

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 23rd February 2021

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

DEMISE OF HON. FRANCIS MUNYUA WAITITU

Hon. Speaker: Hon. Members, it is with deep sorrow that I notify the House of the untimely demise of the Member for Juja Constituency, Hon. Francis Munyua Waititu, who passed on yesterday

Monday, 22nd February 2021, while undergoing treatment at M.P. Shah Hospital, Nairobi. The late Hon. Francis Munyua Waititu was born on the 5th October 1958 in Gigiri area, which was then within the present Kiambu County. He attended Karura Forest Primary School where he sat for his Certificate of Primary Education (CPE), before proceeding to Sharda High School for his East Africa Certificate of Education. He thereafter obtained certificates and diplomas in coffee related research and management from both local and international institutions.

Hon. Members, the late Hon. Waititu, popularly known as ‘*Wakapee*’, had immense interest in the agriculture and real estate sector, which highlighted his sterling career at a number of coffee estates in the country, where he served at management level and later as Group General Manager of one of the then major coffee estate farms in the country. The late Hon. Waititu’s popularity on account of his work ethics was confirmed in 2013 when he was elected as Member of Parliament for Juja Constituency. Unsurprisingly, he retained the seat in 2017 despite battling cancer that saw him travel out of the country on a few occasions for treatment. He was an illustrious and devoted member of the Departmental Committee on Agriculture and Livestock and the then Joint Committee on Catering and Health Club, which is the predecessor of the Committee on Members’ Services and Facilities. He also served diligently in the Committee on Implementation. He was unequivocally vocal on matters pertaining to coffee as exemplified by his efforts that contributed to the declaration of the Coffee Cherry Advance Revolving Fund by His Excellency the President during the 124th Session of the International Coffee Council in Nairobi in March 2019.

Hon. Members, the late Member was consistent in introducing and supporting legislation on improvement of the agriculture sector and ease of doing business in Kenya. He will be remembered in this House for introducing the Law of Contract (Amendment) Bill, (National Assembly Bill No. 20 of 2018), which was the first individual Member’s Bill to be published in

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this 12th Parliament. The Bill sought to compel creditors to first realize the assets of the principal borrowers before proceeding to realize the assets of guarantors in cases of default by the principal borrowers of loans. Although the Bill did not obtain the requisite presidential assent, it nevertheless provided many insights into borrower-lender relations and related dynamics in the country.

Hon. Members, you will agree with me that this nation has lost a progressive, trusted and devoted community leader whose actions reflected the interests of his constituents. On behalf of all Members and staff of the National Assembly and, indeed, on my own behalf, I wish to convey heartfelt condolences to the family of the late Hon. Francis Munyua Waititu, the people of Juja Constituency and all his relatives and friends during this difficult time of mourning. As the National Assembly, we assure the family of our support during this period of great sorrow. In this regard, Hon. Members, and in line with the Parliamentary Service Commission's Bereavement Policy, I have constituted an *Ad-Hoc* Committee to help with the funeral arrangements. The Committee, which will be led by the Member for Kiambu Constituency, the Hon. Jude Kang'ethe Njomo, MP, will comprise the following other Members-

1. Hon. (Ms.) Wanjiku Kibe, MP;
2. Hon. Julius Melly, MP;
3. Hon. Gabriel Kago, MP;
4. Hon. Fabian Kyule Muli, MP; and,
5. Hon. Kimani Ichung'wah, MP.

The Senate is to also nominate two Members to this Committee. May God rest his soul in eternal peace. Hon. Members, in tribute and honour to our departed colleague, the late Hon. Francis Munyua Waititu, MP, I request that we all stand to observe a moment of silence.

*(Hon. Members stood up in their places
and observed a moment of silence)*

May his soul rest in eternal peace. Thank you. Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Speaker. On behalf of myself, my family and the people of Garissa Township, I wish to send my condolences to the people of Juja Constituency and to the family of our late colleague and brother, Hon. "Wakapee" as he was known in this House.

I had a very special relationship with Hon. Wakapee and his death has really touched me. Hon. Wakapee was an active Member of this House. He used to sit behind me, where the current Leader of the Majority Party used to sit. I want to say without any fear of contradiction that him and Hon. Pukose were my foot soldiers in this House. They really helped me in dealing with matters of Government business in the House. I can remember when Hon. Waititu - and may his soul rest in peace - had this piece of legislation, the Contract Bill. He was not able to move his Bill at the Second Reading because he was ailing. He delegated that responsibility to me to move that Bill at the Second Reading. I remember he delegated that responsibility to me. I moved it at the Second Reading and the House agreed with him and me up to the Committee of the whole House stage. This is the only Private Member's Bill that, as the former Leader of the Majority Party, I moved and took it through all the stages. The Bill was very important and it had only one clause. As you well said, banks or financial institutions should deal with the principle borrower before going to seize the assets of the guarantor. For very strange reasons and in compliance with Article 115 of the Constitution, the President had reservations on that Bill. Since it is six months down the

line, I will be ready to bring that Bill back. I will consider the reservations of the President and see whether we can bring back that Bill, while putting in place what the President had said so that this House and the Hansard can be used to honour our late colleague.

Finally, I was in many WhatsApp groups of Members of Parliament. They were shocked at the number of deaths that we have had. In the last ten days alone, we have lost three Members including the late Hon. Senator Yusuf Haji, our colleague, Hon. Oroo and now Hon. Waititu. This Parliament has had the highest number of Members of Parliament who have died while serving the people. I speak for the 10th, 11th and the 12th Parliaments. During this period of COVID-19 pandemic, it is good to note that just because we are Members of Parliament and our death can easily be visible, there are many other people who are dying. I really want to say that the COVID-19 cases are rising now. So, let us encourage our voters and everybody to go back to the protocols that were given by the Ministry of Health.

This House has lost a great leader and I am sure under your leadership and the Clerk, we will give our brother and colleague a befitting send-off.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Wamalwa.

Hon. Chris Wamalwa (Kiminini, Ford Kenya): Thank you, Hon. Speaker. On my behalf, on behalf of my family and on behalf of the great people of Kiminini Constituency, I would like to send a message of condolence to the family of the late Hon. Waititu and the entire Juja Constituency. We have lost a great friend. I am the Chair of the Catholic Members of Parliament Forum and, indeed, Hon. Waititu was our member. He never missed a mass on Wednesdays. In fact, most of the time, even the time he was ailing, he used to come very early together with Hon. Muturi Kigano. This is a man who was very brave. Many times when people have cancer, they face a lot of stigma. I shared so much with him. He told me: "Mhesh, my mother has had issues of cancer and my sister too". The last time when he was ailing in India, he called us and asked us to remember him in prayers. As Catholic Members of Parliament, we have lost a dedicated colleague. I remember him mentioning to me that he was the Chairman of the Juja Parish Committee on Development. As Catholic Members of Parliament, we normally visit our colleagues every month and we do some contributions towards the development of the church. This year, his Parish was earmarked to be the parish that we were to visit. We did not know that he will not stay any longer with us. As Catholic Members of Parliament, we want to assure the Juja Parish that we will be able to fulfill what we had discussed. This was a man who was very humble. He cut across the political divide. This is a man who could speak every language. He used to speak fluent Luhya. One time during his campaign, he invited me to go to Juja. I asked him: "How comes you speak the Luhya language fluently?" I was later told that the majority of the people who work in Kiambu were Luhyas. This shows there are too many Luhyas in Kiambu. When I went there, the man spoke fluent Luhya and the workers really liked him. He was very humble. I remember him mentioning to me that he has worked for the Kenyatta Family in the coffee industry. I know His Excellency the President has lost a dedicated friend.

We send a message of condolence and we pray to almighty God to give his family strength and comfort at this difficult time.

I thank you.

Hon. Speaker: Member for Mwea.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Speaker. On my behalf, on behalf of my family and on behalf of the people of Mwea, I bring by condolences to the family of the late Hon. Francis Munyua Waititu, a man who I came to know when we got into this House; a man

whom I found to be a source of advice in this House. Quite often than not, we sat with the late Hon. Waititu, and he would advise me on House procedures. Much of what I have learnt in this House came from him and the MP who spoke before me, Hon. Wamalwa, whom I consulted a lot. Because of that consultation with Hon. Waititu, I found my way to his constituency with Hon. Koinange and I learnt a lot from the good work he was doing for his constituents and, as a result, I also organized for my CDF team to visit and learn the best practices from his constituency. That is the man we are bereaving today. We have lost a man who was dedicated, who was always here whipping people. At one time I thought he was the Chief Whip because he worked tirelessly to see that the House business moved on the way it was supposed to, and I think this has been alluded to by the former Leader of the Majority Party, Hon. Aden Duale. The man was really dedicated. It is for that reason that we offer our condolences and we hope and pray that God will be with the family and he will give them strength to endure the challenges that come with the loss of a father.

May his soul rest in eternal peace! Thank you, Hon. Speaker.

Hon. Speaker: Member for Igembe Central.

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Speaker for giving me this opportunity. Let me take this chance on my own behalf, on behalf of my family and that of the great people of Igembe Central, to pass my heartfelt condolences to my good friend and colleague Hon. Wakapee. We joined Parliament with Hon. Wakapee in 2013 and we became friends. All along, we were coping on very well.

When he got diagnosed with cancer, he told me that he had taken his mother to the hospital. But because the sister also had cancer, he preferred to be tested. He was also found to be sick, but the disease was in the early stages. So, he was very confident that because it was discovered in the early stages, it would be managed. When he went to India, we were confident that he was going to come back healed. Unfortunately, it has caught up with him. I really feel sorry for the family and for the people of Juja. May his soul rest in peace.

Hon. Speaker: Member for Tharaka.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. Allow me to also extend my deep and sincere condolences, on my own behalf, on behalf of my family and on behalf of the people of Tharaka, to the constituents of Juja. They have lost a great man.

Hon. Wakapee was one of the best Members of Parliament (MPs) we had here. A very likeable person, amiable and friendly to everyone. I remember Hon. Wakapee from the days I joined the House because he was one of the MPs who could introduce us, as newcomers, to the procedures of this House and what happens here. He would make friends with even us, the freshers', curious to know where we came from and also eager to tell us about Juja Constituency. I also met Hon. Wakapee when I went to Mang'u High School, which is in his constituency, as a parent. It is also my former school. We were able to do a lot for the people of Juja through that school.

We have lost a great man. A man who will be remembered for the work he did in this House, especially on the amendment to the Law of Contracts Act, which Act we actually opposed because we felt it was infringing on some of the provisions on the laws of contract that are known in this country. He was able to persuade majority of the House that this is the law that was going to help the common man and was for the betterment of the country and so, we enacted it. I am happy to hear that the former Leader of the Majority Party will revive that law. We will look at it afresh and see whether we can breathe some impetus of life into it in honour of the late Hon. Wakapee. Juja, we condole with you. We condole with the country. May his soul rest in eternal peace.

I thank you.

Hon. Speaker: Member for Endebess.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I join you and the entire Parliament, on behalf of my family and the great people of Endebess, to send our heartfelt condolences to the family and the people of Juja following the death of our colleague, Hon. Francis Waititu alias “Wakapee”.

Hon. Wakapee used to sit here. He was a great friend of mine. We would always mobilize ourselves, if there was serious business, and made sure that we supported the Leader of the Majority Party to make sure that, that business was transacted. He would even move around and try to mobilize people to come in. When he became sick, it was very unfortunate. Most of Hon. Wakapee’s children have joined the university. There are those who were in Makerere University. He was only left with his wife Susan. In the evening, Hon. Wakapee would call Susan and ask: “Where are you?” It was so that they could go home together. I know she is going to feel very lonely after the death of her husband. I say *pole* to Susan, the family and the people of Juja following the death of Hon. Wakapee. May his soul rest in eternal peace.

Hon. Speaker: Member for Alego-Usonga.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Speaker. On my own behalf, on behalf of my family and on behalf of the people of Alego-Usonga, I convey my heartfelt condolences to the family of the late Hon. Francis Waititu and the people of Juja.

We joined Parliament a bit late after the Majority side had joined because we were engaged in resistance. When I joined, I was trying to make friends and I found Hon. Waititu to be very friendly. He used to go for the Catholic mass every Tuesday in the morning. I also used to come very early. So, we could meet at the cafeteria. We started having a conversation and he was very friendly and humble. He told me that in his constituency, there are many members of my community. In fact, he told me that even in his National Government Constituency Development Fund (NG-CDF) Committee, there were Luos whom he had appointed. We became very close. He told me that he was very happy because the handshake had provided him with an opportunity to be a proper leader because in his constituency, he was representing members across the country. When he became sick, we continued our conversation and he was very optimistic that he was going to survive because he got the disease a bit earlier. But, unfortunately, God has done his part.

Lastly, many of our colleagues have gone to be with the Lord. This is something that we need to learn, as Members of Parliament, because each and every weekend, I see many of us involved in vicious political engagements. Sometimes, I see my colleagues speaking in rallies and they are very bitter. It is like if there is no politics, life cannot move on. I urge my colleagues to embrace each other. Let us behave like Hon. Waititu who was more of a nationalist who engaged everybody. His constituency is cosmopolitan and he was able to represent his people with all satisfaction. May his soul rest in eternal peace.

Hon. Speaker: Member for Kipipiri.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker, for giving me this opportunity to join my colleagues in sending my condolences, those of my family and those of the people of Kipipiri to the people of Juja and to the family of the late Hon. Wakapee. I extend it to all the people who are bravely bearing the ravages of some of the diseases that have become almost part of the normal, and which he was one of the greatest ambassadors in terms of admission. He kept on telling each one of us: “I have cancer, but I believe that it will go away”. He never lost hope. He knew it was terminal, but he believed that he would extend and put more life in his days because he knew that it was a matter of when.

I met Hon. Wakapee in 2017 during the campaign period. We went out as a group during campaigns. When campaigning within the neighbourhood of Juja and Gatundu, he would come say hi to me. Off course, he knew me but I had not met him. We started talking like we had known one another until at some point I was telling him: “We are campaigning in your area”. Even as we were looking and saying: “Yes, we want to go to campaign in Juja Farm but, if we go there, we might miss this.” He was quick to say: “Leave Juja Farm to me! Let us go and campaign in Hon. Wanjiku Kibe’s Constituency.” It is because the former MP, Hon. Clement Waibara, was giving her hell. He was willing to give up his own campaign team not to go to his place, but to go to the other one and yet, you could see he was still frail.

In my imagination, this is the person all of us needed to get there. His people loved him and, as you can see, they elected him. He made friends with everyone. He never shied to say what the issue was. Most people tend to hide things and then suffer in silence. By opening up, he was able to live with the condition and to internalize it. That, perhaps, is what we all need to do so that the pain is lessened.

As we go through it, I believe Members of Parliament, in the usual way, we will be generous. Between the Leader of the Minority Party and me, we will be communicating to the Clerk so that arrangements can be made on how we can support our colleague in the usual standard way. At least, it is easier to channel everything as one cheque rather than to keep telling everyone to send to a committee; some to Airtel, some to MPesa, some to a Paybill and so on. We will do it in an organized way.

I thank you, Hon. Members, for that decision that was made earlier, and I thank my predecessor for enforcing it. We will be doing that within ourselves. We will facilitate that so that we have a check-off system that will contribute to that. It is something that has touched us.

It is a sad thing because immediately we lost Hon. Oyioka...

Hon. Speaker: Give him the microphone.

Hon. Amos Kimunya (Kipipiri, JP): Immediately we lost Hon. Oyioka, even as I was writing a message to tell the Members, I was very much alive to the fact that Hon. Wakapee was in a very bad state. My worst case scenario was that I would have to write two messages. They have died so close to each other.

It is a sad time for this nation and this Parliament. We hope that we will pray hard enough to be given a small break so that we can continue working without having to condole with the families of Members every other day. We must also be realistic that it is God’s wish. We can only hope and pray that his soul rests in eternal peace.

Hon. Speaker: Let us have the Member for Turkana Central.

Hon. Lodepe Nakara (Turkana Central, ODM): Thank you, Hon. Speaker. I join my colleagues to give my condolences and those of my family and the people of Turkana Central.

