to 8th October, 2015.

The Report of the APNACK Biannual General Meeting held in N'Djamena, Chad, from 24th to 26th April, 2015.

The Report of the 16th International Anti-Corruption Conference held in Malaysia from 2nd to 4th September, 2015.

The Report of the Global Parliamentary Conference on the World Bank and International Monetary Fund (IMF) held in Washington DC from 12th to 13th April, 2015.

Thank you.

(Hon. A.B. Duale laid the documents on the Table)

Hon. Speaker: The treaty making agreement is referred to the Departmental Committee on Transport, Public Works and Housing for consideration. The Chairperson, Departmental Committee on Defence and Foreign Relations.

Hon. Gethenji: Hon. Speaker, I have delegated the laying of Paper to Hon. Rasso, if you can give him the Floor.

Hon. Speaker: Hon. Ali Rasso.

Hon. Dido: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday, 16th March, 2016:-

The Report of the Departmental Committee on Defence and Foreign Relations on the Petition Regarding continued occupation of Migingo and Ugingo islands in Lake Victoria.

Thank you.

(Hon. Dido laid the document on the Table)

Hon. Speaker: Next Order.

NOTICE OF MOTION

HONORARIUM FOR VILLAGE ELDERS

Hon. Injendi: Thank you, Hon. Speaker. Before I give my notice of Motion, I wish to express my disappointment arising from the difficulties I encountered when I was preparing this Motion. I would like to bring to your attention that our offices at Continental House have not had internet for two weeks. When you want to come up with a Motion like this, you have to research on the internet.

Thank you, Hon. Speaker, for indulging me on that.

Hon. Speaker: Hon. Injendi, those are administrative matters. Hon. Members, as you would expect, from where I sit, when I am here, I am not meant to deal with administrative matters. If there are internet problems, the Speaker is not a mechanic to deal with the repair of internet and such like things. That is a matter that if you brought to my attention in the proper way, we would have called the appropriate people. From here, we would just assume that you wanted to entertain yourself.

Proceed.

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

THAT, aware that village elders play a critical role in facilitating the work undertaken by chiefs and assistant chiefs in solving disputes, addressing petty crimes, handling security issues and generally promoting development initiatives; concerned that the Government is yet to adequately recognize their vital roles by way of facilitating their work; further noting that those hardworking citizens are crucial in the dissemination of Government policies and plans at the grassroots, this House urges the national Government to consider giving a monthly or annual honorarium to village elders as a means of appreciating their services and encouraging them to uphold their dedication to the community.

Hon. Speaker: Supposing the services are beneficial to the devolved levels of Government, would it not be fairer to amend the County Government Act to provide for those stipends to be payable to the village elders such as *Omukhasa, Liguru---*

Hon. M'uthari: *Njuri Ncheke*.

Hon. Speaker: The Member from Igembe North says "*Njuri Ncheke*". I do not know what the Member for Kaiti would call them.

Hon. Ogolla: *Okwaro*.

Hon. Speaker: Hon. Ochanda says "*Okwaro*". Now, they are so many. Hon. Injendi, if you could consider an appropriate amendment to the County Government Act which would be considered by this House and the other House--- That is because there is the administrative structure of village administrators, those people would fall within that framework. A Motion may not necessarily be a legal framework within which arrangements to do with salaries and stipends can be properly factored in a budgetary format.

Hon. Injendi: Hon. Speaker, for your information and general information to the public, assistant chiefs and sub-county officers fall under the national Government functions. Those

village elders called *Maguru or Omukhasa* in Luo as he says are the people who facilitate chiefs and assistant chiefs to do their work effectively. Up to now, and as we are talking, they do not receive anything and yet, they do a lot of work to ensure that the national Government is felt at the grassroots. I hope this Motion is appropriate in this House.

Hon. Speaker: Possibly, Hon. Injendi, if you look at the provisions of Article 6(3) of the Constitution, it requires every national State organ to devolve the services to the lowest level. In that context, your Motion could be appropriate for this House without an amendment to the County Government Act. Members are at liberty to consider. But I think it is a great idea. Leader of the Majority Party, proceed.

Hon. A.B. Duale: Hon. Speaker, I totally agree with you. I am sure Hon. Injendi would have done better by amending the National Government Coordination Act and bring in the roles and functions of village elders. The Motion will again require you to make it into a law. So, the Motion will just be to debate, resolve and send to the Committee on Implementation. I am sure that, as we debate that, Hon. Injendi and all of us should be thinking ahead so that we can amend the National Coordination Act which stipulates the various strata and functions of the Provincial Administration from the Regional Coordinator to the County Commissioner, Sub-County Commissioners, District Officers, Chiefs, Sub-Chiefs, and we put a strata of village elders where they can become part and parcel of the national Government. They can be paid according to what we set as House. As we debate, I am sure that is the best route. I will urge Members, as the Member of the House Business Committee (HBC), to deal with Bills more. We look at all existing principal Acts and see whether we can amend them, than having Motions. That is because Motions will not have a direct effect of helping our people. So, I am sure as we debate that Motion, another Member or Hon. Injendi should be preparing a Bill to bring an amendment to that Act.

Hon. Speaker: Very well. Before we proceed, allow me to recognise students from the following institutions:-

Rwathia Girls High School, Kangema Constituency, Murang'a County in the Speaker's Gallery; Alliance High School, Kabete Constituency, Kiambu County; Mukamoni Secondary School, Kibwezi West Constituency, Makueni County and Marurui Primary School, Kasarani Constituency in Nairobi County.

You are welcome to observe the proceedings of the National Assembly.

STATEMENTS

STATUS OF STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL

Hon. Speaker: Could I get the Chair of the Mediation Committee on the Statute Law (Miscellaneous Amendments) Bill No.2 (National Assembly Bill No.33 of 2013). Is that Hon. Chepkong'a?

Hon. Chepkong'a: Thank you, Hon. Speaker. As you know, this Bill was passed by the National Assembly and thereafter, you submitted it to the Senate. The Senate made amendments. Thereafter, you appointed a Meditation Committee in which I am a member together with Hon. Timothy Bosire and Hon. Maanzo, as Members from the National Assembly.

We met today to consider the Statute Law (Miscellaneous Amendments) Bill No.2 (National Assembly Bill No. of 2013). The Committee considered the amendments from the

Senate which we thought were tempered in any event. It was an amendment to the Transition Government Authority Act. As you know Transition Authority (TA) ceased to exist. So, that amendment in itself is moot. We told them that this is something that has become irrelevant and so we do not need to consider it. So, we agreed that this is a matter that we will agree in the next meeting which will be on Wednesday, so that we can prepare the report. It takes time to convince those who believed in it. I will sort it out.

I thank you.

Hon. Speaker: Is it not *functus officio*? What is there to consider about an amendment to the Transition Authority Act? Whatever was to be transited either transited living or dead. There was some technical committee which was to take over. Is it the view of your colleagues from the Senate that there is still business you can transact on this?

Hon. Chepkong'a: Hon. Speaker, they were trying to see whether they could find a home for that amendment, whether it should be placed under the Inter-governmental Authority Act which as you know, was not a subject of amendment in this Miscellaneous Amendments Bill. So, even that attempt itself will not succeed.

As you have correctly put it, the Transition Authority itself is *functus officio*. So, to make an attempt to give power to a body that does not exist does not make sense.

I thank you.

Hon. Speaker: Well. These are some of the intrigues and intricacies of bicameralism. Perhaps, you should be able to resolve the matter before we go on the short recess.

STATUS OF BUSINESS BEFORE THE
COMMITTEE ON DELEGATED LEGISLATION

Hon. Speaker: Can we get a report from the Chairperson, Committee on Delegated Legislation. I was informed that the Vice-Chairlady is to give the update. Hon. Gitari, Member for Kerugoya Kutus, you are likely to be accused by some other organisations that they have not seen you make a maiden speech.

(Laughter)

Hon. Gitari: Hon. Speaker, correction. It is not Kerugoya Kutus, it is Kirinyaga Central.

Hon. Speaker: Kirinyaga Central?

Hon. Gitari: Yes.

Hon. Speaker: I saw some people alleging that certain Members have not spoken, but I have seen those Members speak here from where I sit. I do not know what records they look at.

Hon. Gitari: Hon. Speaker, I do not know where they are getting the information from. I want to correct you that I was not in the list because they know what I did on health matters last Session.

I stand here to give a brief of what the Committee on Delegated Legislation has done so far. There are instruments that we have concluded as a Committee. There are a number of them. They are:-

- 1) The Public Finance Management, that is, Uwezo Fund Regulations, 2013;
- 2) The CDF Regulations, 2014;
- 3) The National Construction Authority Regulations, 2014;
- 4) The National Payment Systems Regulations, 2014;

- 5) The National Honours Regulations, 2014;
- 6) The National Police Service Commission (Recruitment and Appointment) Regulations, 2015;
- 7) The Universities Regulations, 2014;
- 8) The National Transport and Safety Authority (Operation and Motorcycles) Regulations, 2015;
- 9) The National Police Service Commission (Transfers and Deployments) Regulations, 2015;
- 10) The National Police Service Commission (Promotions) Regulations, 2015;
- 11) The National Police Service Commission (Discipline) Regulations, 2015;
- 12) The Public Finance Management (National Government) Regulations, 2015;
- 13) The Public Finance Management (County Government) Regulations, 2015;
- 14) The Public Finance Management (Declaration of the National Government Entities) Regulations, 2015;
- 15) The Public Finance Management (Affirmative Action Social Development Fund) Regulations, 2014;
- 16) The Science Technology Innovation, Registration and Accreditation of Research Institution Regulations, 2014;
- 17) The Science Technology and Innovation Regulations, 2014;
- 18) The Science Technology and Innovation Research and Licensing Regulations, 2014;
- 19) The Public Finance Management (Roads Annuity Fund) Regulations, 2015;
- 20) The Public Finance Management (State Officers House Mortgage Scheme Fund) Regulations, 2015;
- 21) The Regulation of Wages (Agricultural Industry) (Amendment) Order, 2015;
- 22) The Regulation of Wages (General) (Amendment) Order, 2015;
- 23) The Human Resource Management Professionals (Election of the Council) Regulations, 2015;
- 24) The Leadership and Integrity Legal Notice No.13 of 2015;
- 25) The Kenya School of Law Training Programmes Regulations, 2016;
- 26) The Alupe University College Order, 2015;
- 27) The Basic Education Regulations, 2015;
- 28) The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015;
- 29) The Technical and Vocational Education and Training Act Regulations;
- 30) The Nairobi Centre for International Arbitration (Mediation) Rules Regulations, 2015;
- 31) The Nairobi Centre for International Arbitration Regulations, 2015;
- 32) The Civil Servants (Housing Scheme Fund) Regulations, 2015;
- 33) The Veterinary Surgeon and Veterinary Para-professionals Code of Ethics Regulations, 2015;
- 34) Legal Notice No.13 on Unclaimed Financial Assets Regulations, 2011;
- 35) The Certified Public Secretaries (Application for Registration) (Forms and Fees) (Amendment) Regulations, 2015;
- 36) The Mediation (Pilot Project) Rules Regulations, 2015;

- 37) Environmental Management and Coordination (Electronic Waste Management) Regulations;
- 38) The TSC Code of Conduct and Ethics for Teachers Regulations, 2015;
- 39) The Witness Protection Rules, 2015; and,
- 40) Legal Notice No.165 on Income Tax.

Hon. Speaker, there are some other instruments that we have finalised as a Committee and the report is waiting for debate in this House. These include:-

- 1) The Child Welfare Society of Kenya Order 2014;
- 2) The National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014;
- 3) The Kisumu National Polytechnic Order, 2014;
- 4) The Eldoret National Polytechnic Order, 2014; and,
- 5) The Kenya Technical Trainers College Order, 2014.

There are some other instruments that we have reviewed as a Committee and taken them back to the statutory-making bodies. They include:-

- 1) The Kenya Deposit Insurance Regulations, 2014.
- 2) The Kenya Agriculture and Livestock Research Regulations, 2015.
- 3) Environmental Management and Coordination (Waste tyres) Regulations, 2015.
- 4) The County Land Management Board Regulations, 2014.
- 5) The National Land Commission (Review of Grants) Regulations, 2014.
- 6) The Public-Private Partnership Regulations, 2015.
- 7) Draft Laws and Regulations under the Kenya Defence Forces Act.
- 8) The Companies Regulations, 2015.

There are other instruments which are pending within the Committee, and are partly considered. They include:-

- 1) The Tobacco Control Regulations, 2015.
- 2) The VAT Regulations, 2014.
- 3) The Public Finance Management (Equalisation Fund) Regulations, 2015.
- 4) The Companies Regulations, 2016.

We have also recently received some other regulations in our Committee and we are working on them. They include:-

- 1) The Draft Political Parties Funding Regulations.
- 2) The Political Parties Registration Regulations.
- 3) Draft Political Parties Liaison Committee Regulations.
- 4) The Draft Kenya National Commission on Human Rights Regulations.
- 5) Legal Notice No.228 on Business Registration Service Act No.15 of 2015.
- 6) Legal Notice No.229 on Public Finance Management Act No.18 of 2012.
- 7) Legal Notice No.197 on Civil Procedure Act Cap. 21 and Training Regulations, 2015.
- 8) Legal Notice No.221 and 222 on Export Processing Zone Act Cap. 517.
- 9) Merchant Shipping (Training and Certification) Regulations, 2016.
- 10) Merchant Shipping Maximum (Safe Manning) Regulations, 2016.
- 11) Merchant Shipping Regulations, 2016.
- 12) The Protected Areas Order, 2015.

(Applause as Hon. Mung'aro and Hon. Mwashetani entered the Chamber)

Hon. Speaker, gauging by the mood of the House, would I be in order to ask if we can stand for one minute and recognize Hon. Gideon Mung'aro and Hon. Mustafa Idd? They have done us proud in Malindi and we have proved to our colleagues here that---

Hon. Speaker: Is that part of the Report of the Committee on Delegated Legislation?

(Laughter)

Hon. Gitari: Yes! I was in Malindi. I can tell you and vow that these are two gentlemen and we stand with them.

(Applause)

Hon. Speaker: Now finish!

