

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 15<sup>th</sup> November 2018

The House met at 9.30 a.m.

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

PRAYERS

QUORUM

**Hon. Deputy Speaker:** Hon. Members, obviously, we do not seem to have the required quorum, I therefore order that the bell be rung for 10 minutes.

*(The Quorum Bell was rung)*

**Hon. Deputy Speaker:** Okay, I think we now have the numbers and business can begin.

QUESTIONS

**Hon. Deputy Speaker:** In this particular Order, we have a few Questions and we will start with the Member for Kwale County, Hon. (Ms.) Zuleikha Hassan.

*Question No. 152/2018*

DELAYED SUBMISSION OF MINING REGULATIONS TO PARLIAMENT FOR APPROVAL

**Hon. (Ms.) Zuleikha Hassan** (Kwale CWR, ODM): Thank you, Hon. Deputy Speaker for giving me this opportunity. I will be asking Question No.152/2018.

**Hon. Deputy Speaker:** When will you be asking it?

**Hon. (Ms.) Zuleikha Hassan** (Kwale CWR, ODM): Hon. Deputy Speaker, the Leader of the Majority Party always has an issue when I ask Questions. Please protect me. I am asking Question No.152/2018 to the Cabinet Secretary for Petroleum and Mining.

- (a) When will the regulations under sections 224 and 225 of the Mining Act, (No. 12 of 2016) be published and submitted to Parliament for approval?
- (b) What is the ratio of revenue sharing for proceeds of titanium mining between the National Government and the local community, how much has the community been paid to date?
- (c) Could the Cabinet Secretary provide a list of the individuals from the community who have benefited from the funds meant for the community and explain whether there are plans for extension of the titanium mining contract at the end of the current programme/contract?

**Hon. Deputy Speaker:** I must commend you because you have been asking quite a number of Questions, on behalf of your constituents. Next is Member for Wajir North, Hon. Ahmed A. Ibrahim.

*Question No.175/2018*

## FAILURE TO AWARD BIDDING COMPANIES CONTRACTS

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Thank you, Hon. Deputy Speaker. I am asking Question No.175/2018. My Question, just to make a correction on the Order Paper, is directed to the Cabinet Secretary, Ministry for Agriculture, Livestock, Fisheries and Irrigation. I can see it is reading Ministry of Water and Irrigation. I think earlier the Department of Irrigation was under the Ministry of Water but as we speak the Department of Irrigation is under the Ministry of Agriculture.

Could the Cabinet Secretary explain why the following companies have not been awarded their contracts for various works in the Ministry following a successful bidding process and issuance of notification of award letters dated 27<sup>th</sup> March 2018:

1. New World Choices
2. Misky Generals Ltd
3. Manguro Construction Co. Ltd
4. Gilbertson Trading Co. Ltd
5. Ling Spring Supplies & Merchants
6. Southpole Construction Co. Ltd
7. Halgan Construction Co. Ltd
8. Devote Ltd
9. Minion Ltd
10. Maalin Trading Co. Ltd

I want to make a special request considering the urgency of this matter. Hon. Deputy Speaker, can you direct the Cabinet Secretary to at least give this Question special consideration because of its urgency? I am raising this because...

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

**Hon. Deputy Speaker:** What is it, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Deputy Speaker. The Member has asked the Question and that is the end of the story.

**Hon. Deputy Speaker:** The only reason why I am entertaining the presentation he is making is because I am also grappling with which particular Departmental Committee this Question will go to.

So, I think he has actually done the right thing because you have asked the Question and you have really finalised it. I am looking at it and thinking that this should be answered before the Departmental Committee on Agriculture and Livestock. That is exactly where that particular Question will be answered. The previous one by Hon. Zuleikha will be replied to before the Departmental Committee on Environmental and Natural Resources. Are you satisfied now? Perfect.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Before the Leader of the Majority Party interfered, my request was that...

**Hon. Deputy Speaker:** It is okay. He was also raising an extremely valid issue. This is because Members are supposed to simply ask Questions and the rest will be a question of pinpointing where the Question will be replied to. However, you raised a good issue yourself.

Otherwise, it would have gone to either the Departmental Committee on Environmental and Natural Resources. However, it is going to be done as I have asked.

Let us go to the third Question by Hon. Benard Shinali, Member for Ikolomani Constituency.

*Question 176/2018*

DELAYED COMPENSATION OF PERSONS AFFECTED BY  
CONSTRUCTION OF SIGALAGALA-MUSOLI-BUKURA-BUTERE ROAD

**Hon. Benard Shinali** (Ikolomani, JP): Hon. Deputy Speaker, I would like to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development the following Question:

Why has there been a delay in compensating persons displaced and properties destroyed during the construction of the Sigalagala – Musoli – Bukura – Butere Road D260 implemented by Kenya Rural Roads Authority?

**Hon. Deputy Speaker:** That particular Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

*Question No. 178/2018*

STATUS OF COMPENSATION AND RELOCATION OF FAMILIES  
AFFECTED BY EXPANSION OF MALINDI AIRPORT

**Hon. Deputy Speaker:** Upon request by Hon. Jumwa, I am deferring Question No. 178/2018. So, we will go to Hon. Jomo Washiali, Member for Mumias East.

*(Question deferred)*

*Question No. 179/2018*

MEASURES TO ENSURE COMPLIANCE OF STANDARDS  
FOR GOODS IMPORTED INTO THE COUNTRY

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Deputy Speaker, I rise to ask the Cabinet Secretary for Industry, Trade and Cooperatives the following Question:

Which companies have been contracted by Kenya Bureau of Standards to inspect goods imported into the country?

- (a) How does the Certificate of Conformity ensure that quality and value of goods entering the country meet the standards required by law, given the recent investigations by Kenya Revenue Authority which has unearthed goods of questionable quality and grossly undervalued in the local market?
- (b) What measures is the Ministry putting in place to ensure absolute compliance of standards for goods being imported into the country?

**Hon. Deputy Speaker:** That one will be replied before the Departmental Committee on Finance and National Planning. The last Question is by the Member for Lamu, Hon. (Capt.) Ruweida Mohamed. This is another Member who has been very active in asking Questions.

*Question No. 182/201*

TRANSFER OF KCPE CANDIDATES TO NEW EXAMINATION CENTRES IN LAMU COUNTY

**Hon. (Ms.) Ruweida Mohamed** (Lamu CWR, JP): Hon. Deputy Speaker, I would like to ask the Cabinet Secretary for Education the following Question:

- (a) Why were some Kenya Certificate of Primary Education candidates in Lamu County moved from their schools to new examination centres during the examination period?
- (b) Why was security of the said candidates not put into consideration in the move considering that many had to walk for long distances from the examination centres to their homes?

**Hon. Deputy Speaker:** That will be replied to before the Departmental Committee on Education.

**Hon. Benjamin Washiali** (Mumias East, JP): On a point of order, Hon. Deputy Speaker!

**Hon. Deputy Speaker:** What is your point of order, Hon. Jomo Washiali?

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Deputy Speaker. My apologies for asking after the other Question has been asked. Hon. Deputy Speaker, you directed that my Question should be handled by the Departmental Committee on Finance and National Planning. I thought that this being a business of trade, it should be handled by the relevant Departmental Committee on Trade, Industry and Cooperatives.

**Hon. Deputy Speaker:** There is a component of both. There is component which will go to the Departmental Committee on Trade, Industry and Cooperatives and, of course, a big chunk of it which goes to Departmental Committee on Finance and National Planning, unless you have a specific reason why you want this to go before the Departmental Committee on Trade, Industry and Cooperatives. Do you feel that you will suffer any prejudice?

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Deputy Speaker, I do not have any personal interest. I just thought that the Departmental Committee on Trade, Industry and Cooperatives is the one that oversees this ministry. I thought so, so that we do not try to introduce new players. This is because the Departmental Committee on Finance and National Planning will completely be a new Committee in terms of matters trade and industry.

**Hon. Deputy Speaker:** Okay. Otherwise, in part (b) of your Question, you had raised the issue of investigation by the Kenya Revenue Authority. However, if you are really comfortable with the Departmental Committee on Trade, Industry and Cooperatives then that is fine with me. We will send it there. So, it will be replied to before the Departmental Committee on Trade, Industry and Cooperatives. I believe that satisfies Hon. Washiali.

Next Order!

**PROGRESS REPORTED**

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 12 of 2018) and seek leave to sit again today.

**Hon. Deputy Speaker:** I can confirm that we have the requisite quorum. Therefore, I will put the Question.

*(Question put and agreed to)*

Next Order!

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

#### IN THE COMMITTEE

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

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, we are now in the Committee of the whole House. I just want to remind those who were here yesterday that we made very good progress and I am hopeful that today we shall also do good progress and justice to this Statute Law (Miscellaneous Amendments) Bill. We reached the Kenya Post Office Savings Bank Act (Cap 493). We shall today start with the Export Processing Zones Act, 1990 (Cap 517). If you have your Order Paper, we are on Page 1535. I hope we are all together so that we can start business.

THE EXPORT PROCESSING ZONES ACT, 1990 CAP 517

*The Export Processing Zones Act, Cap.517, Section 2*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Let us have the Chair of the Departmental Committee on Finance and Planning. Sorry, it is the Chair of the Departmental Committee on Trade, Industry and Cooperatives, Hon. Kanini Kega. Let us have the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Which section are we dealing with? Section 2?

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendment to Section 2 of the Export Processing Zones Act (Cap. 517) by—

(a) deleting the proposed definition of the term “eligible activities” and substituting therefor the following new definition—

s. 2 Insert the following definition in proper alphabetical sequence—

"eligible activities" include activities to enable agricultural activities preceding processing and value addition directly related to value addition conducted in Kenya within a gazetted export processing zone in aquaculture, horticulture, tea, coffee, floriculture, dairy and ranching and silviculture.

The justification for this is to increase the scope of the eligible activities as proposed. The Chair is trying to expand the number of activities that can take place in a given period as far as the Export Processing Zone (EPZ) is concerned.

*(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)*

*(Section 2 as amended agreed to)*

*(Section 15 (1) agreed to)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Mover, there is an amendment to Section 21. Chair of the Departmental Committee on Trade, Industry and Cooperatives, do you want to settle down so that the Leader of the Majority Party can do it for you? Leader of the Majority Party, please assist him. He can take it up after.

**Hon. Aden Duale** (Garissa Township, JP): The Chair must pay some fees.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendment to Section 2 of the Export Processing Zones Act (Cap. 517) by—

(b) deleting the proposed amendment to Section 21 of the Export Processing Zones Act (Cap. 517) and substituting therefor the following—

s. 21 Delete the words “for a minimum period of thirty years within the export processing zone” and substitute therefor the words “or building or part thereof for a minimum period of ten years for land and buildings or part thereof”.

The gist is to provide for the minimum period of owning or leasing a building or land within the zone to 10 years for both. It increases the period for owning a building to 10 years from six years as it is currently.

*(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)*

*(Section 21 as amended agreed to)*

*(Section 26(3B) agreed to)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, we are done with that part of the Bill.

*(Provisions relating to the Export Processing Zones Act, 1990 Cap.117 as amended agreed to)*

*(Schedule as amended agreed to)*

THE NATIONAL COUNCIL FOR LAW REPORTING ACT, NO. 11 OF 1994

*The National Council for Law Reporting Act, No. 11 OF 1994*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Leader of the Majority Party, your amendment proposes to delete everything so I will start with you.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended by deleting the proposed amendments to the National Council for Law Reporting Act, 1994.