When I came to Parliament in 2013, this is the man whom I met and he became like a brother and a friend. He showed me where to get a house in Kahawa Sukari. We called each other “*shemeji*”. Whenever I met him along the corridors of Parliament, he would always give me a good smile. Even if you had a problem, when *Mheshimiwa* smiled, you felt comfortable.

On behalf of my family and the people of Turkana Central and Turkana County at large, I say *pole* to the family.

Hon. Speaker: Let us have the Member for Gilgil.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Speaker. I also join you and my colleagues in eulogizing a great man, Hon. Wakapee. I met him in the 11th Parliament. As it has been said by my colleagues, he was not shy in talking about what was ailing him. In fact, he

told that story to everyone on how he chanced to go for testing when he was taking his mother for the same. He was encouraging people to take tests so that if there is anything, it can be detected early.

On behalf of myself, my family and the people of Gilgil, I wish his family God's grace that surpasses all understanding. I condole with the people of Juja on the loss of their Member of Parliament (MP). As the Leader of the Majority Party has said, I hope that the 12th Parliament will get a break because it has been quite a tough time for us.

Even as we eulogize this great man, the one thing that would honour him would be to prioritize healthcare. I say this to the county governments. Even as we fight for more resources to go to the counties through the Building Bridges Initiative (BBI), county governors can honour the Abuja Declaration of 1989 that stated that not less than 15 per cent of a country's funds should go towards healthcare. Let us bring India to Kenya so that the many people who are suffering out there from cancer and terminal illnesses are able to locally access quality healthcare.

With those few remarks, I say sorry to the people of Juja and to the family. May he rest in peace.

Hon. Speaker: Let us have Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I also want to eulogize the late Francis Waititu on my own behalf and on behalf of my constituents.

I will not repeat what my colleagues have said but, it is true that the Hon. Member was a friend to many, if not all, in this House. Sometimes, when I looked at Waititu and the way he behaved, you would tell yourself that probably all of us need to represent cosmopolitan constituencies to appreciate that we can live in diversity and that ethnic polarization does not help this country at all. This is one gentleman in this House who, even if you had differences politically, or were on different sides of the political divide, you could still find time and discuss constructively.

In fact, I remember that immediately after the last General Elections, he was so passionate about Raila and Uhuru shaking hands. At that time, no one even knew that there would be shaking of hands. He was one of those Kenyans who were really praying that this country could come together, live together and that there would be peace. One thing he kept on repeating was that we needed peace in this country. He would sometimes irritate you with that statement because he would repeat it severally. Those of us who were on the other side of the political divide would ask him if he was asking for peace because he was in power and wanted to stay there. I think he meant it from the passion with which he said it. He was a friend to all of us.

It took me some time to know he was unwell until when I did not see him for quite some time in the House. That is when I got to learn that he was in India. Later, he came out publicly and spoke about his condition and about other Members of Parliament suffering the same.

My concluding remarks would be that we need to look at the health sector in this country to address the issue of cancer. It has ceased to be a rich man's disease. Hon. Waititu was a person of average means. Poor Kenyans who are suffering and dying from that disease cannot be counted. In fact, some of them die without knowing it is cancer. They term it as other local diseases. Some think they are bewitched. The truth of the matter is that cancer is widespread in this country. As leaders and policy makers, we need to think through this matter. It is something that we should not just leave to the counties. There should be a policy direction from the national Government level. I pray with the family of the late Francis Waititu.

May God rest his soul in eternal peace.

Hon. Speaker: Let us have the Member for Kiambu Town, Hon. Jude Njomo.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Speaker. On behalf of my family, the people of Kiambu and myself, I would like to pass my heartfelt condolences to the family of Hon. Waititu, Wakapee, who passed on yesterday.

Hon. Waititu was a member of the Departmental Committee on Agriculture and Livestock. As members of that Committee, we are very sad because he is the second Member of the Committee to pass on this year, after Hon. Murunga. It has really shaken the Committee. He was a very active member of the Committee.

I remember him one time arguing about the amount of money that we allocate to agriculture. Agriculture contributes to 27 per cent of the national basket and yet, we only allocate 3 per cent to agricultural activities. He would ask if we had our priorities right. We should feed the animals that produce more so that they can give even more. He was agitating so that we allocate more money to the agricultural sector because it would make our country even better.

Hon. Duale has talked about his Bill. I remember he consulted me widely when he was doing that Bill because he was very passionate about it. We knew of people who had lost their property, not because they had borrowed, but because they had guaranteed other people or their relatives in the bank. The bank would look at which property was more lucrative. Without consulting anybody, they would go and recover or auction the guarantor's property before even touching the borrower's property, which did not even look naturally fair. I supported his Bill but it was unfortunate that it was not assented to by the President.

He continued working very hard even when he was sick. I remember him one time coming to the House with a Statement that he wanted to read, but he had lost the power to read. He was looking for another Member who would read the Statement on his behalf. He refused to go and sleep at home because he was sick. He said that he would continue working. He worked until he could not do it anymore. He was that hard-working! After he came from India after treatment, I remember that he took a roadshow truck and went round his constituency. He even went to Githurai. He told people of the steps they should take, so that they can be diagnosed at an early stage before cancer affects them. Many people hide their problems. However, he came out strongly and said that he would use that opportunity to help others not to get cancer.

Hon. Speaker, like what my Chairman has said, he was a Member of our church here in Parliament. He was very active. He came until he could not come to Parliament. He continued being an active member of our church. As a church, the only way we can thank him is by visiting his constituency, like we had planned, and support his church.

Hon. Speaker: I will give you a maximum of two minutes because you are the Chair of the *Ad hoc* Committee. We do not want long debates.

Hon. Jude Njomo (Kiambu, JP): Okay. The time has passed very fast. I did not realize it. Hon. Speaker, his constituency's National Government - Constituencies Development Fund (NG-CDF) was ranked No. 7 because they managed the funds and prioritized the projects in such a way that it was ranked well in the country.

I met Hon. Wakapee even before I came to Parliament. I was a meter reader and he was a manager of a farm. I went to read a meter there and we became friends.

(Loud consultations)

Famous men always read meters. If you remember, even President Jomo Kenyatta was a meter reader. I was also a meter reader.

(Laughter)

I learnt that, as a manager of a farm, he would go out with his workers and he would pay their bills. He told them to take whatever they wanted and he would pay because he was a very generous man. His name, “Wakapee”, was from that sentence of saying, “I will pay”. I want to thank some Members of Parliament who joined hands a few months ago, contributed and said that they must go to his home. We took him some “soup”, so that he could recuperate faster. I thank those Members whom we went to Juja Constituency with.

With those few remarks, Hon. Speaker, I want to stop there. I visited the home this morning. The family is doing well. It is very strong. Let us support them the way the Leader of the Majority Party has said, so that we can give Hon. Wakapee a dignified send-off that he deserves. Thank you very much, Hon. Speaker.

Hon. Speaker: Member for Narok North.

Hon. Richard ole Kenta (Narok North, ODM): Thank you, Hon. Speaker. I would also like to take this opportunity to condole with the family of the late Hon. Waititu. I would like the House to note that he was a member of the Committee on Implementation. He was a very committed Member and pleasant to work with. He was the life of the party.

The last time he attended the Committee deliberations, he said that he had improved. He was always very optimistic that things would turn out well. Unfortunately, as in all spheres of life, some things do not happen as we project. We are praying for his family, friends and constituents. We tell them to be strong because a great man has rested.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Kiambu County.

Hon. (Ms.) Gathoni Wamuchomba (Kiambu CWR, JP): Thank you, Hon. Speaker. I rise to mourn one of my great voters, Hon. Francis Waititu, who is popularly known as Wakapee. On behalf of the great people of Kiambu County, I want to register my condolences. I wish to say great things to this great son of Juja Constituency in Kiambu County. He is a great son of a peasant who appreciated his past and used it to capitalize on his achievements.

I came to know the famous Wakapee when I was working in the radio sector. He was the Chairman of Juja Salams Club which used to send *Salams* to everybody. As a farm manager then, he used to list all his workers and he would send them *salams* through the radio. He really wanted to be recognized on behalf of his workers. He was a great manager and sociable. He was often referred to as Wakapee because he used to say: “*Wapee nitalipa*.” This means: “You give them what they are consuming and I will pay.”

Hon. Wakapee taught us to be loyal, which is a virtue which he held on until his death. He always spoke about his days when he served as a farm manager and how his bosses supported him in his political career. This is something that is not very common to most political career Members. He enjoyed his life. Most of all, he loved ladies. I appreciate him because of the way he treated his wife, Susan. He always accompanied her everywhere. Most of us knew his wife through him. I am his wife’s friend. In every social place that I went, including the last ceremony we had in his home during his last-born daughter’s wedding, you could tell that the man honoured women and appreciated their presence.

(Applause)

I mourn a great law maker who dedicatedly served his people in Juja Constituency with zeal and vigour. He was the best NG-CDF patron during his first term. We appreciate Hon. Wakapee as one of the great legislators that we had in Kiambu County, and especially when it comes to the plight of coffee farmers and workers.

May his soul rest in peace.

Hon. Speaker: Member for Rarieda.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. On behalf of the people of Rarieda, my family and I, let me join in condoling our late colleague, Hon. Francis Waititu. Representing a cosmopolitan constituency, he not only spoke Luhya as Hon. Wamalwa has said, but he also spoke Luo fluently. When I asked him, he told me that it is because many of his constituents were Luos and wherever he went, he would seek their votes in the language they understood.

He was a great catholic. He was very jolly and humorous. Despite his illness, he would never leave without cracking a joke or two. He took his illness in great stride. He demonstrated great courage in the face of adversity. It reminds us of how transient life is. Given the nature of how this House is being ravaged, other than the daily prayers that you give at the start of every Sitting, we should have a national prayer day for Parliament only. At this rate, we all need to worry.

We had this discussion in this House. The rate at which cancer is ravaging our people is so high that it begs to question the traditional beliefs and statements we get from medical doctors as to the causes and instances. Perhaps, it is time to really study why cancer is killing so many of us. In my constituency, and I am sure it is throughout Kenya, out of every 10 deaths that we experience, three to four are as a result of cancer. That is a very high number. Sometimes, it goes up even to five.

May his soul rest in eternal peace.

Hon. Speaker: Member for Kieni.

Hon. Kanini Kega (Kieni, JP): Ahsante, Mhe. Spika kwa kunipatia nafasi hii nitoe risala za rambirambi kwa jamaa na marafiki wa rafiki yangu Mhe. Waititu. Wingu la simanzi limetanda katika taifa letu na kule Juja kwa sababu tumempoteza Mbunge na pia rafiki yetu.

Nilijuana na Mhe. Waititu mwaka wa 2013 tulipokuwa tunafanya kampeni. Wetu ulikuwa ni urafiki wa mara ya kwanza kwa sababu yeye ni mcheshi na mpenda watu. Kama walivyosema Wabunge wenzangu, jina ‘Wakapee’ linatokana na ule moyo wake wakupeana. Tulipokuwa na yeye hapa Bunge, mara nyingi, tulipokuwa tunakunywa naye chai, hakuwa anapatia mtu nafasi ya kulipa.

Pili, kinyume na Wabunge wengi ambao hawaishi katika maeneo bunge ambayo wanawakilisha, Mhe. Wakapee alikuwa anaishi Juja. Kila wakati ukienda huko, ulikuwa unapata akijiendesha na kukaa na wananchii. Labda, hiyo ndio sababu waliweza kumpatia nafasi ya pili kuwahudumia kama Mbunge wao.

La mwisho, nilikuwa mmoja wa wale walienda nyumbani kwake alipokuwa anaugua. Kila wakati tulipoenda kumtembelea, alikuwa anauliza: “Ile *Bill* yangu imefika wapi?” Hata kama alikuwa anaugua sana. Kwa hivyo, ni vizuri Mhe. Duale amesema kuwa atachukua Mswada huo. Kama kuna kitu kizuri tunaenza patia familia ya mwendazake Mhe. Wakapee ni kuhakisha kwamba tumeleta Mswada huo na tumeukamilisha.

Ugonjwa huu wa saratani umekita mizizi katika kila familia. Hakuna familia moja katika Bunge hili ambayo inaweza kuwa haijaathiriwa na ugonjwa huu. Tunajua kuwa ugonjwa huu

ukigundulia mapema, unaweza kutibiwa. Kwa hivyo, hili ni jukumu tunalopeleka kwa serikali za kaunti kuhakikisha kuwa wako na vituo mbadala vya kuangazia ugonjwa huu.

Kwa hayo machache, ningependa kutoa mkono wa buriani kwa familia ya rafiki yangu mwenzake Wakapee.

Ahsante Mhe. Spika.

Hon. Speaker: Member for Taita Taveta County.

Hon. (Ms.) Haika Mizighi (Taita Taveta CWR, JP): Ahsante Bw. Spika kwa kunipa fursa hii. Kwa niaba yangu na ile ya watu wa Taita Taveta ninaowaakilisha hapa Bungeni, naleta rambirambi zangu kwa watu wa Juja na hata familia ya Mhe. Waititu, almaharufu, Wakapee.

Nataka kumwomboleza mheshimiwa huyu kama kiongozi shujaa sana. Alikuwa mpole na mpenda watu. Kipindi kidogo nilichojuana na yeye, nilimwona kama mtu aliyekuwa na upendo sana. Nilimfahamu pia alipokuwa anafanya uhamasisho wa mambo haya ya saratani. Mara kwa mara, tukipata fursa ya kukaa na yeye, alitungelesha na kutueleza umuhimu wa kuzingatia afya zetu kwa kwenda kupata uchunguzi wa kimatibabu. Alitupatia historia ya alivyopata kujua kuwa anaugua ugonjwa huu wa saratani. Kwa hivyo, tunamwomboleza kama shujaa aliyepigana vita na ugonjwa huu wa saratani, na alikuwa na matumaini makubwa ya kushinda vita hivyo.

Tulikuwa tunakutana na Mhe. Wakapee katika ibada zetu za misa za Wakatoliki hapa Bungeni. Kama Wakatoliki, kipindi hiki cha Kwaresma ni kipindi cha kusali, kufunga na kutoa. Kama Wakatoliki, tutamwombea sana Mungu aipatie familia yake faraja. Eh Bwana, umpe, eh Bwana, na Mwanga wa milele umwangazie milele ili apumzike kwa amani. Amina.

Ahsante sana, Bw. Spika.

Hon. Speaker: Finally, let us have Hon. Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Speaker for giving me this opportunity. Allow me to join my colleagues in conveying my sincere condolences to the family and friends of Hon. Waititu.

I got to know this great man when we joined this Parliament in 2013. As my colleagues have said, Hon. Wakapee was a very generous man. Anytime you met him, you always felt like you have known him for many years. I remember when he came back from India; he became a champion on matters on cancer. How it has turned out that he has died just two years after coming back from India is unfathomable. This is because he lived a very positive life and everybody thought that cancer could not kill this great man. But here we are mourning him after cancer took a toll on him.

I can only wish the family well and pray that the Almighty God comforts and strengthens them during these difficult times. May his soul rest in eternal peace. Amen.

Hon. Speaker: Thank you very much, Hon. Members. Unfortunately, we cannot go on beyond now. So, we will end there. We will have the occasion to condole with the family as we move on.

Next Order.