Hon. Gitari: Hon. Speaker, do not be worried! These are our heroes from the Coast Province. The last one is the Draft National Government Constituencies Development Fund Regulations, 2016, which was formerly called the "Constituencies Development Fund (CDF)". We have received the regulations in a draft form and, as a Committee, we have approved them. We have sent them for publication and they are supposed to be transmitted back to the House within the next seven days.

Hon. Speaker: Did I hear hon. Gitari report that, as a Committee, you have considered and finalized the National Government Constituencies Development Fund Regulations?

Hon. Gitari: I have said that, as a Committee, we have considered them in a draft format. By yesterday, we sent them back to the regulation-making authority for them to publish and re-submit the same to this House within seven days.

Hon. Speaker: Very well. That is important for the entire House to hear and know.

Hon. Gitari: That is true. You can see hon. Mbadi is not listening to this.

Hon. Speaker: Never mind. He will look at the HANSARD.

Hon. Gitari: Hon. Mbadi, you are not listening to this.

Hon. Speaker: Next! The Chairlady, Departmental Committee on Defence and Foreign Relations.

STATUS OF BUSINESS BEFORE THE COMMITTEE ON
DEFENCE AND FOREIGN RELATIONS

Hon. Gethenji: I am pleased to welcome most dearly our dear brothers from the Coast Province, *Mhe. Mung'aro, Mhe. Mwashetani and Mhe. Mustafa Idd* who have taken appropriate seats on this side of the House. We are waiting with bated breath for other Members, including our dear brother across the Floor, Hon. Ken Obura. I know hon. John Mbadi is waiting desperately to cross the Floor in a big leap of faith towards the party of the future - Jubilee.

I am pleased to report that despite recent events, all is well in the Departmental Committee on Defence and Foreign Relations. I thank all my brothers and sisters, including my

dear mother and Hon. Members, for their renewed confidence in the leadership of the Member for Tetu. Thank you. Hon. Chris Wamalwa.

Before the Departmental Committee on Defence and Foreign Relations, we have been very active. We have dispensed much of our business. The following Bills have been placed before us and dispensed with.

(Loud consultations)

Hon. Speaker: Order, Members! I think now the excitement should be over. I thought Hon. Members are not supposed to be excited for more than a minute. Hon. Member for Kisumu village. No, it is Kisumu Central, hon. Mirenga, let us give the Chair an opportunity to complete.

Hon. Gethenji: Thank you, Hon. Speaker. I know he is just dying to cross the Floor. He is just excited. The Bills before the Committee which we have dispensed with include:-

1. The Kenya Defence Forces (Amendment) Bill - which is presently the property of the House. It is on the Order Paper.
2. The Kenya Regiment (Territorial Force) (Repeal) Bill, which has also been dispensed by the Committee and the Report was tabled on 17th February, 2016.
3. The Military Veterans Bill, 2013 which, by your direction, has been returned to the Budget and Appropriations Committee and our Committee for further consideration.
4. Before us, we have also dispensed one Petition regarding the alleged continued occupation of Migingo and Ugingo islands by Uganda Security Forces. That Report has just been tabled this afternoon.
5. The Defence Cooperation Agreement (DCA) which is governing the relationship between the British Defence Forces who are training in Nanyuki, Kenya. It has been tabled in Parliament and is before the Committee. We are preparing, pursuant to Articles 118 and 127 of the Constitution and under Standing Orders, respectively, to subject the DCA to public participation within the next 10 or so days.
6. Hon. Speaker, we have the Protected Areas Order 2015 with Explanatory Memorandum attached. The Order and Memorandum are before the Committee. In accordance with Article No.118 of the Constitution and Standing Order No.127, we intend to subject the same to public participation before we proceed to interrogate it and write our report on the same for tabling in the House.
7. We have also dispensed with the single Motion that was before us, which was on recognition of Somaliland as a Republic. The Committee deliberated on the Motion and forwarded its preliminaries finding to the Office of the Speaker.

We have a number of inspections and oversight visits to respective foreign missions in various countries around the world. On completion of that inspection tour, we will produce a report for tabling and debate by this House. There is only one protocol before us – the Pan-African Parliament Protocol. A report on the Pan-African Parliament has been considered by the Committee and is awaiting adoption. The Committee will adopt the Report on 29th March, 2016 and table it thereafter.

Further to that, we have before us the inquiry into the attack on the KDF El Adde Camp in Somalia. We have already invited the Ministry of Defence and the KDF leadership to come

and give their account of the events to the Committee, so that we can interrogate the happenings and write a report and bring it to this House.

Thank you, Hon. Speaker.

Hon. Speaker: Member of Suba, are you claiming to rise on a point of order?

Hon. Ng'ongo: Yes, Hon. Speaker. I know that it is within our rights, as hon. Members, to sit anywhere in this House. However, I heard the "Chairlady" of the Departmental Committee on Defence and Foreign Relations mention publicly and on record that Hon. Mung'aro and Hon. Mwashetani have crossed the Floor to the other side. As the "Chairlady" of the ODM, I would like to confirm from Hon. Mung'aro whether he has formally crossed the Floor to the Jubilee side. If that is the case---

Hon. Speaker: You are totally out of order, Hon. Mbadi! Did you say that you are Chairlady of something?

Hon. Ng'ongo: Yes, I am the "Chairlady" of ODM.

Hon. Speaker: In this House, you are the Member for Suba. You are not "Chairlady" of something. You can be a Chairlady of a Committee of the House. You said that you heard the "Chairlady" of Defence and Foreign Relations, and not Hon. Mung'aro. How can you ask Hon. Mung'aro to say something about what was said by another Member regarding him unless you want to excite the house for two seconds, which you have done successfully? There can be nothing else to ask Hon. Mung'aro to comment on.

Hon Ng'ongo: Hon. Speaker, the reason as to why I raised this matter is that we are in this House, courtesy of our respective political parties. If Hon. Mung'aro did not agree with Hon. Gethenji, he would have stood on a point of order to correct the notion that he has officially crossed the Floor to the Jubilee side. Failure to do that confirms that Hon. Mung'aro has defected, in which case, as the political party that sponsored Hon. Mung'aro to his House, we would be at liberty to take action.

Hon Speaker: Hon. John Mbadi, I want to advise you for free. As usual, you are at liberty to write to the Speaker making those kinds of allegations that you are making. But remember that the letter must come from the Minority Whip or the Deputy Minority Whip. I can see they are all next to you. They are your bosses. It can also come from the Minority Leader of the Party or the Deputy Minority Leader of the Party. They are all your bosses. I may not engage in any correspondence between you and the Speaker's Office. Please, proceed as you choose or as you find appropriate, but I will receive the correspondence from them, the contents of which will be acted on as appropriate. There is nothing out of order about this. Let it be written too by Members. Let us proceed to the next business.

Next Order!

BILL

Third Reading

THE PROTECTION OF THE TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS BILL

(Hon. Mung'aro bowed at the Bar)

(Applause)

Hon. Members, remember this is Assembly plenary and not a dancing hall. Even if you want to express happiness, please do it like an hon. Member. The Member for Kilifi did what is expected at the Bar. Debate on the business appearing as Order No.8 was concluded and what remains is for me to put the Question.

(Question put and agreed to)

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

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD

Hon. A.B. Duale: It is very interesting. I saw a maiden catwalk. Hon. Speaker, I beg to move:-

THAT, notwithstanding the provisions of Standing Order No.120, this House resolves to reduce the publication period of the Division of Revenue Bill (National Assembly Bill No.4 of 2016) from 14 to 6 days.

The reduction of the publication period is very crucial and important. To begin with, the Division of Revenue Bill, 2016 has statutory timelines and ought to be passed by the National Assembly and the Senate within a specified period of time as stipulated in the Public Finance Management (PFM) Act and in the Constitution. Under this context, I urge that the period of publication of the Division of Revenue Bill, 2016 be reduced from 16 to six days. This is to allow the Bill to go through the First Reading today and be sent to the other stages in a timely manner according to the timelines provided, so that we can forward it to the Senate for consideration in accordance with Standing Order No.142. In this regard, until we constitute the Budget and Appropriations Committee, I urge the Liaison Committee, following your direction, to use the technical staff provided by Parliament, namely the Parliamentary Budget Office, to fast-track the consideration of this Bill and report back to the House.

It is important for Members to note that the House is scheduled to proceed for a short recess beginning Friday, 25th March 2016, as per the Calendar of the National Assembly 2016. With this in mind, we are constrained by the time provided. This being the budget cycle period, we are expected to deal with the annual estimates, the Division of Revenue Bill, the Appropriation Bill, the Finance Bill and many others. I ask that we reduce the publication period so that the Liaison Committee can start dealing with this Bill. This Bill is important to the country as it provides for how the national Government and the county governments can share revenue.

I ask the Chair of the Departmental Committee on Justice and Legal Affairs to second this Procedural Motion.

Hon. Chepkong'a: Thank you, Hon. Speaker. I rise to second this Procedural Motion. This is a very important Bill that ensures that we split the revenue between the county government and the national Government.

I hope that one day we will be able to reverse the Supreme Court ruling which stated that the Division of Revenue Bill can also be considered by the Senate. This is a money Bill. Some of the rulings of the courts are, at times, unconstitutional. The only problem is that we cannot challenge them anywhere. The Judges of the Supreme Court cannot be elected by the people. Parliament is the House that can make laws to undo what the Supreme Court, at times, decides. The ruling that the Division of Revenue Bill should be sent to the Senate was made without any precedent and without following any law. When coming up with the provisions of the Constitution, the drafters and Kenyans themselves decided that the Division of Revenue Bill should only be considered in the National Assembly. The representatives of the people are in the National Assembly. We represent the people and this money should be used by the people and not for boundaries. As you know, the Senate only represents boundaries - that is the counties.

I beg to second.

Hon. Speaker: Hon. (Ms.) Ali is having an intimate conversation with Hon. Chachu Ganya. You should pay attention to what is happening so that we can move on. You can consult with Hon. Chachu Ganya while seated next to him. He is not harmful.

(Laughter)

(Question proposed)

(Question put and agreed to)

BILL

First Reading

THE DIVISION OF REVENUE BILL

(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)

Hon. Speaker: Hon. Members, for the time being, and because of the significant role played by the Division of Revenue Bill, Article 95 of the Constitution mandates the National Assembly to, among other things, divide revenue between the two levels of Government, which is what this Bill intends to do. I refer the consideration of the Bill to the Liaison Committee of this House. I urge them to move with speed as suggested by the Leader of the Majority Party. We will provide the technical staff necessary to take the Members of that Committee through the salient features of the Bill, so as to come up with a report on the Bill.

Should there be any difficulties that the Liaison Committee encounters, I would like to know by Tuesday next week so that I can make an appropriate alternative arrangement for consideration of that Bill. As you know, we do not have a Budget and Appropriations Committee, which ordinarily is the one that should consider this Bill. I believe the Chairpersons of the various Committees are available and they can begin sitting tomorrow to be taken through various stages of the Bill.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE FOREST CONSERVATION AND MANAGEMENT BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Order, Members! Those who are walking out, please, do so in haste. Hon. Members, we are in the Committee of the whole House to consider the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015). Hon. Members, please, resume your seats. Hon. Mwashetani, we are aware of where you sit. Please, resume your seat.

(Laughter)

Hon. Members, we can proceed.

(Clause 3 agreed to)

Clause 4

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

THAT, Clause 4 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (d)-

“(e) protection of indigenous knowledge and intellectual property rights of forests resources; and,

(f) international best practices in management and conservation of forests.”

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I can see some requests to Clause 4 and I will give the first chance to the Member for Nyaribari Masaba.

Hon. Moindi: I am not ready, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Maanzo.

Hon. Maanzo: Thank you, Hon. Temporary Deputy Chairlady for giving me an opportunity. I would like to support this amendment because it makes it better and constitutional. You remember the argument that went around this area. When you say “protection of indigenous

knowledge and intellectual property”, then the words “intellectual property” cover everything and it is recognisable internationally.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, I will now give this chance to Hon. Kubai Iringo.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairlady. I support the Chairlady of the Departmental Committee on Environment and Natural Resources, especially on part (f) which talks about international best practices. We know about the countries which have good practices and which have conserved their forests. We should emulate them by getting some knowledge from them.

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

Hon. M’uthari: Thank you, Hon. Temporary Deputy Chairlady. I support this amendment especially the addition of protection of indigenous knowledge and intellectual property rights. This is important because in the past, people entrusted with responsibilities have used the opportunity to exploit our resources as individuals at the expense of the common good because of lack of legislation. In my opinion, this addition is good.

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

(Clause 4 as amended agreed to)

Clause 5

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

THAT, Clause 5 of the Bill be amended—

- (a) by deleting the words “Management Guidelines” appearing in the marginal note and substituting therefor the word “Policy”;
- (b) in Sub-clause (1) by deleting the word “management”; and
- (c) in Sub-clause (2) by deleting the word “management”.

Hon. Temporary Deputy Chairlady, we have a forest policy and not a forest management guideline. We are replacing the words “Management Guidelines” with the word “Policy” so that this clause is in line with the Draft Forest Policy.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): If you want to contribute, can I have your name on the intervention slot? Member for Rangwe.

Hon. Ogalo: Hon. Temporary Deputy Chairlady, this is just to correct a drafting error because we do not have the National Forest Management Guidelines. We have a forest policy.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Wario, do you want to speak on this?

Hon. Wario: Not on this.

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

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

(Clause 5 as amended agreed to)

Clause 6

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairlady, I do not have an amendment on Clause 6.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. (Ms.) Abdalla, please, look at your Order Paper because I can see an amendment on that clause.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairlady, I was consulting another document.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Go ahead.

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

THAT, Clause 6 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “which shall be the successor to the Kenya Forest Service established under the Forests Act, 2005”; and,

(b) in sub-clause (2) by deleting the word “shall” appearing immediately after the words “corporate name”.

It is a cleanup exercise on the issue of public forest. The first amendment on sub-clause (1) talks about the Kenya Forest Service (KFS) being the successor of the Forest Act, 2005. The amendment on sub-clause (2) makes it mandatory by deleting the word “shall” and replacing it with the words “corporate name”

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Kitui Central.

Hon. Mulu: Hon. Temporary Deputy Chairlady, this being a cleanup exercise, I want to support the proposed amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Rangwe.

Hon. Ogalo: Hon. Temporary Deputy Chairlady, this is a saving clause that will deal with other saving clauses. The other one is a grammatical correction.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): It is a straightforward amendment.

