

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Thursday, 12th May 2022

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Well, Hon Members, there is no quorum. Ring the Quorum Bell. The lady Member walking out, please, do not walk out when the Quorum Bell is ringing.

(The Quorum Bell was rung)

Very well. We may commence business. Order Members! I wish to introduce to you a delegation of staff and students from Edmund A. Walsh School of Foreign Service, Georgetown University, Washington DC, USA, who are seated in the public gallery. The delegation comprises of:

1. Dr. Stacy Moak - Lecturer and Team Leader,
2. Prof. Tina, Reuter - Lecturer,
3. Mr. Logan Cobb - Student,
4. Mr. Aahill Rajpari - Student,
5. Ms Lexie Thomas - Student.
6. Ms. Jada Antony – Student
7. Ms. Jalee Brown - Student

The delegation is accompanied by their guides, namely, Mr. Joel Brown, Mr. Moses Njapit and Mr. Ryan Reiya.

Hon. Members: They are not here!

Hon. Speaker: Sorry, I am being told they are in the public gallery. I do not know who made this arrangement. You mean there is nobody? I think the staff have not made sufficient arrangements for them. I hope they will not say they have not been recognised.

(An Hon. Member spoke off record)

We cannot. That is for the Serjeant-at-Arms and protocol people to work on.

(Hon. Marselino Arbelle stood in his place)

Anyway, let us proceed with business. Member for Laisamis, take your seat.

MESSAGE

APPOINTMENT OF SENATORS TO THE MEDIATION COMMITTEE TO CONSIDER THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL

Hon. Speaker: Hon. Members, you will recall that on Wednesday, 16th February 2022, the National Assembly rejected the Wildlife Conservation and Management (Amendment) Bill (Senate Bill No.30 of 2020). Pursuant to provisions of Article 112 of the Constitution and Standing Order 149 of the National Assembly Standing Orders, the Bill was committed to a Mediation Committee.

Subsequently, I appointed the following five Members to represent the National Assembly in the Mediation Committee and conveyed the decision of the National Assembly to the Senate:

1. The Hon. Chachu Ganya, MP;
2. The Hon. Paul Nzengu, MP;
3. The Hon. Ali Amin Deddy, MP;
4. The Hon. Rozaah Akinyi Buyu, MP, and,
5. The Hon. Bernard Shinali, MP.

Hon. Members, pursuant to the provisions of Standing Order 41, I wish to report to the House that I am in receipt of a correspondence from the Senate, dated 25th April 2022, conveying that the Senate has appointed the following Senators to the Mediation Committee to consider the said Bill:

1. Sen. Mwangi Githiomi, MP;
2. Sen. Johnes Mwaruma, MP;
3. Sen. Njeru Ndwiga, MP;
4. Sen. (Arch.) Sylvia Kasanga, MP, and,
5. Sen. (CPA) Farhiya Haji, MP.

Hon. Members, with the appointment of the above Senators, the Mediation Committee is now fully constituted. I, therefore, call upon the Committee to expeditiously consider the Bill and submit a Mediated Version of the Bill to both Houses of Parliament within the timelines contemplated under Article 113(3) of the Constitution.

I thank you.

Member for Laisamis, Hon. Marselino Arbelle.

PETITION

INSECURITY IN MARSABIT COUNTY

Hon. Marselino Arbelle (Laisamis, JP): Thank you, Hon. Speaker.

Hon. Speaker, I, the undersigned, on behalf of Rendille Community residing in Logolo Ward, Laisamis Constituency, Marsabit County, draw the attention of the House to the following:

THAT, the Rendille Community lives in an area surrounded by the Borana, Gabra, Somali, Samburu and Turkana communities;

THAT, the centrally located geographical location naturally renders this community vulnerable to the attacks from the neighbouring communities;

THAT, the frequent attacks have repeatedly resulted in loss of human lives, most recently involving a Head Chief, Mr. Kenedy Konkoman and Assistant Chief, Mr. Keena Moga, and

Messrs. Lenchada Mirgichan, Lerapo Lekasula, Loyai Leruk and Lekasula Lebarok, who are respected community elders;

THAT, the relentless theft and killing of livestock has affected the sustainability of livelihoods of the residents who heavily rely on pastoralism as the key economic activity;

THAT, efforts to have these grievances addressed by the relevant Government agencies have not yielded any fruits; and

THAT, the issues in respect of which this Petition is made are not pending before any court of law or other constitutional or legal body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Administration and National Security:

(i) engages the relevant Government agencies, including the National Cohesion and Integration Commission (NCIC) with a view to resolving the rampant cases of communal tension and insecurity and seek justice on behalf of the aggrieved residents;

(ii) recommends enlisting of additional National Police Reservists;

(iii) recommends review of administrative boundaries in Marsabit County to minimise conflict and promote cohesion.

(iv) recommends timely compensation of deceased persons who have died in the line of duty.

(v) makes any further orders deemed fit in the circumstances of the Petition.

And your petitioners will ever pray.

Thank you, Hon. Speaker. I submit.

Hon. Speaker: Very well. Few comments. Hon Pukose.

Hon. (Dr.) Pukose (Endebess, JP): Thank you, Hon. Speaker. This issue of cattle rustling and insecurity within Marsabit County is something that has been going on for a very long time. This House can remember that we lost Hon. Bonaya Godana and others as they were on a peace mission in the area.

We also had a Petition by Hon. Col (Rtd) Ali Rasso in this House and a Report was tabled. It is important for the Government to look for a lasting solution to the insecurity problem in Marsabit and other areas which are prone to cattle rustling like Baringo and Kerio Valley. It should also address the issue of the Kenya National Police Reservists. This House passed a law that made them to be part and parcel of the security system of this country. They should also have identification and a regular payment as a way of motivation for them to keep working under those difficult circumstances. The Kenya National Police Reservists interests ought to be well taken care of so that they can offer security in their areas of engagement.