PAPERS LAID

Hon. Speaker: Leader of Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table today, Tuesday, 23rd February, 2021:

The Reports of the Auditor-General and Financial Statements on Donor Funded Projects for the year ended 30th June, 2020, and the implementing agencies:

1. Kenya Development Response to Displacement Impacts Project - Executive Office of the President, Cabinet Affairs;
2. Small-Scale Irrigation and Value Addition Project - State Department for Crop Development and Agricultural Research;
3. National Agricultural and Rural Inclusive Growth Project - Ministry of Agriculture, Livestock, Fisheries and Co-operatives;
4. Kenya Climate Smart Agriculture Project - Ministry of Agriculture, Livestock, Fisheries and Co-operatives;
5. Kenya Marine Fisheries and Socio-Economic Development Project – State Department for Fisheries, Aquaculture and the Blue Economy;
6. Capacity Development Project for Enhancement of Rice Production - State Department for Crop Development and Agricultural Research;
7. Supporting Agricultural Input and Output Marketing Policy and Regulatory Reforms to Improve the Enabling Business Environment for Agriculture in Kenya Project - Ministry of Agriculture, Livestock, Fisheries and Co-operatives;
8. Enable Youth Kenya Program - State Department for Crop Development and Agricultural Research;
9. Aquaculture Business Development programme - State Department for Fisheries, Aquaculture and the Blue Economy;
10. Agricultural Sector Development Support Programme II - Ministry of Agriculture, Livestock, Fisheries and Co-operatives;
11. Drought Resilience and Sustainable Livelihoods Programme - State Department for Crop Development and Agricultural Research;
12. Kenya Cereal Enhancement Programme Climate Resilient Agricultural Livelihood Window - State Department for Crop Development and Agricultural Research;
13. Rice-Based Market Oriented Agricultural Promotion Project – State Department for Crop Development and Agricultural Research;
14. Strengthening Fertilizer Quality and Regulatory Standards in Kenya Project - State Department for Crop Development and Agricultural Research;
15. Regional Pastoral Livelihoods Resilience Project - Ministry of Agriculture, Livestock, Fisheries and Co-operatives;
16. Instrument for Devolution Advice and Support Project by the State Department for Devolution;
17. The Kenya Symbio-City Programme Grant by the Council of Governors;
18. Coordination of Population Policy Implementation Project by the National Council for Population and Development;
19. The Kenya Youth Employment and Opportunities Project by the State Department for Youth;

20. The Kenya Primary Education Development Project by the Ministry of Education (State Department for Early Learning and Basic Education);
21. Secondary Education Quality Improvement Project by the Ministry of Education (State Department for Early Learning and Basic Education);
22. The East Africa Skills for Transformation and Regional Integration Project (EASTRIP) by the Ministry for Education (State Department for Vocational and Technical Training);
23. Establishment of Kenya Advanced Institute of Science and Technology (KAIST) Project by the Ministry of Education (State Department for University Education);
24. The Eastern and Southern Africa Higher Education Centres of Excellence (Ace II) Project by the State Department for University Education;
25. The GoK/UNICEF Education for Young People Programme by the Ministry of Education (State Department for Early Learning and Basic Education);
26. Support to Enhancement of Quality and Relevance in Higher Education, Science and Technology Project by the State Department for University Education;
27. The Kenya-Italy Debt for Development Program (KIDDP) by the Ministry of Education (State Department for Vocational and technical Training);
28. Support to Technical Vocational Education and Training for Relevant Skills Development Project (Phase II) by the State Department for Vocational and technical Training;
29. Secondary Education Quality Improvement Project by the Teachers Service Commission; and,
30. The Upper Tana Catchment Natural Resources Management Project by the Ministry of Water, Sanitation and Irrigation.

Hon. Members, these are all Reports of the Auditor-General on donor-funded projects for the year ended 30th June 2020, and the agencies implementing them.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Hon. Wandayi can tell that there is already too much work. Today there are 30 reports, and last week there were more than 70 reports which were tabled. So, you have more than you need to do.

Next is the Chairperson of the Select Committee on National Government Constituency Development Fund (NG-CDF), Hon. Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Select Committee on the National Government Constituencies Development Fund (NG-CDF) on inspections of NG-CDF Projects in 16 selected constituencies.

Thank you, Hon. Speaker.

Hon. Members: Pesa iko wapi?

(Loud consultations)

Hon. Speaker: I am in possession of the information regarding the matter that I hear Members raising. I am aware that Hon. Wamunyinyi has information which is not very bad news. Proceed, Hon. Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Speaker, over the weekend, the Leader of the Majority Party, my colleague Chairpersons and I had a session with the Cabinet Secretary (CS) of the National Treasury and Planning, and his Principal Secretary (PS). We put up a case for the NG-CDF. He assured us that money is going to be disbursed, but I will bring a comprehensive report to the House. I will give details in the course of the week or next week. He promised that before we even move to transact business on the Supplementary Budgets and the main Budget, he will be finished with all the NG-CDF disbursements.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Just check for further information because he has forwarded certain information. You just need to check further.

Next Order!

NOTICES OF MOTION

ADOPTION OF REPORT ON PETITION REGARDING DEPLORABLE WORKING CONDITIONS OF WORKERS AT KWALE SUGAR COMPANY

Hon. Richard ole Kenta (Narok North, ODM): Hon. Speaker, I beg to give notices of the following Motions:

THAT, this House adopts the Report of the Select Committee on Implementation on the Implementation Status of the Report of the Departmental Committee on Labour and Social Welfare on a Petition regarding Deplorable Working Conditions of Workers at the Kwale International Sugar Company Limited, laid on the Table of House on Thursday, 26th November 2020.

RE-CONSIDERATION OF RESOLUTION ON REPORT ON CRISIS FACING THE SUGAR INDUSTRY

THAT, this House adopts the Report of the Select Committee on Implementation on its consideration of the Public Petition to re-consider a Resolution of the House on the Report on the crisis facing the Sugar Industry in Kenya, laid on the Table of House on Wednesday, 5th August 2020.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order!

ORDINARY QUESTIONS

Question No.025/2021

STATUS OF OWNERSHIP OF LAND PARCEL OCCUPIED BY MPIDI PRIMARY SCHOOL

Hon. Speaker: Hon. Members, the first Question is by the Member for Central Imenti, Hon. Moses Nguchine Kirima, who has requested that the Question be deferred. His request has been acceded to. So, the Question is deferred.

(Question deferred)

Hon. Members, the next Question is by Hon. Gideon Ochanda, Member for Bondo constituency, who has similarly requested for deferment. His request has been acceded to.

Question No.040/2021

MEASURES TAKEN TO ASSIST PEOPLE AFFECTED BY RIVER YALA FLOODS

(Question deferred)

So, we move to the third Question by the Member for Kibwezi East, Hon. (Ms.) Jessica Mbalu.

Question No. 041/2021

STATUS OF INVESTIGATIONS INTO KILLING OF AUGUSTUS MUTUKU MWATHI

Hon. (Ms.) Jessica Mbalu (Kibwezi East, WDM-K): Thank you, Hon. Speaker...

Hon. Speaker: Hon. Mbalu, today you are seated in an unusual corner. I was looking for you on this side.

Hon. (Ms.) Jessica Mbalu (Kibwezi East, WDM-K): Hon. Speaker, I sat here to mourn my very good friend, Hon. Waititu. So, on behalf of the people of Kibwezi East, I join you and the other Members to mourn my very good friend, Hon. Waititu. May the Lord give strength to Ms. Susan and my friend, his son, whom we used to call the 'briefcase?'

Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Co-ordination of National Government the following Question:

- (i) What is the status of investigations into the killing of Mr. Augustus Mutuku Mwathi of I.D. No.25190696, who was attacked in Mlolongo Town, Machakos County on 2nd February 2021 and later succumbed to injuries while receiving treatment at Shalom Hospital, Athi River on 4th February 2021?
- (ii) Could the Cabinet Secretary explain whether any of the Government's investigating agencies have managed to uncover the motive for the murder and whether any suspects have been arrested?

Thank you, Hon. Speaker.

Hon. Speaker: The Question is to be replied to before the Departmental Committee on Administration and National Security.

The next Question is by the Member for Gilgil, Hon. Wangari.

Question No. 046/2021

DEMOLITION OF BUILDINGS IN GILGIL CONSTITUENCY

Hon. (Ms.) Martha Wanjiru (Gilgil, JP): I rise to ask Question No. 046/2021 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Could the Cabinet Secretary explain why the Kenya Railways Corporation has recently demolished commercial and residential buildings in Gilgil Constituency?
- (ii) Why were the demolitions effected yet the lessors were paying the lease fees and the corresponding levies and rates to the relevant Government bodies?
- (iii) Could the Ministry consider compensating the affected landlords who have valid leases for loss of investments and properties and cause the corporation and other Government bodies to refund the fees collected on the properties for the interrupted period?

Hon. Speaker: That Question is to be replied to before the Departmental Committee on Transport, Public Works and Housing. The next Question is by the Member of Manyatta, Hon. John Muchiri.

Question No. 048/2021

RECRUITMENT INTO THE KENYA DEFENCE FORCES IN EMBU

Hon. John Nyaga (Manyatta, JP): Thank you, Hon. Speaker. My Question, No. 048/2021, goes to the Cabinet Secretary for Defence:

- (i) Could the Cabinet Secretary state how many persons were recruited into the Kenya Defence Forces in Embu West and Embu North Sub-Counties, and specifically Manyatta Constituency during the February 2021 recruitment exercise?
- (ii) Why were youth from Nginda Ward, Embu North Sub-County discriminated by the Kenya Defence Forces during the recruitment exercise?
- (iii) Could the Ministry provide a list of all designated recruitment centres in Embu County and the list of youth recruited from each of the centres during the recent exercise?

Thank you, Hon. Speaker.

Hon. Speaker: That Question will be responded to before the Departmental Committee on Defence and Foreign Relations. The next Question is by the Member of Laikipia East, Hon. Mohamed Deddy.

Question No. 049/2021

STATUS OF ROADS IN LAIKIPIA EAST CONSTITUENCY

Hon. Ali Amin (Laikipia East, JP): Thank you, Hon. Speaker. I rise to ask Question No. 049/2021 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) What is the status of the construction of Akorino-Umande – Maili Sita, Umande, Ngenia and Mwireri – Maili Sita, Sweetwaters Ol Pejeta – Marura Bridge/Mirera-

Matanya-Ngoro Theru and Junction A2 (Kwa Huku) - Gakawa Dispensary-Mlima Kenya Secondary School Roads under the ROADS10,000 Programme in Laikipia East Constituency?

- (ii) Are there plans by the Ministry to ensure upgrading of the said roads to bitumen standards which should commence the soonest?

Hon. Speaker: That Question will be replied to before the Departmental Committee on Transport, Public Works and Housing. The next Question is by the Member of Kajiado Central, Hon. Memusi Kanchory.

Question No. 059/2021

MEASURES TO CURB THE ELEPHANTS MENACE IN KAJIADO CENTRAL

Hon. Memusi ole Kanchory (Kajiado Central, ODM): Thank you, Hon. Speaker. I rise to ask Question No. 059/2021. The Question is directed to the Cabinet Secretary for Wildlife and Tourism:

- (i) Could the Cabinet Secretary provide details on the elephant population in Kajiado Central Constituency and, in particular, the number of elephants that are roaming in private land?
- (ii) What measures is the Government putting in place to assure the residents of Kajiado Central of their safety considering that children are unable to go to schools and residents are unable to tend their land because of the elephant menace?
- (iii) What measures is the ministry putting in place to ensure that elephants in private lands are relocated to game parks and reserves?

Allow me to also say *pole* to the family of the late Hon. Waititu.

Hon. Speaker: The Question to be replied to before the Departmental Committee on Environment and Natural Resources.

The next Question is by the Member for Sigowet/Soin, the Hon. Kipsengeret Koros, who has requested for deferment. Request has been acceded to. So, the Question is not to be asked.

Question No.060/2021

STATUS OF CONSTRUCTION OF SOIN IRRIGATION PROJECT

(Question deferred)

The last Question is by the Member for Banissa, Hon. Kulow Maalim. Member for Banissa? That is a constituency in Mandera County. Hon. Members, I know many of you may not know where some of these constituencies are unless you hear. You may think that it is in neighbouring Ethiopia. It is in Mandera County. Hon. Kulow Maalim. The Member has not requested anything. So, it is assumed that he did not want the Question to be asked. So, it is dropped.

Question No.061/2021

STATUS OF COMPLETION OF ODA-BUTE-DANABA ROAD

(Question dropped)

The next segment is on Statements. There is a request by the Member of Garissa Township.

REQUEST FOR STATEMENT

STATUS OF PROVISION OF SCHOOL DESKS TO VARIOUS LEARNING INSTITUTIONS

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a statement from the Chairperson of the Departmental Committee on Education and Research regarding the provision of school desks to various learning institutions in the country under the Economic Stimulus Programme.

In the recent past, the Government allocated Kshs1.9 billion for the purchase of about 625,000 locally assembled desks to both public primary and secondary schools. The allocations were under the Kshs53.7 billion eight-point economic stimulus package unveiled by His Excellency the President in May 2020 to alleviate the effects of the Corona pandemic on the economy and support local artisans who constitute the largest part of the jobless graduates in our country.

In as far as I appreciate the efforts by the Government to support learning and school infrastructure in the country, it is our responsibility as legislators to ensure that those allocations are used prudently. It is against this background that I seek a statement from the Chairperson of the Departmental Committee on Education and Research on the following:

- (i) Could the Chairperson provide a list of all learning institutions that benefitted from the programme and the number of desks allocated to each constituency?
- (ii) Could the Chairperson provide a list of all artisans who delivered the 625,000 desks to various learning institutions in the country and their payment details?
- (iii) Could the Chairperson explain and cite whether the Kshs1.9 billion was factored in the budgetary allocation of 2019/2020 or the supplementary estimates that the House has approved?

Hon. Speaker: The Chairperson of the Departmental Committee on Education and Research, Hon. Mutua Florence.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Thank you, Hon. Speaker. I have heard the request from Hon. Duale. We have made it very clear to the CS that we need a breakdown of where the infrastructure money went and the desks that were bought and the schools that have so far been put up with the money that was allocated for infrastructure. That is because this request for statement has been made several times. Now we need a breakdown. We just had a meeting with them when we were looking at the Budget and we have made it very clear that we need a breakdown of all the schools that were reached and what has been done with that money. So, we will get a response in the next two weeks.

Hon. Speaker: After how long?

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Two weeks, Hon. Speaker, because of the process of the Budget.

Hon. Speaker: Two weeks, Hon. Duale. Very well, Hon. (Ms.) Florence Mutua. Any other request for statement? Hon. Koinange?

Hon. Paul Koinange (Kiambaa, JP): Thank you, Hon. Speaker. I just wanted to inform the House through you that, as you had directed, I was to meet Hon. Kamket and the Members of

Parliament (MPs) from Tiaty area. I have spoken to the CS and he has agreed to give us a date once he is back in the country next week. We have agreed to meet Members of Parliament, Senators and Governors from that region in order to find a lasting solution.

Thank you, Hon. Speaker.

(Applause)

Hon. Speaker: Yes, Hon. Kamket.

Hon. Kassait Kamket (Tiaty, KANU): Hon. Speaker, I spoke to Hon. Koinange earlier. I will go by what he says as long he keeps his word.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order!

BILL

Second Reading

THE REFERENDUM (NO.2) BILL

(Hon. (Dr.) Otiende Amollo on 11.2.2021)

(Resumption of Debate interrupted on 18.2.2021)

Hon. Speaker: Hon. Members, when the House rose, Hon. Sossion was on his feet. He has a balance of six minutes.

An Hon. Member: He is absent.

Hon. Members: Put the Question.

Hon. Speaker: Is it the desire of the House that the Mover be called upon to reply?

Hon. Members: Yes.

Hon. Speaker: Let me test whether that is the real desire.

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

Let us have the Mover, Hon. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker.

First, I want to thank the Members who spoke to this Bill. All the Members spoke in support of the Bill with various suggestions in terms of amendments.

Hon. Speaker, there were three types of responses: First, there were Members who made observations which are covered in the intended amendments that the Committee had identified. The second category were Members who made observations worth considering and the Committee will do that. Thirdly, there were Members who spoke to certain aspects that only require explanations. I want to thank all Members and the leadership of the Constitutional Implementation Oversight Committee (CIOC). It is important to note that the Justice and Legal Affairs Committee (JLAC) Report was unanimously adopted. The report of the two joint committees was also unanimously adopted by the membership of that harmonisation Committee.

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Hon. Speaker, the first aspect on Clause 5(8) was raised by the Leader of the Majority Party. That clause is quite simple as it contemplates under (a), a situation where you are having an amendment which does not require a referendum, which then fails or succeeds in Parliament. The second bit requires a referendum such as what we are facing. You will take notice that today is what we have called the Super Tuesday. It is a significant day because 30 county assemblies have endorsed the draft the Building Bridges Initiative (BBI) Bill, and I believe the next scene of action will be this House and the Senate.

Hon. Speaker, some Members spoke to the question of the Supreme Court. Why are we not going to the Supreme Court on such a fundamental issue of a referendum? The answer is that the jurisdiction of the Supreme Court is captured under Article 163(4) of the Constitution and to the extent that the jurisdiction is covered, you cannot grant a new jurisdiction to the Supreme Court, unless you amend the Constitution.