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

(Clause 6 as amended agreed to)

Clause 7

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

THAT, the Bill be amended by deleting Clause 7 and substituting therefor with the following new clause—

Functions of the Service.

7. The functions of the Service shall be to —

- (a) conserve, protect and manage all public forests in accordance with the provisions of this Act;
- (b) prepare and implement management plans for all public forests and, where requested, assist in preparation of management plans for community forests or private forests in consultation with the relevant owners;
- (c) receive and consider applications for licenses or permits in relation to forest resources or management of forests or any other relevant matter in accordance with this Act;
- (d) establish and implement benefit sharing arrangements in accordance with the provisions of this Act;
- (e) assist county governments to build capacity in forestry and forest management in the counties;
- (f) in consultation with relevant stakeholders, develop programmes for tourism and for recreational and ceremonial use of national forests;
- (g) promote forestry education and training;
- (h) register and maintain a register of all forest management plans prepared for public forests;
- (i) collaborate with relevant persons in identifying research needs and applying research findings in relation to forests and forestry;
- (j) manage water catchment areas in relation to soil and water conservation, carbon sequestration and other environmental services in collaboration with relevant stakeholders;
- (k) prepare-
 - (i) a Forest Status Report for the Cabinet Secretary once in every two years;
 - (ii) a Resource Assessment Report for the Cabinet Secretary once in every five years;
- (l) consider and recommend to the Cabinet Secretary the establishment of public forests on un-alienated public land or any other public land;
- (m) consider and recommend to the Cabinet Secretary the determination and alteration of boundaries of public forests;
- (n) establish forest conservancy areas for purposes of conservation and management;
- (o) approve the provision of credit facilities and technical training for community-based forest industries, and the provision of incentives to persons for the sustainable

- utilization of wood and non-wood forest products;
- (p) implement and enforce rules and regulations governing importation, exportation and trade in forest produce; and
- (q) develop, maintain and regularly update a geographic information system database of all forests in Kenya.

There were many issues to be corrected, including numbering of the same, but the most important one was the fact that there are no longer county forests. Both county and national forests are public forests. It was a cleanup exercise and that is why we deleted the entire clause and substituted it with a new clause.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I can see some interest in this. I will start with Member for Ndhiwa.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Chairlady. I support this amendment because of two things that stand out. First, it recommends to the Cabinet Secretary (CS) the establishment of public forests in un-alienated land. Secondly, they are trying to maintain and regularly update the geographical information system for all forests in Kenya. These two will, among other things, help the Service in making sure that we have a large forest cover.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Mathira.

Hon. Kinyua: Thank you, Hon. Temporary Deputy Chairlady. I will support the proposed amendment because it is a cleanup exercise on what has been amended as well as consider the provision in that clause, particularly issues to do with training and resource assessment by the CS.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Chuka/Igambang'ombe, Hon. Onesmus Njuki.

Hon. Njuki: Thank you, Hon. Temporary Deputy Chairlady, for getting that name right. This is not just a cleanup exercise. Devolution has been a complicated issue as far as resources are concerned. The governors have been putting claim on some forests that are outside the main gazetted forests. Now that it has been made clear by this amendment; that the forest belongs to the public, then that enhances the conservation as a consolidated Government.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. William Kipkemoi.

Hon. Kisang: I rise to support the amendment proposed by the Chairlady, especially because of management plans for forests, maintaining of a register of those natural plants and conservation of catchment areas so that people do not encroach. I support the proposed amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me hear whether you support or not.

Hon. Kisang: Hon. Temporary Deputy Chairlady, I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you. Let me have the Member for Pokot South.

Hon. Losiakou: Thank you, Hon. Temporary Deputy Chairlady. Just as the Committee Chair has said, this is just a clean-up. I want to put a rider as I support. There has been confusion between the Kenya Forest Service (KFS) and the Ministry of Land, Housing and Urban Development in terms of survey. Sometimes, KFS takes that responsibility and conducts surveys

of its own and thus, usurps the role of the Survey of Kenya. I like this amendment and I thank the Chair of the Committee. Now it is very clear who does the survey. The survey is domiciled in the Ministry of Land, Housing and Urban Development, under the Survey of Kenya and not in KFS. Now they know that their services are here. There has been a lot of confusion in my constituency but now, it has been made very clear this afternoon.

I support.

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

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

(Clause 7 as amended agreed to)

Clause 8

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): We have an amendment by the Committee Chair, Hon. Amina.

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

THAT, Clause 8 of the Bill be amended—

(a) in sub clause (1)—

(i) by deleting the words “from among the members of the Board” appearing in paragraph (a);

(ii) by inserting the following new paragraphs immediately after paragraph (c)—

“(ca) the Inspector-General of the National Police Service or a designated representative;

(cb) the Director of the Kenya Forestry Research Institute or a designated representative; and,

(b) by inserting the following new sub-clause immediately after sub-clause (1)—

“(1A) A person shall be qualified for appointment as chairperson to the Board if such person—

(a) holds a minimum of a bachelors degree from a university recognized in Kenya;

(b) has knowledge and experience of, at least, ten years in matters relating to any of the following—

(i) management of natural resources;

(ii) forest conservation and management; or,

(iii) public administration and planning.

(c) satisfies the requirements of Chapter six of the Constitution.”

We have several amendments on Clause 8. The first one was to clean up the fact that the Chair would be independently appointed by the President and not from among the members. The second one is that we are adding the Inspector-General of the National Police Service or his

designated representative and the Director of the Kenya Forest Research Institute (KEFRI), or their designated representatives into the Board of KFS.

The reason why we are adding these two persons is that the KFS has an arms wing that would do well if they are coordinated by the Inspector-General of Police. Most importantly, we have added the Director of KEFRI because there is a lot of forest research that has been carried out by that institution that is not being replicated in our plantation forests or as extension activities. Just as an example, the KFS has done a lot on bamboo and value addition on the same, but that has not been translated at KFS. So, we believe that the presence of their Director in the KFS Board will assist.

The final amendment is that the Bill did not have a qualification for a Chair. In this day of meritocracy, we need to give some qualifications.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Kipkelion East.

Hon. Limo: Hon. Temporary Deputy Chairlady, I support this amendment because we have noted in this country that the forest cover is almost constant. Therefore, bringing in the Director of KEFRI is going to really help because most of the times, the innovations are not being implemented in the field.

Finally, the qualification of the Chair is very important because we need knowledge so that we can have qualified people running the forest department.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Ndhiwa, Hon. Aghostinho Neto.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Chairlady. I agree with the spirit of Clause 8. However, I would like to oppose Clause (1A)(b). I have no problem with meritocracy and I have no problem with the qualifications. However, I have a problem with the age requirement. You are putting the requirement for 10 years of experience. That is going to disenfranchise very many young people. I appeal to the Chair of the Committee that, whereas meritocracy is very good and everything that she proposes is very good, I only have a small problem with that clause, which puts the knowledge and experience to, at least, 10 years. There are many young people in this country who do not have that number of years of experience, but have made it to be chairpersons. An example is my good friend, Hon. Sakaja, who has done a very good job running a national political party and he did not need to have 10 years of experience. When you do this, you disenfranchise the young people of this country.

Committee Chair, please agree with me that we drop this particular amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me give the chance to Hon. Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. I am also happy with the proposed amendments by the Committee Chair, save for what my brother from Ndhiwa has just mentioned. When one has been to school and holds a bachelor's degree from a recognised university and is relevant to the matter in question, it is important that, that person is treated as having qualified for that particular assignment. The aspect of experience will lock out and disadvantage the other people who have not worked for many years or who could have experience, but it is not 10 years as it is stated here. On this ground, I withhold my support for the proposed amendment. I do not support this proposed amendment

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Do you support the amendment or you have reservations?

Hon. Wamunyinyi: I withhold my support for the proposed amendment, particularly on Clause (1A)(b). I propose that the Committee Chair drops this and then we pass the rest.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Chair of the Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairlady. I rise to support the Chair of the Departmental Committee on Environment and Natural Resources. We are not looking for employees to be appointed for their first appointment. We are not looking for a chairperson of the Youth Enterprise Development Fund. This is the Chairperson of the Board of KFS. If we were looking for a Chairperson of the Youth Enterprise Development Fund, we would not require any qualification. I am speaking from authority. I have been a Director-General. It will be very unfortunate to have a Chair who is one year out of the university. Surely, what would he be chairing and telling me as a Director-General? There are certain positions that we must not take lightly. I would like to tell Hon. Aghostinho Neto, who is a member of my Committee that, I became a company secretary at the age of 29. Senior positions are like company secretary and legal officer. A Chairperson is a very serious position. You require minimum qualifications and experience. The Constitution recognises this. In fact, one of the things we are seeking to do in this House is to set minimum qualifications for people who are going to hold serious positions. Hon. Wanyonyi was the Managing Director of Tana and Athi River Development Authority (TARDA). You can imagine him having someone who has just come out of university five years ago and, who is the age of his son, as his Chair. Would he listen to him? Let us be fair. I support the Chair of the Departmental Committee on Environment and Natural Resources. This is a very good proposal. In fact, I think the Committee thought very well. We must congratulate the Committee for pointing out such serious anomalies.

I thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Member for South Imenti.

Hon. Murungi: Thank you, Hon. Temporary Deputy Chairlady. I support this amendment, especially on the inclusion of the KEFRI Director to the Board of Management of KFS. He has professional expertise that he will be taking to the board. Forest management is a very serious issue because we are struggling to get the 10 per cent forest cover. This person will be giving a lot of professional expertise to the board.

I support the Chairperson and the Committee on 10 years' experience for the chairmanship because a chairman of a parastatal should be somebody who can guide it, but not an employee. If we are looking for a Managing Director, we can get a graduate with five years' experience. The chairman of this corporation should be somebody who has more years of experience. If the requirement for the Managing Director is 10 years' experience, we should reduce it to five years and retain the experience of the chairman of the parastatal at 10 years, so that they can guide the parastatal to make it better.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, allow me to put the Question, so that we can take a vote on this amendment on whether you support or oppose it.

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

put and agreed to)

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

(Clause 8 as amended agreed to)

(Clauses 9, 10, 11, 12, 13, 14 and 15 agreed to)

Clause 16

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

THAT, Clause 16 of the Bill be amended by deleting sub clause (4) and substituting therefor the following new sub clause—

“(4) The Board shall formulate policies for the administration and management of the College.”

The amendment is an additional subclause to Clause 16 that gives powers to the Board of the Kenya Forest College to formulate policies for administration and management of the college.

(Question of the amendment proposed)

Hon. Dido: Hon. Temporary Deputy Chairlady, I support this clause. Primarily, the purpose of the board is to give policy direction to the institution. In the other Bill, the purpose of the board was to establish a standing committee. It has provided clarity of what the board should do which is to give policy direction to the institution.

I beg to support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. David Ochieng, Member for Ugenya.

Hon. Ochieng: Thank you very much, Hon. Temporary Deputy Chairlady. This is a very important clause because we have only one college of forestry in this country. In the counties of Siaya, Homa Bay, Busia and Kisumu, where I come from, forest cover has reduced to less than 1 per cent. That is also happening in the rest of the country.

It is important to ensure that the board devolves the college, so that we can have campuses at the Coast, Nyanza and North Eastern regions. Forests are not coming back. They must be created. We must have this board to help us through training to create new forests. They are not only protecting and conserving forests that exist today, but creating new ones through training on proper management of the existing forests.

Secondly, the reason why this new function of the board will be important is that students are not joining this college anymore. Very few students are joining the college because we have not made it responsive to contemporary issues around forestry. We need to train students on Information and Communication Technology (ICT) as well as on forestry and climate change. New relevant courses should be introduced at the college. This will ensure that we train people to conserve and create forests in a manner that resonates with the current environmental trends.

With those remarks, I support the amendment.

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

Hon. Lati: Thank you, Hon. Temporary Chairlady. I support the amendment. I wanted to contribute to the other clause. Something incorrect was implied by Hon. Chepkong'a, whom I respect very much. He said that in any committee where a person of your father's age sits, you cannot be ashamed. That is a very bad implication. That is very wrong.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): That was on a light note. Hon. Lati, are you supporting or opposing the amendment? Hon. Members, we are in the Committee of the whole House. We are not debating the Bill.

Member for Igembe Central!

Hon. Kubai Iringo: Thank you, Hon. Temporary Chairlady, for giving me the opportunity to contribute. I support the Chair of the Committee. If the board is supposed to oversee forest management and ensure that forests are conserved, even trained officers should follow the policies stipulated by the board. If the board is supposed to oversee the programmes of the college and the campuses that train forest officers, they will be in tandem with what is required of them. At the end of the day, we will achieve what we set to achieve.

With those remarks, I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, I have 18 requests some of which, I am sure, are not for the clause that we scrutinising. Therefore, if you want to contribute to the clause that we are dealing with, please, press the intervention button.

Hon. Chachu Ganya!

Hon. Ganya: Hon. Temporary Chairlady, I support Clause 16 because this college is under the Kenya Forest Service. The board should have powers to make policies to direct the college.

I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Ottichilo.

Hon. (Dr.) Ottichilo: Hon. Temporary Chairlady, I want to support this amendment because this college is extremely important for the functioning of the Kenya Forest Service. That is where they train all the technicians and people who do silviculture. Therefore, we need the board to set up policies, rules and regulations for better management of the entire sector.

With those remarks, I support.

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, I seek your attention. I want to put the Question.

(Clause 16 as amended agreed to)

Clause 17

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

THAT, Clause 17 of the Bill be amended in sub clause (2) by —

- (a) deleting paragraph (d);
- (b) deleting paragraph (e); and
- (c) deleting paragraph (f).

This is regarding the functions of an honorary forester. It is our view that sub-clauses (d), (e) and (f) are an oversubscription and the matters being proposed should be dealt with in a regulation.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): First, let me have Hon. George Ogalo.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment. If honorary foresters are going to do all this, there could be a conflict between honorary foresters and direct forest officers.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): You support the amendment? I just wanted it to be on HANSARD. Let me have Hon. ole Ntutu.

Hon. Member: I thought you had given me that chance.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): You have not caught my eye, Hon. Member. Just hold your horses.

Hon. ole Ntutu: Hon. Temporary Deputy Chairlady, I support the amendment even though I was coming to check whether my name is appearing. I have logged in and I was not being called out.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): At least, you now know what to do. I had already done a Communication. Thank you for knowing what to do. Hon. Member for Igembe Central.