After consultation with the Office of the Attorney General, we have realised that those amendments are substantial and cannot be done in this kind of a Bill. Through a letter he wrote to me dated 22<sup>nd</sup> August 2018, and which is even copied to the Clerk of the National Assembly, I beg to entirely delete all the proposed amendments to the National Council for Law Reporting Act of 1994 and table a substantive Bill.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, if the proposals by the Leader of the Majority Party are carried...Let me propose first before you confirm, Chair.

*(Question of the amendment proposed)*

Let us have the Chair of the Departmental Committee on Justice and Legal Affairs.

**Hon. William Cheptumo** (Baringo North, JP): Hon. Temporary Deputy Chairman, I confirm that this amendment requires further consultations with the stakeholders. I agree with the Leader of the Majority Party that this be deleted and we have no objection to that. We have already consulted and it is in order.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Very well. Hon. Members, let me put the Question.

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

That was the only amendment. There were two other amendments proposed by the Chair and Hon. Millie Odhiambo, who has nominated Hon. T. J. Kajwang' and Hon. Nyikal to hold

brief for her today but both of them are not in. There is no harm because their proposals are similar to the one that was proposed by the Leader of the Majority Party. Therefore, we are all carried in that boat. We are all together.

*(Provisions relating to the National Council for Law Reporting Act  
No.11 of 1994 agreed to)*

*(Schedule agreed to)*

#### KENYA REVENUE AUTHORITY ACT, NO.2 OF 1995

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, if you look at your Order Paper on page 1536, you will see the Kenya Revenue Authority Act No. 2 of 1995. I want to inform Members that those proposed amendments were withdrawn by the Leader of the Majority Party. So, we will not deal with those ones. I, therefore, direct that we move to the next proposed amendments on the Order Paper.

*(Provisions relating to Kenya Revenue Authority Act, No.2 of 1995 withdrawn)*

#### THE HIGHER EDUCATION LOANS BOARD, NO. 3 OF 1995

*The Higher Education Loans Board, No. 3 of 1995*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, we are on page 1538. Chair, Departmental Committee on Education and Research.

**Hon. Julius Melly** (Tinderet, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Schedule to the Bill be amended in the proposed amendments to the Higher Education Loans Board Act, 1995 by –

- (a) deleting the proposed amendments to section 4(1);
- (b) deleting the proposed amendments to section 4(3);
- (c) deleting the proposed amendments to section 5; and
- (d) deleting the proposed amendments to section 22.

As a Committee, we met with all the stakeholders. They agreed that they will take this back, so that they write sector-wide amendments and laws that are going to run the sector for the next many years. This particular Bill touches on very few areas. The sector needs a lot of laws to ensure that it is run well. We agreed to delete the proposed amendments.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Ordinarily, we move each section but your reasons apply to all the sections. For the record, I will call each one and then we see what we will do. The Leader of the Majority Party has something to say to it.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, the reason given by the Chair of the Departmental Committee on Education and Research is not convincing. This Bill seeks to amend the Act to align the composition of the board to include representation from the current institutions involved with the Higher Education Loans Board (HELB). It also provides for the term of office of the Chief Executive Officer (CEO) and the board members as four years and three years in line with *Mwongozo* principles of Jubilee.



The Chair is telling us that he wants to delete the proposed amendments so that they can go and consult people. Tell us what is offensive in my Bill because it is aligning the Act with the composition of the board. This is a minor amendment and you met with stakeholders. What is offensive? Why do you want to delete it? This Bill has been in the House for the last six months. Convince the House why you want to delete the proposed amendments.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see interest from Hon. Ogutu, Member for Bomachoge Borabu. Do you want to speak to this?

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): Thank you, Hon. Temporary Deputy Chairman. After discussions with the stakeholders, we came to the conclusion that there were areas that were not clear even with *Mwongozo*. For instance, insisting that the Chairperson should have a financial background. There were many areas which the secretariat was not able to convince us to move forward. For that reason, we saw no point to only pass a section of the amendments. We wanted them to look at these amendments in the context of HELB in the evolving society of Kenya by expanding its support and engaging with the private sector, including private universities. For that reason, Chair, we felt that we needed to be convinced. After engaging them, they asked for more time to consult and submit a detailed amendment.

Thank you, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Chachu.

**Hon. Chachu Ganya** (North Horr, FAP): Thank you, Hon. Temporary Deputy Chairman. In terms of the traditions of this House and the precedents that have been set before, a Departmental Committee of this House did its work, consulted the stakeholders widely and took a position on the Floor of this House. I do not think it is in order for the Leader of the Majority Party to undermine their role. He is an individual with a serious office in this House. It does not augur well with the traditions in this House if the whole work done by a Departmental Committee is undermined.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Chachu, there is a point of order from the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, the Members of the Departmental Committee on Education and Research are 19. This Bill is before the rest of the Members of the House. The rest of the Members of the House must be convinced. They can disagree with the Committee or me who is the owner of the Bill. So, there is nothing written. I know Hon. Chachu is talking like that. I will tell you that there are no institutions which do not have practices. You should not use the word “practice”. If you use the words “practice and tradition”, you need to cite them. We research. We are not ignorant. What we are saying is, and the Members will agree with me, I have given my reasons in the Bill. If you allow me Chair, I will repeat. This Bill seeks to align the composition of the board to include representation from the current institutions within the higher education.

Two, it provides for the term of the office of the CEO to be four years and for the board to be three years. Tell us why you have a problem with that. Why are you deleting the whole of that section? That is the work of the Chair of the Departmental Committee on Education and Research. Hon. Chachu is not a Member of the Departmental Committee on Education and Research. You do not just speak for the sake of speaking.

*(Hon. Aden Duale spoke off record)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, listen for one minute. The Leader of the Majority Party, give Hon. Chachu a chance to contribute. Hon. Chachu was on his feet before he was interrupted. You can finish what you were saying and then I will give directions on this.

**Hon. Chachu Ganya**(North Horr, FAP): Hon. Temporary Deputy Chairman, for the record, I want to state that a Departmental Committee of this House is delegated that responsibility by the entire House. It is their right to guide this House. The Chair said that instead of doing piecemeal amendments, they want to do holistic amendment to the parent Act. That is the guidance the Committee gave to this House. I strongly feel that the Leader of the Majority Party should not just stand up and rubbish the work of the entire Committee of this House. That is my problem.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Chachu, you have been heard. You have spoken. Hon. Members, listen to this direction. When Committees bring their reports here, the plenary becomes the owner of that business. The reason we undergo this practice of having a Committee of the whole House is for the Committee to deal with that business as it deems fit. It can amend, agree, completely delete or throw it out. It is the business of the House. It is to be debated. We cannot say that if the Committee has reached a certain decision on an issue, it is final. It becomes the business of the House to deal with it. Let me give the opportunity to Hon. Washiali who will be followed by Hon. Rachael Nyamai.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Temporary Deputy Chairman. It is like you picked my brains. I want to agree with you that the Committee's position is not absolute. Many times, when a report has been tabled by a Committee, the Committee of the whole House looks at it to see its merits and demerits. The issue that the Chair has raised is not the first time it has come up. We realise that many Chairs of Committees do not agree with statute law miscellaneous amendments. We need to agree as a House on the route we need to take. If Chairs are saying that, that is not their position or that they did not deliberate on a particular matter, then many questions will come up. We need the Mover to be in agreement with the Chair so that we can move forward. When the Chair reads from a different script from the Mover, then we have a problem.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I agree with you, Hon. Washiali. It will be neater if the Mover and the Leader of the Majority Party, who is usually the mover of government business, could agree with the Chair.

Hon. (Ms.) Rachael Nyamai.

*(Loud consultations)*

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you, Hon. Temporary Deputy Chairman. While I appreciate the sentiments of the Chair of the Committee, I would like to support the amendment by the Leader of the Majority Party because it does not interfere with the running of the board. It just makes things better. It is meant to align the composition of the board to include four years for the CEO and three for members. There could be times when Committee may not agree with an amendment in a Government Bill but in this situation, I support the Leader of the Majority Party and ask other Members to support. It is meant to increase the efficiency of the board and to specify the number of years the CEO shall serve and the number of years the board members shall serve.

I support.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Ibrahim, Member for Wajir North.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Thank you, Hon. Temporary Deputy Chairman. I also rise to support the amendment by the Leader of the Majority Party on the composition of the board to include representation from the current institutions involved in higher education.

I am also happy, on the same note, that it supports the *Mwongozo* Code of Conduct on State corporations, which advises the Government pertaining matters of general administration of State corporations.

I believe the amendment will importantly support transparency, accountability and integrated related issues on composition of the board. Indeed, the fact that it is clear on the term of the board as three years and the Chairperson of the board being four years, I believe it is in line.

I support the amendment.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Kamuren, Member for Mogotio. Hon. Omboko, hold on for a short while, I will give you an opportunity.

**Hon. Daniel Tuitoek** (Mogotio, JP): Thank you, Hon. Temporary Deputy Chairman. It is fair to give the CEO four years and the board three years. The cycle of a university normally takes almost four years for students to graduate. Normally, when the curriculum is being implemented, it is revised after four years. If we keep changing the CEOs in the middle, it disrupts the system or curriculum in place.

I oppose the amendment. We need time to consult the Chair of the Departmental Committee on Education and Research to have a more consultative framework so that most of the sector is consulted.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Omboko.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Chairman. It is true that we submit to the House as a Committee. I am a Member of the Departmental Committee on Education and Research. We worked and now that we are in the House, it is the business of the House. Finally, it will be put to vote.

The position we took as a Committee was arrived at after great consultations. The Committee itself has people from the education sector. We thought we should have time for people in that area to consult widely so that finally when we get the document, it will be comprehensive for the education sector and not piecemeal. That is why I stand with the Chair and try to convince Members that we adopt the amendment as it is. We are doing a good work there, and we shall continue do so on behalf of the House.

Thank you.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Wamalwa Chris.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. It is a requirement nowadays that before we debate, we must have a committee report so that we look at it to establish if the Bill has gone through public participation for purposes of informed decision-making. But even if a report is there, the House can veto it. This is what I thought I should inform the Members. What the Committee comes up with does not mean it will automatically see the light of the day. If the Committee is not convinced, it can make a contrary decision.

On statutory Acts, we must make consistent laws. State Corporations Act stipulates a term of a CEO as three years. The HELB is also a State corporation. The four year is contrary to

what other State corporations have. It is normally a term of three years, subject to renewal. But in this case, the HELB is a State corporation.

*(Hon. (Dr.) Chris Wamalwa consulted Hon. Members)*

I am informed that the term of a CEO of a State corporation is four years. If that is the case, there is consistency as far as State corporations are concerned. In that case, there is no problem.

We should support that.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Nyasuna.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I broadly agree with the Chair of the Departmental Committee on Education and Research. The Committee is not final. The House has the final say but the Committee is our eye. They have the opportunity to interact with stakeholders, listen and hear what they have to say. If they say that they need time so that it is well harmonised, I do not think it is difficult for us to give them that time. They are our eyes and ears. They listen to stakeholders on our behalf. We are unable to listen to stakeholders as a House. All the 19 Members of the Committee cannot be wrong. I have not heard any dissenting view.

I support the Chair.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Finally, on this one, let us have the Chair having the final say so that I put the Question to vote.

**Hon. Julius Melly** (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairman. The Committee met stakeholders. Some of the stakeholders we met are the HELB CEO and some officials from the Ministry of Education. When we met them, they had a raft of amendments. They were not even aware of this Bill. In our own wisdom, and I consulted the Office of Leader of the Majority Party on this one; we felt that this law needs to be looked at wholesomely and brought to the House with further amendments. In the spirit of public participation, as Hon. Wanga has said, let us delete this section but the Higher Education Loans Board Bill will be brought to the House so that we deal with it in a better way.