The election petitions are able to go there directly because that is what the Constitution states. If we are so desirous, then that is something to consider in terms of amending the Constitution. We cannot bring it by way of a Referendum Bill. As we do that, we must be alive to the fact that as contemplated right now, the process of challenge will take up to 72 days, two-and-a-half months, from the High Court to the Court of Appeal. Do we want to prolong that period of holding the will of the people in abeyance? The Committee considered that concern.

Hon. Speaker, there was a fundamental issue in terms of the multiple questions. This bears an explanation and there are two things to note: First, while a reading of Article 257(1) and (2) might suggest that you can proceed in a referendum by way of a general suggestion or a formulated draft Bill, Article 257(3) is clear. It states that, if it is a popular initiative in the form of a general suggestion, then the promoters of that Bill shall formulate it to a draft Bill.

Under Article 257 of the Constitution, you can only bring a Bill and there is no question of general ideas. We must disabuse the supposition that you can bring general and multiple suggestions. The Constitution requires the promoters to reduce their ideas to a Bill. You will note that on Page 30 of the JLAC Report and on Page 9 of the Joint Committee of JLAC and CIOC Report, we were unanimous that you can only reduce your ideas to a draft Bill.

There was also a question of whether we can do a general referendum. These issues will be coming at the Committee of the whole House stage. As a Committee, we came to the conclusion that the only referendum expressly contemplated by the Constitution is under Article 255 to 257. There is no other provision of the Constitution that appears to contemplate any other referendum. The Question would be whether we can bring general issues.

Article 1 contemplates that people can exercise their sovereignty either directly or through their elected representatives. Some people have suggested that if you have such issues, then you should bring them to the elected representatives of the people. Others have suggested that nothing stops you from doing so.

However, that is not for this debate now. As we contemplate it, we must know that this can also be abused. As much as you could want to have a positive referendum, what if you have a mischievous President who will ask the question in a referendum that they want to be President for life, without amending the Constitution? What will happen if in a local referendum you have a county that poses the question that they want to secede? As we contemplate that possibility, we must be alive to the dangers of opening that door.

Many Members spoke to the question of verification and it is a very difficult question. It should be noted that all the Members who spoke to this raised the question, but did not give an answer and it is precisely because of the difficulty. We contemplated that the Commission will

verify that the support is at least of 1 million registered voters. The mitigation is that the Commission will publicise that full list. As they publicise it, we have given the option of readdressing this question by way of regulation and we must remember that those regulations must come to this House before they are adopted.

Lastly is on the question of giving counties 90 days. Some Members noted that this could be too long. It may be too long, but that is what the Constitution says. So we do not have an option in terms of making that adjustment right now. The only adjustment we have is restricting the time Parliament has. We have suggested that Parliament will only have a maximum of 30 days. With those, I beg to reply.

Hon. Speaker: Very well. Indeed, I agree with Hon. Otiende Amollo. Sometimes Members contribute without giving solutions to some of the problems that they identify. I still think that, as a country, we need to make up our mind. When we have provisions of Article 27 of the Constitution on not more than two thirds of either gender, other than amending the Constitution – which as you know, Hon. Duale has attempted many times without success – what is the other option available? Everybody is making noise out there to dissolve Parliament, but nobody has ever come up with any other solution. I have heard some tired thinking somewhere that we can declare some constituencies to be for male and others for female MPs. Obviously that is tired thinking. It is one of those intricate solutions, but perhaps, the Bill will address that.

Hon. Members, having confirmed that the House quorates, I put the Question.

(Question put and agreed to)

Hon. Members, I wish to draw the attention of the House to the fact that... I was listening to the debate and there have been further complaints about why the HBC decided that the Bill sponsored by the JLAC be the one that anchors this process without excluding the other. Members should closely look at Section 4 of the Sixth Schedule of the Constitution, which establishes the Parliamentary Committee on implementation of the Constitution. Very soon, that Committee may become moribund because one of the main bodies that they were supposed to be overseeing ceased to exist during the life of the last Parliament. That is the body that was created in Section 5, the Commission for the Implementation of the Constitution (CIC) and it is the body that they were supposed to be overseeing. Today, they have some other peripheral work that they are supposed to be doing.

Next Order!

MOTION

REJECTION OF MWENDE MWINZI'S APPOINTMENT AS AMBASSADOR

THAT, taking into consideration the findings of the Select Committee on Implementation of its Report on Examination of the Implementation Status of the Resolution of the House of 6th June 2019, regarding the conditional approval of Ms. Mwendu Mwinzi for appointment as Ambassador of Kenya to Seoul, South Korea, laid on the Table of the House on 27th November 2019, which takes cognizance of the determination of the High Court of Kenya on 14th November 2019, (Nairobi Constitutional Petition No. 367 of 2019) particularly paragraphs 104 and 105 that, while Ms. Mwendu

Mwinzi cannot be coerced to renounce her citizenship of the United States of America (USA), a person holding dual citizenship ought not be an ambassador unless the person renounces the citizenship of the foreign state as dual citizenship may jeopardise the national interest of the Republic of Kenya, against the interest of the foreign state; this House rejects the appointment of Ms. Mwendu Mwinzi as an Ambassador.

Hon. Speaker: Hon. Kimunya

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. You may recall that last Thursday, the Member for Mosop, Vincent Tuwei, rose on a point of order and requested for a statement on the subject matter of the Motion on Order No. 9. It was almost in the exact terms as of the request that was made by the Hon. (Dr.) Robert Pukose, which triggered the production of the Report that is scheduled for debate under this Order. The issues were particularly on: what was the status of the appointment, whether the appointment was made and the status of the dual citizenship that is whether the person has renounced her citizenship. The statement was directed to the Leader of the Majority Party and at that point I undertook to bring a statement within three weeks. I have initiated the process. I have had consultations within Government, and I have written the necessary letters to the Attorney-General and the Ministry of foreign affairs. I am expecting a response.

I took time to read this Report. One of the things I found out was that even at the point of production of this Report, it was not definite as to whether an appointment had been made. That point has been captured by the Committee in paragraph 23(3), hence rendering the Report premature because it cannot answer what Hon. Pukose wanted to know on whether an appointment had been made. Accordingly, because two Members have asked the same question, I want to request the House to bear with me for three weeks, so that I bring a comprehensive statement on the latest status on two issues. One, the current status of the appointment. Whether it has been completed with an appointment letter – that was the matter that was raised in court - and, two whether the appointed person has taken action in accordance with the conditions set by the House. Until this is done conclusively, it will be premature to debate without knowing the latest facts.

Therefore, with your indulgence and the indulgence of the House, I request that we defer and withdraw the Report for discussion today until when I will have the opportunity to respond to the House by bringing the latest facts. At that point, the Committee on Implementation may consider taking into account the latest information and update its Report, so that the House is properly guided rather than debating something that is not conclusive. The main thing is one, has the appointment taken place and two, what is the status of the citizenship of the appointed officer? Once we have that information, the Committee will reflect on it alongside the recommendations of the House and guide the House based on facts. Without that, we will be working on presumptions without the benefit of information.

So, I beg to request that, for the convenience of the discussion of the House, we withdraw this Motion until a time I will have provided concrete information on the status.

Hon. Speaker: There was a request by Hon. Tuwei and Hon. Pukose about the status as the Leader of the Majority Party has said. However, I do not know what is the position with regard to Hon. ole Kenta, the Chair of the Committee?

Hon. Richard ole Kenta (Narok North, ODM): Thank you, Hon. Speaker. I have heard the Leader of the Majority Party. I would like to bring to the notice of the House that this matter has been pending for the last two years. In fact, it has been coming for debate, but for one reason or the other, it has always been taken out of the Order Paper. I would like Parliament and the people of Kenya to know that there was a decision of this House. I will not go into the merits of

the case, but this House should not act in vain. I believe the Report was conclusive and the matter went to court and Parliament won the case. I would like to take this opportunity to appreciate the work of the legal committee of Parliament. However, this is becoming a Sword of Damocles hanging over this Parliament. It is something that needs to be concluded. In fact, I would like to point out what the law says, Section 3 of the Public Appointments (Parliamentary Approval) Act states:

“An appointment under the Constitution or any other law, for which the approval of Parliament is required, shall not be made unless the appointment is approved or deemed to have been approved by Parliament in accordance with this Act.”

What I am simply saying is that Members have raised this issue. There is fear that somebody has actually been appointed when Parliament has not approved that appointment. I would just advise the Leader of the Majority Party to follow up the matter. If that has happened, it is the most serious breach that has ever happened. It is something that will bring conflict between the Executive and this Parliament. Such an appointment is not an appointment at all; it is fraudulent. Any presentation of credentials amounts to fraudulent misrepresentation. It is meaningless. In fact, we also intend as a Committee to invite the concerned Cabinet Secretary to come and explain to us whether this happened and how it happened. From there, we will know what to do. This Parliament should actually ensure that other arms of government do not intrude into what is our role by law under the Constitution. So, I will indulge the Leader of the Majority Party. I will also urge this Parliament to remember that the Constitution requires us to ensure whoever is appointed is actually the person that the people of Kenya, through us, have approved.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I have heard the Leader of the Majority Party asking to be given about three weeks to be able to find out whether Mwendu Mwinzi was given an appointment letter and whether she has renounced her US citizenship. I think three weeks will be too much time. I have an issue with the time because this is something that has been on and off. My request to you, Hon. Speaker, and to the Leader of the Majority Party, is that we step the matter down, but reduce the time to two weeks, because to get information from the relevant offices should take the Leader of the Majority Party at least a week. Therefore, the next week is when the House Business Committee should schedule this debate so that we can finish this matter.

As much as we do not want to refer to things that we have seen out there, apparently we are in receipt of information that she has taken up her appointment in Seoul, South Korea. That would be an abuse to this House because this House does not do anything in vain. We would demand that if she has been appointed, the Cabinet Secretary should be censured and action be taken against her for having disobeyed the law. That would be an abuse of the law and of her office. We will be taking action against the CS should that have happened. As much as we do not anticipate anything, that is the fact. Should the CS have made an appointment without the approval of this House, then she is in breach of the law and action should be taken against her.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Tuwei.

Hon. Vincent Tuwei (Mosop, JP): Mhe. Spika, asante sana kwa fursa hii ambayo umetupa kujadili jambo hili la kushtua. Linashangaza sana kwamba Kiongozi wa Waliowengi anahitaji wiki mbili kupata jibu ambalo ni rahisi. Leo tumejadili ule Mswada wa kuangalia mambo ya pesa katika Wizara ya Masuala ya Nje na tumegundua kwamba suala hili limejadiliwa.

Wiki mbili ni mbali sana. Kama ingewezekana, tupate jibu kwa wiki moja. Ni hatia kwa nchi na vilevile kibalozi ulimwenguni kwa Balozi kupokelewa kwa nchi nyingine bila nyaraka ambazo zimeidhinishwa rasmi na Bunge. Hili ni jambo ambalo litatupa sura mbaya kama nchi, iwapo mabalozi watachaguliwa kwa njia ambayo haifai. Ni ombi langu kuwa jambo hili lipewe muda mfupi ili tumalize mambo haya kwa wakati huu.

Hon. Speaker: Let me hear the person who raised this issue, Hon. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. In the totality of the circumstances, I think it would be fair to give the Leader of the Majority Party some time, so that when he brings a report it is a comprehensive one. I also agree that it should be done as soon as possible, as you may guide.

Thank you.

Hon. Speaker: Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, as I agree with the Leader of the Majority Party's position, this matter has been in this House for some time. The reason we are very much concerned, in my opinion and in the opinion of the House, is that this might be the highest definition of impunity—that a nominee for a State office as sensitive as that of an Ambassador can be approved on a condition, that for you to get the job you must renounce your other citizenship. The question that bothers all of us, as we give the Leader of the Majority Party time, is: Was the House right to grant a condition for her appointment? And the decision of the House with respect to the Report of the Departmental Committee on Defence and Foreign Relations when this matter came up first included a condition that if she is to be approved she needs to renounce her US citizenship. Now, what are we dealing with this afternoon? I think the Leader of the Majority Party should take less time. I agree that we need to go by his suggestions because we cannot discuss this report.

There is a possibility and we need to be very fair and the House must not act in vain. Maybe, Mwende Maluki has complied with the recommendation of the Committee and forfeited her US citizenship. In that circumstance, then this report ought not to be discussed by the House and we should go by the report of the Committee that approved her on condition. The only information we need from the Leader of the Majority Party, and I said it last week, is whether Mwende renounced her US citizenship.

Hon. Speaker, you can order from where you sit that in another seven days the Committee can summon the CS or the Leader of the Majority Party can give the House the only information missing. Has Mwende renounced her US citizenship? If she has, then Hon. Kenta's report is null and void and the House should not discuss it. What we go back to is the report that the House adopted previously. The information the Leader of the Majority Party is looking for is important. I agree with him, with the Chair, Hon. Otiende Amollo and Hon. Pukose that we step the matter down. But looking at the calendar of the House and given that this is a serious matter, he can bring us the information next week and if we feel this report should be debated, then the House will be given the liberty to discuss it.

So, I agree with the timeline of three weeks. This is a matter of ascertaining whether that person has renounced her US citizenship. This is a small matter. The Leader of the Majority can do it even tomorrow, unless he wants this matter of the Budget...

(Laughter)

Hon. Speaker, you know that I have been a Leader of Majority Party. Therefore, I know how to circumvent issues sometimes. Unless he wants to do it when the budget of the Ministry of Foreign Affairs is concluded – of course that will only be one situation. The Estimates have not been brought. I agree with him. That is why what we are going to deal with is the Policy Statement. Therefore, the Leader of Majority can be very fair to the House and ask for a half of the three weeks for us to give out that information.

Hon. Speaker: However, I think maybe we have chosen not to remember what the Leader of Majority said – that, he has already written to the relevant offices, including the Office of the Attorney General. Therefore, if he has written...

(Hon. Amos Kimunya spoke off record)

Oh, he says the evidence of that writing is there. No, there is nothing to debate.

(Several Hon. Members raised their hands)

Sorry, Hon. Members. I can see many of you trying to raise your fingers. Do not point at me with a finger.

(Laughter)

You know I remember there was some religion called “One Finger” and some news anchor got into some trouble.

(Hon. (Dr.) Pukose and Hon. Duale spoke off-record)

Yes it was a cult. Therefore, Hon. Members, I think it is fair. The Leader of Majority has already explained that he has written to both the Ministry and the Attorney General. Maybe, those of you who might wish to understand this is that renunciation is a legal process. It requires certain documents being deposited in certain other offices not necessarily deposited in the Ministry of Foreign Affairs. I think to the extent that he says he has written to those two offices, he has mentioned...

(Hon. Amos Kimunya showed a letter to the House)

I think he is showing you the letter. He is holding it there. I see this issue was raised on Thursday. I do not want us to go into the substance of this discussion save the procedural issues. I know the only problem is that many of you have even been to addressing the media there saying one thing or the other. Do not even bother. I will not give you a chance to say anything now because you want to go into the Report. In addition, I do not want anybody to go into the Report.

Those of you who read both the reports of Defence and Foreign Relations and found occasion to read this Report by the Committee on Implementation, have also seen the judgment of the High Court. The judgment was similar to the Report by the Committee on Defence and Foreign Relations. Moreover, if you recall, prior to this matter there had been another matter that arose out of nominations in Taita-Taveta County senatorial elections in 2013, which went up to the Court of

Appeal. Remember even at that time the decision of the court was that yes, somebody may be nominated and may even go ahead and be elected, but may not be sworn in.

Therefore, it is good to appreciate those steps. Somebody may be nominated and may even go ahead and be elected. However, to take up the job that you have been elected as a Member of Parliament either in this House or in the other House - if you hold dual citizenship, you would have to renounce one at that point. In addition, these are the issues that we need to walk through to find out whether this has happened.

Moreover, if you remember that judgment, it says that you could even go ahead up to being appointed – appointed in the sense of being named. However, you may not take up the job if you have not renounced the other citizenship. That is what we want to hear from the Leader of Majority. The statement requested by Hon. Tuwei was linked to that extent and Hon. (Dr.) Pukose. Those are the issues that you want to know. Therefore, I do not know. The request was made last week. Therefore, the three weeks must have started running, have they not?