With those few remarks, I support this Petition.

Hon. Speaker: Member for Tharaka.

Hon. George Gitonga (Tharaka, DP): Thank you very much, Hon. Speaker.

Insecurity in the country is a matter of concern. It is not only limited to Marsabit, but also Laikipia, Isiolo, Baringo, West Pokot and other areas, which of late have come under attack from bandits who are also cattle rustlers. It is important that the Government takes this matter seriously and ensures that we have sufficient security in these areas to protect both life and property.

I applied to have the Kenya Police Reservists in my constituency, Tharaka, when I was newly elected, but was informed that the Government had ceased recruiting them. Of late, however, it appears that the policy has been reversed and the Government is recruiting police reservists. It is a very important unit which must be properly trained, armed and remunerated well so that some of the local security issues are taken care of instantly and upon occurrence.

I, therefore, support this Petition.

Hon. Speaker: Member for Marakwet West.

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Speaker.

It is so sad that cattle rustling is happening across the country; Marsabit, Kerio Valley and other areas have been affected. Teachers in Marsabit County are not even going to school and several schools are closed. There is fighting among communities and the Government looks like it is unable to contain this menace across the country. Communities from Marsabit, Kerio Valley and other areas have, for almost eternity, requested to have the Kenya National Police Reservists. We do not know why they have not been employed yet Hon. Pukose has said that the law was passed. It cannot be an issue of lack of resources because this House has, every year, been budgeting and allocating a lot of resources to the Ministry of Interior and Co-ordination of National Government. We do not know what they do with those resources. People are killed every day! It looks like they do not have any human feelings. I know we have no time, but I hope the Committee will, at least, push so that the Ministry responds quickly because it seems they are sleeping on their job.

Hon. Speaker: Very well. The Petition is committed to the Departmental Committee of Administration and National Security.

Next Order.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House.

Reports of the Auditor-General and Financial Statements in respect to the following institutions for the year ended 30th June 2021 and the certificates therein:

- i. State Department for Devolution;
- ii. Consolidated Funds Services;
- iii. Pensions and Gratuities;
- iv. The Government Investments and Public Enterprises Revenue Statements;
- v. Teachers Service Commission;
- vi. The Kenya Energy-Sector Environment and Social Responsibility Programme Fund; and
- vii. State Department for Early Learning and Basic Education.

Report of the Auditor-General and Financial Statements in respect of Konoin Technical Training Institute for the Year ended 30th June 2019, and the certificates therein.

Reports of the Auditor-General and Financial Statement in respect of the Nyandarua Institute of Science and Technology for the years ended 30th June 2017 and 30th June 2018 and the certificates therein.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairman, or Chairperson as the case may be, of the Departmental Committee on Justice and Legal Affairs.

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Speaker, on behalf of the Chair of the Departmental Committee on Justice and Legal Affairs, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Justice and Legal Affairs on its consideration of the nominees for appointment as members of the Ethics and Anti-Corruption Commission. (EACC).

Hon. Speaker: Very well. Next Order

NOTICE OF MOTION

CONSIDERATION OF NOMINEES FOR APPOINTMENT TO THE ETHICS AND ANTI-CORRUPTION COMMISSION

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Speaker, I beg to give notice of the following Motion:

THAT, taking into account the findings of the Departmental Committee on Justice and Legal Affairs in its Report on its consideration of nominees for appointment as members of the Ethics and Anti-Corruption Commission (EACC), laid on the Table of the House on Thursday, 12th May 2022 and pursuant to provisions of Section 10(3) of the Ethics and Anti-Corruption Commission Act, 2011 and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act 2011, this House approves the appointment of Dr. Cecilia Mbinya Mutuku and Mr. John Ogallo as members of the Ethics and Anti-Corruption Commission.

Hon. Speaker: Very well. Next Order.

QUESTIONS AND STATEMENTS

Hon. Speaker: The first segment is on Questions. The first Question is by the Member for Kuresoi North, the Deputy Speaker.

ORDINARY QUESTIONS

Question No.118/2022

CRITERIA FOR RECRUITING TEACHERS BY TEACHERS SERVICE COMMISSION

Hon. Moses Cheboi (Kuresoi North, JP): Thank you, Hon. Speaker. I beg to ask Question No.118/2022 to the Chairperson of the Teachers Service Commission:

- (i) Could the Chairperson explain the criteria applied by the Teachers Service Commission during recruitment of teachers?
- (ii) Could the Chairperson explain the Commission's policy, if any, for recruitment of teachers who are approaching or are above 45 years?
- (iii) Could the Commission consider recruiting under special considerations, Mr. Kipngétich Wesley Kurugat of ID No. 21136330 aged 44 years, who is a holder of a Bachelor of Education Degree (Chemistry and Mathematics), during the forthcoming recruitment exercise by virtue of his age?

Thank you.

Hon. Speaker: That Question is for a written reply by the Chairperson of the Teachers Service Commission.

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Hon. Speaker: Next Question is by Hon. Zuleikha Hassan, the Member for Kwale County. The next Question is by the Member for Marsabit County, Hon. Safia Adan.

Question No.120/2022

PROTECTION OF GRAZING LANDS FROM ILLEGAL ACQUISITION

Hon. (Ms.) Safia Sheikh (Marsabit CWR, JP): Thank you, Hon. Speaker for giving me this opportunity. My Question is directed to the Minister for Physical Planning and Lands.

What plan has the Ministry put in place to protect grazing land of the pastoralist communities across the country from being illegally acquired by private developers?

There is need to protect the grazing land of pastoralist communities which are moving with their livestock from place to place in search of water and green pasture.

Majority of these groups of people have no formal education, permanent homes or settlements. It is important...

Hon. Speaker: Are you reading a Statement or are you asking a Question? The Question I have here does not include the discourse you are giving.