Hon. Kubai Iringo: Hon. Temporary Deputy Chairlady, I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): This is a straight forward Bill. Member, Igembe North.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Chairlady. I do not support this because I do not see what harm it does.

I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Member for Kaiti.

Hon. Makenga: Thank you, Hon. Temporary Deputy Chairlady. I stand to support the amendment as proposed by the Chairlady of the Departmental Committee on Environment and Natural Resources.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Luanda, Hon. Omulele.

Hon. Omulele: Hon. Temporary Deputy Chairlady, I support because the provisions from (d) to (f) will be in direct conflict with the roles of the board if they are retained in the Bill.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me give the last chance to a Member who seems to have a very burning comment.

Hon. Dido: Hon. Temporary Deputy Chairlady, I rise to oppose this amendment. The purpose of an honorary member is to represent the community. For that reason, whatever views he or she gives are of the community. It is not an individual's views. If we delete sub-clauses (d), (e) and (f) we are, to an extent, going against the grain of why the honorary member is there.

I wish the Chairlady could give clarity why the Committee has decided to expunge the three sub-clauses.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, I am sure you have the Bill and the amendments. You must have gone through them. The Committee has done a lot in terms of their mandate.

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

(Clause 17 as amended agreed to)

(Clauses 18 and 19 agreed to)

Clause 20

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

THAT, the Bill be amended by deleting Clause 20 and substituting therefor with the following new clause—

- Forestry functions of
County
Governments
20. (1) Each County Government—
- (a) shall implement national policies on forest management and conservation;
 - (b) shall manage all forests on public land defined under Article 62(2) of the Constitution;
 - (c) shall prepare an annual report, with the approval of the County Assembly, for the Service on the activities of the county government in relation to this Act and any national policies on forest management and conservation;
 - (d) shall promote afforestation activities in the county;
 - (e) shall advice and assist communities and individuals in the management of community forests or private forests; and
 - (f) may enter into joint management agreements with communities or individuals for the management of community forests or private forests.
- (2) A county assembly may enact legislation for the better carrying into effect of the provisions of this section.
- (3) The Service may if requested, collaborate, partner or offer assistance to the County Government for

This is a very important amendment because the draft Bill was creating an amorphous reporting relationship between the County Executive Committee (CEC) responsible for environment and the Cabinet Secretary.

We are proposing that the functions be of the county government under this Bill rather than creating amorphous relationships. This is an amendment I am very proud of.

(Question of amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Peter Kinyua of Mathira, do you want to speak on this?

Hon. Kinyua: Hon. Temporary Deputy Chairlady, I want to support this amendment and also congratulate the Committee that I am a Member for the good work. As Hon. Muthomi has just mentioned, there is the issue of unclear functions where we have crosscutting issues from county governments to the national Government. This clause sets all these straight. It makes sure that the County Executive Committee for environment takes lead in local implementation of policies that are national in nature. There is no ambiguity in the same.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Member for Kipkelion West, Hon. Jackson Rop.

Hon. Rop: Thank you, Hon. Temporary Deputy Chairlady. At least, you have seen me. I also want to support the amendment by stating that it is going to clarify reporting issues and functions of both the county and the national Government. The Committee has deliberated on this and it is a very important clause.

Thank you, I support.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Chairlady. I thought you are looking for my name.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Member, I know you are always very fast, but let me allow another Member for this one. He caught my eye. Hon. Member, are you on a point of order? Let him contribute.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Chairlady. I want to support this on two bases. The first one is that the original Bill tries to prescribe to the counties how they are going to carry out their functions. It should be up to the county governments to decide. Instead of saying CEC, let us say county governments. Secondly, the Bill is saying that the CEC shall supervise the implementation. You cannot be supervising the implementation of the national Government policies. As it appears, the wording "shall implement national policies on forest management and conservation" is the best.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me give a chance to one more Member. Member for Igembe North, let me be good enough because it had already come to you.

Hon. M'uthari: Hon. Temporary Deputy Chairlady, this is important because it was not clear in the original Bill. It is now clear as indicated here. This is important, so that we can prescribe the roles and functions of county governments as far as conservation and management of forests is concerned. It also gives flexibility in terms of the implementation of the Act.

Hon. Omulele: Thank you, Hon. Temporary Deputy Chairlady. It is very important for this amendment to go through. The way it is set out in the original text was sending us into an unconstitutional prescription of the law where we were prescribing to the counties how they are going to run their businesses. The way it has been brought out is very clear and constitutional. I support.

Hon. Melly: Hon. Temporary Deputy Chairlady, I support the Bill. Forests are found in counties and it has given counties a role in conservation and preservation of forests.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): All Members are supporting. Let me take a vote on this.

*(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 20 as amended agreed to)

(Clauses 21, 22, and 23 agreed to)

Clause 24

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

THAT, clause 24 of the Bill be amended in sub clause (2) by —

- (a) deleting the word “national” appearing in paragraph (a) and substituting therefor the word “public”; and
- (b) deleting the word “national” appearing in paragraph (b) and substituting therefor the word “public”.

Both national and county forests are public forests. So, we are replacing the word “national” with “public forest” to include both national and county forests.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Lelelit Lati.

Hon. Lati: This is a straightforward amendment. Our forests are public under the new Constitution. Both national and county forests can be summarised as public forests. At the end of the day, we are serving the public. So, it is a good correction.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Patrick ole Ntutu on Clause 24.

Hon. ole Ntutu: I also support this amendment. It is a straightforward amendment. We are recognising that it is no longer national, but we also have county governments and it is important that we change it to public forests.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I recognise the Member for Marakwet West.

Hon. Kisang: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment to clarify the provision. Both county and national forests are public forests. We only have public forests and not private forests. 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 24 as amended agreed to)

Clause 25

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, we have a lot of clauses to amend. So, it is important that we make our contributions. If you want to contribute on another clause, let me be aware. I can see an amendment by the Chair. Please, carry on.

Hon. (Ms.) Abdalla: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-
THAT, Clause 25 of the Bill be amended in sub clause (3) by deleting the words "Public Audit Act, 2003" and substituting therefor the words "law relating to public audit."

The justification is that it makes this law relevant even if the Public Audit Act, 2003 is repealed.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I can see Hon. Kubai Iringo. You are the first one on my intervention.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairlady. I support this one because the Public Audit Act, 2003 was repealed. For this clause to be relevant in law it had to be amended. So I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Yusuf Chanzu, Member for Vihiga, do you want to contribute on this?

Hon. Chanzu: No. It was on the earlier one, but I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I can see a request by Hon. Ababu, Member for Budalang'i.

Hon. Ababu: Hon. Temporary Deputy Chairlady, I have been trying to catch your attention for quite a while. I wanted to contribute to an earlier amendment which passed me already. So, I support. Please, try catching me. I believe my name is prominent enough on your screen, but I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Please, seek my eyes on the intervention and I will catch you, Hon. Member. Let us have the Member for Kipkelion West? Not here. Let us have the Member for Tharaka Nithi, Hon. Beatrice Nyaga.

Hon. (Ms.) B.N. Nyaga: Thank you, Hon. Temporary Deputy Chairlady for giving me the opportunity. I also support the amendment because the Public Audit Act, 2003 was repealed. So,

it has to read: “law relating to public audit”.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Member for Gatundu North. I want to see Members who have not spoken.

Hon. Njenga: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment because law relating to audit is not static. Leaving it the way it is, even if further changes come to the law, it is well enclosed. So, I support. This Act was repealed. So, the amendment ensures that even if the Acts that are in force are repealed, that is taken care of. So, I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Since you are all supporting, please, allow me to put the Question to 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 25 as amended agreed to)

Clause 26

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

THAT, Clause 26 of the Bill be amended by deleting sub clause (2) and substituting therefor the following new sub clauses —

“(2) The objects of the Trust Fund shall be to nurture, promote and support innovations and best practices in forest conservation and development including the support of—

- (a) community forestry programmes;
- (b) reforestation and afforestation programmes;
- (c) forestry extension programmes;
- (d) apprenticeships and vocational training; and
- (e) programmes for payment for ecosystem services,

(3) The Cabinet Secretary shall make rules for the management of the Trust Fund.

We are adding a new Sub-clause 2 that is intended to broaden the utilisation of the Forest Trust Fund.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Member for Gichugu.

Hon. Barua: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment as proposed by the Chair. This amendment is going to make the Fund accessible to a wider cross section of the community and as stated in the Order Paper, it is going to promote innovation.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Neto.

Hon. Oyugi: I would like to support this amendment. The Trust Fund is expanding. You can introduce community forest programmes, apprenticeship and vocational training which is going to go a long way in terms of helping us to get forest cover. This is a very good inclusion and I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I give the last chance to the Member for Narok West.

Hon. ole Ntutu: This is a very important amendment particularly the Trust Fund that has been created here. A lot of our forests have been cleared simply because of lack of such programmes.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Order Members! Can the Member be heard? We know the rules and procedures of the House. Hon. Member, proceed.

Hon. ole Ntutu: Thank you, Hon Temporary Deputy Chairlady for protecting me. This Trust Fund will go a long way in protecting our forests particularly with what the Fund intends to do. Community forest programmes, reforestation and afforestation programmes are very important because in this country, a lot of people are clearing forests for charcoal burning and other uses. This Trust Fund is very important.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Igembe and the Member for Gatundu, you seem to be in competition. Are you opposing? You know the rules on how to catch the Chair's eye. You do not stand up. You do not make noise. Please, you have caught my eye. Let us have the Member for Gatundu North.

Hon. Njenga: Thank you very much. I looked at this and found that it is going to get to the grassroots; community afforestation programme and expansion and extension of such programmes. I support this and Clause 26(3) where the Cabinet Secretary shall make rules for the management of the Trust Fund. That is a very strong point. By the fact that such rules will come to this House, they will enhance our oversight role. More importantly, if this Fund is well utilized, it will get to the communities where we live. This takes into account the fact that we oversee the national Government and represent communities. There is need to have programmes that will touch our communities on afforestation, apprenticeship and vocational training needs. With this, we should strongly support Clause 26 as amended.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Alice Chae.

Hon. (Ms.) Chae: Thank you for seeing me, Hon. Temporary Deputy Chairlady. I was getting worried.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Can you make your comment on this? We have many clauses to deal with.

Hon. (Ms.) Chae: That is where I am going. I stand to support the amendment as proposed by the Chair. The objectives of the Trust Fund are to ensure enhanced planting of trees in the community. Then, we will not be talking about afforestation. I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Namwaba Ababu, Member for Budalangi, is it on this or another one?

Hon. Ababu: I am actually waiting for an amendment. I know that I need to catch your eye in advance. It is a couple of steps away.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): When we get there, you will get your time.

*(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 26 as amended agreed to)

Clause 27

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Members, I want to communicate that we will be moving faster. Some of you are making requests not meant for the particular clause. Since we have many clauses, I know you have interest in them. Allow us to move as fast as possible, of course, not compromising our law-making process.

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

THAT, Clause 27 of the Bill be amended by inserting the words “and the Kenya Forest Service Board” immediately after the words “Board of Trustees” appearing in paragraph (b).

The Kenya Forest Service Board levies charges on forest product use. So, it is important that they be consulted in that matter. This will remove conflicts and overlap between the Trust Fund and the Kenya Forest Service Board.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members this is a proposal on insertion. It is straightforward. I, therefore, give the first one to Hon. Christopher Omulele.

Hon. Omulele: Hon. Temporary Deputy Chairlady, I support it. It is straightforward.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Chachu Ganya.

Hon. Ganya: Hon. Temporary Deputy Chairlady, I support the amendment. It is to enable consultation between the Trust Fund and the Kenya Forest Service Board. This will ensure maximisation of resources as well as ensuring that the Kenya Forest Service Board deliver on its part.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Alice Nyanchoka, do you have a request on this? Hon. Members and Committee Members, it should not just be Hon. Amina either supporting or not. Please, let us take a vote on this.

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

(Clause 27 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Wamunyinyi, is there something out of order? Are you okay? We appreciate you.

Next clause!

Clause 28

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

THAT, Clause 28 of the Bill be amended by —

(a) deleting sub clause (2) and substituting therefor the following new sub clause—

(2) The Board of Trustees shall comprise of—

(a) a chairperson and four other members appointed by the Cabinet Secretary in an open and competitive process;

(b) the Director General or a designated representative, who shall be an ex-officio member of the Board;

(c) the principal Secretary responsible for forestry who shall be an ex-officio member of the Board; and

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

“(4) The Cabinet Secretary shall make regulations for the management and administration of the Fund.”

The biggest input there is to have the Director-General of the Kenya Forest Service Board as a member of the Board of the Trust Fund to create linkage and synergy between the two institutions.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I can see Hon. Beatrice Nyaga, Member for Tharaka Nithi. We also need to hear the voices of doves.

Hon. (Ms.) B.N. Nyaga: Hon. Temporary Deputy Chairlady, I support the amendment by the Chair.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Jackson Rop, are you on this?

Hon. Rop: Thank you, Hon. Temporary Deputy Chairlady. I also want to support the amendment by the Chair because this will bring prudent financial management of the Fund.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Njogu Barua.

Hon. Barua: Thank you, Hon. Temporary Deputy Chairlady. I want to support this amendment as proposed by the Chair. This encourages a competitive and transparent process of appointing members of the board. The Director-General is a very key person in the KFSB and the general management of forests in Kenya. It is very important for him or her to be a member of the board.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me hear from Hon. Birdi.

Hon. (Ms.) Sunjeev: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment mainly because proper management of the Trust Fund is important. From the outset,

I am very pleased to see many Members of Parliament present during the amendment of this very important Bill.

*(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 28 as amended agreed to)

Next clause!

Clause 29

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I can see an amendment by the Chair again.

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

THAT, Clause 29 of the Bill be amended by renumbering sub clause (5) as sub clause (4).

This is a clean-up exercise. There is no sub clause 5. The current sub clause 4 is being called sub clause 5. So, we are just asking that it be named correctly.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, today, I must appreciate the numbers in this part of the law-making process and I expect the House to take a vote.

(Question of the amendment proposed)

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

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

(Clause 29 as amended agreed to)

Clause 30

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

THAT, Clause 30 of the Bill be amended in sub-clause (2) by inserting the words “through a *Gazette* Notice” immediately after the word “declare”.