(Hon. (Dr.) Pukose spoke off-record)

They started running. Therefore, today it is not three weeks. So, the period is reduced starting from that Thursday because Thursday is when you accepted to be given the report in three weeks. Therefore, there is no need of us changing today because it was there.

(Hon. (Dr.) Pukose spoke off-record)

Yes. It does not have to be three weeks. It is not a 100 meters dash. Therefore, it can be sooner than even that Thursday. For those reasons, I would accede to the request to step down this business appearing as Order Number 9.

Let us proceed to the Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Deputy Chairman (Hon. Patrick Mariru) in the Chair]

THE REFUGEES BILL

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we are in the Committee of the whole House to consider three Bills. We shall be starting with the Refugees Bill (National Assembly Bill No.62 of 2019). It is a lengthy Bill. I hope we will make progress. We should be able to move fast with a balance between giving chances to Members to speak to the clauses as we make sure that we do not linger so much on particular clauses in order to make progress.

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(Hon. (Ms.) Odhiambo-Mabona walked in the isle)

Hon. Members, we are starting with Clause 3. Hon. Millie Odhiambo is walking in and she should be here in half a minute. Hon. Millie, we deferred because of you.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you Hon. Temporary Deputy Chairman.

The Temporary Deputy (Chairman) (Hon. Patrick Mariru): Hon. Members, we are back to the status quo. Let us be clear. We will call out Clause 2. We will then do Clause 3 and go to Clause 3A. Clause 3 has not been moved in the first place.

Yes, Hon. Cheptumo.

Clause 3

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 3 of the Bill be amended—

(a) in sub-clause (1) —

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

“(a) being outside of his or her country of nationality and owing to a well-founded fear of being persecuted for reasons of race, personal convictions, religion, nationality, membership of a particular social group or political opinion, or for failure to conform to a retrogressive cultural practice; and who is in Kenya and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or country of nationality or the country of habitual residence;”

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph —

“(b) not having a nationality and being outside the country of his or her

former habitual residence owing to a well-founded fear of being persecuted for reasons of race, personal convictions, religion, nationality, membership of a particular social group or political opinion, or for failure to conform to a retrogressive cultural practice; and who is in Kenya and is unable or, owing to such fear, unwilling to return to the country of his or her habitual residence;”

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

Application 3A

This Act shall apply to all refugees and asylum seekers within the territory of Kenya, without discrimination on the basis of race, religion, personal conviction, color, national origin, sex, disability or age.

Hon. Temporary Deputy Chairman, I am sorry I have to check my computer to get the reasons.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Please get to your computer. I feel that you can check your computer in a fairly fast manner.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I will do that fast. I am just opening it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, Hon. Millie Odhiambo knows that her amendment was coming and we need to move. If she is not ready, we can drop it and we move to the next one.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie is ideally known to be very robust. So, we can always give her a minute.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, what you have said is true. Hon. Duale knows that I am very robust normally. I was invited by Hon. Kaluma from the Committee. We are trying to harmonise. We have managed to do some and not others. I encourage the Committee as I know some of them are usually not here when we are in the Committee of the whole House, when a Member brings amendments, it is not an attack on the Bill, but rather it is to strengthen the Bill.

I have brought many Bills that people have brought amendments with my support because I know they are strengthening the Bill. So, I just want to encourage them not to feel that when I am bringing amendments that I am attacking the Bill.

First and foremost, I am a Kenyan and unlike my sister Mwendu Mwinzi whom we are attacking in this House, I do not have dual citizenship even though I am married in Zimbabwe. So, my allegiance is to my country Kenya even though we are dealing with refugee matter. I am also not a refugee, but I have the interest of the country first.

Having said that, the reasons for moving Clause 3 is for diction and terminology. The terminology that is used there is not legal. It is archaic. You cannot say it is “done” but it is “adopted in.” So, it is more of proper language.

I thank you.

(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)*

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we have another amendment still under Clause 3 by the Vice-Chairperson on paragraph (c).

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 3 of the Bill be amended in sub-clause (1) by deleting the word “any” immediately after the words “public order in” appearing in paragraph (c) and substituting therefor the word “either”;

We are moving this amendment to provide for the definition to reflect and remain consistent with the Organisation of African Union (OAU) Convention. So, we are picking the matters defined in the OAU Convention and replicating it here.

(Question of the amendment proposed)

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

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

(Clause 3 as amended agreed to)

Clause 4

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by the Vice-Chairperson.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 4 of the Bill be amended—

(a) in sub-clause (1) —

(i) by deleting the words “as defined in the International Crimes Act” appearing immediately after the words “against humanity” and substituting therefor the words “referred to in any international instrument to which Kenya is a party”, in paragraph (a);

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

“(ca) is determined to be a threat to national security:”

(iii) by deleting paragraph (d);

(b) in sub-clause (2), by inserting the words “has sought asylum in another country or” before the words “has been granted” in paragraph (b).

Hon. Aden Duale (Garissa Township, JP): On a point of order.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is your point of order, Hon. Duale?

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I thought in Clause 4, the Committee is amending Sub clause 1 by deleting paragraph (d) which talks about, “has sought asylum in another country.” However, when I read what my good friend and Vice Chair is proposing, it looks like a different matter. It was that Clause 4 of the Bill to be amended in Sub clause 1 by deleting paragraph (d).

However, I am hearing something else.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kaluma, please take a second stab on that. You are basically doing an amendment on Sub clause 1 and 2, if you could be clear on the specifics of the amendments. There is a deletion and substitution of words there. I know there are many amendments and so we could give you a few seconds to reorganise your thoughts.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, in Clause 4(a) (i), we are proposing to delete the words, “as defined in the International Crimes Act”, appearing after the words, “against humanity” and substituting therefor the words “referred to in any international instrument to which Kenya is a party”.

What we are seeking to achieve is to avoid restricting this matter only to International Crimes Act, but to all human rights, treaties and conventions to which Kenya is a party under our Constitution. That is what we seek to achieve. So, we are expanding the scope in:

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

“(ca) is determined to be a threat to national security”. Again we are restricting circumstances under which this may be denied only if it is established it is about national security and not as vague as it is right now. By deleting paragraph (b), we are seeking to provide that an asylum seeker or a refugee may be excluded from being considered for refugee status, if one is determined to be a threat to national security and provides that seeking asylum in another country is a ground for exclusion for refugee status.

The Temporary Deputy Chairman (Hon. Patrick Mariru): You could still proceed to Sub clause 2.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, in Sub clause 2 we are seeking to amend by inserting the words “has sought asylum in another country or” before the words “has been granted.” This is so that if you have sought asylum elsewhere, we are avoiding one being considered a refugee or an asylum seeker in one country when your asylum seeking application is also pending in another country.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. What is out of order, Hon. Millie? You have the microphone.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. Can I be heard? I have noticed that by accident we have passed a different thing in clause 3 but I do not mind. I just wanted to be honest so that I do not look like I am being mischievous. I have just noticed now. On the same vain, I would like to be clear because I have also moved an amendment in clause 4(1) (d). I want you to make it clear whether it is the same one Hon. Kaluma is moving? Is he seeking deletion or something else? This is because if he is seeking a deletion and it passes, then I do not need to move mine.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will pronounce on yours. I am waiting for the House to make a decision on Hon. Kaluma’s.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I just needed clarity whether that is what he is doing.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, indeed your bit is related. Hon. Kaluma let us make progress on this.

Hon. Peter Kaluma (Homa Bay Town, ODM): I needed to give Hon. Millie and the House...

The Temporary Deputy Chairman (Hon. Patrick Mariru): No! Order, Hon. Kaluma! You must be orderly because you have moved. I need to propose the Question first.

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes.

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman. I really want Hon. Kaluma to put his act in order. Like now he is talking of sub-clause (2) and I can see he is amending sub-clause 2(b). He must come out very clearly and say it is sub-clause 2(b). Not the whole of sub-clause 2 so that we can follow. I want him to look at his papers properly. So, first of all he should tell us which clause the Committee is amending and then give justification so that we can move slowly.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kaluma, you moved sub-clause 2. Hon. Duale is asking you to pronounce yourself specifically if it is Clause 2(b) for the record.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I thank Hon. Duale. It is Clause 4(2) (b). What we are seeking to achieve is we do not want to make the fact of seeking asylum in another country a ground for exclusion.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Leader of the Majority Party, allow me to propose the Question and then open it up so that I can give you a chance.

(Question of the amendment proposed)

Leader of the Majority Party, do you want to say something?

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. I am looking at that in tandem with the amendments by Hon. Millie Odhiambo and the Chair. I think both are in agreement on one thing, the deletion. If we do one and then go to next, we will avoid the confusion.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I propose we have...It has only been moved, maybe that will guide us in the subsequent ones. Let us have the Leader of the Majority Party and at least two more so that we can make progress.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, you should say the former Leader of the Majority Party, for the *Hansard*. I totally agree with Hon. Kaluma and the Committee and support them. There are times when an asylum seeker is in a very desperate situation and tries many countries. So, whichever country comes first, he can go there or choose not to. I like the way the Committee has expanded this; that in such a situation a person who has sought asylums in many countries should not be punished. I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. I rise to support and thank the Committee for clarifying on the issues of disqualification as opposed to exclusion.

However, I am looking at Clause 4(1)(i) where the words “as defined in the International Crimes Act” appearing immediately after the words “against humanity” are deleted and substituted therefor with the words “referred to in any international instrument to which Kenya is a party.”

For purposes of clarity, we know the Executive can sign any international treaty but unless it is ratified by Parliament, it cannot be part and parcel of our laws. Looking at the issue of party, we have seen after the Executive has committed the country, this takes so long to be brought for

purposes of ratification by Parliament. How I wish there was clarity. I wanted Hon. Kaluma to clarify when talking of a party, does it mean it has been ratified by Parliament. Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Wamalwa, I think that is the obvious consequence. This is because if it is not ratified by the Constitution, it does not take effect. Hon. Makali then we make progress.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I also have an amendment give me a chance.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I think you have picked those words from my mouth. In terms of what Hon. Wamalwa was saying, these international instruments only become effective once Parliament ratifies them. I also want to support this amendment. As we said, it is good when we are seeking asylum in different countries it is a disqualification rather than a condition for not applying. I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Last will be Hon. Millie because she also had an amendment. The fate of that amendment depends on the decision of the House.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I support the Committee's amendment because its effect does what I have suggested. In fact, it makes it better by adding international instruments in the earlier part. This is because International Crimes Act only limits you to one international treaty, but when you leave other instruments then, it covers any other treaty that relates to refugees. This is either directly or indirectly.

I support because we should not penalise somebody in a difficult situation, seeking asylum like it happened to my friend who came from Uganda the other day. She may come to Kenya or go wherever she likes if she feels Uganda is too hot. We should not penalise 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)*

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Automatically the amendment by Hon. Millie Odhiambo falls.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 4 as amended agreed to)

Clause 5

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by the Chairperson.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 5 of the Bill be amended in the proviso by deleting the words “falling under Section 3 (1) (a) and (b) of this Act” appearing immediately after the words “a refugee”.

We are seeking to have the clause specify more on refugee as defined under the Act.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Just take one more minute to explain so that you carry Members along. I think he is amending the last part on the proviso.

Hon. Peter Kaluma (Homa Bay Town, ODM): We are amending the proviso on page 978 of the Bill. We are proposing a deletion of the words “falling under section 3 (1) (a) and (b) of this Act” appearing immediately after the words “a refugee”. We want to lay emphasis on the refugee and not the provisions. I do not know whether Hon. Millie requires me to read what is in the Bill.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kaluma maybe the essence moving forward is not to read what is in the Bill but just give the import of the amendment so that you are able to carry Members along. They want to appreciate the amendments you are doing. Please take an additional half a minute to help Members appreciate.

Hon. Peter Kaluma (Homa Bay Town, ODM): If you look at the proviso to the current Clause 5 of the Bill it states:

Provided that paragraphs (e) and (f) shall not apply to a refugee falling under section 3(1)(a) and (b) of this Act who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself the protection of their country of nationality or former habitual residence.

The Committee’s amendment is seeking to delete the words “falling under section 3 (1) (a) and (b) of this Act.” So, it remains as a refugee falling and who is able to invoke compelling reasons. We want to make it more clear by removing those specific references.

(Question of the amendment proposed)

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

(Clause 5 as amended agreed to)

(Clause 6 agreed to)

Clause 7

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by Hon. Millie Odhiambo specifically on sub-clause 2(c). Sorry, Hon. Millie. We have to move you. That microphone seems to not work so much. Move to the next one.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, the process of my moving is complicated because I am using about four gadgets. What I want to say is that, based on the harmonisation process we have had with the Committee, I do realise that the word “asylum seeking” is also included in the definition. So, I drop my amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is dropped now.

*(Proposed amendments by Hon.
(Ms.) Odhiambo-Mabona dropped)*

(Clause 7 agreed to)

Clause 8

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by the Chairperson specifically sub-clause 2(n) and (u).

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 8 of the Bill be amended in sub-clause (2) by —

(a) inserting the words “coordinate activities to” before the words “ensure the civilian in paragraph (n);

(b) deleting the words “co-ordination of” and substituting therefor the words “co-ordinate, where relevant in collaboration with county authorities,” in paragraph (u).

Hon. Temporary Deputy Chairman, what we are proposing is to amend sub-clause (2) of Clause 8 by inserting the words “coordinate activities to” before the words “ensure the civilian” in paragraph (n). That is just to make it clear and better. In (b), we amend by deleting the words “co-ordination of” and substituting therefor the words “co-ordinate, where relevant in collaboration with county authorities,” in paragraph (u). Again, it is just for semantics.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is straight forward.

(Question of the amendment proposed)

Yes, Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I agree with the Committee in the amendment to sub-clause 8(q) but I really want Hon....

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Duale, (q) is for Hon. Millie and we will come back to that later. The Committee is on sub-clauses (n) and (u).

Hon. Aden Duale (Garissa Township, JP): Okay. I have a problem with (q).

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

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

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have amendment by Hon. Millie Odhiambo to paragraph (q).

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 8 of the Bill be amended in sub-clause (2) by deleting paragraph (q) and substituting therefor the following new paragraph —

“(q) ensure that the treatment of all asylum seekers and refugees complies with national and international law”

What I am seeking is that we have compliance with both national and international law as provided in our Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Duale, did you have something?

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I have a problem with the words “international law”. That is too open. We must say “international law ratified by Kenya.” This is because there are some international laws which we are not party to as a country. So, saying “international law” will be a serious blanket. It will open a Pandora’s Box. So, I ask Hon. Millie to do a further amendment and say “international law signed and ratified by Kenya.”

The Temporary Deputy Chairman (Hon. Patrick Mariru): As Hon. Millie organises herself to that, let us hear the Chairperson first.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I oppose the amendment by Hon. Millie, on behalf of the Committee. This is because in sub-clause (q), we are already talking about ensuring treatment of asylum seekers and refugees in compliance with national laws. That nation laws phrase is very wide. It includes international law which we have ratified, as the former Leader of the Majority Party mentions. This indeed includes everything that Hon. Millie is seeking to amend.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, does that sound convincing, especially what the Chairperson has said? It looks like quite a legal issue that the chairperson has actually raised about national law.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman because our Constitution provides for laws that are ratified in Kenya, I can live with it. So, I can drop. That is okay.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Indeed, that makes very solid arguments by the Chairperson. That amendment by Hon. Millie Odhiambo is dropped

*(Proposed amendment by Hon. (Ms.)
Odhiambo-Mabona dropped)*

(Clause 8 as amended agreed to)

Clause 9

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have two amendments. One is by the Chairperson and the other by Hon. Millie. We will start with the Chairperson.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 9 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause—

“(1) The Committee shall consist of—

- (a) the Commissioner and who shall be the chairperson and who shall provide secretariat services to the Committee;
- (b) the Principal Secretary from the Ministry responsible for refugee affairs or a representative nominated, in writing, from the Ministry responsible for Refugee Affairs;
- (c) the Principal Secretary or a representative nominated, in writing, from the Ministry responsible for foreign affairs;
- (d) the Principal Secretary or a representative nominated, in writing, from the Ministry responsible for devolution affairs;
- (e) the Principal Secretary or a representative nominated, in writing, from the Ministry responsible for health;
- (f) the Principal Secretary or a representative nominated, in writing, from the Ministry responsible for finance;
- (g) the Principal Secretary or a representative nominated, in writing, from the Ministry responsible for education;
- (h) the Attorney-General or a representative nominated in writing;
- (i) the Director of the Department of Immigration or a representative nominated in writing;
- (j) the Inspector-General or a representative nominated in writing; and
- (k) one person representing the Council of Governors.