On what the Leader of the Majority Party said regarding Members of Departmental Committee on Education and Research or any Committee, there are certain pertinent issues that we look for in the Committee. When we come to the House and we do not consider those things, as Hon. Omboko said, it will not be good on our part. We are deleting this, not to go against the law but to bring a better, more harmonised and a more comprehensive part of the law especially on higher education.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I hear the Leader of the Majority Party saying he is now in agreement with you.

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

*(Sections 4(1) and 4(3) as agreed to)*

*The Higher Education Loans Board, No. 3 of 1995, Section 5*

**Hon. Julius Melly** (Tinderet, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Higher Education Loans Board Act, 1995 by –

(c) deleting the proposed amendments to section 5;

*(Question of the amendment proposed)*

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

*(Section 5 agreed to)*

*The Higher Education Loans Board, No. 3 of 1995, Section 22*

**Hon. Julius Melly** (Tinderet, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Higher Education Loans Board Act, 1995 by –

(d) deleting the proposed amendments to section 22.

*(Question of the amendment proposed)*

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

*(Section 22 agreed to)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, from your Order Paper, you will see that Hon. Millie Odhiambo had intentions to move amendments which were similar to the ones that have been moved by the Chair. So, they therefore stand dropped.

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

*(Provisions relating to the Higher Education Loans Board, No. 3 of 1995,  
as amended agreed to)*

THE KENYA INFORMATION AND COMMUNICATIONS ACT, NO. 2 OF 1998

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, from your Order Paper, you will see that the Leader of the Majority Party is proposing to delete all the proposed amendments. That is at page 1540 of the Order Paper. I will, therefore, give him the first bite on this.

**Hon. Aden Duale** (Garissa Township, JP): Chair, I drop my amendment.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): The proposed amendments stand dropped. We will therefore move to the proposed amendments.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Justification?

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): He does not have to, but if he has, he can give.

**Hon. Aden Duale** (Garissa Township, JP): First, I was asked by the Attorney-General to do further consultation but later the Cabinet Secretary for Information had an amendment through the Committee. In that instance, if I go with my amendment then the one of the Ministry of Information and Technology from the Committee will die. To save it, I withdraw my amendment.

*(Proposed amendments by Hon. Aden Duale withdrawn)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): We will, therefore, proceed with the proposals made by the Chair, Hon. Kisang.

*The Kenya Information and Communications Act, No. 2 Of 1998, Sections 6(1)(a) and 6B(1)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, in the Order Paper, you will see that there were proposed amendments by Hon. Millie but she is not in the House. The ones she had chosen to prosecute on her behalf are not in the House. Therefore, they stand dropped.

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

*(Sections 6(1) and 6B(1) agreed to)*

*The Kenya Information and Communications Act, No. 2 of 1998, New Sections 6(1)(e) and 6(2)*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairman, Hon. Millie agreed last night to drop her amendments. I reported the same to the House.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Kenya Information and Communications Act, 1998 (No.2 of 1998) by -

(i) inserting the following new amendments in their proper chronological sequence—  
s. 6(1) (e) Delete the expression “in accordance with section 6B”.

s. 6 Insert the following new subsection immediately after subsection

(1)–

“(2) In appointing the members of the Board under subsection

(1) (e) the Cabinet Secretary shall ensure—

(a) that the appointees to the Board reflect the interests of all sections of society;

(b) equal opportunities for persons with disabilities and other marginalised groups; and

(c) that not more than two-thirds of the members are of the same gender.

(ii) deleting the proposed amendments to section 6B and substituting therefor the following new amendment—

s. 6B Delete.

We sat as a Committee and met the stakeholders. The Committee came up with a resolution that we give an opportunity to the President, as earlier law stated, to appoint directly the Chairman of the Authority and the Cabinet Secretary is given an opportunity to appoint other board members. The Committee noted that a different procedure had earlier been given where the Chairperson was appointed by the President and board members were appointed by a panel. There was a time the Authority stayed for one-and-a-half years without board members because it was very difficult to have quorum to replace board members. There is a need, therefore, to establish an equitable appointment procedure which does not inordinately hamper the operations of the Authority and safeguards the independence of the Authority as required by Article 34(5) of the Constitution.

The Cabinet Secretary will appoint the board members but when it comes to their removal, there is a tribunal. For any board member to be removed, it will have to go through the tribunal. That is why we decided to agree with the request by both the Ministry and CEO of the Authority.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Allow me to propose the Question first.

*(Question of the new sections proposed)*

*(New sections read the First Time)*

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

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

*(The new sections were read a Second Time)*

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

*The Kenya Information and Communications Act, No. 2 of 1998, New Section 25(A)*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Kenya Information Communications Act, 1998 (No.2 of 1998) by -

- (i) inserting the following new amendments in their proper chronological sequence—
  - s. 6(1) Delete the expression “in accordance with section 6B”.
  - (e)
  - s. 6 Insert the following new subsection immediately after subsection (1)—

“(2) In appointing the members of the Board under subsection (1) (e) the Cabinet Secretary shall ensure—

- (a) that the appointees to the Board reflect the interests of all sections of society;
- (b) equal opportunities for persons with disabilities and other marginalised groups; and
- (c) that not more than two-thirds of the members are of the same gender.

(ii) Deleting the proposed amendments to section 6B and substituting therefo

s. 6B Delete.

*Provisio Amendment*

*n*

New Insert the following new section immediately after section 25—

Payment of licence fees.

25A. (1) The Authority may prescribe fees payable for a licence issued under this Part.

(2) Subject to subsection (3), an applicant shall pay the prescribed fees in full before the grant of a licence.

(3) The Authority may permit the payment of spectrum license fees in equal instalments over a period not exceeding ten years if—

- (a) the fees exceed one billion shillings;
- (b) the applicant is a Kenyan citizen or an entity in which Kenyan citizens own at least fifty-one per cent shares; and
- (c) the applicant undertakes to construct at least five hundred base transceiver stations across the country within three years of the grant of the licence.

(4) A person granted a licence subject to the conditions under subsection (3) shall be liable to pay the prescribed licence fee in full if they—

- (a) cease to be a Kenyan citizen or an entity in which Kenyan citizens own at least fifty-one per cent shares; or
- (b) propose a transfer or assignment of the licence to a non-citizen or an entity in which Kenyan citizens do not own at least fifty-one per cent shares.

(5) The Authority shall revoke a licence granted subject to the conditions under subsection (3) if the licensee fails to meet the requirement under paragraph (3)(c).



We, as a Committee, sat and because of the dynamics of the industry and the dominance that is in the sector, we proposed or came up with something. We agreed that we need to level the field of the industry and encourage local investors to put in their resources. The shareholding of local investors in the three operators that are already there – Safaricom, Telkom and Airtel – is below 50 per cent. So, we said we need to encourage local investors to put in resources. That is so that we increase the shareholding and the market share of Kenyans. Because of the entry barrier of Kshs2.5 billion upfront licence fee for spectrum, we proposed that for companies that have more than 51 per cent shareholding, they pay over a period of not more than 10 years if the spectrum fee is more than Kshs1 billion. The current 4G licence is at 25 million US Dollars. That is equivalent to about Kshs2.5 billion. It will be good if we give them an opportunity to pay an average of Kshs250 million a year and also allow them to invest in towers. That way, coverage in our country will move faster. That is why we propose that we spread the charge across the spectrum fee for companies that own more than 50 per cent.

I propose that Members support this so that we give opportunities to our local companies to invest in the telecommunication sector. I beg to move.

*(Question of the new sections proposed)*

*(New sections read the First Time)*

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

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see interest from Hon. Osotsi. This is usually your area.

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Temporary Deputy Chairman, I want to say that I have no interest, I am just a member of the Committee. I support this amendment on the basis that we have a serious problem in the mobile telecommunication sector in this country because of the barriers to entry, especially by local investors. One is supposed to pay over Kshs1 billion for spectrum licence, that is, even before you start laying your infrastructure. This makes it so difficult to enter the market. This amendment is going to open up opportunities for Kenyans to invest in the mobile telecommunication industry.

Kenya is among a few countries in the world where dominance is a problem. We have Safaricom which controls over 50 per cent of the market share. This is unacceptable. This amendment will help us to solve the dominance problem that we have in the sector.

So, I support this amendment.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Duale, the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): This amendment is good. I do not see the Member for Mathira Constituency who has been arguing for “kenyanisation”. I support this. Again, the Chair needs to tell us why he wants the applicants to undertake to construct at least 500 base transceiver stations across the country. You cannot allow Kenyan investors to pay the spectrum fee over a period of 10 years and, at the same time tell them to do at least, 500 base transceiver stations. That is another huge investment. The Chair can tell us what the rationale for the 500 is. It is unfair if you want an investor to pay a spectrum fee which is above Kshs1 billion

over 10 years and yet, tell him he must build 500 stations. Those stations are very expensive. You are on one hand helping the investor and killing him on the other.

Secondly, I think that is the spirit of Hon. Jude Njomo's Motion in the House. There are proposed amendments to the Public Procurement and Asset Disposal Act. Let us make sure we protect our people in terms of doing business. I support.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I hear you, Hon. Chris. Let me allow Hon. Kathuri to have a go at it. He has not said anything since morning.

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Temporary Deputy Chairman. I want to echo the sentiments of the Leader of the Majority Party.

On this, I encourage the Chairman of the Departmental Committee on Communication, Information and Innovation to encourage investors to do sharing of the transceiver stations. Environmentally, it is not sound to construct those base stations across the country. The infrastructure we have can be used by anybody coming to this country to invest. It is happening in other jurisdictions. As an environmentalist, I encourage the Chair to encourage those coming in to share the infrastructure we already have and stop polluting the environment with so many base transceiver stations.

I support the amendment.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wamalwa, do you have something new to say?

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): We do research. We do not just come and say: "Put the Question". If you have nothing to say, let others say something.

This industry is very lucrative the world over in terms of returns over investments. Unfortunately, the big players have been people from outside. A good example is an organisation like Safaricom. It is making super profits. When it comes to issues of corporate social responsibility, whatever they are doing is negligible. It is insignificant. We should encourage local investors because it has been an entry barrier. This policy has been very prohibitive. I thank the Committee. In fact, it should have gone and lowered the rates further so that we encourage local investors because we are assured their returns are going to be invested locally.

When it comes to the local industry in telecommunication, it should not just be an issue of foreigners. So, this is a very good amendment. I salute the Chair for the good work. As time goes by, let us do an impact analysis. We could amend and go down further so that we encourage more people.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I think all of us are encouraging those investors. Unless you have something that is contrary to that, let us put the Question. Hon. Njomo, do you have something different?

**Hon. Jude Njomo** (Kiambu, JP): Yes, slightly different.

Though I support what the Leader of the Majority Party has said, I want to reframe what Hon. Kathuri has said. Instead of encouraging the sharing of base transmission stations, we should discourage installation of new ones. We should make sure that existing ones are fully utilised. I remember when I owned my first mobile telephone I could not talk while standing behind a building. This was because the company which was the supplier then had very few base stations. When we tell a new comer that they must first build 500 base transmission stations, we are killing our local investors. I would say that we change that and ask them to share with those who have already put up the infrastructure so that they can move. This should go to the television transmission stations because those who have the systems are becoming very expensive and the industry is not growing.

Thank you, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Very well, Hon. Jude. Hon. Chair, one minute so that I can put the Question.