We want to provide clarification on the instrument that the Cabinet Secretary will use to declare land as forests. That is why we are adding that it should be through a *Gazette* Notice.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): This is a straightforward amendment. I just expect one or two contributions. Let us have Hon. Francis Nderitu.

Hon. Nderitu: I would like to support the amendment by the Chair. It will be very important to have a very clear way of degazetting forests. We have a lot of issues with our forests and if we are not clear, people might sneak in other amendments in our Bills that are likely to degazette forests. Knowing that the international requirement of 10 per cent forest cover should be implemented in Kenya, we should be very careful with the existing forest and any other land that has been illegally acquired that people have been agitating to degazette as forest land.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Regina Nyeris, Member for West Pokot.

Hon. (Ms.) Changorok: Thank you, Hon. Temporary Deputy Chairlady. First of all, I want to congratulate the Chair and the Committee. This is a straightforward amendment. I, therefore, support it.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Alice Chae, Member for Nyamira. Do you support or oppose the amendment?

Hon. (Ms.) Chae: I support the amendment. It is a straightforward amendment.

(Question of the amendment proposed)

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

(Clause 30 as amended agreed to)

Clause 31

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

THAT, Clause 31 of the Bill be amended in sub-clause (4) by deleting the words “to the county government for” appearing immediately after the words “the community may apply”.

This is to remove repetition.

(Question of the amendment proposed)

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

(Clause 31 as amended agreed to)

Clause 32

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

THAT, Clause 32 of the Bill be amended in sub-clause (4) by inserting the words “of the land on which the forest is established” immediately after the words “levied in respect”.

The amendment makes the clause complete and gives it meaning.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): This is a straightforward amendment. Let me give an opportunity to Hon. Sakwa Bunyasi.

Hon. Bunyasi: Hon. Temporary Deputy Chairlady, it improves the reading and the meaning of the clause. I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Member for Narok South.

Hon. ole Lemein: Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendment. It is a very important amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me give the last opportunity to Hon. Njogu Barua.

Hon. Barua: Hon. Temporary Deputy Chairlady, I also rise to support this important amendment.

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

(Clause 32 as amended agreed to)

Clause 33

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): There are three Members who have amendments to this clause. I will give the first opportunity to Hon. Ali Wario. His amendment is to delete the clause. If his amendment is carried, then the amendments by Hon. Amina and Hon. Lentoimaga will fall.

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

THAT, the Bill be amended by deleting Clause 33 and substituting therefor the following new clause—

Variation of
boundaries or
revocation of
public forests.

33. (1) Any person may petition the National Assembly or the Senate, for the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest.

(2) A petition under subsection (1) shall demonstrate that the variation of boundaries or revocation of the registration of a public forest or a portion of a public forest does not—

- (a) endanger any rare, threatened or endangered species; or
- (b) adversely affect its value as a water catchment area; and prejudice biodiversity conservation, cultural site protection of the forest or its use for educational,

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recreational, health or research purposes.

(3) A petition made under subsection (1) shall be considered in accordance with the provisions of the Petitions to Parliament (Procedure) Act and the Standing Orders of the relevant House.

(4) The Cabinet Secretary shall, within thirty days of the petition being committed to the relevant Committee, submit a recommendation on whether the petition should be approved subject to—

(a) the petition being subjected to an independent Environmental Impact Assessment; and

(b) public consultation being undertaken in accordance with the Second Schedule.

(5) If the relevant Committee, reports that it finds that the petition—

(a) does not disclose a ground for the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest, no further proceedings shall be taken; or

(b) discloses a ground for the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest, the National Assembly or the Senate shall vote on whether to approve the recommendation.

(6) If the resolution under subsection (5) (b) is supported by a majority of the members of the National Assembly or the Senate, present and voting, the Cabinet Secretary shall publish a notice in the Gazette.

About 123,000 hectares of land were gazetted as forest land in my constituency without public consultation and without the consent of the then County Council of Tana River. Unfortunately, all our social amenities such as schools, hospitals and police stations happened to be within this gazetted area. It is now a problem for us to access these amenities. I successfully petitioned Parliament and Hon. Amina's Committee visited the ground and unsuccessfully accepted my Petition.

The problem I have with Clause 33 is that Section 28 of the Forest Act gives the power of variation of boundaries to the Service. It is unfortunate that the person tasked with taking away people's land is also required to vary the boundary. I, therefore, propose that Kenyans should be allowed to petition Parliament when it comes to variation of boundaries. In petitions, there is a time frame. But as it is in Section 28 under the current Act, you cannot force the Executive to move this amendment. If I could, I would have forced them to do so two years ago when my Petition was accepted. I have been following it up, running between the Cabinet Secretary, the Principal Secretary and the Director-General of the Kenya Forest Service for them to initiate this process, but unfortunately, it has born no fruit. This is why I propose that that power be moved from the KFS to Kenyans to petition Parliament. With a timeframe, we can seek ways on how to vary boundaries. That is my concern.

(Question of the amendment proposed)

Hon. Chepkong'a: Thank you very much, Hon. Temporary Deputy Chairlady. I rise to support this proposed amendment. It provides for a roadmap within which a petition that is coming or emanating from any Kenyan that is dissatisfied with a particular process can be considered. This ensures that due process is guaranteed under the law. We do not want people to be treated in a whimsical manner. We are the representatives of the people and we have the power to alter or decide that a particular place shall be a forest and provide for the money to compensate the people. There must be a due process. I spoke to Hon. Wario and I am sympathetic to him that even a place where he was born was degazetted. It was not a forest when he was born. His ancestral land is now a forest. There was no consultation to ask people whether that place should be a forest. The forest is for the benefit of the people and not meant to injure people in any manner. These are our forests and so, if a place is going to be gazetted, then, due process must be undertaken by those in authority. I support the process. The good thing is that it will come to the National Assembly and the Senate and so, no one will do things in a whimsical manner. It will be subjected to due process.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. (Ms.) Abdalla.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairlady, I support that amendment. I have two Petitions about variation of forests. One relates to Wayu Forest and the other relates to Hon. Wario's constituency. It has been two years and nothing has happened. We should resolve that anomaly in the law and this amendment will help.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. (Ms.) Halima Duri.

Hon. (Ms.) Duri: Hon. Temporary Deputy Chairlady, mine is just a comment. It is only wild animals that live in forests. In Tana River County, Bangali and Mbalambala are in the forest. There are trading centres, grazing land, Administration Police (AP) posts, hospitals and schools. Can we change the names "Bangali" and "Mbalambala" if they are forests?

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Are you speaking on the amendment?

Hon. (Ms.) Duri: That is a good amendment. People live there, but they are now turning the whole area into forests. If the Government cannot degazette these two areas, we cannot live in the forest because we are not wild animals.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Members, let us speak to the amendments but, of course, the message has been passed. We have a lot of interest on this amendment. I will now give a chance to Hon. William Kipkemoi.

Hon. Kisang: Hon. Temporary Deputy Chairlady, I rise to support the proposed amendments by Hon. Wario. We need to have a roadmap on how we can gazette forest land. Some areas were gazetted as forest land illegally and forests were allocated to individuals. We have two areas in Marakwet West where in 1994, the Government of Kenya took about 70 acres of land to pave way for a district headquarters and people were settled in a forest land. I have been following the issue for the last three years for this portion of land to be degazetted and I am told the issue is at the Cabinet level. I support the amendment, so that we can have a roadmap to sort out these issues in the country.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Dukicha. Members, let us be reminded that we must have our cards, so that you can catch the Chair's eye easily.

Hon. Dukicha: Hon. Temporary Deputy Chairlady, I support the proposed amendment by Hon. Wario because we are now squatters in our own country. I brought a Petition here in 2014 about the degazettement of Wayu Forest, but it has not materialised to date. The same has been brought by Hon. Wario and the Committee has been sent there and until today, it has not materialised. As a matter of urgency, it is important that a Petition should come through Parliament.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Speak on the amendment.

Hon. Dukicha: Petitions should come through Parliament instead of Cabinet Secretaries because it takes too long.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Samburu North, Hon. Alois Lentoimaga.

Hon. Lentoimaga: Hon. Temporary Deputy Chairlady, I wanted to speak on the next 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)*

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, Hon. (Ms.) Abdalla's and Hon. Lentoimaga's amendments are, therefore, dropped.

*(Proposed amendments by Hon. (Ms.) Abdalla
and Hon. Lentoimaga dropped)*

(Clause 33 as amended agreed to)

(Clauses 34, 35, 36, 37, 38, 39, 40, 41 and 42 agreed to)

Clause 43

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

THAT, Clause 43 of the Bill be amended —

(a) in the marginal note by deleting the words “national and county” and substituting therefor the word “public”;

(b) in Sub clause (4) by deleting the word “licence” and substituting therefor the word “concession”; and

(c) by inserting the following new Sub clause immediately after Sub clause (7)—

“(7) A grantee of a concession shall provide a bond or some other form of financial security in this section referred to as “an Environmental Protection Bond”.

(8) An Environmental Protection Bond shall be of an amount sufficient to cover the costs associated with the implementation of the environmental obligations of the holder under this Act.

(9) An Environmental Protection Bond shall be in a form and for an amount as maybe determined by the Cabinet Secretary having regard to the particular characteristics of the concession.”

This amendment helps in reflecting the land tenure system that is defined in the Constitution. It also deals with the fact that concessions are not done through a licence as implied.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Neto.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Chairlady. I would like to support the proposed amendment by the Chairlady. However, in the amendment under part (c), Environmental Protection Bond is introduced. It is not defined anywhere in the interpretation section. I notice that an attempt to define it in this section is untidy. So, whereas I support this particular amendment, I request the Chair to consider, in the interpretation section, a definition of what an “Environmental Protection Bond” ought to be.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Alois Lentoimaga, Member for Samburu, you seem to have a contribution.

Hon Lentoimaga: Hon. Temporary Deputy Chairlady, you lumped my amendment together with that of Hon. Wario. I thought mine was a bit different.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): It has already been overtaken by events.

Hon Lentoimaga: What does that mean?

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon Lentoimaga, as per the procedure of the Committee of the whole House, we had three proposed amendments. There was your amendment, Hon. Amina’s amendment and Hon. Wario’s amendment. We already passed there, but for the sake of giving information, we made an announcement that if Hon. Wario’s amendment was carried, which was the first one, then Hon. Amina’s and yours were to be dropped. This is because yours was on insertion. Since Hon. Wario’s amendment was carried, then your amendment and that of Hon. Amina stand dropped. That is the procedure. Let us not go back there. That is how it is.

We are in Clause 43. Let me get the second contributor. Committee Chair, do you want to respond to Hon. Neto?

Hon. (Ms.) Abdallah: The Member for Ndhiwa is saying that we should get the “Environmental Protection Bond” in the definition section. I just wanted to let him know that the Environmental Management and Coordination (EMC) Act has a provision for the environmental bond. If you remember, last week I mentioned that this is one of the recommendations that the EMC Act has brought. So, it is already defined under the EMCA and doing another definition will just be repeating ourselves.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): That is good information to Hon. Neto. Member for Rangwe, Hon. George Ogalo.

Hon. Ogalo: I actually concur with Hon. Neto because even if it appears in the EMC Act, we need to indicate the meaning of “Environmental Protection Bond” as it appears in the EMC Act. If it is not indicated, then there is a problem in the drafting of this law. When

amending Clause 2, we need to make that amendment. I am not sure if we are through with the general provisions.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Are you supporting the amendment on Clause 43 or not?

Hon. Ogallo: Hon. Temporary Deputy Chairlady, I support, but we need to create a definition of the bond here. I know it is in the EMC Act, but we need to create it as a definition in the general segment of this Bill in Clause 2. We should do it in Clause 2.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Neto, I suggest that you consult with the Committee Chair on the same. Of course, you are at liberty to propose an amendment in Clause 2. Since it deals with interpretation, you can do such possible insertions on the same. Hon. Neto, you should also consult with the Committee Chair. Let us have the Member for South Imenti, Hon. Kathuri Murungi.

Hon. Murungi: Thank you, Hon. Temporary Deputy Chairlady. I support the issue of the Environmental Protection Bond. However, the Cabinet Secretary, in consultation with the KFS Board, should determine the amount of money to be paid as the Environmental Protection Bond. Instead of leaving this to one person, the Cabinet Secretary, in consultation with the KFS Board, can determine the amount to be paid as the Environmental Protection Bond.

*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 43 as amended agreed to)

Clause 44

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): We have an amendment by Hon. Alois Lentoimaga on Clause 44. You can move your amendment.

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

THAT, Clause 44 be amended by inserting the following new sub-clauses immediately after sub-clause (2)—

“(2A) Without prejudice to the generality of subsection (1), the Service may enter into a management agreement with any person who has acquired customary rights with respect to a public forest.

(2B) In entering into an agreement under this section, the Service shall give priority to applicants from the forest community associated with the public forest concerned, or persons residing in areas bordering the forest”.

I am not happy with the way the previous amendment has been made because Hon. Wario’s amendment was totally different from my amendment to Clause 33. I was talking about gazetted forests and Hon. Wario was talking about rural forests.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Member, we have passed that already. We are not in Clause 33. Please, speak on Clause 44.

Hon Lentoimaga: On Clause 44, it is important to know that there are people who are affected in the forest. Communities that have lived there for a long time have taken that area as their home. We have several gazetted forests in Samburu North, Nyiro, Lerroki Plateau and Ndooto. Kenyans have been there since time immemorial. Some of us were born there. We attach a lot of our lives to the forest to the extent that even customary rites are performed there. We also have specific important trees. So, in the event the Government comes to do some activities like varying the forest, these communities must be recognised and listened to. They must also participate in any kind of activities that the Government wants to perform. So, this amendment entails consideration of these communities as part and parcel of that area because they do not have any other place they call home except those areas.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I give the Floor to Hon. Amina.

Hon. (Ms.) Abdallah: Hon. Temporary Deputy Chairlady, I would really love Hon. Lentoimaga to give us the mischief he is trying to cure. Part of Clause 44 is dealing with gazetted forest. For example, this component provides that if you go to Karura Forest and want to do an activity there, you would have to do a management plan. So, I am wondering what mischief he is trying to solve.

I am not opposing, but I am not getting clearly what mischief he wants to resolve by this amendment. This is generally a management plan. If you are looking for something which is for customary use, then it would be part of the plan. I would love to know what he is trying to solve.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Can I have the Member for Budalangi, Hon. Ababu Namwamba, to contribute on Clause 44?