Hon. Temporary Deputy Chairman, if all Members have noted what is in the Order Paper, what we are seeking to do is to provide that any alternate in the Committee shall be nominated and appointed in writing so that you do not just hear somebody is an alternate without written evidence.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is out of order, Hon. Millie?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. Could I please propose that we go clause by clause since I have two different amendments and he has a different amendment? Even my own amendments are very different. Because of that, maybe somebody might agree with one and disagree on the other and vice versa. So, is it possible that we go clause by clause?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): As I agree with Hon. Millie, I really want to indulge the Vice-Chair, Hon. Kaluma. For example, if the amendment is in Section 9, please tell us whether you are introducing a new subsection or you are amending (a), (b), (c) up to (k) or 9(2) or (3) or (4). You know you are just giving us a blanket. You are doing very well, but please tell us the section. I agree with your amendment. It should be in writing. Where is that? Is it 9(a)? If it is 9(1) please say it so that we move together.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I thought when it is as long as it is, if it is properly captured in the Order Paper, then that is already in the Order Paper. Once I say I move the amendment as per the Order Paper, it is captured there, unless I am being required to read the entire amendment under the Order Paper.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson that cannot be. The practice is that you can say you move the amendments as per the Order Paper. What the Members are keener on, because they have the Order Paper, is the rationale or import. To carry Members along, because there are quite a number of sub-clauses and all that, it helps to mention. Maybe this is not the best example, but where you are actually specifically amending a certain sub-clause, maybe paragraph (a), it is good to mention that.

However, Hon. Millie, to come back to your point, this one we may not deal with one after the other because he is actually substituting the entire Clause 1. Clause 1 has (a), (b), (c) up to (k). He is actually saying replace the entire Clause.

We can only deal with it that way. That amendment has a consequence to yours. So we have to have Members discuss that first, then the implications to yours will come later.

(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 Chairman (Hon. Patrick Mariru): Having carried that, the amendment by Hon. Millie Odhiambo in sub clause (d) falls. Hon. Millie you have an amendment on sub-clause 2. Please, you have the Floor on Clause 9(2).

Clause 9(2)

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): The reason we are actually encouraging Hon. Kaluma to be very specific is because usually this part of lawmaking is very tedious, but it is the real lawmaking. This is where we are making the law. That is why it is tedious. Please bear with me because with this amendment, I am not even sure of the import of his amendment on my amendment, but now that we have said that I need to move Clause 9(i) (d)...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, sub-clause 2

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): Do I take it that the amendment on Principal Secretary has fallen apart from devolution?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes. In sub-clause 2, you are doing a deletion and a substitution.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 9 of the Bill be amended -

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

“(2) In appointing representatives to the committee under subsection (1) (1), the Cabinet Secretary shall take into account equitable gender representation.”

What I am seeking to do is to ensure equitable gender representation in the appointments. Again, you need to advise because this amendment was anchored on my earlier amendment. Perhaps, it does not make sense any more. That is why I would want to encourage Hon. Kaluma. I know that he is usually very good at the Second Reading but he is one of the people who are rare at this stage, so he needs to be patient with us. We are always here until midnight, so just be patient and deal with this in a way that we understand.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I have to come to Hon. Kaluma's defense, sometimes he attends. Actually, very often but I am sure he is well advised.

(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 9 as amended agreed to)

Clause 10

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 10 of the Bill be amended by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) to advise the Cabinet Secretary in respect to declaration, amendment or revocation of *prima facie* determinations;”

This clause deals with the functions of the committee and it is the advisory committee. In the manner it was couched before, it is like the one which was making the declarations and these things. We want to advise on those matters so that it tallies with the function of the advisory committee.

I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. I just need some clarification from the committee because, if I read (b), it says, “to advise the Cabinet Secretary on matters relating to refugees”. Now, (c), is to make a recommendation for declaration and revocation of *prima facie* status, which is distinct. Now, what I see being amended is, we are on (b), advising the Cabinet Secretary on matters relating to refugees, and the new (c), is again to advise the secretary in respect of declaration or revocations of *prima facie* determination. Now, I do not see the difference between advice and recommendation. To advise on the determination or to make a recommendation for the declaration is just about the same. So, perhaps, the committee may consider that this amendment is superfluous and we do not need it, because it is clear that the

committee is not making declaration, it is recommending for declaration which is the same as advising the Cabinet Secretary on declaration. We are actually dealing with matters to do with declaration of *prima facie* status, they are making a specific recommendation, which is an advisory to the Cabinet Secretary. You may wish to reconsider whether it is necessary or it is just....

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear Hon. Kaluma, he may say something that defines the way forward.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, the Leader of the Majority Party is just confirming that making recommendation is the same as to advise. I would agree to that extent, save for the fact that, the reason as to why we have both (b) and (c) is that, if you look at (b), it is to advise the Cabinet Secretary on matters relating to refugees in general. But on this specific matters as we go across the Bill, you will find provisions requiring that some recommendations be made before determinations or decisions can be made on those matters. So, I would still propose the amendment because it does not change anything much other than making it clear that this is the function of the advisory committee.

The view of the former Leader of the Majority Party on these recommendations is a matter which has been tried in court up to the Supreme Court. Remember we were seeking to defer it. So, the recommendation would be a mere recommendation or it would be mandatory in terms of application. So we want to make it clear that this is just advice, not to open it up to such litigation on what recommendation means.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us listen to Hon. Bashane.

Hon. Ahmed Gaal (Tarbaj, PDR): I totally agree with the Committee Chair, Hon. Kaluma, because advice and recommendation are totally different things. If you recommend something and then they say make a recommendation for a declaration; that is totally different from advice. I would go with what Hon. Kaluma has said.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Duale then we make progress.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I think this is what Hon. Millie is talking about. Law making is at the Committee of the whole House and it is give and take. I totally agree with the Leader of the Majority Party that at (b), you have advice, then at (c), we have a recommendation of that committee. Why we have the word *prima facie* is that it still has to be proved. So the Cabinet Secretary will read the recommendation and based on what is recommended, he will approve it. So there is a serious distinction between advice, if we have (b) as advice then (c), we have recommendation.

Hon. Kaluma, I really want to indulge you. Please drop this. This is give and take. That is why we are in the House. I am taking this as a person who participated in the drafting of this law, it has my signature. So, Hon. Millie and I have a history about it. So, we indulge you to drop it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay, before Hon. Kaluma speaks, let us hear from someone who has not spoken. Hon. Kaunya.

Hon. Oku Kaunya (Teso North, ANC): Thank you, Hon. Temporary Deputy Chairperson. On that particular point, I agree with the Chairperson and the Committee. The thinking on (b) is that you are talking about general advice on all matters. On (c), it is specific about revocation of *prima facie* status. These two are different. The last one is more specific. So, it would be important to adopt that change.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Okay. Let us hear from other Members, one minute each, and then we put the matter to vote.

Hon. David ole Sankok.

(Hon. (Dr.) Chris Wamalwa spoke off record)

Hon. (Dr.) Chris Wamalwa I will give you a chance.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Chairperson. I agree with what the Leader of the Majority Party emeritus, Hon. Aden Duale, has said that there is a total difference between “recommend” and “advice”. When you advise, you do not expect anything to be explained to you, but when you give recommendations, in case they change the recommendations, they must reply to you, in writing, and say why they did not take your recommendations.

I thank you.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Okay. Hon. (Dr.) Chris Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD – K): Thank you, Hon. Temporary Deputy Chairperson. In law making, simplicity is very critical. When you look at (c), the value added is totally insignificant. I do not see any value in it because it has already been provided for. We do not just need to bring some issues here for the sake of it. It has already been addressed in (b).

I thank you.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Hon. Chairperson, do you have anything to say because I have to put this to vote.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairperson, I beg the Members to see more keenly the challenges that we have had in the Supreme Court on the matter “recommendation and advice”. As currently coached, The Refugee Status Appeals Committee is being empowered to make recommendations for declaration and revocation of *prima facie* status.

The contemplation of the provision is that the decision to deal with these declarations and revocation of *prima facie* status is a decision of the Cabinet Secretary. All that the advisory Committee does is to advise on it. If we go by recommendation and reject the amendment, the challenge would be that a person will go interpreting whether these recommendations are to be followed by the CS or not. That is what we are avoiding by just making it known that the advisory committee advises on those matters. It is not their work, under the Bill as proposed, to make recommendations.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Very well. We must make progress.

Hon. (Dr.) Chris Wamalwa, what is out of Order?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairperson. The point of order is that Hon. Peter Kaluma is trying to push something with an argument of the Supreme Court ruling, which we do not have the benefit of. The rules of this House provide that normally when such a matter is there, you need to table. Maybe, he is misleading us for purposes of us including that.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Hon. Members, we must put the Question on this one.

(Hon. Amos Kimunya spoke off-record)

We are tarrying on this one quite a bit, but I am unable to close out the Leader of the Majority Party. If you could take a minute so that we do not linger here longer than this.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairperson, perhaps, the Committee has not brought this to our attention. I have just seen some two words that have been added because it is to advise the CS in respect of declaration, amendment or revocation. The other one is purely on declaration or revocation. Had they explained that there is a middle word that advises on respect to declaration, amendment or revocation, I might be persuaded that we are now talking of three actions: either declaration, amendment or revocation, which is now an expansion of declaration and revocation in the Bill. If that is the case, then I would side with the Committee.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Very well. We have amendments by Hon. Odhiambo-Mabona for Paragraph (a), (b) and (d). Hon. Odhiambo-Mabona

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairperson. We are at nine, right?

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Clause 10. Yours is on paragraphs (a), (b) and (d).

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairperson, I am not too sure which this clause is. The ones where I have provided amendments on adding asylum seekers, I wish to drop that because of the agreement we have had with the Committee.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Which is that, Hon. Odhiambo-Mabona? Which paragraph is that?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): That is what I am actually... I noticed I did not indicate what paragraph it is in my notes.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): You are dealing with paragraphs (a), (b) and (d). So, do you want to drop one?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairperson, the one that I am dropping talks about the functions of the committee shall be to... Oh, yeah, it is (a), (b) and (d). So, I will drop that, but I wish to move... Essentially I am dropping all ten.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Yes, you are dropping everything.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): The ones I was thinking of are in Clause 11. Sorry.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Very well. That remains dropped.

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

put and agreed)

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

put and agreed to)

(Clause 10 as amended agreed to)

Clause 11

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Hon. Members, we have quite a bit of amendments by the Chairperson and Hon. Odhiambo-Mabona. We shall start with the Chairperson.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairperson, I beg to move:

THAT, Clause 11 of the Bill be amended—

(a) by deleting Sub-Clause (1) and substituting therefore the new Sub-Clause—
“(1) There is established a committee to be known as a Refugee Status Appeals Committee.”

(b) in Sub-Clause (4), by inserting the word “revocation” immediately after the word “cancellation”, appearing in paragraph (b).

(c) by inserting the following new Sub-Clauses immediately after Sub-Clause (4) —

“(4A) A member of the Appeals Committee shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(4C) Each member of the Appeals Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.

(4D) The Public Service Commission shall provide the Appeals Committee with a secretariat for the purposes of discharging its mandate.”

Hon. Temporary Deputy Chairperson, in terms of amendment to Sub-Clause 1, we are doing so for clarity. If you look at Sub-Clause 1, the manner in which that body is being created is not neat in law. So, we are just making it clearer that the Refugee Status Appeals Committee is being established in the clearest legislative manner.

Additionally, in terms of 4A, 4C and 4D, we seek to introduce and provide for a secretariat to the Refugee Status Appeals Committee. We also seek to provide that the chairperson shall have a casting vote where there is a tie and for the term of office of the members of the committee, which is being set at three years.

I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Hon. David ole Sankok, what is out of Order?

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairperson, we are not yet out of the woods with regard to COVID-19. As you can see, Hon. Odhiambo-Mabona and the Vice-Chairperson of the Departmental Committee on Labour and Social Welfare have not put on their masks since they entered the House. We have not revised the COVID-19 protocols from the Ministry of Health.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): You are right. Hon. (Ms.) Odhiambo-Mabona and the Vice-Chairperson, please, have your masks on.

Hon. Aden Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairperson, before I go to my procedure, Hon. David ole Sankok is just being mischievous. You cannot have your cake and eat it. You cannot enforce the COVID-19 protocols in the Chamber and when you go out in your rallies, you do not comply with them.

I have one question regarding the procedure. It has been a long time since I participated in the Committee of the whole House. The Hon. Vice-Chair is introducing new sub-clauses. Are we supposed to deal with them now or later? You can guide us on that. He is introducing new sub-clauses 4A, 4C and 4D. Just to be sure, you can give us direction.

The Temporary Deputy Chairman (Hon. Patrick Mariru): These are sub-clauses under Clause 11. They are not entirely new clauses. I agree with you that new clauses come at the end.

Hon. Millie, let us deal with that. What is out of order? We can then make progress.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman.

Let me first of all deal with the issue of the masks. Other than the fact that Hon. Sankok does not normally comply with COVID-19 rules when he is outside, the other reason that he is raising this point of order is so that he can overtake my performance in the House. He cannot because he came in second after me the last time. He must bring proper and serious amendments like the ones I am bringing. The reason I am not wearing a mask is because I am keeping distance. I also wear glasses. I am sure other Members who wear glasses know it is very difficult to have a mask on as well as glasses, especially when we are doing this work. It is difficult. You might be special. It is very difficult for me.

Hon. Temporary Deputy Chairman, you also notice that I am actually using three gadgets. This is what digitising did not take into account. Previously, the manual Order Paper had all these things. Now I have to look at one gadget that has the Refugee Bill, my computer has my amendments and the next gadget has the Committee amendments. It becomes difficult to manage all these.

My point of order is in relation to the way we are moving with the amendments by the Committee. I have several amendments. If we take a blanket consideration of the Committee amendments, it will create the sort of confusion that I was talking about earlier. Even where their amendments do not affect mine, they may end up affecting them. Could I, please, request that we go sub-clause by sub-clause, especially on these ones, so that where I also have an amendment on that specific sub-clause, I can concurrently move it to avoid confusion, with your kind indulgence.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, I note your request. Some of the sub-clauses are more or less related and they are not in conflict. Where it is seamless, it may make sense for the Member to move more than one sub-clause. But where an amendment to a sub-clause relates to an amendment of the same sub-clause by another Member, it would be good to mention that sub-clause specifically. We will do so on a case-by-case basis. On this one, the amendment the Chairperson has moved does not affect yours. Your amendment is on sub-clause 2, which has not been touched by the Chairperson. That sensitivity is important so that we carry everyone along.

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

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

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

Hon. Millie, you have amendments to sub-clauses 2, 3 and 5 and a new sub-clause 8 after sub-clause 7.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, could I request that I do exactly what I had suggested in relation to mine because they are very different?

The Temporary Deputy Chairman (Hon. Patrick Mariru): No problem.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 11 of the Bill be amended —

(a) in sub-clause (2) —

(i) by inserting the following paragraph immediately after paragraph (b)—

“(ba) a representative of the National Gender Commission;”

The reason is obvious. Whenever there are refugees, the vulnerable ones who tend to suffer the most are the women and children. When we have somebody from the National Gender and Equality Commission (NGEC), they will be a voice. Given that my amendment to Clause 10 on the civil society, which also had gender representation, was overtaken by events, could I please then move that we add somebody from the National Gender and Equality Commission?

I will be moving another amendment on the United Nations High Commission for Refugees (UNHCR). Because they are two different issues, I request to move them separately.