Hon. (Ms.) Safia Sheikh (Marsabit CWR, JP): I am asking a Question. Since these people cannot advocate for themselves, it is important for the Ministry of Lands to protect their rights.

Hon. Speaker: Very well, Hon. Safia Adan. The Question will be replied to before the Departmental Committee on Lands.

For the second time, let us have Question No.119/2022 by the Member for Kwale County, Hon. Zuleikha Hassan. The Member is absent and not desiring to be present so, the Question is dropped.

Question No.119/2022

STATUS REPORT ON UTILISATION OF NATIONAL
GOVERNMENT AFFIRMATIVE ACTION FUND

(Question dropped)

Let us move to the second segment on Requests for Statements. The first request is by Hon. George Theuri, Member for Embakasi West.

REQUEST FOR STATEMENT

POOR ROAD WORKS AT JUNCTIONS, EXITS AND
DIVERSIONS ALONG MOMBASA ROAD

Hon. George Theuri (Embakasi West, JP): Thank you, Hon. Speaker. Pursuant to Standing Order No.44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the poor state of road works at junctions of link roads, exit roads and diversions along the Nairobi-Mombasa Road occasioned by the ongoing construction of the Nairobi Expressway.

As you are aware, the ongoing construction of the 27.1 kilometre Nairobi Expressway Project commissioned in October 2019 begins at Mlolongo connecting the Jomo Kenyatta International Airport (JKIA) and the Nairobi's Central Business District and terminates at the James Gichuru-Waiyaki Way Junction in the Westlands area. The said construction, which has occasioned significant road design alterations of Mombasa Road, is nearly complete. However, the contractor has failed to provide motorable road works at junctions of link roads and road exits from Mombasa Road.

The poor state of roads at various junctions of link and exit roads has resulted in numerous inconveniences to motorists, riders, residents and business communities living and operating along the Mlolongo, JKIA and Westlands areas. As a result, motorists and riders have had to cope with high costs of repairs for their vehicles due to damages caused by rutted and pitted roads.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing. In the Statement, the Chairperson should address the following concerns:

- (i) What measures have been put in place to ensure that the contractor delivers quality road works especially at the junctions of link and exit roads?
- (ii) What measures have been put in place to provide quality road infrastructure along the link and exit roads that will ensure smooth flow of traffic, particularly in Embakasi area?
- (iii) What urgent steps have been put in place to ensure that Mombasa Road is rehabilitated and restored to its former state, including and not limited to beautification and restoration?

Thank you, Hon. Speaker.

Hon. Speaker: The Statement is referred to the Chairperson of the Departmental Committee on Transport, Public Works and Housing, Hon. Pkosing or the Vice-Chair. Hon. Theuri, it will be channelled to the Committee through the Office of the Leader of the Majority Party.

Let us move to the next segment. I see an intervention by a Member. Let us have Hon. John Paul Mwirigi.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Speaker. I rise to seek your guidance. On 24th September 2020, I presented a Petition to the Departmental Committee on Agriculture and Livestock. Whenever we near recess, they seek an extension. This trend has gone on for some time and up to now, I have not received the report from the Committee. The people of my constituency sent that Petition to me so that they could get assistance from this House. I would like to request, if possible, through your guidance, if the Chairperson could be requested to table that report on Tuesday.

Hon. Speaker: Let us have the Chairman of Departmental Committee on Agriculture and Livestock, Hon. Silas Tiren. Hon. Tiren has become an extremely rare person in the Chamber. Through the Office of the Leader of the Majority Party, communicate to the Chairman of the Departmental Committee on Agriculture and Livestock that he is supposed to come and respond to the Petition by Hon. John Paul Mwirigi, which he says he presented on 24th September 2020. It will be gross dereliction of duty for the Committee not to have a report ready.

I see the Member for Kilifi North saying that he also has a Petition on cashew nuts. Hon. Tiren should come and give the House an update. He is not being requested; he is being directed to come and give the House an update on the status of those petitions.

I agree with Hon. John Paul Mwirigi and with what the Member for Kilifi North presented that the residents expected that the National Assembly would come to their aid. That is why there is a provision for petitions in Article 119 of the Constitution. Hon. Tiren is directed to come here on Tuesday and give an update on those two petitions.

Hon. Baya, I think that suffices because he is not here in any event. Leader of the Majority Party, please, present your Statement.

STATEMENT

BUSINESS FOR WEEK COMMENCING 17TH TO 19TH MAY 2022

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(a), I rise to give the following Statement on behalf of the House Business Committee, which met on Tuesday, 10th May 2022, to prioritise business for consideration.

I trust the Members have had a restful albeit busy working recess. I also hope the committees have actively participated in representing the interests of their line ministries throughout the budget consideration process.

As Members are aware, we are in the final Session of the 12th Parliament. I wish to underscore, however, that we still have some critical business to prosecute before the *sine die* recess. In that regard, I wish to request Members to offer support to committees to allow them to expedite all urgent business.

On Tuesday next week, the following business has been scheduled for consideration, namely, the Second Reading of the following Bills;

- (1) The Mung Beans Bills (Senate Bill No.9 of 2020);
- (2) The Prompt Payment Bill (Senate Bill No.16 of 2021); and,
- (3) The County Boundaries Bill (Senate Bill No.20 of 2021).

At the Committee of the whole House, we will be considering:

- (1) The Huduma Bill (National Assembly Bill No.57 of 2021); and,
- (2) The Universities (Amendment) Bill (National Assembly Bill No.35 of 2021).

We will also be looking at the Report of the Justice and Legal Affairs Committee on consideration of nominees for appointment to the Ethics and Anti-Corruption Commission, which has just been tabled, and the Report of the Committee on Implementation regarding the implementation status of the Report of the Petition on Irregular Renewal of Leases of Land by Del Monte Kenya Limited and eviction of workers from their land in Roysambu. We will also be looking at the reports of the Committee on Members' Services and Facilities on the study visit to the Legislative Assembly of Alberta, Canada, and on the establishment of a Parliamentary Health Services Unit.