**Hon. William Kisang** (Marakwet East, JP): Thank you very much, Hon. Members. We have noted that. There is a report that is coming to the House in the next two weeks, on the inquiry of the sector. We are proposing sharing of towers and we are also using universal service funds. Going forward, whoever is going to put up a tower needs to put space for others to slot in their equipment in those particular towers instead of building so many towers across the place. For the 500 towers we have proposed, we wanted to get serious investors so that we do not get jokers who are coming in and they do not invest.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Chair, I think you have heard the sentiments of the Members and you have committed yourself on record that you shall be bringing something in regard to sharing of those facilities. This is a House of record and we hope that you will do that.

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

*(The new section was read a Second Time)*

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

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

THE COMMUNITY SERVICE ORDER ACT, NO.10 OF 1998

*(Section 2 agreed to)*

*The Community Service Orders Act, No. 10 of 1998, Section 3(3)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): The Leader of the Majority Party, before you take it on, there is a proposal by Hon. Millie Odhiambo to delete that proposed amendment. Her nominated representative in this regard is Hon. T. J. Kajwang'. Hon. T.J. are you able to deal with it?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, Member for Suba North intends to delete these provisions. We are here for a good legislation. If the deletion were to pass, then of course the proposals by the Chair would fall aside. Because Hon. Millie did not attend the harmonisation process as she said yesterday, she may not have been conversant with some of the things that the Committee discussed with the stakeholders. In the interest of the House, would I ask the Chair to explain the purpose of his amendment? I am willing to withdraw what is not reasonable or pursue what I think is reasonable.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Your proposal is sound and that should be the spirit of law-making. It is a give and take. We shall move to the

proposals by the Chair so that Hon. T.J. can get traction and decide what to do with the proposals by Hon. Millie. The Leader of the Majority Party, you have a point of order?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I think procedurally, Hon. T.J. must first drop for us to move to the amendment by the Chair. We cannot do reverse that the Chair explains then Hon. T.J. drops. He has shown the goodwill only that he has not uttered the word “drop”. But the spirit, the letter and the heart was geared towards dropping only that he did not use the word “drop”.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Leader of the Majority Party, you are absolutely right. What I am proceeding to do is to accommodate Hon. T. J. and ask the Chair if he has...

**Hon. T.J. Kajwang’** (Ruaraka, ODM): I know the thinking of the Member for Suba North. She happens to be my blood sister and a Member of the place where my umbilical cord was buried. I happen to know her thinking. I know that...

*(Hon. (Dr.) Chris Wamalwa stood in his place)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Chris Wamalwa you cannot be on your feet to challenge Hon. T. J. when he has the microphone.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): I know that Hon. Millie Odhiambo is concerned about Section 10(b) and (c). This is what I want to understand if the Chair of the Committee has grasped that amendment. The amendment is taking away the application of the Act from Sexual Offences Act and Female Genital Mutilation. This is where the Member for Suba North is very concerned.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): What Hon. Millie was proposing to delete is in the Act, in Section 3(3). What you seem to be speaking to are the proposals by the Chair to amend, which are new. I will accede to your first request which was that if the Chair could speak to those proposals by Millie, you would be able to make your decision one way or another. But in any event, we will allow the House to make its final decision.

Hon. Koinange.

**Hon. Paul Koinange** (Kiambaa, JP): Thank you, Hon. Temporary Deputy Chairman, I can go ahead and move or you want to respond to...

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Yes, respond to the proposal by Hon. Millie to delete Section 3(3). What is your take on it?

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Temporary Deputy Chair, I wish to give the House a background in regard to Section 3 of the Community Service Act on which the amendment in the Statute Laws (Miscellaneous Amendments) Bill seeks to amend. Section 3 of the Act gives the courts the power to issue community service orders to persons of an offense punishable with imprisonment for a term not exceeding three years, with or without the option of a fine.

Second, imprisonment for a term exceeding three years but for which the court determines a term of imprisonment for three years or less with or without the option of a fine to be appropriate. Now, the intention of the new subsection 9 as introduced in the amendment Bill.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): You have moved ahead of us. You are actually moving your proposed amendment. I just wanted you to give us

direction. Anyway Hon. Members, this is the business of the House. Now, that Hon. T. J. has spoken let me give it to the House to make a decision on the proposal by Hon. Millie.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): That may not be necessary. I withdraw.

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

*(Section 3(3) agreed to)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Thank you, Hon. T.J. The proposal by Hon. Millie is dropped. I will therefore proceed to the proposals by the Chair on Section 3. Hon. Chair you should make your proposal on new subsection 9. We have finished with subsection with 3(3).

*Section 3(9)*

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Schedule to the Bill be amended in the proposed amendments to section 3 of the Community Service Orders Act (No. 10 of 1998) by inserting the following new subsection immediately after the new subsection (9)—

s.3 “(10) Subsection (1) of this Act shall not apply to a person convicted under the following legislation—

- (g) the Anti-Corruption and Economic Crimes Act, No.3 of 2003;
- (h) the Sexual Offences Act, No. 3 of 2006;
- (i) the Prohibition of Female Genital Mutilation, No. 32 of 2011;
- (j) the Prevention of Terrorism Act, No. 30 of 2012;
- (k) the Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009; or
- (l) the Bribery Act, No. 47 of 2016.”

The Committee is in agreement with new subsection 9 and further wish to introduce a new subsection 10 as per the Order Paper which seeks to limit the issuance of community service orders to persons convicted of the offences listed that is anti-corruption and economic offences, sexual offences, prohibition of female genital mutilation, the prevention of terrorism, the proceeds of crime and anti-money laundering and the Bribery Act. If the convicts are taken to serve in the community it will affect the community which they had already offended. That is why we feel that they should not be allowed to serve the community.

Thank you, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. T.J. I will give you but first allow me to propose the Question.

*(Question of the amendment proposed)*

**Hon. T. J. Kajwang'** (Ruaraka, ODM): I needed your guidance. Having dropped my amendments it therefore means that subsection 3(3) does not have an amendment. What the Chair is speaking to is the new amendment. I think we need to dispose of this as though there is no amendment and then move to what the Chair seems to be suggesting. Let us vote as if there is no amendment. Then, the Chair can address us on new subsection 10 which he wants to insert.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. T. J. I can understand what you are saying. So, that we can move together, Hon. Millie was proposing to amend subsection 3(3) by deleting which we have dropped. However, the Chair is proposing to add to it, a new sub-section. The amendment by Hon. Millie and the one proposed by Chair are not concurrent. I will put the global Question to take care of all of us with amendments as part of the Bill at the end of it.

**Hon. (Dr.) James Nyikal** (Seme, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Dr. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I can remember this happened yesterday. When putting the global Question, For example, I may be supporting subsection 3 but I am not in agreement with the new subsection 10. Then when you put the global Question this is not considered. It would be good have each subsection completed before we move on.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Nyikal, before we put the global Question for every individual Section we deal with, we propose the Question so that Members either agree or reject. For example, if they reject subsection 3(3) or the new proposed subsection 3(9) then it does not become part of the Bill. They will have rejected it at the point of proposal. So, it will not be an amendment that has been acceded to by the House. In any event, just to move in a neat way after we deal with the one by the Chair, I will put the Question so we move in one clear way. I had proposed the Question and I see interest from Hon. Antony Oluoch, Member for Mathare.

**Hon. Antony Oluoch** (Mathare, ODM): Hon. Temporary Deputy Chairman, I had placed an intervention earlier in relation to the Departmental Committee on Information, Communication and Innovation.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Very well. Hon. Tongi.

**Hon. Richard Tong'i** (Nyaribari Chache, JP): Hon. Temporary Deputy Chairman whereas I agree with the amendment as moved by the Chairman. I am concerned with (e) the Proceeds of Crime and Anti-money Laundering Act No.9 of 2009 for being included in the proposed amendment. I think if by including it then it means people who have stolen from the Kenyan public will endure the period of serving in prisons and nothing will happen.

What if we have a provision where they will be forced to retribute and give back what they have stolen from the public? For example, I have in mind the former Town Clerk of Nairobi City County who passed on in jail recently. Why did his jail term benefit Kenyans? What if he gave back the money after being found guilty? It would have added more value than him being jailed at our cost and using our money.

We did not gain at all because it was a lose-lose situation when he was jailed. It would be better if we had a provision where we recover the money and get the culprits to do hard work like serving the community which probably, will be more humiliating than having to hide them in prison. Those are my thoughts.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Tong'i, you can hear protest from Members. When we are in Third Reading we usually give brief comments. Hon. Members, allow me to put the Question. Hon. Makali Mulu, it is not a must that you say something. You will say something by voting.

*(Question, that the words to be inserted be inserted,*

*put and agreed to)*

*(Section 3(9) as amended agreed to)*

*(Sections 7(1)(c) and (3)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see no amendments to this.

*(Sections 7(1) (c) and 3 agreed to)*

*(Section 8(1) agreed to)*

*(Section 17 agreed to)*

*(Provisions relating to the Community Service Orders Act,  
No. 10 of 1998, as amended agreed to)*

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, NO. 8 OF 1999

*The Environmental Management and Co-ordination Act, No. 8 of 1999, Section 29(4)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see a proposed deletion of that section by Hon. Millie Odhiambo. Hon. T.J.

**Hon. T.J Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, the Member for Suba North intends to propose deletions to Sections 29, 32 and 36 of the Bill.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. T.J, just deal with Section 29(4) first.

**Hon. T.J Kajwang'** (Ruaraka, ODM): I think I need to drop this because as I see, the deletion proposed in the Bill is to correct the numbering. There is a resultant renumbering which has ensued after there is a reorganisation in that clause. So, I go on record as dropping that amendment to Section 29(4).

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

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is a change of Chair. Hon. T.J Kajwang', the amendment by Hon. Millie Odhiambo has been dropped. I confirm that.

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

*(Section 29(4) agreed to)*

*The Environmental Management and Co-ordination Act, No. 8 of 1999, Section 32*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. T.J Kajwang’, you are doing that for Hon. Millie Odhiambo.

**Hon. T.J Kajwang’** (Ruaraka, ODM): Sure. I also intend to drop this. I can see that the Bill is trying to realign the terminology of the council to the Cabinet Secretary. So, just to save time, I will drop the amendments on Sections 32 and 36(1).

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. T.J Kajwang’, we will deal with one after the other. For record purposes, the amendment by Hon. Millie Odhiambo on Section 32 is dropped.

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

*(Section 32 agreed to)*

*The Environmental Management and Co-ordination Act, No. 8 of 1999, Section 36(1)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. T.J Kajwang’, move for Hon. Millie Odhiambo on Section 36(1).

**Hon. T.J Kajwang’** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, I propose to drop that amendment on Section 36(1).

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): For record, the amendment by Hon. Millie Odhiambo on Section 36(1) is dropped.

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

*(Section 36(1) agreed to)*

*The Environmental Management and Co-ordination Act, No. 8 of 1999, New Section 2*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have the Leader of the Majority Party. We are dealing with the Second Reading for New Section 2.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Environmental Management and Co-ordination Act, 1999 by inserting the following new amendments in proper numerical order—

| Written law  | Provision | Amendment |
|--|-----------|-----------|
| The Environmental Management and Co-ordination Act, 1999 |           |           |

(No.8 of 1999)

s.2

Delete the definition of the word “Public Department”.

s.2

Insert the following new definition in proper alphabetical sequence—

“Complaints Committee” means the National Environmental Complaints Committee established under section 31.



The justification is just to delete the word “Public Department” and replace it with “Complaints Committee” within the reading of the National Environmental Complaints Committee. It is just an alphabetical replacement. Complaints Committee is the right term for the National Environmental Authority.