(Question of the amendment proposed)

Let us have the Chairperson and then the Leader of the Majority Party.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, a reading of Article 56(1) of the Constitution only establishes the Kenya National Commission on Human Rights (KNCHR). The National Gender and Equality Commission is additionally established by Parliament under Article 56(4). The emphasis I am making is that the remit of powers of the KNCHR include dealing with matters of gender and children. We will just be plotting this without adding something which is not there. I request Hon. Millie that we go with the Commission singularly established to deal with human rights matters under Article 56.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, I know it is not a point of order. You want to contribute. I will give you another stab at it. What is out of order, Millie? Your microphone seems to be on and off.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): It operates by will. Unfortunately, I am unable to move because this gadget does not work even though this one does. I have to move.

Is Hon. Kaluma, who is a lawyer, in order to deliberately mislead this House that when a gender commission has been established by this House, it is not lawful? Is he saying that it is not

proper when we have passed that law through this Parliament? Are we saying that this is a quack Parliament and that we pass quack laws? The Constitution that sets up the NGEAC allows the splitting of the KNCHR to several others. It has not been amended. Therefore, whenever it sets up another commission, that commission becomes a new one constitutionally and by law. Is he in order to mislead the House?

The Temporary Deputy Chairman (Hon. Patrick Mariru): He is not in order to mislead the House to the extent that you have said he is, but it seems you were giving him information rather than rebutting what he had earlier raised.

Hon. Kaluma, I do not want that crossfire, but I will give you a chance. Let us first have the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. I would like to urge Hon. Millie Odhiambo to look at the wider intentions of the Bill. When you talk of the Appeals Committee, it already has a representative of the Principal Secretary who is responsible for refugee matters, a representative of the KNCHR, a representative from Immigration, a representative of the Attorney-General and three persons with knowledge and experience in refugee matters.

First of all, we have subject-matter experts in the Appeals Committee. We also have the overarching proviso in all the appointments that are made. They must be gender compliant. There is no way you will only have members of one gender sitting on the committee, be it women or men. Let us not introduce the NGEAC who have a totally different mandate. Let us not bring them into refugee matters. How do we even know that the person who comes from the NGEAC has any knowledge of refugee matters or will just be a flower girl or flower boy to balance the numbers? Let us be specific.

We have an overarching proviso that all the committees and tribunals that are appointed must be gender compliant. We do not need to worry on whether the issues of women, children or men will now be taken care of, so long as we have the experts who have been identified within the Bill. Let us not look as if we are agitating for certain groups to be included in this Refugee Status Appeals Committee rather than look at what exactly we want to achieve with the Bill.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the Chairperson and then the House will make a decision on this amendment.

(Hon. (Ms.) Odhiambo-Mabona spoke off-record)

Hon. Peter Kaluma (Homa Bay Town, ODM): I thank you, Hon. Temporary Deputy Chairman. Refugee Status Appeals Committee deals with human rights matters. Therefore, I agree with the Leader of the Majority Party that once you have the Kenya National Commission on Human Rights representative there, all those human rights issues which relate to gender, persons with disability or marginalised sections of our society will be taken care of.

Let me also urge Members that already we have an Appeals Committee which has seven people. If you have a representative of the National Gender Equality Commission, you will increase them to eight. That is why I was saying that we are just bloating it without adding much that is not yet there. I want to request Hon. Millie that we retain these bodies as they are in the Refugee Status Appeal Committee.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Members, let me put this amendment to vote.

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

Hon. Millie, you have another amendment in Clause 11. I have asked the Serjeant-at-Arms to give you a microphone, so that you do not need to move. However, in the meantime, please move. I have asked them to do that because you have quite a number of amendments.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. Before I move the amendment, I wish to request that when we are considering my amendment, please, give me the chance to respond, instead of the Chair because it is not his amendment. He may end up misleading Members.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, if you need me to give you a chance, I will definitely do that.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. As a human rights expert, I want to say that gender expertise is not human rights expertise. I have both which is coincidental.

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Sorry, Hon. Millie. We dealt with sub-clause 2, but there is insertion of new sub-clauses 3A, 3B and 3C immediately after sub-clause 7. Had you dealt with that?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): No, Hon. Temporary Deputy Chairman. We have not finished moving the amendments in sub-clause 2 because I was also moving an amendment in the same sub-clause to add a representative of the United Nations High Commission for Refugees in the Refugee Status Appeals Committee. Those are two different issues. I want to deal with them separately. The amendment to add a representative of the National Gender Equality Commission has been defeated.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 11 of the Bill be amended —

(a) in sub-clause (2) —

(ii) by inserting the following paragraph immediately after paragraph (e)—

“(f) a representative of the United Nations High Commission for Refugees.”

This amendment seeks to add expertise on refugees. The other amendment was to add expertise on gender.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Is that amendment under sub-clause 2(ii)(f)?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I am moving this amendment because you notice that the bulk of the people who work in the refugee sector in Kenya are not the Government, but the civil society and the United Nations. That is why I am proposing that we add a representative of the UNHCR.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to oppose that amendment on the understanding that Clause 11(5) of the Bill provides that the Refugee Status Appeals Committee may co-opt an officer of the UNHCR to advise them in performance of their function. Hon. Millie is removing the co-option function and making a representative of UNHCR a permanent person in the committee.

We already have the KNCHR. Why do we want UNHCR to come and sit in the Refugee Status Appeals Committee and yet their role should only be advisory and they will be co-opted when they are required? We must be Kenyans first before we subject ourselves to bloating our institutions with appointees from the UN who are answerable to a totally different regime. They can come as advisors, but they cannot come to micromanage the situation.

(Applause)

Let us get our national psyche in the right perspective.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kabinga.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairman, I want to support the position of the Leader of the Majority Party. The idea of a representative of the UNHCR to permanently sit in the committee is not necessary. They can be co-opted or invited to provide the expertise that is required. It is not necessary for them to have a permanent seat in that particular committee.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. Despite the mood of the House, I will stick by my proposed amendment. I wish we were as faithful in being Kenyans even in our finances. We cannot be proud as Kenyans when it comes to representation, but three quarters of the money that deals with refugees comes from the UNHCR. We are very proudly Kenyan now when it comes to one person sitting in that committee. I do not mind the mood of the House. I stand with my proposed amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let us make progress.

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

Hon. Millie, you still have the new sub-clauses 3A, 3B and 3C. Please move them together.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I cannot move them together because they are different. I know that we are in a hurry. Unfortunately, I shall be heard.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, let me be clear. Clause 11(b)(3A) is about the Refugee Status Appeals committee. Clauses 11(b)3B and 3C are about the membership of that committee.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): The Committee passed an amendment in Clause 11(c)(4A) which I agree with. So, there is no reason for me to move what I agree with the Committee. That is why I am saying that I will move the amendments one by one. When we were harmonising the amendments with the Committee, I agreed with them on the term of office of the members of the Appeals Committee. In my amendment, I have proposed that the

members shall serve a four-year term which may be renewable once. The Committee proposed a term of three years which is renewable once which is okay. What was missing was that aspect of the term limit.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Move the amendments.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 11 of the Bill be amended —

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

“(3A) In appointing members to the Appeals Committee, regard shall be taken to ensure equitable gender representation.”

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, when we were dealing with Clause 9, Hon. Millie Odhiambo withdrew a similar provision which was in Clause 9(b)(2) which says that in appointing representatives to the committee under subsection 1(1), the Cabinet Secretary shall take into account equitable gender representation.

She withdrew it on the understanding that it is already provided for. We are re-introducing the same thing in another committee and yet she withdrew it in the Refugee Advisory Committee.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Where is it provided for? Point it to me.

Hon. Amos Kimunya (Kipipiri, JP): It is on record that she withdrew that amendment in Clause 9 on equitable gender representation. We are now talking of equitable gender representation, which we all agree is provided for in the Constitution. It is within the law that all committees shall be gender compliant. So, why are we legislating on the obvious in vain? We should be spending our time on adding value to the Bill rather than restating what is already provided for elsewhere.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Chairperson.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairperson, I agree with the Leader of Majority. Additionally, if you look at Clause 11(2), in terms of how the Refugee Status Appeals Committee is to be constituted, we are talking of representatives of various agencies and departments of Government. These departments are to send one representative each. How does a single Government department, sending one representative, consider gender balance on one nominee? It is impractical. Therefore, in addition to the fact that gender parity is already a requirement under the Constitution, what Hon. Millie is proposing by this amendment is only practical in terms of nomination under Clause 11(2)(e), where three people are to be nominated.

My problem with Hon. Millie is that she is imposing this amendment for all these representatives, which is impractical. I, therefore, oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let us make progress. We cannot linger here so much.

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie Odhiambo, you may proceed.

Hon. Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairperson. What Hon. Kaluma said proves exactly what I am saying, that you will find an only men committee. He proves what I am saying. Be that as it may, I know this is a long “war”, but we will “fight” it here by winning some and losing some. But I am here and I will be here every day fighting the pro-gender balance “war.”

I will fight and I am glad that Hon. Kaluma is not always here. He will win on this one, but lose on the others by his absence.

Hon. Temporary Deputy Chairperson, I wish to move-

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, I wanted you to pronounce yourself because 3B...

Hon. Odhiambo-Mabona (Suba North, ODM): Yes, that is what I am actually moving.

The Temporary Deputy Chairman (Hon. Patrick Mariru): You cannot move it because 3A has been disposed with. It is the one establishing the Appeals Committee, its membership and how it operates. It does not arise anymore. I want you to pronounce yourself.

Hon. Odhiambo-Mabona (Suba North, ODM): On which one?

The Temporary Deputy Chairman (Hon. Patrick Mariru): On 3B and 3C now that that does not apply.

Hon. Odhiambo-Mabona (Suba North, ODM): On 3D?

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is 3B, which says that: “The members of the committee shall serve a four-year term which may be renewable once.”

Hon. Odhiambo-Mabona (Suba North, ODM): I agreed with the Committee on this one. The Committee had actually moved an amendment. I encourage the Committee that what Hon. Duale had said is important, that in the Committee of the whole House, it is a give-and-take situation. The Committee will tell you that on most amendments that we have agreed on, I was the one giving. They have none where they are agreeing with me. They are disagreeing on everything.

Let us learn that this is a fight against the Bill. They should not look at it like that.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, it cannot be a fight.

Hon. Odhiambo-Mabona (Suba North, ODM): Let them learn and come to this stage more often.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Millie! There is a point of order by Hon. Kajwang’.

Hon. T.J. Kajwang’ (Ruaraka, ODM): Hon. Temporary Deputy Chairman, this is the time that we also need some break. I have heard the Member for Suba North, a lady that I respect and a lady who gives me a lot of encouragement for her sheer vigilance, mentioning the word “fight.” You know how that word caused problems to the United States over the impeachment trial of President Trump. The word ‘fight’ was looked at and pieced. Could Hon. Millie find another way of employing another word so that gender issues are not understood to be all the time fighting?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Your colleague, Hon. Kajwang', is worried about the disposition of the word 'fight'.

Hon. Odhiambo-Mabona (Suba North, ODM): I am willing to use another terminology but it might have a sexual connotation. We are willing to 'push'.

(Laughter)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Proceed Hon. Millie, we do not want to get there, at least not now.

Hon. Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I also want to thank Hon. Kajwang' who is also my brother.

I actually agree with the Committee on sub-clause 4. I now move that we have a new sub-clause 5, which provides that-

"The Appeals Committee shall be independent in the exercise of its functions under this Act

(c) by deleting sub-clause (5);"

They should no longer fear because it is all Government and it can as well be just independent.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, let us be very clear on sub-clause (b). Hon. Members, we are lingering here because we need to be very clear. Hon. Millie, you are not inserting sub-clause (5), but deleting. Or are you dropping it?

Hon. Odhiambo-Mabona (Suba North, ODM): I am looking at my original amendments. Maybe the Table Office might not have captured this, but my original amendment in sub-clause 11(5) has an inclusion that the committee can be independent. I can drop that because it is all Government and it does not matter anymore. They can be independent or non-independent, it really does not matter. However, sub-clause 11(5) does not apply because I was moving an amendment to delete "the High Commissioner for Refugees" but because my earlier amendment on the High Commissioner for Refugees has been defeated, it falls off the way.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, I know you have quite a number of amendments. I am sure you are shuttling around.

Hon. Odhiambo-Mabona (Suba North, ODM): Sub-clause 11(8)?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, new sub-clause 11 (8) that says-

"The Cabinet Secretary shall make regulations to give effect to this section and such regulations shall include —"

Hon. Odhiambo-Mabona (Suba North, ODM): Okay, Hon. Temporary Deputy Chairperson, I have seen it. Thank you. Could I also please request that I be protected from the Leader of Majority, who is in a hurry to finish? He is telling me to drop it. I am not dropping it.

Hon. Temporary Deputy Chairperson, I beg to move that:

THAT, Clause 11 of the Bill be amended —

(d) By inserting the following sub-clause immediately after sub-clause 7 -

“(8) The Cabinet Secretary shall make regulations to give effect to this section and such regulations shall include —

- (a) procedures of providing interpreters for refugees or asylum seekers;
- (b) mechanisms of ensuring confidentiality;
- (c) mechanisms of ensuring impartiality;
- (d) protection against sexual harassment;
- (e) rights of representation by a lawyer; and,
- (f) permission of attendance by eligible observers.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Departmental Committee Chair.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, the regulation making authority is given to the Cabinet Secretary under Clause 43. I, therefore, request Hon. Millie to drop or I oppose the amendment. It is very wide there and it can cover all those issues. Hon. Millie should look at Clause 43(1).

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kabinga.

Hon. Josphat Kabinga (Mwea, JP): I want to support that position by the Chair. When such regulations are developed, they find their way into this House. That would be the appropriate time for my good friend to propose whatever she wants included in the regulations.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, I want to put the Question. Yes, Hon. Millie, you could have a final stamp on it.

Hon. Odhiambo-Mabona (Suba North, ODM): Yes, I wish to respond. One, when the regulations are made, there is no guarantee that all of them will be here. Some stop at the committee stage. Secondly, when you do the work of gender mainstreaming, if you provide ‘include’, it does not exclude what else the others will do. It means what you are saying is so important that it needs to be ensured.

Issues of confidentiality, especially for women who have been sexually abused when moving, issues of protection of women and children are so important that they should be at the very least included. I do not see how this harms the Chair of the Committee. I stand with the amendment even if I am the only voice standing with it.

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

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman.

I beg to move:

THAT, Clause 13 of the Bill be amended-

(a) in sub-clause 2 by inserting the following paragraph immediately after paragraph (b) –

“(c) A representative of the United Nations High Commissioner for Refugees.”

(b) By deleting sub-clause (3) and substituting therefor the following new sub-clause-

“(3) In appointing persons to the Eligibility Panel, the Commissioner shall take into consideration equitable gender representation”.

I propose that we add a representative of the United Nations High Commissioner for Refugees to the Eligibility Panel. That is my first proposed amendment in Clause 13(2).

I beg to move.

(Question of amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us start with Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, this is the same thing that we handled and we said that we should be truly Kenyans. Is there any other Kenyan who is sitting in any committee outside this country or we are inviting foreigners to start micromanaging us? You should know that they are answerable to their paymasters. Their paymasters are not Kenyans. We need Kenyans who are answerable to the paymasters who are the citizens of this country.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, indeed, the Bill provides for the panel co-opting a representative of UNHCR in exactly the same way it was for the Appeals Committee. Since this House already made a decision on the Appeals Committee, I would urge Hon. Millie Odhiambo, if she was listening, to consider that the House has pronounced itself in terms of the composition of the Appeals Committee. The panel cannot be any different. Right? We cannot have a co-opted person in the committee and a substantive person in a panel, which is a panel of experts.

I would urge that we stop agitating for these bodies to have their inclusion into every organisation that we create.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well.

The Chairperson.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I oppose the proposed amendment. If you look at Clause 13(3), there is provision already made to allow the eligibility panel, once established, to co-opt somebody from UNHCR. It is not that a representative from UNHCR should sit permanently in this body. So, I would request Hon. Millie to withdraw her proposed amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Finally, Hon. Owino.