Hon. Speaker, in accordance with provisions of Standing Order No.42A5, and 6, I wish to convey that the Cabinet Secretary for the Ministry of Interior and Coordination of National Government is scheduled to appear before the Departmental Committee on Administration and National Security to respond to the following Questions:

- i. Question No.74/2022 by Hon. Godfrey Osotsi regarding investigation by the Director of Criminal Investigation into the alleged copyright theft by Safaricom Ltd. from Transcend Ltd.
- ii. Question No.95/2022 by Hon. David ole Sankok, MP, regarding the status of fines collected from the motorcycle crackdown.

- iii. Question No.96/2022 by Hon. Mboko Milemba, MP, on the establishment of civil registration centre in Emuhaya sub-county.
- iv. Question No.101/2022 by Hon. Gladwell Jesire, MP, regarding the recent state of insecurity in Baringo.
- v. Question No.102/2022 by Hon. Michael Kingi, MP, regarding the supply of relief food in Magarini Constituency.
- vi. Question No.105/2022 by Hon. Benjamin Tayari, MP, on public participation on the boundaries of Samburu and Kinangop sub-counties.
- vii. Question No.106/2022 by Hon. Feisal Bader, MP, regarding the abduction of Mr. Amani Mohammed Mwafujo.

Hon. Speaker, the House Business Committee shall reconvene on Tuesday, 17th May 2022, to schedule the business for the rest of the week.

Hon. Speaker, I wish to lay the Statement on the Table of the House.

Thank you.

(Hon. Amos Kimunya laid the document on the Table)

Hon. Speaker: Next Order.

REPORT AND THIRD READING

THE NATIONAL DISASTER RISK MANAGEMENT BILL

Hon. Moses Cheboi (Kuresoi North JP): I thank you, Hon. Speaker. I beg to report to the House that the Committee of the whole House has considered the National Disaster Risk Management Bill (National Assembly Bill No.28 of 2021) and approved the same with amendments.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move that the House do agree with the Committee in the said Report. I request Hon. Aduma Owuor to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Speaker: Hon. Aduma.

Hon. Aduma Owuor (Nyakach, ODM): Thank you, Hon. Speaker, as a Member of the Committee, I want to second the Report and thank the Members for their input. I would like to urge the House to pass the Bill with the amendments which were put. Hon. Speaker, it is imperative to note that our disaster preparedness has been challenged by either weak or lack of harmonised policy. You may recall the events of the disaster of the US Embassy in 1998 and the *El Nino* rains. Therefore, I second and urge the Members to support.

Hon. Speaker: Very well.

(Question proposed)

(Question put and agreed to)

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move that the National Disaster Risk Management Bill (National Assembly Bill No.28 of 2021) be now read the Third Time.

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

I wish to take this opportunity to thank the Members who participated at all levels, namely, in public participation, in the Second Reading and in the Committee of the whole House to bring this Bill to where it is. I wish to, once again, request Hon. Aduma Owuor, Member of the Departmental Committee, to second.

Hon. Aduma Owuor (Nyakach, ODM): Thank you, Hon. Speaker. I second.

(Question proposed)

(Question put and agreed to)

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

Hon. Speaker: Next Order.

REPORT

THE CHILDREN BILL

Hon. Moses Cheboi (Kuresoi North JP): I thank you, Hon. Speaker. I beg to report to the House that the Committee of the whole House has considered the Children Bill (National Assembly Bill No.38 of 2021) up to Clause 34 and approved the same with amendments and seek leave to sit again.

Hon. Speaker: Mover.

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

Hon. Speaker: Hon. Wachira Kabinga.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Speaker. I second.

(Question proposed)

Hon. Members: Put the Question!

(Question put and agreed to)

Hon. Speaker: Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee Read)

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

IN THE COMMITTEE

[The Chairman (Hon. Moses Cheboi) took the Chair]

THE CHILDREN BILL

(Resumption of Consideration in Committee interrupted on 11.5.2022)

(Resumption from Clause 35)

Hon. Chairman: Hon. Members we are now in the Committee of the whole House to consider The Children Bill (National Assembly Bill No.38 of 2021). It had been transacted yesterday up to Clause 34 and we are progressing. We will be moving very fast because we have a very long...

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

Hon. Millie Odhiambo, what are you asking? Well, I am told the Order Papers are over. Unless, it is for your own purpose, Hon. Millie Odhiambo, the rest of it are in soft copy. You will, however, be given yours now.

(Loud consultations)

We can give the available Order Papers to the two Members immediately. As for the rest of the membership, they should be having theirs in a short while. Can the Chair, and Hon. Millie Odhiambo, who have few amendments, be given a copy each?

The Serjeant-at-Arms handed copies of the Order Paper to Hon. (Ms.) Odhiambo-Mabona and Hon. Josphat Kabinga)

Hon. Millie Odhiambo do you now have your copy? What of the Chair of the Committee, Hon. Kabinga, do you now have yours?

Clause 35

Hon. Chairman: Leader of the Majority Party, do you have an amendment?

Hon. Amos Kimunya (Kipipiri, JP): Hon. Chairman, I beg to move:

THAT Clause 35 of the Bill be deleted and substituted therefor by the following new clause

—
Functions of the
Cabinet Secretary.