Hon. Ababu: Hon. Temporary Deputy Chairlady, I have listened to my Chairman in the Departmental Committee on Administration and National Security, Hon. Lentoimaga. I was struggling to get the rationale for this amendment especially on a clause that touches on gazetted forest areas. Forests and protection of forests are very sensitive issues in this country. Therefore, it is very important for us to be fully apprised on the rationale for this amendment before we make a decision. I do not want to oppose, but to understand the rationale for the amendment before we pass a verdict.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): As we contribute, it is important to get the rationale first. Let me get the rationale again from the Chair and the other Members who want to contribute.

Hon. Lentoimaga: Hon. Temporary Deputy Chairlady, Members may not understand because where I come from in Samburu, boundaries were drawn during the colonial time. The colonialists drew the boundaries when people were already inside. No attempts have ever been made to remove these people from that particular area.

Secondly, during times of animosity, people run into forests to stay there. We have more than 5,000 families in Samburu Forest. The Government appointed the Community Forest Association (CFA), which is struggling to remove people from the forests. However, they are not doing it in a good way. The process has always flopped because they have not involved the people who know that forest better than the Government. They bring officers from communities that are not part of that forest. Communities who live near the forest must be involved more.

They should make a deliberate move to ensure that communities who live there are involved in the management of that forest.

In Lerroki Plateau, there are two forest lines. There is one for the sanctuary and another one for the forest. I do not know what 'sanctuary' means. If the KFS wants to manage the forest, they should involve the local people because they know it better than the management committee of the Government.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Chair was not in when the Member was contributing. Let us hear from Hon. Serut.

Hon. Serut: Thank you, Hon. Temporary Deputy Chairlady. I have listened to the Vice-Chairman of the Departmental Committee on Administration and National Security. It is illegal for any Kenyan to live and have permanent structures in any gazetted forest. Hunters and gatherers have been living in forests from time immemorial.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): You are protected. Let him finish.

Hon. Serut: It is a policy. People who manage forests on behalf of communities are known as Community Forest Association (CFA). I do not understand what the Vice-Chairman is trying to say. I want him to come clear on this because people are in that forest illegally.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Serut, are you supporting or opposing?

Hon. Serut: I oppose that amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Pukose and then the Chair, so that we can see whether she got the rationale from Hon. Lentoimaga in his proposed amendment.

Hon. (Dr.) Pukose: Thank you, Hon. Temporary Deputy Chairlady. I want to support Hon. Lentoimaga's amendment. Kaya elders living next to a forest may want to utilise it for cultural purposes. They should have the right to use such forest through an agreement with the KFS. Any other community living around a forest can have the right to utilise it for traditional functions. Hon. Lentoimaga is putting it out that without prejudice to the generality of subsection 1, the KFS may enter into a management agreement with any person who has acquired customary rights with respect to a public forest. The KFS has given the Kaya elders a customary right to perform their traditional functions within the forests that they live around. They need to be given that right.

Secondly, in entering into an agreement under this section, priority shall be given to applicants from the forest community that is associated with the public forest concerned or persons residing in areas bordering forests. These are the only people who understand how to take care of the forest. They understand the value of that forest. Anybody from anywhere else might destroy the forest. They may want to collect herbal medicine from the forest for their customary use and they understand what they want to collect.

I support Hon. Lentoimaga's amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Chairperson, I have reservations for you. Let us hear Hon. Ababu Namwabu. He was questioning the rationale of the amendment.

Hon. Ababu: Thank you, Hon. Temporary Deputy Chairlady. I am now even more worried. I oppose the amendment if that is the intention.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Did you listen to Hon. Pukose?

Hon. Ababu: Yes. I believe Hon. Pukose was amplifying the amendment. I saw Hon. Lentoimaga nodding in agreement. I believe that is his position. On a serious note, we must allow the authority responsible for forests certain latitude to make administrative decisions without legislative pressure. I have no doubt, whatsoever, that the kind of utility or use that we are seeking to introduce through this amendment can still be achieved administratively. The moment you legislate on a matter like this one, you open a Pandora's box. We will have a floodgate of litigation. A lot of pressure will be exerted on the KFS.

We know this is one Service that is already under immense pressure to raise the forest cover in this country to the acceptable global minimum of 10 per cent. We are way below the global minimum requirement. We should not bring about additional pressure to the KFS by allowing fellows who may want to train militias in forests to freely roam there.

With a lot of respect to Hon. Lentoimaga, a man whom I have a lot of respect for, I oppose this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, this is an amendment of interest. You will take a vote on it according to the procedure of the House. So, it is good that you are listening. Let me hear from the Member for Muhoroni.

Hon. Oyoo: Thank you very much, Hon. Temporary Deputy Chairlady. I have listened to this issue and I have a lot of interest in it.

The Constitution is the most powerful document in this country. It has created several Acts including the Forest Act which created the Forest Department. All gazetted forests are protected by the Kenya Forest Service (KFS). All the land belongs to the State and it is the Commissioner of Lands who keeps the custody of land in this country. We are going to water down the Constitution if we start tilting everything to our personal interests. I cannot foresee a situation where we are going to trust our forests in the hands of ethnic groups. For security reasons it will be a hazard.

We are going to allow a situation where militia groups will be trained, with permission from Parliament and it will pose real danger to this country. For economic reasons, we are going to create a situation where the *Kaya* group that is outside the country will quietly come back. Their brothers will ask them to come and pitch tent in the forest. I believe that we need to delve into this and think about it. So, I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Since the House will take a vote, I will give two Members a chance and then we take a vote. Let us have Hon. ole Sakuda.

Hon. ole Sakuda: Thank you. I support this amendment. For purposes of the record, I believe we are talking about Clause 44 and not Clause 33. If you look at Sub-clause 2(a)---

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): We are on Clause 44.

Hon. ole Sakuda: Correct. Hon. Lentoimaga is saying that before any forest is gazetted, there is always a community and there has always been people around that forest. In fact, the preservation of those forests wherever they are--- Ngong Hills where I come from is called "*Oldonyo Loo-Ilaiser*". That means the clan *Laiser* has been taking care of that forest. So, what is the problem of getting into agreement in terms of the management because of the customary rights? I support and I want to ask Members to look at how communities have played a big role in the maintenance of these forests.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Okay. Let me get the last one from Hon. Baiya. After that we can have the Chair of the Committee before we take a vote as a House. We will not belabour on this. I have given enough Members a chance to prosecute this amendment and we have listened.

Hon. Baiya: Thank you. I support the proposed amendment by Hon. Lentoimaga. This proposal is providing for a mechanism of conservation of involving the community and making it clear that the relevant forest agency can enter into an agreement and set terms and conditions to be met by the community. This is the most effective way of involving communities in conservation and we are only giving it legal recognition and we are not saying the terms. So, the relevant agency will set out the clear terms the community has to meet. We are only making the community part and parcel of conservation.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Okay. Let me get to the Chair of the Committee, Hon. Amina before I put the Question. Members, it is important to listen because we are going to make a law once we pass the amendment.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairlady, I wish to oppose that amendment by Hon. Lentoimaga on the following grounds: The rationale behind this clause is to deal with concessioning of public forests for purposes of increasing the revenues we are generating from those forests.

Secondly, the issue of customary use is already allowed under all public forests. So, in this case what we are dealing with is that we are going to a plantation forest, for instance, and you say that the KFS has only been generating Kshs4 billion from this forest. There is a private concessioner who gives you a proposal that they are going to generate Kshs9 billion. We are not talking about indigenous forests. If you are an applicant, you are any person. If you decide that you are going to use it customarily and provide higher royalties than commercial use of that forest, then you are okay. So, in this one Hon. Lentoimaga, your problem is not in this clause. Your problem is what Hon. Wario and many of the pastoralists and dry land forest people are suffering from, that your areas have been gazetted while you are inhabitants and your activities are curtailed. This is not the clause that is going to deal with that. So, I beg Hon. Lentoimaga that this is a clause that is dealing with generating more resources from our forest products and not minor activities such as those related to our customs. For example, you will never have anybody wanting to get a concessioner on the *Kayas*, because they are not planting fast growing trees. That is a natural indigenous forest. So, it is a different issue.

I beg Hon. Lentoimaga to accept.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Okay. Having listened to the Mover and the contributions of Members, it is my pleasure to put the Question on the amendment of the clause. It is up to the House to make a decision on this after listening to the contributions.

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

(Clause 44 agreed to)

Clause 45

Hon. Lentoimaga: Hon. Temporary Deputy Chairlady. I want to withdraw this amendment because it is related to the previous one and I need to go by what the Chair of the Committee has said. So, I withdraw.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Since it is withdrawn, it is in the HANSARD that Hon.Lentoimaga has withdrawn the proposed amendment to Clause 45.

(Proposed amendment by Hon. Lentoimaga withdrawn)

(Clause 45 agreed to)

(Clauses 46 and 47 agreed to)

Clause 48

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

THAT, Clause 48 of the Bill be amended—

(a) in sub clause (1) by inserting the word “Service” immediately after the words “inform the” appearing in paragraph (f); and

(b) by deleting sub clause (2) and substituting therefor the following new sub clause-

“(2) The management agreement between the Service and the community forest association shall confer on the association all or any of the following forest user rights—

- (a) collection of medicinal herbs;
- (b) harvesting of honey;
- (c) harvesting of timber or fuel wood;
- (d) grass harvesting and grazing;
- (e) collection of forest produce for community based industries;
- (f) ecotourism and recreational activities;
- (g) scientific and education activities;
- (h) plantation establishment through non-resident cultivation;
- (i) contracts to assist in carrying out specified forestry operations;
- (j) development of community wood and non-wood forest based industries; and
- (k) other benefits which may from time to time be agreed upon between an association and the Service.

(3) Subject to sub section (1) –

- (a) none of the activities specified in this section shall be carried out so as to conflict with the conservation of biodiversity; and

(b) the Director-General may, in consultation with the association, prescribe rules for the conduct of the activities specified in this section.

This is the management agreement between the Kenya Forest Service and the Community Forest Association and has the list of uses that is allowed. This is also an opportunity for Hon. Lentoimaga, if there is any activity of customary nature that has been left out. This is where we should put it.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me give this chance to Hon. Kubai Iringo, the Member for Igembe Central

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairlady. I support the Committee and the Chair on this one. As the Chair has said Hon. Lentoimaga can pick on this one because it is somehow trying to mitigate his fears and what he wanted. This is because there will be some agreement which will guide the local community or the people who need to benefit from the forest, or the community bordering the forests who are the users. They will have limitations on how far they can interfere with that ecosystem. This will ensure that they do not get a free card to do anything they want. If there is anything which could be added after (k) maybe that can be brought in and Hon. Lentoimaga will be comfortable.

Thank you, Hon. Temporary Deputy Chairlady. I support.

(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)

(Clause 48 as amended agreed to)

Clause 49

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

THAT, Clause 49 of the Bill be amended in sub clause (1) by inserting the word “association” immediately after the words “community forest”.

The Bill had left out the word “association”. Its user rights are given to Community Forest Association and not to community forests.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Wafula Wamunyinyi, are you on this?

Hon. Wamunyinyi: I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Sunjeev Birdi, you have the Floor.

Hon. (Ms.) Sunjeev: Thank you, Hon. Temporary Deputy Chairlady. I support because it is pretty straightforward.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, Hon. John Nakara, the Member for Turkana Central.

Hon. Nakara: I support, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): All of you are supporting. Let me get Hon. Winnie Karimi.

Hon. (Ms.) W.K. Njuguna: I support the amendment.

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

(Clause 49 as amended agreed to)

(Clauses 50 and 51 agreed to)

Clause 52

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

THAT, Clause 52 of the Bill be amended by inserting the words “, and in accordance with rules made under this act or other relevant laws” immediately after the words “social amenities”.

This is calling for rules made under this Act and other relevant roles on corporate social responsibility by investors in this sector.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): This is also a straightforward one. I, therefore, want to give only two Members a chance. Yes, Hon. Joyce Akai.

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Chairlady. I want to support this amendment to this clause. Generally, it is on incentives and benefits sharing.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us now have Hon. Francis Nderitu.

Hon. Nderitu: Hon. Temporary Deputy Chairlady, I was looking forward to another one.

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

(Clause 52 as amended agreed to)

Clause 53

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

THAT, Clause 53 of the Bill be amended by deleting sub clause (1) and substituting therefor the following new sub clause—

“(1) The Cabinet Secretary for the National Treasury, may on the recommendation by the Cabinet Secretary, propose tax and other fiscal incentives to increase investments in forest land use and forest resource utilization in order to promote forest conservation and management, and to prevent or abate forest degradation.”

Currently, Clause 53(1) talks about the Cabinet Secretary (CS), National Treasury consulting with the counties. That will not be possible. So, we have deleted the same and proposed the change. This provides clarity so that the issue of tax payable is actionable by the CS, National Treasury because county governments are not responsible for proposing taxes on anything.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): There is interest from Hon. Wamunyinyi. Hon. Neto, when you sit next to him you get lost.

Hon. Oyugi: Hon. Temporary Deputy Chairlady, I appreciate the fact that Hon. Wamunyinyi dwarfs me. He is very gigantic and that is why he is the Chairman of the Bunge Football Club. This particular clause is a good provision, apart from the fact that it is tiding the work between the CS, National Treasury and the county government. The fact that it is providing for fiscal incentives, is a good provision in terms of helping protect our forest cover. This together with the one that we have passed under Clause 48 has very good provisions. To that extent let us thank the Chair for a good job well done.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Muhoroni, just a quick one.

Hon. Oyoo: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment although I had reservations because it does not define the role of the CS, National Treasury. Subject to Parliament passing it, we may be giving a blank cheque to the CS who will just propose and tomorrow it is implemented. I want us to reconsider and not give the CS, National Treasury a blank cheque.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Do you support or oppose?

Hon. Oyoo: I support with reservations.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Turkana Central, you have the Floor.

Hon. Nakara: Hon. Temporary Deputy Chairlady, you have heard the formula that came out recently from the Senate that every county must raise taxes locally for them to get more money. If we denied the county government the tax they get from forests, then they may not get money. We need to encourage the CS, to consult the county government so that they can also raise some money locally.

I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me hear from Hon. Kangongo David.