*(Question of the new section proposed)*

*(New section read the First Time)*

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

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

**Hon. Chachu Ganya** (North Horr, FAP): Hon. Temporary Deputy Chairman, I do support the Leader of the Majority Party’s amendment on this. As a Committee, actually we had a similar amendment but we felt that his should carry the day. So, it is actually just fitting that we have the National Environmental Complaints Committee replace the National Environment Department. This is because it is only investigative and that name is more befitting and more suitable. We are in concurrence.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, it is good to be keen. Order, Hon. Members! It is good to be keen. I know it is a lengthy session.

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

*(The new section was read a Second Time)*

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

*The Environmental Management and Co-ordination Act, No. 8 of 1999, New Sections 31, 31(1), 31(1)(d), 31 (2), 31(3), 31(4), 31(5) and 31(6)*

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, Thank you very much. Thank you, Hon. T.J and Hon Chachu. It is just the same thing – replacing the word “department” appearing in...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes. It is a whole lot of new sections.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Environmental Management and Co-ordination Act, 1999 by inserting the following new amendments in proper numerical order—

s.31 Delete the word “Department” appearing on the marginal note and substitute therefor the words “Complaints Committee”.

s.31 (1) Delete the expression “National Environmental Department (hereinafter referred to as “the Department”) and substitute therefor the words “Complaints Committee”.

s.31 (1) (d) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

s.31 (2) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

s.31 (3) Delete the word “Department” appearing in the opening statement and substitute therefor the words “Complaints Committee”.

s.31 (4) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

s.31 (5) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

s.31 (6) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

This amendment seeks to replace the words “National Environmental Department” herein referred to as “the Department” and substituting therefor the words “Complaints Committee” for the same reasons.

*(Question of the new sections proposed)*

*(New sections read the First Time)*

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

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

*(The new sections were read a Second Time)*

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

*The Environmental Management and Co-ordination Act, No. 8 of 1999, New Section 32*

**Hon. Aden Duale** (Garissa Township, JP): Is it Section 32?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us deal with it one after another. It helps to be tidy.

**Hon. Aden Duale** (Garissa Township, JP): It is the same thing. The procedures do not allow us.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Environmental Management and Co-ordination Act, 1999 by inserting the following new amendments in proper numerical order—

s.32 Delete the words “National Environmental Department” appearing in the marginal note and substitute therefor the words “Complaints Committee”.

s.32 Delete the expression “National Environmental Department (hereinafter referred to as “the Department”) and substitute therefor the words “Complaints Committee”.

It is the same thing. The amendment seeks to replace the word “Department” with the words “Complaints Committee” because of the investigative nature of the National Environment Management Authority.

*(Question of the new section proposed)*

*(New section read the First Time)*

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

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

*(The new section was read a Second Time)*

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

*The Environmental Management and Co-ordination Act, No. 8 of 1999, New Sections 33, 33 (1), 33 (1) (a), 33 (1) (b), 33 (2) (a), 33 (2) (c) and 33 (2) (d)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Majority Party, it is important to get them very specifically for the record.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Environmental Management and Co-ordination Act, 1999 by inserting the following new amendments in proper numerical order—

s.33 Delete the words “National Environmental Department” appearing in the marginal note and substitute therefor the words “Complaints Committee”.

s.33 (1) Delete the expression “National Environmental Department (hereinafter referred to as “the Department”) appearing in the opening statement and substitute therefor the words “Complaints Committee”.

s.33 (1) (a) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

s.33 (1) (b) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

s.33 (2) (a) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

s.33 (2) (c) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

s.33 (2) (d) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

The justification is the same. The amendment is just replacing the word “Department” with the words “Complaints Committee” because of the nature of the National Environment Management Authority as an investigating authority.

*(Question of the new sections proposed)*

*(New sections read the First Time)*

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

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

*(The new sections were read a Second Time)*

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

*The Environmental Management and Co-ordination Act, No. 8 of 1999, New Section 34*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Environmental Management and Co-ordination Act, 1999 by inserting the following new amendments in proper numerical order—

s.34 Delete the words “National Environmental Department” appearing in the marginal note and substitute therefor the words “Complaints Committee”.

s.34 Delete the word “Department” and substitute therefor the words “Complaints Committee”.

It is the same argument of replacing the words “National Environmental Department” appearing in the marginal note and substituting therefor the words “Complaints Committee” of the National Environment Management Authority.

*(Question of the new section proposed)*

*(New section read the First Time)*

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

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

*(The new section was read a Second Time)*

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

*The Environmental Management and Co-ordination Act, No. 8 of 1999, New Section 35 (1)*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Environmental Management and Co-ordination Act, 1999 by inserting the following new amendments in proper numerical order—

s.35 (1) Delete the word “Department” wherever it appears and substitute therefor the words “Complaints Committee”.

Again, these are just consequential amendments. The amendment seeks to delete the word “Department” wherever it appears and substitute it with the words “Complaints Committee” of National Environment Management Act.

*(Question of the new section proposed)*

*(New section read the First Time)*

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

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

*(The new section was read a Second Time)*

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

*The Environmental Management and Co-ordination Act, No. 8 of 1999, New Sections 36, 36 (1)  
and 36 (2)*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Environmental Management and Co-ordination Act, 1999 by inserting the following new amendments in proper numerical order—

s.36 Delete the words “National Environmental Department” appearing in the marginal note and substitute therefor the words “Complaints Committee”.

s.36 (1) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

s.36 (2) Delete the word “Department” and substitute therefor the words “Complaints Committee”.

Again, it is the same amendment which replaces the word “Department” wherever it appears with the words “Complaints Committee”. All these are consequential amendments.

*(Question of the new sections proposed)*

*(New sections read the First Time)*

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

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

*(The new sections were read a Second Time)*

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

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

THE KENYA ROADS BOARD ACT, NO.7 OF 1999

*The Kenya Roads Board Act, No. 7 of 1999, Section 12(2)*

**Hon. T.J. Kajwang'** (Ruaraka, ODM): The Member is asleep.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. T. J. Kajwang', the Member cannot be asleep. He is completely alert and I can tell. What is it Hon. (Dr.) Makali?

**Hon. Makali Mulu** (Kitui Central, WDM – K): Thank you very much, Hon. Temporary Deputy Chairman for allowing me to say what I want to say. I have looked at what we have gone through. I know this is a House of rules and procedure but if you look at the time we have taken to change every small bit to replace the word “department” with “Complaints Committee”, we need to learn as we move forward. We, as a House, need to get a way to improve that in future so that such small things should not take our time. It should be done in a faster way. I know there is a procedure. It does not mean that we must stick with procedure that we cannot change anything. If there is something that we can do, such small issue should not take a lot of time.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Hon. Makali, I see what you mean but the procedure has to be followed. It is good for future. That is why the Members are even given leverage to amend Standing Orders. That is the procedure for now.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Mover.

**Hon. David Pkosing** (Pokot South, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendment to Section 12 (2) of the Kenya Roads Board Act, No. 7 of 1999 by deleting the word “Master’s” appearing in paragraph (a).

The import of this is that we, as a Committee, are proposing to amend the Schedule by deleting the word “Master’s” appearing in paragraph (a) and remain with “degree”. This concerns the appointment of the Executive Director of the Board. The earlier one was providing for Master’s degree as the minimum qualification in terms of education. We, the Committee, are saying that the minimum qualification should be a degree, so that it does not look like we are targeting to meet certain people. However, if you have a Master’s degree, that is well.

I thank you.

*(Question of the amendment proposed)*

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

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Temporary Deputy Chairman. I want to support that proposal by the Chair because this amendment in the Bill looks so suspicious and malicious. It looks like someone wants to create a position for a certain person. I believe the first degree is adequate for a person to be a Director-General, unless you want a lecturer to be in that place.

I support the Chair.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Makali and then we will have two other Members. After that, we will make progress.

**Hon. Makali Mulu** (Kitui Central, WDM – K): Thank you, Hon. Temporary Deputy Chairman. As I support these amendments, I want to make the following observation. There is need for us, as a House, to harmonise some of these qualifications. To get to that level in the mainstream public service without a Master’s degree is impossible. I do not know whether we are saying that someone should be picked from outside to come and get this position. If you are in Job Group M and above, you cannot be promoted without a Master’s degree. We need to harmonise that as we make the law, so that we do not open room for people who are not qualified to go there and start bringing problems.

I thank you, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have Hon. T. J. Kajwang’ and then I will come to the other side.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, this is a good amendment. If you have been following the amendments we had in the infrastructure sector, we insisted this starting with when we were doing the Kenya Roads Bill. We looked at lots of institutions and boards. The Leader of the Majority Party is the one who thought that we should bring in the Master’s degree in the qualifications. Members said that it was a good thing but it was a very high qualification. We should think more of experience than the paper degree that a person comes with. This is in line with what we have said in the infrastructure sector that a basic degree that one should have as a Chief Executive Officer (CEO) is the graduate level. Thereafter, we can look at the experience. The only place we made an amendment for a Master’s degree level is in the Retirement Benefits Authority (RBA).

This is a good amendment. I support it.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have two other Members and then we make progress on this one. Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, as I support this amendment, and we have done it in many other legislations, having a Master's degree does not lock you out. It becomes an added advantage. We do not want to send the feeling that the position is only for people with the first degree. If somebody goes for an interview for the same job and he has a Master's degree which is an added advantage and experience, he will still get the job.

I support the amendment. There is no mischief in the Bill.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): One minute, Hon. Kathuri.

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Temporary Deputy Chairman. As I support this amendment which is good, in my mind, I am trying to think if there is nothing else in Kenya Roads Board Act which can be amended to make the roads maintenance fuel levy fund to be more efficient. I am wondering why it is only the aspect of the Master's degree that the Committee saw to amend in the whole Act. There are so many things that need to be done, so that the roads maintenance fuel levy fund can be used efficiently.

*(Laughter)*

I support the amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we must make progress on this one.

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

*(Section 12(2) as amended agreed to)*

*(Provisions relating to the Kenya Roads Board Act, No. 7  
of 1999 as amended agreed to)*

THE INDUSTRIAL PROPERTY ACT, NO.3 OF 2001

*(Sections 2, 6 and 9 agreed to)*

*The industrial Property Act, No. 3 of 2001, Section 12(2)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, Hon. Kanini Kega.

**Hon. Kanini Kega** (Kieni, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendment to the Industrial Property Act, No.3 of 2001 by—

(c) deleting the proposed amendment to section 12 subsection (2);

It is more of administrative work. We felt that we are over-legislating on it. It is the proposal and thinking of the Committee that it can be left to the board and for the clause to be deleted.

*(Question of the amendment proposed)*



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

**Hon Aden Duale** (Garissa Township, JP): As I support, the functions of the Managing Director will be performed exclusively by him or her. That is the import of the amendment of the Committee, in simple language.

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

*(Section 12(2) as amended agreed to)*

*(Sections 16, 18, 21 and 27 agreed to)*

*(Sections 29 (1)(a), 29(1)(b) and 29(1)(c) agreed to)*

*The industrial Property Act, No. 3 of 2001, Section 34(4)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by Hon. Millie Odhiambo. Hon. T. J. Kajwang', do you have a brief on that amendment?

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, I have a brief. I have gone through these pieces of legislation. This is one of the pieces of legislation that I heard Hon. Member for Suba North say that she would wish to drop. I have gone through them and they are good pieces of legislation.

They align the terminology of legislation from "Minster" to "Cabinet Secretary". Above all, Clause 59 is the best because it ingrains what we know as property rights that you have to deposit the piece of art or skill for which you want a patent or protection.