35. (1) The Ministry responsible for matters relating to children shall—

- (a) ensure that every child achieves the full realization of their rights as set out in the Constitution and this Act;
- (b) ensure the welfare and protection of children in matters relating to rights of children under Article 53 of the Constitution, parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

- children, and regulation and administration of children's institutions;
- (c) ensure the development and implementation of relevant policies, programmes, plans and actions that ensure children's rights are realized including adoption, tracing and repatriation;
 - (d) ensure formulation of relevant policies on the planning, financing and co-ordination of child welfare programmes and activities;
 - (e) ensure the full implementation of Kenya's international and regional obligations relating to children and support the formulation of policies, programmes, plans and actions for the promotion and protection of the rights of the child;
 - (f) ensure affirmative action on matters relating to children;
 - (g) make regulations for the effective discharge of functions under this Act; and
 - (h) enter into agreements with any person, agency, organization, association, institution for any purpose related to this Act.
- (2) The Cabinet Secretary shall be responsible for policy formulation and guidance of the functions including establishment of national government service delivery co-ordination units under subsection (1).
- (3) The Cabinet Secretary for the time being responsible for matters relating to children's affairs shall, in consultation with the Council, make regulations on any matter—
- (a) to implement any provision of this Act; and
 - (b) to implement within Kenya measures agreed upon within the framework of any treaty, international convention or regional intergovernmental agreement to which Kenya is a party.
- (4) The Cabinet Secretary shall delegate the performance of functions in the manner provided for under subsections (5) (9) and sections 35B, 35E and 35F.
- (5) The Principal Secretary shall be responsible for administration of the State department including establishing and administering the organizational structure of the state department comprising of technical directorates.
- (6) A function that is not assigned under sections 35B, 35E and 35F is a function or power of the Secretary.

As Members would note, Clause 35 has enumerated a certain number of functions of the Cabinet Secretary, which is usually never put within the law. It is the prerogative of the President to re-organise his Government, and assign responsibilities to the Ministries which we do not do within a Bill. We are now removing it to allow the President of the day to reorganise his Government, and assign the responsibilities to the Ministries rather than us doing it from here, which again, is not our constitutional mandate. It is the President's mandate, and hence, the basis.

Hon. Chairman: Okay.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Chairman, arising from that, and for clarity to the Members, the Committee is further proposing other re-organisations of functions which will come as New Clause 35, later on. Deletion of this will not stop the Committee from re-introducing the new clauses to a further streamlining of these other functions.

I beg to move.

Hon. Chairman: I see no other interest. Oh, we have Hon. Tonui?

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Hon. Chairman. Whatever the Leader of the Majority has stated may be misleading because this is how we do legislation. He is implying that we need to leave legislation to the President to allocate duties. We have not named Ministers. You will name Ministers, and also give them responsibilities, and the details of their responsibilities would be provided in legislation. I believe that the presence of this section is very good. After all, if we remove the functions, there is going to be a vacuum in this Bill.

I, therefore, oppose.

Hon. Chairman: Hon. Millie Odhiambo, do you want to speak to this one?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Sorry, Chairman. I do not want to speak to this one. I think the Chair and the Committee came to an agreement.

Hon. Chairman: Hon. Chair?

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman. This is one clause that we have had a lot of consultations since yesterday. We have consulted with the Leader of the Majority Party and the Director of Legal Services, and we have a way forward. I am sorry I had not had the time to discuss with my colleagues on the same. I will continue to do so now that we are together here.

We support this particular amendment.

(Question of the amendment proposed)

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

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

(Clause 35 as amended agreed to)

Hon. Chairman: We will now move on to the next clause, is that not so?

(Clause 36 agreed to)

Clause 37

Hon. Chairman: This is a deletion. Chair of the Committee?

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman.

I need your guidance on this particular one because the Committee proposed to delete it on the understanding that Clause 35 (c) will hold. We will be bringing a New Clause 35C, and I hence propose that we go ahead and delete this one on that understanding.

Hon. Chairman: Hon. Chair, remember that it would be coming as a new clause, and will probably capture most of these things.

Hon. Josphat Kabinga (Mwea, JP): Yes, it will come as a new clause.

Hon. Chairman: You can then proceed with this one.

Hon. Josphat Kabinga (Mwea, JP): Yes.

Hon. Chairman: Basically, you are proposing a deletion.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 37 of the Bill be deleted.

I propose to delete Clause 37 since they are functions of the National Council for Children Services which will be re-drafted as New Clause 35E.

Hon. Chairman: Okay.

(Question of the amendment proposed)

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

(Clause 37 deleted)

Clause 38

Hon. Chairman: Hon. Millie Odhiambo, do you have an amendment to Clause 38?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Chairman. I am just wondering whether my amendment stays in light of the fact that Clause 38 has been...

Hon. Chairman: Is it Clause 38 or Clause 37?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): It is Clause 37 because it is about the objectives of the Council while Clause 38 is about the composition of the Council. I do not know if the composition of the Council stays. If it stays, I will move my amendment which is basically to ensure regional, ethnic, and gender balance in the Council.

I beg to move.

Hon. Chairman: Just allow me a minute to consult as I look at what is in the proposed amendment. Give us a minute.

(Hon. Ronald Tonui spoke off-record)

Hon. Tonui, we have not opened it up. She has not moved. We are consulting on something; give us some time. In the meantime, proceed, Hon. Tonui, as we deal with the other matter.

Hon. Ronald Tonui (Bomet Central, JP): Hon. Chairman, the amendment is about the regional diversity of the country but when she explained it, she was talking of the Council. What is printed here is that the appointments should reflect ethnic and regional diversity of the country within the Council.

Hon. Chairman: I think it is okay, Hon. Tonui. Hon. Millie Odhiambo is perfectly in order to proceed. It will not affect anything because when we get to the new clauses, we will probably need those particular amendments. Just proceed with that.

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

THAT, Clause 38 of the Bill be amended in subsection (2) by inserting the following paragraph immediately after paragraph (b)-

(c) the appointments reflect ethnic and regional diversity of the country.

The amendment seeks to ensure that the composition of the Council reflects the ethnic and regional diversity of the country.

(Question of the amendment proposed)

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

(Clause 38 as amended agreed to)

Clause 39

Hon. Chairman: This is a deletion, but I would prefer it if the proposer of the deletion would move it himself. That should be the Chairperson.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 39 of the Bill be deleted.