Hon. Martin Owino (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Chairman. I just want to ask Hon. Millie to see the reasons because this is the second time she is insisting that the United Nations should be represented here. Can you just come forward and tell us why you really advocate for this?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Owino, you cannot ask a Member to explain to you further. You should not do that. However, Hon. Millie, you do have a final stab.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. Perhaps Hon. Martin Owino might not know that before I joined Parliament, I worked in the human rights sector. I have never worked with the UN. I have worked with the human rights civil society and worked very closely with different UN agencies. UN agencies include all nations, including Kenya. The primary responsibility of dealing with refugee issues is the UNHCR, not any other. I have worked with the United Nations Office on Drugs and Crime (UNODC) on issues of counter trafficking in persons. So, if you are dealing with trafficking I would push the UNODC. If you actually look at the Counter-Trafficking in Persons Act, I have UNODC. This is the primary agency that sponsors the support of refugees in this country. It is the one which does all this work. For that reason, I really do not see why they are not included because, in any event, they will do it. The only difference between me and the Committee is that the Committee is talking about a co-option which may or may not be. Personally, I am thinking they should be. It is one person from the UNHCR. I do not see the harm.

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

(Clause 13 agreed to)

Clause 14

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have two amendments, by the Hon. Chairperson and Hon. Millie Odhiambo. We will start with Hon. Millie Odhiambo because it is Sub-Clause 1.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 14 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “thirty days” and substituting therefor the words “sixty days”;

It is because we know under the circumstances that refugees deal, that time of 30 days which they are given is a very short time. Most of them are strangers to this country. They may not have legal representation. I know this because a lot of times many cases of refugees were referred to me when I was a counsel in FIDA and sometimes by the time the matter comes to you it is already late by law. So, maybe you could give them 60 days instead of 30. That is my proposed amendment, both in (a) and (b). So, I move for both (a) and (b).

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Vice-Chair.

Hon. Peter Kaluma (Homa Bay Town, ODM): The privilege of appeal here is being given against the decision of the Commissioner and not the Refugee Status Appeals Committee. If you look at those decisions, they may require that a person who has been denied refugee status be removed immediately. Giving such a person a whole 60 days to be within is too long a time for a state which is party to the Convention to retain a party. I was saying that even in the interest of the person affected by the decision of the Commissioner, within 30 days would be enough so long as it is 30 days upon being notified of the decision.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Kabinga, then we make progress.

Hon. Josphat Kabinga (Mwea, JP): Again, I hope Hon. Millie will not feel like we are opposing everything she is proposing. Sixty days will only give the aggrieved time to manipulate and do things that are not necessary in this country. We know that 30 days are enough. Beyond, we will be giving time for manipulation. They have been doing it. Some of us have worked in the international arena with refugees and we know that some of them come here with a lot of knowledge on how to manipulate our processes. The 30 days should be enough.

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson of the Committee, you have an amendment on Clause 14(2).

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 14 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) A person who is aggrieved by the decision of the Appeals Committee may appeal to the High Court within thirty days of being notified.”

Hon. Temporary Deputy Chairman, the main emphasis we are making here is on being notified. The appeals body can make the decision, but the refugee or the affected person may not get notice of the fact. We are securing that the 30 days’ period is from the time he is duly notified of a decision.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairman. Despite the fact that the Committee is consistently opposing me, I will support their amendment not to please them, but because I believe in it.

Hon. Temporary Deputy Chairman, even if I bring the entire Bill and they oppose, because I believe in what I am bringing, I will not be moved. I am consistent and I will bring them. Hon.

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Kimunya who has been with me here, knows that about me. I am so relaxed. I will move all of them whether they support or do not support me.

On this one, the amendment makes sense because they can appeal to the High Court.

I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, you should not anticipate that they will not support you in the subsequent amendments.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): They were saying that they will oppose. I do not care and I will move all my amendments

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is okay to bring all the amendments, but the House will make a decision at that point.

Hon. Peter Kaluma (Homa Bay Town, ODM): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kaluma, what is out of order?

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Millie is intimidating all Members to accept her amendments. She is making presentations as to make the nation believe that when we are at the Committee stage, we are in a barter trade and that if I accept your amendment, you must accept mine. We oppose or support with reasons.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kaluma, you are not being intimidated, and if you are, I would be surprised.

Hon. Masara wants to speak on this.

Hon. Peter Masara (Suna West, Independent): Thank you, Hon. Temporary Deputy Chairman. I want to appreciate Hon. Millie's efforts and it is through such that she has been elected twice as the representative of Suba North Constituency.

I am a Member of this Committee and we really tried to persuade ourselves on the amendments, but eventually settled on what has been presented by the Chairman. We are not against her amendments. We even agreed to go to the negotiating table to ensure that we accommodate all the views. We may not go the route she is taking because we are Kenyans and Kenya is our business.

Thank you, Hon. Temporary Deputy Chairman.

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

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, under sub-clause 2, you had an amendment, is that so? You even have a New Clause 5 as per the Order Paper.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): Is that on Clause 19?

The Temporary Deputy Chairman (Hon. Patrick Mariru): No. It is on Clause 14. We have to make sure that we prosecute every clause that you have proposed to amend without fail.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. The good thing with Parliament is that my amendments have to be dealt with.

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I beg to move:

THAT, Clause 14 of the Bill be amended—

(b) in sub-clause (2) by deleting the words “thirty days” and substituting therefor the words “sixty days”;

(c) by inserting the following new sub-clause immediately after sub-clause (4) —

“(5) No fee shall be charged for filing of applications and appeals under this section.”

(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)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, I told you not to anticipate rejection of your amendments. You see, this amendment has been carried.

Hon. Members, I will put the global Question. I am sorry, I had not put the global Question to Clause 13 for tidiness.

(Clause 14 as amended agreed to)

(Clauses 15, 16, 17 and 18 agreed to)

Clause 19

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Vice-Chairperson.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairperson, I beg to move:

THAT, Clause 19 of the Bill be amended—

(a) in sub-clause (1) by deleting the expression “Section 30” appearing immediately after the words “Subject to” and substituting therefor the expression “Section 29”;

We are correcting it in terms of cross-referencing of the relevant provisions under that sub-clause.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kaluma, you will move only Clause 19(1). Sub-clauses (2) and (3) will change in ordering.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I am on Clause 19 (1). We are deleting Section 30 and replacing it with Section 29, which is the right provision in terms of cross-referencing.

(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)*

On sub-clauses (2) and (3), we have amendments by Hon. Millie Odhiambo and the Departmental Committee Chairperson. We will start with Hon. Millie Odhiambo's amendment. She is proposing a deletion. If it is carried, there will be nothing for the Chairperson to amend.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 19 of the Bill be amended —

(b) by deleting sub-clause (2);

(c) by deleting sub-clause (3);

Sub-clause (1) provides sufficient ground for expulsion, but sub-sections (2) and (3) introduce something called “public morality.” What is public morality? In our own laws in Kenya, we have done away with public morality. Other than that, if you look at Article 32 of the 1951 Convention relating to the status of refugees, which Kenya acceded to on 16th May 1966, it clearly provides for grounds of expulsion, which is what is provided in sub-section (1), but it does not include the issue of morality. It goes against Article 27 of the Vienna Convention on the Law of Treaties and other treaties to which Kenya is a signatory. So, I propose deletion of those two sub-clauses. The issues of concern for expulsion are already provided for in sub-clause (1).

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Vice-Chairperson.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I am happy Hon. Millie does not agree with expulsion on account of breach of public order. Hon. Members, this provision deals with circumstances under which refugees may be expelled from the country. Public order is very wide. If you consider the process of identifying refugee status, what if you admit a person on a temporary basis and you discover he is a terrorist? Is Hon. Millie saying that you cannot expel him? These are the security situations we are talking about.

On public morality, if Hon. Millie waited, she would have listened to our amendment in which we are saying public morality should not be subjective. We are adding the words ‘public morality under the law,’ so that it is defined and you do not just say everything is immoral. So, I would request Hon. Millie to consider our amendments. Otherwise, you will incapacitate the State even where there are grounds to expel a refugee.

Let me tell, Hon. Temporary Deputy Chairman that just across Uganda, something like gay marriage is an issue. And just a short while back, the Turkana people chased several refugees from

Uganda who were in Kakuma because they were practising gayism and other things which are not allowed by our laws. We are not saying everything immoral, but if it is immoral under our law, we can expel you. These are the people who came to the court wearing bikinis and funny things yet they are men. We can expel you on account of those breaches so long as it is under the law.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I am very reasonable. If he adds “under the law”, I am willing to concede. But when you just leave it at morality, we might actually then send somebody back to their home because they are wearing a knee-high skirt, because that is very subjective. If it includes “under the law”, I am okay.

The Temporary Deputy Chairman (Hon. Patrick Mariru): So, your amendments to sub-clauses (2) and (3) stand withdrawn. Let us move to the Chairperson’s amendments.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 19 of the Bill be amended—

(b) in sub-clause (2) by inserting the words “under the law” immediately after the words “to public morality”;

(c) in sub-clause (3) by deleting the expression “subsection (1)” appearing immediately after the words “in terms of”.

This is just for neatness.

(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 be inserted, put and agreed to)

(Clause 19 as amended agreed to)

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I have amendment to Clause 19(5).

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, there is no sub-clause (5). Not on this one.

Clause 20

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have amendments by two Members: Hon. Millie Odhiambo and Hon. Oundo Ojiambo. We shall start with Hon. Millie. The one of Hon. Ojiambo shall be moved under express... Hon. Ojiambo has written and requested that Hon. Nyikal moves on his behalf. However, let us start with Hon. Millie first.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you Hon. Temporary Deputy Chairman. I do not know again whether I go by sub-clause. However, I will move—

THAT, Clause 20 of the Bill be amended—

“(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause —
“(1) The Commissioner shall ensure that specific measures are taken to ensure the dignity and safety of women, children and the elderly seeking asylum and women, children and the elderly who have been granted refugee status at all times during their stay in designated areas.”

I also wanted to add that we take care of the elderly not just the women and children.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Do you want us to deal with each of them? This is especially because sub-clause (5) has two Members moving. Therefore, let us deal with one.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I have a proposed amendment to sub-clause (1), then I have another one in sub-clause (4), then another one in sub-clause (5).

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Let us dispense with Clause (1).

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Clause (1) is for the elderly. I am just adding 'the elderly'.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Okay. Let us dispense with that first.

(Question of the amendment proposed)

Yes, Hon. Vice-Chairperson.

Hon. Peter Kaluga (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, the proposal by Hon. Millie is agreeable to the Committee, save the location. I wanted to inform the House and Hon. Millie that we are bringing in care for elderly persons under Clause 21 because we deemed the elderly or old persons being added there - if you look at the Committee amendments – it would be neater than having it lumped under women and children where we are dealing with persons with disabilities. Therefore, I would request that for neatness, moreover, we consulted a lot with the UNHCR, the Refugee Consortium and we located the right place to add the elderly in Clause 21 and that is the amendment we will be later proposing. I request Hon. Millie to agree to drop that, so that we can locate it there.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I want to encourage this Committee that next time we have a Bill, they just call me so that we can sit with them. We were actually trying to make a consultation with Hon. Kaluma 15 minutes to this. We did not need to have this, otherwise, I agree with him.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay, that is dropped. Now, Hon. Millie please, move sub-clause (4).

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

She has to pronounce herself on that. Hon. Millie, you have an amendment to sub-clause (4). You are inserting words there. It is about national and international law.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I think this one we had agreed in the 15 minutes that we met on an earlier amendment. We agreed

that as long as we have the national laws that include international, that is okay. Therefore, I drop that amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members that is dropped.

Now, you have new sub-clause 5.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, even though my earlier proposal was defeated, I will move this one.

I beg to move-

THAT, Clause 20 of the Bill be amended—

(c) by inserting the following new sub-clause immediately after sub-clause (4) —

“(5) The Cabinet Secretary shall make regulations to give effect to the better carrying out the provisions of this section and the regulations shall include provisions that shall ensure—

(a) no child is subject to trafficking in persons;

(b) proper registration and identification is recorded to ensure identification of parents or relatives of the child;

(c) a child is placed in a place of safety or with a designated officer responsible for unaccompanied children; and

(d) the child receives psycho social support.

Hon. Temporary Deputy Chairman, I know there may be rules and regulations. However, there is no harm in adding them here for purposes of emphasis. Even in literature, we were taught that. Moreover, especially when we exclude, sometimes attention is not paid to them. Therefore, I move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Vice-Chair.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, the proposed amendments, in substance, are in order. We are talking of the need to have a legislation. If we proceed this way, we will be establishing the regulation-making authority or delegated power under each and every provision. That is why under Clause 43, we identify all those issues over which regulations can be made in addition to the general powers. I would request Hon. (Ms.) Millie Odhiambo that may be she considers bringing this very provision but under Clause 43, so that the regulation making authorities and the issues they can deal with are clear instead of having each provision donating delegated powers.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I am not allowed to do that in terms of procedure but in the spirit of taking us forward, either the Chair can move them or I will bring them at a later date under that Subclause 43. However, if we had had this discussion - that is why we are always encouraged to harmonise - I could have brought them under that. I am also not opposed to doing things which are reasonable. So, I withdraw.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well, I like your recommendation of a free consultation before we get to the plenary. However, here we are. Let us have Hon. Nyikal on behalf of (Dr.) Ojiambo. You have a new clause.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, on behalf of Hon. (Dr.) Ojiambo and with your permission, I beg to move:

THAT, clause 20 of the Bill be amended by inserting the following new Subclause immediately after sub-clause (4) —

“(5) The Commissioner shall ensure that a child whose application for refugee status is being considered or is registered as a refugee under this Act is accorded the rights provided for under the Children’s Act (No. 8 of 2001).”

This is to ensure that any child who is in the country is either with the refugee parents or if they are seeking refugee status is treated exactly the same way as any other child in the country. It is important for us to realise that children are often if not always the innocent victims of circumstances that bring about refugee status.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes Hon. Vice-Chair.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Deputy Chairman. In substance, Hon. (Dr.) Oundo is right but human rights are rights to individuals and not just citizens. So, whether a child is a refugee or not, they have those rights. Under Article 53 of the Constitution, the rights of every child, whether a refugee or otherwise within Kenya are already prescribed. In fact mentioning the Children’s Act instead of the Constitution is even diminishing those rights because the children have more rights under Article 53 which is applicable to every child within the space called Kenya whether they are citizens or not. So, I would request that on account of that, that amendment is opposable. It should be dropped or we reject it. They are already catered for under Article 53.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Leader for the Majority Party, you have one minute.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I do not know if Hon. (Dr.) Oundo had looked at the Bill. This is because, Clause 20 (2) provides for exactly the same. That the Commissioner should ensure that a child who is in need of refugee status and is considered a refugee receives appropriate protection unassisted.

That is in accordance with the law and so we are adding something that is already provided for. Hon. (Dr.) Nyikal you may well consider whether you need to continue prosecuting that or withdraw it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. (Dr.) Nyikal, do you have anything to say in one minute before I put the matter to vote?

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, can I just get more clearly what is mentioned under Clause 20 (2)? If it is in the Constitution then I do not see what is wrong with adding it there because it does not breach the Constitution. So, that is why I am asking which one you are referring to.

“The Commissioner shall ensure that a child who is in need of refugee status and who is considered a refugee receives appropriate protection and assistance whether accompanied or not by his parents”

The only difference here can be reassured, “is considered a refugee”. This is not quite the same with a child who is requesting or the parents themselves are refugees. I think in situations of children, you need to be extremely exact. You do not want a loophole where if people go to court, they can say it be considered or is under request. So, for refugee parents, it is not the same thing. I think it would be better to let this be deleted.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Members! We must put the Question on this and make progress.

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

(Clause 20 agreed to)

The Chairperson you must report progress.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Refugees Bill (National Assembly Bill No.62 of 2019) up to Clause 20 and its approval thereof with amendments and seek leave to sit again.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we must report progress because the House must rise in three minutes.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE REFUGEES BILL

The Temporary Deputy Speaker (Hon. Christopher Omulele): Mover.

Hon. Patrick Mariru (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Refugees Bill (National Assembly Bill No.62 of 2019) up to Clause 20 and approved the same with amendments and seeks leave to sit again.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Mover.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Kaluma to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Speaker, I second.

(Question proposed)

Hon. Members: Put the Question.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well.

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 6.30 p.m., this House stands adjourned until today Tuesday, 23rd February 2021 at 7.00 p.m.

The House rose at 6.30 p.m.