I know the procedure requires that I have to rise all the time, but for brevity, I withdraw all the amendments that have to do with the Industrial Property Act.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): For record, the proposed amendment by Hon. Millie Odhambo on Section 34(4) is withdrawn.

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

*(Section 34(4) agreed to)*

Hon. T.J. Kajwang', you have dropped all the proposed amendments. I will ask the Clerk-at-the-Table to read all the amendments up to Section 84(2) then you pronounce yourself on withdrawing them. We will then put them together. That makes it much easier. I will then call you on the subsequent section later on.

*The industrial Property Act, No. 3 of 2001, Sections 34(5), 53(2)(a), 59, 62, 63, 77, 80, 84(1) and 84(2)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. T.J. Kajwang', can you confirm again that actually the amendments by Hon. Millie Odhiambo have been withdrawn.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, I confirm that all those amendments proposed by the Member for Suba North are withdrawn. I see my learned friend, Hon. Murugara, is the only one, I am sure, who understands where we are now: The Industrial Property Act.

They propose that designs must be deposited with the Registrar. I know the Leader of the Majority Party has problems when we mention learned friend. We will always learn and everybody is allowed to. His statement...

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

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

**Hon Aden Duale** (Garissa Township, JP): My good friend, Hon. T.J. is imputing a very improper motive on Members sitting in the Chamber by saying that it is only Hon. Murugara who understands. There are many Members who understand. We had accepted Hon. T.J. a few hours ago as the "Chief Justice". Let him respect Members.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I withdraw and apologise.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The proposed amendments by Hon. Millie Odhiambo are confirmed withdrawn.

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

*(Sections 34(5), 53(2)(a), 59, 62, 63, 77, 80, 84(1) and 84(2) agreed to)*

*(Sections 86(2), 86(3), (86(4) and 86(5) agreed to)*

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, I pronounce myself in respect of all those provisions to which Member for Suba North had intended to make proposals. I confirm that they are all dropped.

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

*(Sections 87, 87(2), 87(4), 87(6), 87(8), 87(9), 87(10), 87(11), 87(12), 87(13), 90, 90(1), 90(2), 90(3), 90(4), 91, 91A, 92(4), 93(2) and 113 agreed to)*

*The industrial Property Act, No. 3 of 2001, Section 113(6)*

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Millie is proposing to amend Section 113. Are we addressing Section 113?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Section 113(6).

**Hon. T.J. Kajwang'** (Ruaraka, ODM): The Member for Suba North is only concerned with Section 113. That is what I want to address myself to. That is why I should come before the Chair because I am on Section 113. The Chair will come on subsection 6. I confirm that I drop those amendments on behalf of the Member for Suba North.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): That is confirmed. Amendment by Hon. Millie Odhiambo on that is dropped.

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

**Hon. Kanini Kega** (Kieni, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Schedule to the Bill be amended in the proposed amendment to the Industrial Property Act, No.3 of 2001 by—

(b) deleting the proposed amendment to section 113 subsection (6) and substituting therefor the following—

s. 113(6) Insert the following new subsection immediately after subsection (5)—

The Cabinet Secretary shall, through a competitive process, appoint a person who has experience of not less than seven years in matters relating to industrial property being qualified and entitled to practice as an advocate in Kenya to be the Secretary to the Tribunal.

The justification is to ensure fairness in the process of recruiting secretary to the tribunal in terms of the qualification and also relevance and more importantly to be competitively recruited.

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 inserted in place thereof be inserted, put and agreed to)*

*(Section 113(6) as amended agreed to)*

*The industrial Property Act, No. 3 of 2001, Sections 117,119, 120 and Second Schedule)*

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I confirm that on behalf of Member for Suba North, I withdraw amendments proposed to those provisions relating to the Industrial Property Act.

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

*(Sections 117,119, 120 and Second Schedule agreed to)*

*(Provisions relating to the industrial Property Act, No. 3 of 2001, as amended agreed to)*

THE CHILDREN ACT, NO.8 OF 2001

*The Children Act, No.8 of 2001, Section 2*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is a proposed amendment by Hon. Millie Odhiambo. We must commend Hon. Millie Odhiambo. She seems to have read this Bill. Hon. T.J. Kajwang' is here holding brief.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, in respect to the amendments to the Children Act, I do not have the brief of honourable Member for Suba North. Instead, the Member for Seme has her brief.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): On this occasion, it is honourable Member for Seme. Hon. Nyikal, you have the Floor.

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it Hon. Majority Leader?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, Hon. Millie Odhiambo has delegated two Members. There should be a letter from the Speaker. Hon. T.J. Kajwang' has no *locus standi* to delegate to Hon. Nyikal. Can you confirm that delegation was provided for both?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Majority Party, Hon. Member for Suba North, Millie Odhiambo, seems to have done her homework. In light of Standing Order, I have a letter here confirming that Hon. T.J. Kajwang' and Hon. James Nyikal have unequivocally been appointed to hold brief for Hon. Millie Odhiambo. In that case, Hon. Nyikal, proceed.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, in case of doubt, I have a copy of the letter. It can be tabled.

These amendments for Hon. Millie will be adjudicated. So, you will guide if we go one by one.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Children Act No. 8 of 2001 by deleting—

(a) the proposed amendment to section 2;

Our proposal is to delete that. The basic issue here is that we have the Child Welfare Society which, just through a legal notice, seems to be getting the power to do the functions of the National Council for Children Services. Therefore, the officer for that society is now taking the same position as the authorised officer. They are adding into the list on Clause 2 of the actual Act. We are saying that should not be so. So, we seek the deletion of that.

*(Hon. Aden Duale spoke off record)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): I want Hon. T.J. and Hon. Nyikal not to fall victim to Hon. Millie. She is deleting everything, according to the Order Paper. Let us start from there.

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

**Hon. Aden Duale** (Garissa Township, JP): Let me finish because the Bill is mine.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Leader of the Minority Party. I want to give more guidance. I have not proposed the Question. I will give you a chance when I propose the Question so that we are on it.

*(Question of the amendment proposed)*

Let us hear the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): I am sure the Chair and Members of the Departmental Committee on Labour and Social Welfare agree with me that these amendments on the Child Welfare Society of Kenya are very important. One, it is creating a National Adoption Society (NAS). Two, it confers powers on the Cabinet Secretary to regulate how charitable child institutions are run in this country. If we do not do it, the daily stealing of children will continue. Three, adoption societies and how they are established is found in this section.

Lastly, there is establishment of a task force committee and working groups. So, let us go one by one and see what is being deleted. Let us go section by section on the amendments of Hon. Millie. That is so that we delete as she suggests, where we feel it makes sense. I want the House and the Departmental Committee on Labour and Social Welfare to be attentive.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will come to you Hon. Wario.

**Hon. Ali Wario** (Bura, JP): Thank you very much, Hon. Temporary Deputy Chairman. From the outset, I want to oppose that amendment. The reason is that we all appreciate and understand trafficking and vulnerability of children. Section 53(1) of the Constitution clearly elaborates how children are to be treated in this country. There is a line between children officers and Child Welfare Society. We are defining Child Welfare Society to be a national adoption society. Vulnerability of children is countrywide. You cannot give that responsibility to one adoption home. So, if there is a problem of vulnerability, for example, in Kisumu, Garissa or Tana River, the Child Welfare Society has to have the national face in protecting the vulnerable children. That is the essence of this clause. By deleting that, you are leaving the vulnerable children in the hands of people who might turn them into prostitutes and sell them. I oppose.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Wanga.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I would like to oppose this amendment. The reason is on what is being deleted. It is a proposal in Section 2 to insert the words “an officer of the national adoption society” immediately after the words “labour officer”. If you look at what we are adding it is a long list of authorised officers: a police officer; an administrative officer; children’s officer; approved school officer; a chief appointed under the Chiefs Act; a labour officer, and; we are adding an officer of the NAS. Why do we delete that? We are just adding it to a long list of other authorised officers. So, why would you delete a provision such as that?

The Committee on Labour and Social Welfare had a chance to listen to all stakeholders including the civil society members who came and opposed all these amendments. We said Government must have a go-to place as far as adoptions are concerned. We cannot have our children in the hands of private people. This is what we are saying as a Committee. What should be heard by this House is the voice of this Committee that listens to everybody so that we move forward.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Do you have a point of order, Hon. Sankok? That is a contribution and not a point of order. I will come back to you, I

have heard you. Hon. T. J. Kajwang' then we come this way. We will have one or two Members then we make progress.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Let us take away emotions when we discuss this. We are here to make legislation which is good for everybody. It is perfectly in order and everybody wants us to have an adoption society which is a regulatory body. The problem is that we have to see what this thing called the Child Welfare Society of Kenya is. The Child Welfare Society of Kenya is an agency established under the State Corporations Act as an order. This is where the problem is. For you to bring it in a legislation and for you to put it in the body of the legislation, you first need to establish it as a legal entity. Right now it subsists as a presidential executive order under the Corporations Act. This is the point that we are doing. What happens is that when the President decides to give another or the other, the good intentions in what you are doing will be lost. It is because we have a lot of agencies out there who are craving for the attention of the President to be appointed under the State Corporations Act.

So, we are with you Member for Homa Bay Constituency. You are very passionate about this; I need you to listen. We are with you in this. Please help us put this Child Welfare Society of Kenya as part of statute law. This is where we had problems with the Wildlife Society of Kenya. We gave them money and discovered that they are not an organisation which should have a vote yet we gave them money from this House. So, it is that accountability that we are talking about. We can have a body that we can bring to this House and it will respond to us and to the Office of the President through the State Corporations Act. This is the point.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have Hon. Sankok. If you take one minute each, we will make progress.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Chairman.

I really oppose this amendment because these orphanages and the private homes purporting to take care of our children have been the conduit of child trafficking in Kenya. As a member of the Departmental Committee on Labour and Social Welfare, we went round and listened to the Human Rights Commission and the public. What we came up with is that our children will be safe in the hands of their Government, not in the hands of private individuals who sell them for money. Thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): One minute, Hon. Muchira. Let us get two more Members then we shall give it to the members to make a decision either way.

**Hon. Michael Muchira** (Ol Jorok, JP): Thank you, Hon. Temporary Deputy Chairman. I oppose this amendment.

As a Member of the Departmental Committee on Labour and Social Welfare, we went round listening to all stakeholders. Matters of children are too serious to be left to the private players. We have to involve Government on matters of our children. I oppose.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. (Dr.) Makali, you can take one minute and then we will have one more Member

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I am actually surprised by what we are discussing. We are reviewing 2001 Act. I am wondering why the Committee could not just take up the matter and bring the whole Act with all the amendments. What we are discussing is very substantial. I do not know why we want to discuss them under miscellaneous law. I would suggest if it was possible for the Committee to

bring the main Act and we review it so that we discuss this matter comprehensively. What we are doing is piecemeal and we are likely to make serious mistakes.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I can tell there is quite a bit of interest on this one that is why I am giving to two more Members. Hon. Opondo.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman I thank you. I support the amendment proposed by Hon. Nyikal because it seeks to delete the proposal in the Bill that the National Adoption Society should mean the Child Welfare Society of Kenya. The adoption process is law set under the Children Act. Let me confirm to Members that the African society that we have generally is a very adoptive society. Even the provisions in the Adoptions Act...

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

**Hon. Aden Duale** (Garissa Township, JP): Can Hon. Kaluma confirm whether he has an adoption case in court? If he has, he cannot speak on this matter.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Before I go back to what I am dealing with, could the Leader of the Majority Party be requested to withdraw that nonsensical statement. I think we should be cautious when we are raising issues affecting the integrity of Members. You have more children than me but my children are better taken care of. This has to be withdrawn. I have suffered a lot of these nonsensical remarks being made over me. I do not want nonsense.