Hon. Bowen: Thank you, Temporary Deputy Chairlady. I support the amendment. According to the Constitution, it is not the work of the county government to impose taxes on national forests. The work of the CS here is basically administrative and policy making. It cannot be like what my colleague, Hon. Oyoo is saying that it should be subject to another Parliament legislation. It is going to be just a regulation or policy statement.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): We need to move fast and finish these amendments before the close of the House. Hon. Serut, is there something burning? I will give Hon. Serut one minute to contribute before I put the Question. Hon. Serut, do you support or oppose the amendment?

Hon. Serut: Hon. Temporary Deputy Chairlady, the English in that amendment does not flow.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Just go on Hon. Serut.

(Hon. Oyoo spoke off the microphone)

The Member for Muhoroni is concerned about the *baraza*. The Leader of the Majority Party, please consult in low tones.

Hon. Serut: Can I be protected from the Chairperson of the Departmental Committee on Justice and Legal Affairs and the Leader of the Majority Party?

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): You are protected. The Leader of the Majority Party is consulting. The Member for Muhoroni, you are out of order. We do not shout in the House.

Hon. Serut: Hon. Temporary Deputy Chairlady, there is need to polish this statement. That amendment says that “the Cabinet Secretary for the National Treasury may on the recommendation by the Cabinet Secretary---” The Committee should qualify that the second Cabinet Secretary is the Cabinet Secretary for Environment and Natural Resources.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Your comments have been heard, Hon. Serut. The word “Cabinet Secretary” has already been defined in Clause 2. The clause states that the word “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to forestry. Chair, do you want to clarify before I put the Question? We have many amendments that we need to go through.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairlady, Hon. Serut is very attentive and I need to acknowledge that. In this Bill, the definition of the word “Cabinet Secretary” under the preliminaries means the Cabinet Secretary responsible for matters relating to forestry. When you say Cabinet Secretary and you do not qualify it, it is automatic. That is what is defined under the preliminaries. However, I am very happy that you are that alert.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, I did direct that he should look at the definition of the words “Cabinet Secretary”.

*(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 53 as amended agreed to)

(Clauses 54 and 55 agreed to)

Clause 56

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

THAT, Clause 56 of the Bill be amended in sub clause (3) by deleting the words “provisions of the Public Procurement and Asset Disposal Act, 2005” and substituting therefor the words “public procurement and asset disposal laws”.

This is a clean-up exercise so that the law remains relevant even if the Public Procurement and Asset Disposal Act, 2005 is repealed.

(Question of the amendment proposed)

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

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

(Clause 56 as amended agreed to)

(Clauses 57 and 58 agreed to)

Clause 59

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

THAT, Clause 59 of the Bill be amended in sub clause (2) by deleting the word “may” and substituting therefor the word “shall”.

This amendment makes it mandatory for the Cabinet Secretary to gazette regulations regarding export and import of forest products.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I will give an opportunity to Hon. Serut.

Hon. Serut: Hon. Temporary Deputy Chairlady, I support the amendment. We are telling the Cabinet Secretary that nothing will happen without regulations.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Member for Rangwe.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment because if he or she does not publish the regulations, he or she may have discretionary powers which can breed corruption in licensing these people. I support the amendment.

*(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 59 as amended agreed to)

(Clauses 60 and 61 agreed to)

Clause 62

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

THAT, Clause 62 of the Bill be amended in sub clause (2) by inserting the words “uniformed and disciplined” immediately after the word “Any”.

This ensures that only uniformed and disciplined officers of the Kenya Forest Service are allowed to use firearms.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Kajwang'. Do you have a contribution to Clause 62?

Hon. Kajwang': Hon. Temporary Deputy Chairlady, the amendment is fairly obvious. I support it.

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

(Clause 62 as amended agreed to)

Clause 63

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

THAT, Clause 63 of the Bill be amended in sub-clause (1) -

(a) by deleting the words “national, county” and substituting therefor the word “public”; and

(b) by deleting the words “or is in occupation of a building authorised by the Director General or the County public officer responsible for forestry,” appearing in paragraph (b).

This is a clean-up exercise to ensure that the whole Bill conforms to the land tenure classifications in the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I will open this clause for debate. I can see interest on this. Let us start with the Member for Turkana Central.

Hon. Nakara: Hon. Temporary Deputy Chairlady, this clause protects the pastoralists because we have livestock to take care of. Having public land will help pastoralists to have grazing land. I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Priscilla Nyokabi, do you have a comment on this?

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairlady. I support the Chair of the Committee on the clause aligning the land tenure systems to what we have in the Constitution.

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

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

(Clause 63 as amended agreed to)

(Clause 64 agreed to)

Clause 65

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

THAT, Clause 65 of the Bill be amended by deleting the words “two hundred thousand shillings or to imprisonment for a term not exceeding one year” and substituting therefor the words “one million shillings or to imprisonment for a term not exceeding two years”.

We are enhancing the penalties for persons doing illegal quarrying in forest areas from Kshs200,000 to Kshs1 million.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Serut, you have the Floor.

Hon. Serut: Hon. Temporary Deputy Chairlady, the Chairlady of the Departmental Committee on Environment and Natural Resources should express herself on this. Why did she decide to increase the fine?

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. (Ms.) Abdalla, please give it your import for the sake of Hon. Serut.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairlady, I will use an example of my friend. In his forest, there is marble which generates a lot of money. If somebody does illegal marble quarrying in his forest, charging him Kshs200, 000 will be too little given that he can get that amount in one lorry. We want to enhance it so that it can be punitive for people to do illegal quarrying.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Serut, are you informed?

Hon. Serut: Hon. Temporary Deputy Chairlady, if that is the reason then I support the proposed amendment by the Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, the Member for Muhoroni.

Hon. Oyoo: Hon. Temporary Deputy Chairlady, I want to support the Chairlady on this issue because people have been abusing the law by harvesting from a forest which is restricted land. They are very influential people that if the fines imposed are not deterring, they will continue with the trend. The fine should even be enhanced further.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Kangongo, the Member for Marakwet East.

Hon. Bowen: Thank you, Hon. Temporary Deputy Chairlady. I support the proposed amendment because I can imagine someone going to Embobut Forest to harvest some limestone or minerals and yet this is a community and national forest and is only fined Kshs200,000. It should be more than what the Chairlady is proposing because that person will make a profit of more than Kshs1 billion.

*(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 65 as amended agreed to)

Clause 66

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

THAT, Clause 66 of the Bill be amended—

(a) in Sub clause (2) by deleting the words “national, provisional, county” and substituting therefor the words “public, provisional”;

(b) in Sub clause (8) —

(i) by deleting the words “Service or County Department responsible forestry” appearing in paragraph (a) and substituting therefor the words “forest manager”; and

(ii) by deleting the words “Service or County Department responsible forestry” appearing in paragraph (b) and substituting therefor the words “forest manager”.

The first amendment is on the general problem we have that all forests are public forests. The second one is to deal with the fact that forest managers, as defined for public community and private forests take care of all categories of forest. So, we do not have to repeat ourselves by mentioning service or county departments because it is already defined.

(Question of the amendment proposed)

Hon. Kubai Iringo: Hon. Temporary Deputy Chairlady, I wanted to oppose Clause 65 because it has been overtaken by events. I support the proposed amendments on Clause 66.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Joyce Akai.

Hon. (Ms.) Emanikor: Hon. Temporary Deputy Chairlady, I want to support the proposed amendment by the Chairlady of the Departmental Committee on Environment and Natural Resources.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. George Ogalo, the Member for Rangwe.

Hon. Ogalo: Hon. Temporary Deputy Chairlady, I do not know whether I am the only one who is finding it difficult to understand but the amendment is to delete “national, provisional, county”, and substituting thereof with “public, provisional”. Are we retaining the word “provisional”?

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Ogalo is seeking a clarification from the Chairlady of the Departmental Committee on Environment and Natural Resources on the import of that.

Hon. Wamunyinyi, the Member for Kanduyi, you have the Floor

Hon. Wamunyinyi: Mhe. Naibu Mwenyekiti wa Muda, nilikuwa najipanga kutoa maoni yangu kuhusiana na kipengele kinachofuata. Ninaunga mkono kipengele hiki.

*(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 66 as amended agreed to)

(Clauses 67, 68 and 69 agreed to)

Clause 70

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

THAT, Clause 70 of the Bill be amended in Sub clause (2) by deleting the words “national forests, county forests” appearing in Paragraph (c) and substituting therefor the words “public forests”.

This is to conform to the land tenure classification in the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, the Member for Turkana Central.

Hon. Nakara: Thank you, Hon. Temporary Deputy Chairlady. I would like the Chairlady to inform us why she has deleted “county” and “national forests” and replaced that with “public forest”.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. (Ms.) Abdalla, can you inform Hon. Nakara?

Hon. (Ms.) Abdalla: I have forgotten the Article which states that. Whether it is a public forest managed by a county government, all forests are classified as public forest. To differentiate between public and national forest would create a new classification that is not in the Constitution.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, Hon. Anami, the Member for Shinyalu.

Hon. Anami: That is now clear. I am happy with that clarification. I support the proposed amendment by the Chairlady of the Departmental Committee on Environment and Natural Resources.

*(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 70 as amended agreed to)

(Clauses 71, 72, 73, 74 and 75 agreed to)

Clause 76

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I will start with Hon. Ali Wario's amendment.

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

THAT, Clause 76 be amended by inserting the words "and subject to any variations as may be specified in the Third Schedule to this Act" immediately after the words "Forests Act, 2005—".

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I will start with the Committee Chair, Hon. Amina.

Hon. (Ms.) Abdallah: Hon. Temporary Deputy Chairlady, I see what Hon. Wario is trying to do with Clause 76. However, I think if he succeeds on the Schedule, he will have achieved his intention. It will be superfluous to add "and subject to any variations" because variations would happen any time Clause 33 is invoked if this Bill is passed. So, I urge Hon. Wario to reserve his energy for the Third Schedule and let Clause 76 remain as it is because variations are going to be there anyway and so adding it will not solve his problem. His problem is with the Third Schedule.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): So, do you want him to withdraw the amendment?

Hon. (Ms.) Abdallah: I beg he does.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Wario, are you convinced or do you want us to take a vote on the same?

Hon. Wario: I am convinced, Hon. Temporary Deputy Chairlady. That is on my amendment to Clause 76.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Wario, can you officially withdraw the amendment on the HANSARD?

Hon. Wario: Hon. Temporary Deputy Chairlady, I withdraw the proposed amendment to Clause 76.

(Proposed amendment by Hon. Wario withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Now that the amendment is withdrawn, I allow Hon. Amina to move her amendment to Clause 76.

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

THAT, Clause 76 of the Bill of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) any land which immediately before the commencement of this Act, was gazetted or registered as a forest reserve as set out in the Third Schedule to this Act, or under any other relevant law shall be deemed to be a public forest under this Act; and

Whereas the Third Schedule covers what was in the Forest Act with the variations that would be undertaken, there are other laws that have forest areas that will not be covered. So, what we are trying to do is we want to give protection to other forest reserves that have been put under the Water Act and the Antiquities and Monuments Act. Some of these forests are like those at the Coast region. So, the new wording will protect those as well.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I have a further amendment by Hon. Samuel Chepkong'a.

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

THAT, clause of the Bill be amended by inserting the following sub clause immediately after sub clause (a) —

“(aa) forest land degazetted for a public purpose shall not be deemed to be a national forest under this Act and the Cabinet Secretary shall, within six months of the commencement of this Act, grant titles to the allottees or intended allottees of such land;”

The amendment by the Committee Chair that has been carried has declared that all forests that had not been registered before the commencement of this Act shall be deemed to be public

forests. This amendment targets parts of forests which had already been degazetted through due process but titles have not been issued. I will give an example of my own constituency. We have two schools whose land has been degazetted but titles have not been issued. These are Ainabkoi and Soliat Secondary Schools. Also, the new Kenya School of Agriculture has been constructed in a forest. The Government has spent money. So, we are saying that where land has been degazetted and due process has been undertaken for public use and not for private use, titles should be issued. Private use is a totally separate question. Degazettement for private use should never be allowed. Private individuals should not be given land. We are aware of many constituencies where schools were degazetted but they have not obtained titles because of their indolence or for other reasons. So, if this Bill is passed in the manner it is without taking care of those private institutions, it will mean that we will have spent money in the Constituencies Development Fund (CDF) to construct schools in forests. So, it is important that those parts that we have schools and hospitals be removed. This should not be for private use but for public use. Public use is very clear. It is what is used by the public and not what is used by a private person.

I thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, Hon. Serut.

Hon. Serut: Thank you, Hon. Temporary Deputy Chairlady. To me, the amendment brought by Hon. Chepkong'a seems to be in order because the Government gazettes forests and, therefore, the same Government is supposed to degazette them. If the degazettement was done by the Government, then I think that amendment is appropriate. I support it.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, the Member for Narok South.

Hon. ole Lemein: Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose the amendment. I oppose it. I know my friend, Hon. Chepkong'a has said that this is for public use. If this amendment is passed, this particular law will be abused in future.

I oppose this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, there is a point of order from Hon. Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose this amendment. In his amendment, Hon. Chepkong'a is seeking to introduce some laws when the matter is already clear. Once land has been degazetted it is degazetted. Once land is degazetted, it becomes public land for public use like construction of a school or any public amenity. What else do you want to know that you want to put it in the law?

I oppose this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me also hear from Hon. Silverse Anami. I had already mentioned the youth. Hon. Anami is not a youth.

Contribute Hon. Anami.

Hon. Anami: Hon. Temporary Deputy Chairlady, we have to be very careful about this amendment. Degazetted of land is meant for public utility like the public institutions that already exist. So, we must have that clarification. However, we should be hesitant to degazette more forest land because our forest cover is below 10 per cent. We should be working on improving

the percentage of our forest cover. We can deal with those forests which have already been gazetted.

I am happy that you have been to Shinyalu Constituency and you are a friend of the Kakamega Forest Marathon. You have seen that we have schools like Isecheno and Irobo which have been allocated land. Those ones should not be applied here.

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

Hon. Anami: I am supporting.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, I had talked about a youth. Allow the Chair to control the debate.

Hon. Anami: Hon. Temporary Deputy Chairlady, the amendment will open us to future challenges.

I oppose it.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, even if you stand, shout, walk or jump, you will not get the Chair's attention. I had talked about youth. My mind serves me very clearly. Hon. Silverse has contributed. Let us hear Hon. Silvence Osele.