This is because we will be bringing in New Clause 35B which will describe the functions of the Director.

(Question of the amendment proposed)

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

(Clause 39 deleted)

Clause 40

Hon. Chairman: Let us have the Chairperson of the Departmental Committee on Labour and Social Welfare, Hon. Kabinga.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 40 of the Bill be amended by deleting the word “Director” and substituting therefor the word “Secretary”

We will have New Clause 35C that will harmonise the powers of the Secretary to Children’s Services.

Hon. Chairman: Excuse me. Let me confirm something here. Hon. Kabinga, if you look at the Order Paper on page 970, the specific proposal that you were supposed to move is the deletion of the word “Director” and substitution therefor with the word “Secretary”. Is that the position?

Hon. Josphat Kabinga (Mwea, JP): Yes, it is, Hon. Chairman. We are deleting the word “Director” because the new title of the former Director of Children Services is Secretary to Children Services.

(Question of the amendment proposed)

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

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

(Clause 40 as amended agreed to)

Clause 41

Hon. Chairman: Let us have the Chairperson.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 41 of the Bill be amended in the marginal note by deleting the word “appointment” and substituting therefor the word “office”.

We are replacing the word “appointment” with the word “office” to give clarity on the contents of the section. The word “appointment” ordinarily relates to terms of service of staff while what is referred to under Clause 41 is the period of office of members of the Council. Hence a proposal to change the marginal notes from the word “appointment” to terms of office.

(Question of the amendment proposed)

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

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

(Clause 41 as amended agreed to)

(Clause 42 agreed to)

Clause 43

Hon. Chairman: Chairperson.

Hon. Josphat Kabinga (Mwea, JP): I beg to move:

THAT, Clause 43 of the Bill be deleted and substituted therefor with the following new clause—

Remuneration
of members of
the Council

43. The Council shall pay its members such remuneration or allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission, determine

We are replacing that particular clause with a new clause to indicate who determines the remuneration of members of the Council. Members of the Council are appointed by the Cabinet Secretary and not the Public Service Commission, therefore, their remuneration is to be determined by the Salaries and Remuneration Commission (SRC).

(Question of the amendment proposed)

(Question, that the words to be left out

be left out, put and agreed to)

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

(Clause 43 as amended agreed to)

Clause 44

Hon. Chairman: In this particular one, there is a proposal for amendment by the Chairperson of the Departmental Committee on Labour and Social Welfare and one by Hon. Millie Odhiambo. If the one by the Chairperson is carried, the one by Hon. Millie Odhiambo falls. As the Chairperson moves his amendment, Millie Odhiambo will probably have a say on it, so that if it goes either way, she would have said something to it since she also had an amendment.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 44 of the Bill be amended in sub-clause (2) by deleting paragraph (a).

This is in line with best practices as observed in the *Mwongozo Code* that does not have provisions for co-option of members of a committee of the Council. That is why we propose to delete paragraph (a).

(Question of the amendment proposed)

Hon. Chairman: Incidentally, the text seems to be exactly the same. Let us have Hon. Millie Odhiambo having a say on it. It will easily resolve the matter.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Chairman. I support the Chairman of the Departmental Committee on Labour and Social Welfare for the same reasons. I hope that the Leader of the Majority Party takes note because this is something that I have been fighting with him over for a long time. If you are following Government policy and best practices, you do not co-opt people into committees because that will bring people through the backdoor. It is against good governance practices.

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

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

(Clause 44 as amended agreed to)

Clause 45

Hon. Chairman: On this particular one, there is an amendment by the Chairperson and another one by Hon. Millie Odhiambo. The Chairperson will move the Committee's amendment and Hon. Millie Odhiambo will move hers. The Chairperson will move the Committees' amendments on this particular one and Hon. Millie Odhiambo will move the further amendment. So, let us start with the Chair.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 45 of the Bill be amended by deleting sub clause (1) and substituting therefore the following new sub clause—

“(1) There shall be a Chief Executive Officer of the Council who shall be competitively recruited and appointed by the Council and whose terms and conditions of service shall be determined by the Council on advise of the Salaries and Remuneration Commission.

This amendment is clarifying the appointment of the Chief Executive Officer (CEO) of the Council and to point out that his remuneration will be determined by the Council upon advise of the Salaries and Remuneration Commission.

I beg to move.

(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)*

Hon. Chairman: Then we go to Hon. Millie Odhiambo for the further amendment.

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

THAT, Clause 45 be amended in section (8) by inserting the words “represent the ethnic, gender and social diversity of the country and” immediately after the word “shall”. It is no longer as per the Order Paper but based on the proposed amendment by the Committee. My amendment seeks to ensure there is ethnic, gender, and social diversity of the country in representation.

Thank you, Hon. Chairman.

(Question of amendment proposed)

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

(Clause 45 as amended agreed to)

(Clauses 46, 47, 48, 49 and 50 agreed to)

Clause 51

Hon. Chairman: We have an amendment by the Chairperson and a further amendment by Hon. Millie Odhiambo. Let us start with the amendment by the Chair.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman, I beg to move:

THAT, Clause 51 of the Bill be amended in sub clause (2) -

(a) by inserting the following new paragraphs immediately after paragraph (a) -

- (aa) the County Commissioner or a representative;
- (ab) the County Director for Education or a representative;
- (b) by inserting the following new paragraphs immediately after paragraph (j) -
 - (k) the registrar in charge of the area or a representative;
 - (l) the Labour Officer in-charge of the area or a representative;
 - (o) a representative of the Council who shall be the Secretary to the Committee.
- (c) in sub clause (4) by:-
 - (i) by deleting the words “the welfare of children” appearing under paragraph (b) and substituting therefor the words “children matters”;
 - (ii) by deleting the words “the welfare of” appearing under paragraph (c)
 - c) by deleting the words “the welfare of” appearing under paragraph (d).