Can he withdraw? Can it go on record please?

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Members!

**Hon. Aden Duale** (Garissa Township, JP): It was a question but because you know Hon. Kaluma is a very personal friend of mine, on that basis, I withdraw and apologise.

*(Hon. David ole Sankok stood in his place)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Sankok, it did not touch you.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, May I draw your attention to the fact that we are transacting a very serious business. In the adoption process, bodies like the child welfare societies are bodies which give background information in that process. I was confirming to Members that that process is already too tedious. You cannot make a body which is not as statutory body mandated to do specific things and adoption body outside the framework of adoption already in law. For that reason, I would support the amendments proposed by Hon. Nyikal and request colleagues to oppose this. In fact, we would have gotten the views of lawyers. This is a very mistaken amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, Children Act No. 8 of 2001 has very many amendments as you can confirm from the Order Paper. It is important to make progress. So many people want to speak.

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

*(Section 2 agreed to)*

There is another amendment by Hon. Gideon Ochanda. Hon. Ochanda is not on the Floor.

*The Children Act, No.8 of 2001, Section 59*

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chair, I beg to move: THAT, the Schedule to the Bill be amended in the proposed amendments to the Children Act No. 8 of 2001 by deleting—

(a) the proposed amendment to section 59;

I will say this to my colleagues: I know they will pass this amendment, because I can see the mood, but take the facts. I am talking from experience. The Child Welfare Society has been a welfare society. This is a move to get a legal way of putting more money in the Child Welfare Society. This started as far back as 2013.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Hon. Nyikal, before I entertain points of order. Hon. Nyikal, are you dealing with Section 59?

**Hon. (Dr.) James Nyikal** (Seme, ODM): I am dealing with Section 59 because what it says is that we have charitable children institutions which are not part of Government institutions. Because of that, there are rules they must be subjected to. This amendment seeks to create a temporary place of safety established in this Act which will also be included in this list. The Child Welfare Society has now been given through that Gazette Notice, the power to actually put children in places of safety. The places that they are putting children in are the ones being protected. That is exactly the reason. The whole thing is about child welfare society.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Members. You cannot speak; I have not even proposed the Question. Hon. Nyikal is proposing certain amendment on behalf of Hon. Millie Odhiambo, whether you agree or not agree, it is good to listen to him and after that I will open it up after proposing the Question. Hon. Nyikal, I suspect you were almost done.

Proceed and conclude.

**Hon. (Dr.) James Nyikal** (Seme, ODM): It is not a do or die for me. I have done this work for many years. In addition, I am a consultant pediatrician. The Child Welfare Society will now have the power to put children in this safe place for temporary safety. Once they put them there, these institutions must also be subjected to all the other regulations. When you want to put them in the same group as a rehabilitation school... We want to include it in that and we have given this society the power to just place them as they wish. That is not correct and therefore, we are proposing to delete these amendments.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What have you said, Hon. Nyikal?

**Hon. (Dr.) James Nyikal** (Seme, ODM): We are saying we have an amendment Bill. What I am proposing to be deleted is what is in the amendment.

*(Question of the amendment proposed)*



**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. T.J. Kajwang', you seem to have really campaigned for Hon. Wanga, she had already caught my eye.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, JP): Thank you, Hon. Temporary Deputy Chairman. I respect Hon. Nyikal a lot. In fact, apart from being a renowned pediatrician and having worked at the Ministry, something must have gone wrong at the Ministry where he was working that is making him very passionate about this matter.

I really want to state the true position of this amendment. In fact, it seeks to protect children. What it seeks to amend, that Hon. Nyikal told us the opposite, is the temporary place of safety. As established under regulations made in this Act this is not included as part of a charitable children's institution. So as a person you cannot create a place, put children there and say it is a charitable children's institution.

Section 59 states a charitable children's institution shall not include a rehabilitation school, a school within meaning of the Education Act, a borstal institution, any health institution, a children's day care or a temporarily place of safety. So, what is the problem? It shall not be called a charitable institution.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Wangwe. I doubt if you are on record but just use the next microphone.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Chairman. I would like to oppose the amendment by professor. She is referring to these temporary institutions, but the Bill seeks to provide for interim purposes and which has to be in the law as at now. However, he is implying that this should be part of the main Bill. It is not supposed to be that way. Therefore, I oppose that amendment.

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

**Hon. Aden Duale** (Garissa Township, JP): I want Hon. T.J. to listen. The Bill seeks to be amended in the proposed amendments by inserting the following new paragraph immediately after paragraph (c) at Section 59. "(f) a temporary place of safety established under regulations made under this Act." Even that temporary safety place, the regulations of how it will be run will still come back to this House.

However, for the benefit of the nation, I was wondering what child welfare is. Where I come from it is *haram*. Now, I can confirm it is a multi-billion business. I am told a child can be sold for Ksh100 million. Please, let us make this legislation when we are sober. Let us listen to the Chair and the Committee's amendment. Let us have sobriety. When I was growing up there was a probation officer but nowadays it is different. Let us be very sober and the Chair should guide us on each and every amendment.

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

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Initially, I thought the Child Welfare Society of Kenya was formed through a statute. However, it is like something amorphous at the discretion of the Executive. I think we should recommit that particular subsection particularly after hearing from the Leader of the Majority Party. Unless Hon. Wanga tells us what this welfare is all about, we cannot put the interest of children at the risk of the people.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Murugara.

**Hon. George Murugara** (Tharaka, DP): Thank you, Hon. Temporary Deputy Chairman. For our intended purposes the Child Welfare Society of Kenya is a private entity, it has no legal backing on what it does as far as children are concerned. There comes a time when we must legislate to ensure that there is a person who is accountable in respect of what is done to the

children who are to be adopted or taken care of. Therefore, the proposed amendment does not hold merit.

**Hon. Ali Wario** (Bura, JP): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. T.J. Kajwang' I will give you but after Hon. Janet, it is important to listen to her as well. Order! What is your point of order, Hon. Wario?

**Hon. Ali Wario** (Bura, JP): On a point of order, Hon. Temporary Deputy Chairman. I am the Chair of the Departmental Committee of Labour and Social Welfare. Is it in order for some Members to mislead the House that the Child Welfare Society of Kenya is a commercial entity? It is like we are misunderstanding its role and that of adoption homes. These are two different institutions. The Child Welfare Society of Kenya is a legal body and is a national face of Kenya. We need this institution more than any other. It was created under a legal notice

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Wario, you do not engage the Member across. You were on a point of order and you seem to have gravitated towards information.

**Hon. Ali Wario** (Bura, JP): For information purposes the Child Welfare Society of Kenya is established under a legal notice. Hon. Temporary Deputy Chairman, protect me.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order! Hon. Wario you may get a chance to contribute to this. You know, you rose on a point of order.

**Hon. Ali Wario** (Bura, JP): Hon. Temporary Deputy Chairman, we are being misled and that is what I wanted to rectify.

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

**Hon. (Ms.) Janet Nangabo** (Trans Nzoia CWR, JP): Thank you, Hon. Temporary Deputy Chairman. I want to agree with my Committee because I also took part in making the Report. I do not know why we are being misled by others on the issue of children. When you look at child trafficking in this country, it is a big issue which we need to bring our heads together and look for a way forward, so that we can help the children.

I oppose the amendment by the professor.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I had committed to give Hon. T. J. Kajwang'.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Thank you, Hon. Temporary Deputy Chairman. As the Leader of the Majority Party has captured we are dealing with a mega problem. This is because children are being sold at exorbitant prices, and this is completely *haram*. I have listened to my learned friend, Hon. Murugara. Allow me to say this, he made his point and Members next to the Dispatch Box need to listen.

Hon. Wario is talking about a legal notice, he should also listen to others and we need to create a law for everybody. That legal notice is under State Corporations Act, it is a Non-Governmental Organisation (NGO) like any other which has been incorporated under the Act. For an entity to have its legal status, it must be established by statute. As I sit down, Members, do you not see this monopoly which is being brought to the Child Welfare Society of Kenya? They will decide on all those safe houses and all the children will be brought under their umbrella. Do you not see yourselves being duped by this?

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Members! Allow me to give one person from either side so that we can make progress. What is your point of order, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman. I ask Hon. Kaluma to stop what he is doing. I want to go on record and be on the HANSARD. I want anybody to challenge me here, that we cannot legislate for our own individual gain. Let me finish. Hon. Millie Odhiambo, the purported owner of these amendments, runs an institution called The CRADLE. I want anybody to oppose me. On that basis, Hon. Millie Odhiambo, whether she is here or not, is making laws for her own business and this House cannot be used. So, Hon. Temporary Deputy Chairman, I want you to put the Question and we will oppose all her amendments.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I had said one person from the right and one person from the left. Let us have Hon. Oduol.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker. I hope the Leader of the Majority Party can listen to the contribution I am making. I rise to support this amendment. At the outset, I want to...

**Hon. T.J Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Hon. Temporary Deputy Speaker.

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

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Can the Leader of the Majority Party substantiate his comments? Can the Leader of the Majority Party deposit, on the Dispatch Box right now, documents purporting that Hon. Millie Odhiambo runs The CRADLE? Can this be substantiated? If it cannot be substantiated, he must withdraw.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Members! Order, Hon. Members! Order!

**Hon. Aden Duale** (Garissa Township, JP): In the next sitting of the House, I will table. I cannot be intimidated. In the next sitting of the House, I will table and I will ask my legal team to get us the information. The CRADLE belongs to Hon. Millie Odhiambo. Period!

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Members! Order, Hon. Members! Order, Hon. Members! Order, Hon. T.J Kajwang'. Hon. T.J. Kajwang', you know the law. Order, Hon. Members! Can Hon. Oduol finish her presentation and we make progress?

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I would like, as I speak on this matter, to say that one of the reasons why we are in this august House is to make legislation. As I speak on this matter, I would like to draw the attention of the House to the fact that was raised by Hon. (Dr.) Mulu earlier, that the House is in the most important angle of making legislation, that is, the Committee of the whole House. As I make my submission, I want to remind the House that Hon. (Dr.) Mulu had drew our attention to a matter which, in my view, should have elicited the kind of emotion and passion that I am seeing now, but which did not come up. That point was that the matter we are dealing with here is a matter so substantive that it would have required not to be addressed in a miscellaneous Bill.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Members! Order, Hon. Members! Would you please conclude your presentation? We must make progress.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): As I conclude, I want to draw the attention of the House that there is a substantive Bill that is addressing a revision of the Children Act 2001, which is still with the Cabinet Secretary. Part of what we are saying...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Could you, please, just conclude so that we make progress.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Let me conclude. That was preparing a background. As I conclude, what I would like to address is that when we look at Section 59, what we were saying, which Members were concerned about, is if we keep this amendment to Section 59, then this amendment is going to put children in a much more difficult problem because we are going to have children in a safety place where charitable children's regulations do not apply.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Members! Order, Hon. Members! Hon. Members, I will have to put the Question on this one so that we make progress.

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

*(Section 59 agreed to)*

*The Children Act, No.8 of 2001, Section 72A*

**Hon. T.J. Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, I suspect you are holding brief for Hon. Millie Odhiambo. What is your point of order, Hon. Kathuri? Is it on Section 72A?

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you very much, Hon. Temporary Deputy Chairman. As we make progress, we are still discussing the amendments by Hon. Millie Odhiambo. The statement by the Leader of the Majority Party is completely misleading this House. If I plant tea, rear cattle or keep camels, does it mean that I should not legislate on anything that I do in my life? That is gagging Members.