Hon. Onyango: Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose the amendment because it is opening a loophole which will serve to defeat the spirit of this Bill. We have given the Cabinet Secretary (CS) six months to grant titles to allottees. Within those six months, several title deeds for that same forest we are trying to protect will be issued to people illegally. We know how people operate in Kenya.

Therefore, I vehemently oppose this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me get a Member from the other side of the House. Hon. Pukose, you are almost jumping up!

Hon. (Dr.) Pukose: Thank you, Hon. Temporary Deputy Chairlady. I support this amendment because it talks about public purpose. The land will not be for individual use. It says: "forest land degazetted for a public purpose shall not be deemed to be a national forest under this Act and the Cabinet Secretary shall, within six months of commencement of this Act, grant titles to the allottees or intended allottees of such land".

If we have public land which is already degazetted for purpose of establishing a school, we should allocate a title deed to that school. I support this amendment so that we can have those degazetted pieces of land for public use.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you, Hon. Pukose.

Let us have Hon. Zuleikha Juma.

Hon. (Ms.) Juma: Mheshimiwa Naibu Mwenyekiti wa Muda, ninayapinga vikali mabadiliko yanayoletwa kwenye sheria hii. Waziri wa Afya na Waziri wa Ardhi wanapewa nguvu ambazo haziko katika Katiba. Ibara ya 67(2) (a) ya Katiba inaeleza kazi ya National Land Commission (NLC). Inasema kuwa NLC inatajikana kusimamia ardhi za umma kwa niaba ya Serikali ya kitaifa na serikali za kaunti.

Pia, Ibara ya 67(2)(c) ya Katiba inasema kwamba NLC inatajikana kuishauri Serikali ya kitaifa kuhusu masuala ya kuandikisha ardhi. Kwa hivyo, mabadiliko yanayoletwa kwenye sheria hii yanampatia Waziri wa Ardhi nguvu ambazo haziko kwenye Katiba ya nchi yetu.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Is it a point of order or information, Hon. Zuleikha?

Hon. (Ms.) Juma: Kwa mfano ardhi ya *Kaya*. Kwa hivyo, ninayapinga vikali mabadiliko haya.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me hear the Member for Ainabkoi, who is the Mover. Do you want to clarify your amendment?

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I do not want Hon. Zuleikha to oppose the amendment on the basis of what is not true. The Supreme Court in its ruling in which the NLC made reference decided that it is the CS who shall issue title documents. It is no longer the NLC which has the power to issue title documents. The Supreme Court stated so.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I want to give the last chance on this amendment to Hon. Ababu.

Hon. Ababu: Hon. Temporary Deputy Chairlady, let us not attempt to belabour the obvious and to overlegislate to an extent where we take a matter that properly falls in the province of administrative decisions and turn them into legislation. How do you give leverage and latitude to institutions mandated to implement the laws that we legislate here if you will legislate in a manner that amounts to emasculating those institutions in the proper discharge of their mandate? This is one amendment that will amount to over-legislation and swimming in an arena that properly falls in the latitude that must belong to an institution which has been granted mandate such as the Kenya Forest Service.

Let me also hasten to add that legislation such as this one, which a handful of us may want to treat casually, had been abused in the past. The matter of land or forestry in this country cannot be treated casually but with a lot of caution. In respecting the mandate of the institution responsible for forestry, and knowing that there are certain decisions that are more administrative than legislative, I urge this House to reject this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, it is time to vote. The Chair does not have a vote.

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

(Clause 76 agreed to)

New Clause 5A

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 5—

National
Strategy

Forest

5A. (1) The Cabinet Secretary shall, within one year of the commencement of this Act and every five years thereafter, following public participation, formulate a national forest strategy.

(2) The object of the Forest Strategy shall be to provide the Government's plans and programs for the protection, conservation and management of forests and forest resources.

(3) The Forest Strategy shall contain, among other things, details of—

(a) existing forests and forest resources;

(i) measures for the protection, conservation, and management of forests and forest resources;

(ii) minimum forest reserve areas at national and county levels;

(iii) programmes for achievement and maintenance of tree cover of at least ten per cent of the land area of Kenya;

(iv) institutional capacity for forest research and technological development;

(v) functional responsibility for national and county governments in relation to forest resources management and

(vi) any other matters the Cabinet Secretary considers necessary.

(4) The Cabinet Secretary shall—

(a) prepare and issue an annual report on the state of forests and forest resource strategies in Kenya; and

(b) may direct any lead agency to prepare and submit to it, a report on the state of forests and forest resources under the administration of that lead agency.

(5) The Cabinet Secretary shall review the Forest Strategy every three years.

Hon. Temporary Deputy Chairlady, it is the role of a Cabinet Secretary to produce policies, strategies and mechanisms as to how they are going to meet their objectives. The New Clause 5A gives what those strategies and policies should have and when they should be revised. We are proposing the timelines within which they should have a national strategy on forestry and how often that strategy will be reviewed. That is the import of this New Clause 5A.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 36A

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Is Hon. Waluke not here? Where is Hon. Waluke? Hon. Members, Hon. Waluke is not represented and there is no communication from him. Therefore, New Clause 36A is dropped.

(Proposed New Clause 36A by Hon. Waluke dropped)

(First Schedule agreed to)

Second Schedule

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): We have an amendment by Hon. Alois Lentoimaga. Is he in the House? He is not in.

(Proposed Second Schedule by Hon. Lentoimaga dropped)

Third Schedule

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

THAT, the Third Schedule of the Bill be amended by—

- (a) deleting the title “GAZETTED NATIONAL FOREST RESERVES” and substituting therefor the word “GAZETTED PUBLIC FORESTS”; and
- (b) deleting the expression “(s.30)” and substituting therefor the expression “(s.76(a))”;

It is dealing with the right classification that there are no national and county forests but public forests. The second bit is deleting the expression “s.30” because this Schedule is referring to “s.76”.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Now that Hon. Amina Abdalla's amendment has been carried, the proposed amendment by Hon. Ali Wario will be to move (b) and (c). So, I call upon Hon. Wario to proceed and do so.

Hon. Wario: Thank you. My first amendment has been taken care of by Hon. Amina's amendment.

I, therefore, beg to move:-

THAT, the third schedule be amended by-

- (b) deleting the expression '29. Bangali 39/2/2013'; and
- (c) deleting the expression "31. Mbalambala 40/2/2013".

The reason as I earlier said is that the proposed gazetted forest area had not been there from Independence time up to 2013. When they gazetted it on 16th December, 2013 they did this from Nairobi without taking the input of the local communities. In the process they ended up closing the social amenities. I have petitioned Hon. Amina and taken her Committee to the ground and we have shown them the realities.

It is one thing to conserve and it is another to grab. What is disturbing me most is Article 63 of our Constitution which deals with community land. Article 63(3)(4) and (5) is very clear. This is community land. How can the national Government sit in Nairobi and gazette it as a forest?

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Neto.

Hon. Oyugi: I would like to support Hon. Wario's amendment. I am saying this with a lot of interest because of several reasons. Right now there are several amendments that are being circulated for purposes of deleting. However, I would like to speak for Hon. Wario's community. The Hon. Member took us through Section 33 that was newly introduced for purposes of taking care of future communities. He said he has already petitioned the National Assembly and it has always been unable to ensure that his community's interest is taken care of.

What Hon. Wario is trying to do in this particular case is to give effect to decisions that have not been taken. I support his amendment. With regard to the others that are being circulated, I think we must oppose because it is going to set bad precedent. I support this amendment.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me get the Member for Narok South.

Hon. ole Lemein: Hon. Temporary Deputy Chairlady, I rise to oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Halima Duri.

Hon. (Ms.) Duri: Thank you, Hon. Temporary Deputy Chairlady for your good consideration. I support the amendment by Hon. Ali Wario, my neighbour, brother and student. He has done good work with that amendment. Bangali and Mbalambala are trading centres and markets. We have schools and hospitals there. It is good for Bangali and Mbalambala to be deleted. I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Kenta you cannot keep standing and yet you are not even in the request list. Put your card well if you want the Chair to notice you.

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

I have a further amendment by Hon. Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Temporary Deputy Chairlady.

I beg to move:-

THAT, the Third Schedule be further amended by deleting the following expressions –

(e) “122 Kitalale 2/1977”; and

(f) “262 Makunga 23/2013”

After consulting with my colleagues, I support that we amend it by deleting (e) which is “122 Kitalale 2/1977 and drop the (f) part also. This is because in Kitalale scheme people were allocated that land in 1992. They have lived in Kitalale Phase I, II and III. This is land that has already been gazetted and we want these people to be allowed to continue living there.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Order, Members! Hon. Pukose, are you through with your amendment?

Hon. (Dr.) Pukose: I move that the Third Schedule be amended so that these people can be given title deeds. With those few remarks, I support the further amendment.

(Question of the further amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Member for Budalangi.

Hon. Ababu: Hon. Temporary Deputy Chairlady, I believe we are handling a very grave matter rather casually. We are now starting to trend on dangerous grounds. There must have been some very good reasons and rationale why this land was gazetted. To sit in this Chamber, just the handful of us and attempt to casually reverse these decisions without any empirical study, survey or any other basis, will not be very responsible of us as a legislative Chamber. There are better avenues for the responsible authorities to delve into this matter empirically, in a manner that would avail reasonable and satisfactory basis for a decision such as this to be made.

I oppose this amendment and plead with this House to stop this. We are now treading on dangerous ground as we legislate on this Bill.

I oppose the amendment.

(Loud consultations)

Because I still have the microphone, I will add that it is actions such as these in the past that have led to the current scenario where this country, 50 years after Independence, is still struggling to meet the 10 per cent global threshold for forestry. If we continue with this trend, we will drop to a level which is unimaginable. We are going to turn this country into a desert with serious ramifications. Let us save our forests and create a framework where anybody who is

dissatisfied with the situation as it exists can seek other avenues. Saying “Aye” or “Nay” is not sufficient to amend this law in this manner.

Hon. Omulele: Thank you, Hon. Temporary Deputy Chairlady. I associate myself strongly with the sentiments expressed by my brother Hon. Ababu in opposing this particular attempt at amending this schedule to the Bill. These gazettelements have been made through a criterion that met some standard. If Members of Parliament are going to come to this House and reverse gazettelements that have been made through a legal process, we shall be failing Kenyans. These amendments must be taken and weighted through the usual process. If any Member is affected, then he should go through the court process or through a petition, the same way our brother Wario did so that we can have the empirical facts.

I oppose this amendment and we must serve Kenya by opposing it.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Kajwang’.

Hon. Kajwang’: Hon. Temporary Deputy Chairlady, Members are doing what they should which is to legislate. Even as we do that, we must always carry ourselves reasonably throughout the proceedings.

I have two issues of principle that I want to join my learned friends on, the Members for Luanda and Budalangi, in terms of procedure. When a Bill has been published, it means that it has been given to the public to test it and respond. When an amendment is brought to us, such as the ones which have been circulated, and they have not been published for *wananchi* to participate, it is not right. I am one of the proponents who have had a very critical view of the President when he has vetoed Bills. He has not only vetoed them but has told us the text through which we need to legislate. We are doing what we have been hitting out against. We are passing legislation without the participation of the public. This is wrong. There is need for legislation to go through the entire legislative-making process. If the Members so wish, they can bring an amendment to the Act within six months after passing this Bill, which will be published and which *wananchi* will have participated in.

Number two, in a process such as we have a Committee proceeding is almost sacrosanct. In a presidential system, we believe that the Committee must have had the facts and evidence. If we do not listen to what the Committee had to say on this and without evidence we want to bring it, it becomes a travesty of a presidential system. We should be careful on this. The Committee must have sent a Report which is accessible to all Members. Members must have interrogated that Report and we would have then put this on the Order Paper if that was possible so that we can have some meaningful debate. I am constrained to decline to support these amendments.

PROGRESS REPORTED

THE FOREST CONSERVATION AND MANAGEMENT BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Looking at the time and given the fact that no one moved for extension of this sitting, I call upon the Mover to report progress.

Hon. A. B. Duale: Hon. Temporary Deputy Chairlady, if you indulge me, before I report progress, I totally agree with the sentiments of Hon. Ababu Namwamba and Hon. T. J. Kajwang’. It must be very clear that gazettelement of a forest cannot be cast in stone because some were done in pastoral areas where there were no forests but where we have savannah grazing land and because of political implications---

Hon. Members: No!

Hon. A. B. Duale: We are not in a rally for FORD(K).

Secondly, Hon. Wario and Hon. (Dr.) Pukose brought Petitions before the same Committee. We should balance the two. I agree that you cannot use this constitutional provision to degazette a forest. That is not in order. The proposed amendment by Hon. (Dr.) Kibunguchy is out of place. It seems he has erred in degazetting all forests and yet he is not telling us why he is doing so. We will deal with that after I report progress. You cannot degazette a forest and yet you are not telling us what you want to do with that land. We are fighting land grabbing. If land is scarce in your region and you want to use the Floor of this House to degazette a forest, then you should know that will not work. This Bill is going to the Senate anyway. When we come back to your amendment, I will oppose it.

Hon. Temporary Deputy Chairlady, I beg to report that a Committee of the whole House has considered the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015) and approved the same with amendments and seek leave to sit again another day.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The proposed amendment by Hon. (Dr.) Pukose was the same as the one by Hon. (Dr.) Kibunguchy.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. Kajwang'): Order, Hon. Members! Who was the Chairperson? Order! Let us have the Chairperson.

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015) and approved the same with amendments and seek leave to sit again.

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee on the said Report. I request Hon. Amina, the Chair of the Committee, to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. (Ms.) Abdallah seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): The Member for South Imenti, why do you raise your hand?

Hon. Murungi: Hon. Temporary Deputy Speaker, I had the same expressions because this is a very sad day for this House. We are degazetting public land on the Floor of the House. Therefore, mine is just a comment that we really need to rethink even the forest land in Bangali. As a Committee, we did not even recommend degazettement of that forest.

The Temporary Deputy Speaker (Hon. Kajwang'): The issue before us right now is to accept the Report of the Committee. You will have an opportunity later on.

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang'): Order! Hon. Members, the time being 6.38 p.m., this House stands adjourned until Thursday, 17th March, 2016, at 9.30 a.m. It is so ordered.

The House rose at 6.38 p.m.