Hon. Chair, this clause relates to the Children Advisory Committees at the county level and we have an amendment that will ensure we include persons who are members of the county children’s’ advisory committees, who have been omitted in the present clause. We have given examples like the Chair of the Committee who is the County Commissioner and is not included in the clause as it is now.

We are also making some amendments to ensure that the Registrar of Births and Deaths and Director of Education are also included in the county committees.

I, therefore, beg to move.

(Question of the amendment proposed)

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

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

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

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

THAT, Clause 51 of the Bill be amended by deleting subsection (3).

It is for the same reason that co-option is poor practice. So, we should not be co-opting members, if we need expertise, we should hire consultants.

(Question of the amendment proposed)

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

(Clause 51 as amended agreed to)

(Hon. Caleb Kositany stood in his place)

Hon. Chairman: Order, Hon. Kositany! Take your seat.

Clause 52

Hon. Chairman: Same thing as the previous one. The Chairperson moves the Committee amendment and Hon. Millie Odhiambo will move a further amendment.

Hon. Josphat Kabinga (Mwea, JP): Thank you Hon. Chair, I beg to move:

THAT Clause 52 of the Bill be amended by deleting sub clause (3) and substituting therefor the following new sub clause -

(3) Without prejudice to the generality of subsections (1) and (2), the sub-county and other decentralized Children Committees shall -

- (a) facilitate information sharing and networking among key stakeholders in each sub-county and other decentralized units;
- (b) coordinate children matters and activities at the area of jurisdiction;
- (c) inspect, monitor and evaluate children facilities to ensure compliance with standards set by the Council;
- (d) make recommendations to the County Children Advisory Committee on any matters relating to children within the sub-county or area of jurisdiction;
- (e) provide information that may be required by the County Children Advisory Committee on any matters relating to children within the area of jurisdiction;
- (f) submit annual reports to the County Children Advisory Committee on matters relating to children within the area of jurisdiction;
- (g) promote awareness on children matters within the area of jurisdiction; and
- (h) mobilize resources to support the Council's mandate at the sub-county level and area of jurisdiction.

Hon. Chairman, the functions as expressed are a mixture of functions of the Council, Director, Society and adoption societies. The proposed amendment is meant to align the functions of the Council. The sub-county children advisory committees and other decentralised units represent the Council and thus perform delegated functions of the Council at administrative level and areas of jurisdiction.

Hon. Chairman, I beg to move.

(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)*

Hon. Chairman: So, we proceed to the further amendment by Hon. Millie Odhiambo.

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

THAT, Clause 52 of the Bill be amended –

- (a) by deleting subsection (9)
- (b) by deleting subsection (10).

I had actually wished to propose further amendments, because I find it a bit odd that you would have a Council approving programmes for people. For instance, if we decide we want to be giving child-feeding programmes, they would tell us “No, go and get a programme for child labour instead”. Hon. Chairman, this is reminiscent of the days of the Kenya African National Union (KANU) era; the *Baba na Mama* days when it was the Government that told you what programmes you should undertake.

But be that as it may, since I have not proposed that we take away the power from them to have a say in programmes, I think it is actually outrageous that we would consider jailing somebody because they have done a programme, when they have been told not to. There are also other provisions in the Bill, including deregistration if somebody violates. So, why are we still saying that we imprison a person for a term not exceeding 12 months or subject them to a fine not exceeding Ksh200,000 or to both or if after conviction in subsection 9 the person continues, then they will be charged Ksh10,000 for each day during which the offending implementation persists?

I do not know what the drafters of this Bill intended to cure, but most times people actually do very well-intended programmes in our villages and communities. If we want to be punitive because of some administrative issues, I think this is outrageous and of a totally different era. That is why I am proposing we delete subclauses 9 and 10.

(Question of amendment proposed)

Hon. Chairman: Chair of the Committee.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, whereas I do not have problems with the proposal by the Member, I would like to hear from her what she thinks about those organisations or people who come up with outrageous programmes relating to children and they start implementing them without consultation with the council or the advisory committee at the county level. I see no alternative in her proposal once we delete subclauses 9 and 10, to deal with such people. Quite clearly Hon. Chair, these things do happen. Sometimes, we have people who come from outside the country and they pretend to be supporting programmes at the local level just for us to realise that those programmes are harmful to the children because they were not notified or even discussed with the advisory committees.

The issue here is not about punishing or giving powers to the committees, but it is to ensure that we also coordinate the programmes that we are implementing at ground level. As I said, having been involved in local activities including those relating to children, I know there have been some organisations and people who come here in the name of supporting our children and our organisations, but they end up implementing programmes that are very harmful to our children.

I would like to hear from our Member on how we would deal with such people in the absence of advisory committees taking charge of such programmes.

Hon. Chairman: I have no problem giving Hon. (Ms.) Odhiambo a chance to respond to what you have said. The only little problem I have, Chairman of the Departmental Committee on Labour and Social Welfare, is you addressing Hon. Millie directly when I am seated here chairing the Committee.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I apologise for that. You know that I am so close to you that I thought you are feeling my warmth and that Hon. Millie is so far that I have to use words for her to hear what I am saying.

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Hon. Chairman: Okay. I have understood. Hon. Millie Odhiambo, let us hear what you have to say about those concerns by the Chairman of the Departmental Committee on Labour and Social Welfare.

Hon. (Ms.) Odhiambo-Mabona, (Suba North, ODM): Hon. Chairman, I actually understand the Member. I have worked in the children's sector for very many years and I can give you many horrendous cases of people who come from outside the country. An example is one who started a school called Spring Chicken where young girls were being sexually abused. How do you deal with those cases? Through the criminal justice process, you prosecute and jail them. That is why I even brought the law on trafficking. There are even people who traffic children. So, there is a whole legal framework for such things.