His statement should be removed from the record. Because I farm tea and it is my passion, does it mean that I have a conflict of interest?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Hon. Kathuri! I hear your issue.

**Hon. Kathuri Murungi** (South Imenti, Independent): The next amendments we are discussing are by Hon. Millie Odhiambo. Does it mean that we should not discuss them?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Kathuri! Let me make this very clear. No Member can be gagged. They are here in their own right to represent their people. No one will be gagged. You have the freedom.

The Mover is on the Floor. Let us have Hon. Nyikal on the amendment to Section 72A by Hon. Millie Odhiambo.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Children Act No. 8 of 2001 by deleting—

(c) the proposed new section 72A;

Hon. Temporary Deputy Chairman, the regulations say that the Cabinet Secretary may in consultation with the Council, make regulations for the better carrying out of the provisions of this part and in particular citing reasons made. It goes on. Colleagues, listen to this carefully: It goes on to list all the regulations. At the end, it states that having made regulations in consultation with the Council, notwithstanding any provision of those regulations, the Cabinet Secretary may direct the Council to cancel the registration or close down charitable organisations if the lives of the children are in danger. That sounds reasonable. The fear is that we have a situation where the Cabinet Secretary makes regulations and can then override the same Council. That is the gist of this amendment. I do not want to go into further details on that. I leave it to the Members to decide.

*(Question of the amendment proposed)*

**Hon. Members:** Put the Question!

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

*(Section 72A agreed to)*

*The Children Act, No.8 of 2001, Section 72(B)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal to move the amendment on behalf of Hon. Millie Odhiambo.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Children Act No. 8 of 2001 by deleting—

(d) the proposed new section 72B;

This is again in the same context. I want my colleagues to get this very well.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, you have the Floor. Please proceed. Do not be moved by what you are hearing.

**Hon. (Dr.) James Nyikal** (Seme, ODM): The concern of Hon. Millie Odhiambo here is that the Cabinet Secretary will give a directive and form a committee while in the Children Act there is provision for a committee to be formed. This means that you have a situation where there

is a contradiction of the Cabinet Secretary overriding the National Council for Children's Services. I will tell you why I support this amendment.

*(Hon. Aden Duale spoke off record)*

**Hon. (Dr.) James Nyikal** (Seme, ODM): Chair, I have the right to explain.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes. That is why you have the Floor, Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Therefore, I want the Leader of the Majority Party to stop interrupting me. If he wants to rise on a point of order, he can do it.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, you have the Floor and you are completely protected. Do not be moved by what you hear. Just move.

**Hon. (Dr.) James Nyikal** (Seme, ODM): The overall concern here is that these amendments that have come in the Statute Law (Miscellaneous Amendments) Bill are basically running down or negating the whole Children Act, and particularly the National Council for Children's Services. That is the concern of the member. I will leave it to the Members to decide.

*(Question of the amendment proposed)*

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

*(Section 72(B) agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We had an amendment by Hon. Gideon Ochanda. That amendment is dropped because he has taken leave.

*(Proposed amendment by Hon. Gideon Ogolla dropped)*

*The Children Act, No.8 of 2001, Section 147*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal to move on behalf of Hon. Millie Odhiambo.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Chair, from this point I have my own amendments to Sections 147, 155,156,157 and 163. I want to tell this House with complete sincerity that we did not discuss them with Hon. Millie. I got them independently.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Are you dropping the amendment?

*(Hon. Aden Duale spoke off record)*

**Hon. (Dr.) James Nyikal** (Seme, ODM): I am not dropping the amendments. Leader of the Majority party, your position in this House and country is such that you should always be very orderly.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Chair, I want to say this through you. The Leader of the majority Party's position in this House and country is such that he should always maintain utmost order.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, I am the one who maintains order. Hon. Nyikal, I want to assure you that you are completely protected. You are moving the amendments on behalf of Hon. Millie Odhiambo. You have the Floor. People will say many things.

*(Loud consultations)*

**Hon. (Dr.) James Nyikal** (Seme, ODM): Chair, how can you protect my ears when Members are making noise?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, Members are not making noise here. When they are consulting, they do it in low tones. We must make progress.

**Hon. (Dr.) James Nyikal** (Seme, ODM): How am I making progress and I am repeating? I have said that I have my own amendments. If Hon. Millie's amendments pass, my amendments will be dropped, and if they are dropped, my amendment will also be dropped. I understand that process.

The basic issue in all the coming amendments is the fact that in Section 2, we had decided that the Child Welfare Society becomes the National Adoption Society. We are doing that through the Statue Law (Miscellaneous amendments) Bill without amending the actual Act. Therefore, there are institutions we are putting in jeopardy; like the National Children Council and the rules and regulations pertaining to adoption of a child as contained in the Children Act.

**Hon. Member:** Put the Question.

**Hon. (Dr.) James Nyikal** (Seme, ODM): He cannot put the Question before I even say what I am amending.

Hon. Temporary Deputy Chairman, I have always heard of voting machines. I now see some in action.

**Hon. David ole Sankok** (Nominated, JP): On a point of order, Hon. Temporary Deputy Chairman.

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

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Chairman. He cannot call me a voting machine. He has to withdraw that remark. I was just conversing.

*(Hon. T.J. Kajwang' spoke off record)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Members! Hon. Members, there seems to be extreme excitement over this law. Hon. Nyikal, why do you not just take your time and move the amendment so that we make progress?

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I seek your protection because those who are commenting while I am speaking are distracting me.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You are protected. Proceed now.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Children Act No. 8 of 2001 by deleting—

(e) the proposed amendment to section 147;

Notwithstanding any provisions of this Act, the National Adoption Society may place a child it finds to be in foster care under this Act. This takes us back to what I was saying. When you give power to the National Adoption Society to take children to those care places, we exclude them from the regulation that we have already passed. They will be in danger because we are dealing with one organisation, which will have the capacity to even bypass the other provisions of the Children Act. It would have been done better if we had a proper review of the Children Act.

In view of that, I propose that the amendment in the Bill be dropped.

*(Question of the amendment proposed)*

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

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

**Hon Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I have heard from Hon. Nyikal that he has dropped those amendments. He said that.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I did not hear him drop them, but he is here.

**Hon Aden Duale** (Garissa Township, JP): Then we can debate.

**Hon. (Dr.) James Nyikal** (Seme, ODM): There seems to be a language problem here. I thought Swahili was ....

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You have not dropped the amendment. That is all we wanted to hear.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I have not dropped the amendment.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There are Members who want to contribute to this one. I will limit the number so that we make progress.

Let us start with Hon. (Dr.) Makali. Take one minute.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Hon. Temporary Deputy Chairman, you hear people use words like “voting machines” because this is a debating Chamber and as many people as possible should be allowed to present their case. When one is speaking and a Member says we put the Question ....

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Makali, you have the Floor.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Hon. Temporary Deputy Chairman, I want to repeat my earlier point. What we are doing in this House now will one day come back to haunt us. I still want to plead with the Chair of the Committee, if it is possible, to withdraw the amendment and get comprehensive amendment to the Children Act.



**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. Because all Members who are present today have agreed that there is child trafficking and selling, we should have a Government agency regulating, but because of some interests of some people who own children homes, they want this one not to be regulated so that money can be made by those individuals.

I better be called a voting machine but make sure that our children are protected. They are better sold by the Government than by individuals. Some of those individuals are Members of this House who own children orphanages.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Sankok! Let me give an opportunity to someone who has not spoken. Hon. Oyoo Onyango.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Temporary Deputy Chairman.

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

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, you have to take control of this House. A Member cannot impute improper motives on Members and you let him sit down and get to the HANSARD. If he does not substantiate, then I am one of those who have interest according to the insinuation that he has given. Duale is one of those who have interest unless there is substantiation.

Hon. Temporary Deputy Chairman, please take control of this House so that we do not just hull words across. Can this Member take responsibility of his statement and either explain himself, substantiate or withdraw? That is the order that we know in this House.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is the issue that has been raised?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): He has imputed improper motive on general membership of this House that there are Members who have an interest and who are controlling. Are they Murugara, Kajwang'? Who are those Members?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Members! Hon. Kajwang', the House is in full control but I would like to encourage Members. We are making laws. I know there is sometimes quite some specific passion especially around this. Members, please, we are just making laws. One of the Members raised earlier that we are making laws for today and tomorrow. I would like us to be sober in making laws.

Hon. Onyango, you have the Floor.

**Hon. Onyango Oyoo** (Muhoroni, ODM): Thank you, Hon. Temporary Deputy Chairman. I had wanted to deal with my good friend, Hon. (Dr.) Nyikal. He should declare his interest in this. People know very well that he works in that department. The protracted argument he is advancing in this House is not going to convince us. He had an opportunity to come to our Committee – I belong to this Committee. We had public hearings. We had an opportunity to hear all those who were interested. All those who wanted came and we gave them time. We listened and drew our conclusion. We have a Report which we have presented here.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have to make progress on this one.

**Hon. Omboko Milemba** (Emuhaya, ANC): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Milemba, what is your point of order?

**Hon. Omboko Milemba** (Emuhaya, ANC): This is a House of debate and order. We may disagree in debating but Chair, you must establish and rein in order within the House. As I stand with the Committee on Labour, it is very important that debate goes on in a way that is fair to everybody including those who are losing and those who are winning.

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

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

*(Section 147 agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): It is five minutes to 1.00 p.m. We must report progress at this point. Mover, proceed?

### PROGRESS REPORTED

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.12 of 2018) up to the provisions relating to the Children Act Section 147 and its approval thereof with amendment and seek leave to sit again today.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Jessica Mbalu) in the Chair]*

**Hon. Patrick Mariru** (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.12 of 2018) up to the provisions relating to the Children Act Section 147 and approved the same with amendment and seeks leave to sit again today.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Can we have the Mover, the Leader of the Majority Party, to move agreement with the Report?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request the Chair of the Departmental Committee on Labour and Social Welfare, Hon. Wario, to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Ali Wario** (Bura, JP): Thank you, Hon. Temporary Deputy Speaker. I second.

*(Loud consultations)*

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. T. J. Kajwang’.

**Hon. T. J. Kajwang’** (Ruaraka, ODM): This is how those of us who are in this House for the first time will know that debate arises when a Report has been put before the House. It is the right of Members to say something about it. This thing of “put the Question” will kill debate in this House.

I thank Members in the Committee and those who brought these pieces of legislation. They have acted very well except that we would really wish that we observe a lot of decorum, persuasion and debate next time we go into Committee instead of catcalling. The Chair will help us a lot if we will take Kajwang’ and make him an example. Throw him out of the House so that the rest of the Members can know that there must be order. However, to allow everybody to say anything without any discipline is a big problem in this House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Leader of the Majority Party, you just want to make a comment. Is it debate?

**Hon. Aden Duale** (Garissa Township, JP): It is a comment. I thank Members since yesterday and this morning for making sure that they play a very big role in oversight, including Hon. T.J Kajwang’, Hon. Kaluma and Hon. Nyikal. Again, I really want to ask. Going forward, let us declare our interest as provided for in the Standing Orders. Where you have an interest, it is better you declare it. You do not use legislation to fix your business.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): It is already provided in the Standing Orders. Hon. Members, the Committee of the whole House on the Statute Law (Miscellaneous Amendments) Bill will still continue. So, I am putting the Question to this. I confirm that the House is properly constituted.

*(Question put and agreed to)*

*(Loud consultations)*

Order, Hon. Members! Order! Order! The House is still in session.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 1.00 p.m., the House stands adjourned until today, Thursday, 15<sup>th</sup> November 2018, at 2.30 p.m.

The House rose at 1.00 p.m.