Beyond that, this Bill has provisions for deregistration. My only concern is that while we are thinking of people coming from outside the country, we will harm small organisations in the countryside that help orphaned children, which may not have the money or resources to go through this process. We are not thinking about the real people who are actually helping our children. If we do this, we will harm the real people who are helping. So, let us deregister such organisations. That is already in the Bill. We can also use other laws to prosecute and jail such people, but this is too much for small organisations.

Hon. Chairman: Okay. I see the Chairman of the Departmental Committee on Labour and Social Welfare seems to be nodding. Let us give him a chance.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, this is an issue that I would really want to budge on, but with a rejoinder. As the Member said, one of the problems that we have in this country and in many countries in Africa, which I have a lot of experience with, is allowing people to implement programmes without coordination, supervision or approvals. This has been a problem in many countries that I have dealt with in my course of work in the past. I do not have any problem with the proposal by the Member who indicates that there are other provisions within the Bill that we can use. Should there be a problem in the future, this Bill will need to be further amended so that we regulate the way some of these programmes are implemented.

We are dealing with very sensitive issues of children. By the time you realise that things have gone wrong, many of our children would have fallen victim. It is an issue that should be taken very seriously for now. With the explanation that she has given, I will trade in what the Committee had. As I said, this is an area in which I have a lot of experience and I know that there is a problem with implementation of programmes without coordination.

Hon. Chairman: It is good because as the Chairman of the Departmental Committee on Labour and Social Welfare, you have gone on record regarding some of the concerns, which I am sure Hon. Millie Odhiambo also had. Once this matter has been settled, there are other avenues that you can use. Let us see what the Members will say in terms of voting.

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

(Clause 52 as amended agreed to)

(Clauses 53, 54, 55, 56 and 57 agreed to)

Clause 58

Hon. Chairman: The Chairman of the Departmental Committee on Labour and Social Welfare is proposing a deletion and Hon. Millie Odhiambo also has an amendment. If the deletion is taken, obviously Hon. Millie Odhiambo will have nothing to delete. So, let us be clear on that. Hon. Chairman, proceed.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 58 of the Bill be deleted.

We are doing so because this relates to the functions of the Director whom we are now referring to as the Secretary. This will be re-drafted in New Clause 35B as indicated earlier.

(Question of the amendment proposed)

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

(Clause 58 deleted)

Hon. Chairman: Therefore, Hon. Millie Odhiambo's amendment falls. Let us proceed. I must commend the Chairman of the Departmental Committee on Labour and Social Welfare because I can see he is really well-informed on what he is moving and on this particular Bill. Let us proceed.

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

Clause 59

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 59 of the Bill be deleted.

We propose to delete Clause 59 because we shall be re-drafting the same in New Clause 35C.

(Question of the amendment proposed)

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

(Clause 59 deleted)

Clause 60

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 60 of the Bill be deleted.

We will be redrafting the qualifications of the Secretary in New Clause 35C.

(Question of the amendment proposed)

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

(Clause 60 deleted)

Clause 61

Hon. Chairman: There is an amendment by Hon. Millie Odhiambo. We are doing Clause 60. Let me confirm. Sorry. We will have the Chairman again. If I am not wrong, on this particular one, Hon. Millie you have a further amendment. You were proposing a further amendment in Clause 61, but if the deletion is taken, then the same fate befalls your further amendment.

Proceed Hon. Chairman and you are basically proposing a deletion.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I wish to withdraw the amendment to Clause 61.

(Hon. Caleb Kositany walked along the gangways greeting Members)

Hon. Chairman: Order Hon. Kositany! Order!

Hon. Chairman: Okay. If your amendment is withdrawn, it means Hon. Millie Odhiambo can process her further amendment. Hon. Millie, do you have a further amendment on Clause 61?

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

Hon. Chairman: Yes, proceed now that it did not fall.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you Hon. Chairman. I propose that Clause 61 of the Bill be deleted.

The reason is that, if you look at the way it is worded, it provides a penalty for obstruction of the director. I am wondering whether this really applies because we have already deleted the position of a director. I do not know whether the Chairman of the Committee understands this. We have already deleted the position of the director.

(Hon. Josphat Kabinga spoke off record)

Hon. Chairman: That being true, Hon. Chairman, I think you could just process your proposed deletion.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, there is no director, but we are now saying there is a penalty for obstructing a director who does not exist.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, the Member is right. We will be bringing in a further amendment to this as a re-committal.

Hon. Chairman: What I am thinking, just delete it to make it tidy.

Hon. Josphat Kabinga (Mwea, JP): Thank you very much, Hon. Chairman. We can bring it afresh. We are well guided.

Hon. Chairman, I beg to move:

THAT, Clause 61 of the Bill be deleted.

We will be bringing a New Clause 61.

Hon. Chairman: Very well!

(Question, that the words to be left out

be left out, put and agreed to)

(Clause 61 deleted)

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

Clause 62

Hon. Chairman: We have two amendments. One is by the Chairman and the second one by Hon. Millie Odhiambo. If the amendment by the Chairman is carried, the amendment by Hon. Odhiambo will fall. Proceed!

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman. I beg to move:
THAT, Clause 62 of the Bill be deleted.

This relates to the laws of county governments which will now be re-drafted as 63A.

(Question of the amendment proposed)

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

Hon. Chairman: Very well. What is your point of order, Hon. Millie Odhiambo?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, I just want to seek your direction. I know that we have been going through the amendments on this Bill in a very special way. I think there is a challenge from the Cabinet side in terms of drafting. I am wondering because the Chairman of the Committee says that he is bringing a new clause and I had an amendment to this. I am concerned because then I do not have an opportunity to bring an amendment to his.

Hon. Chairman: Well, as he thinks of bringing a new clause, you should be discussing with him so that you see whether you can merge your thoughts on it and bring something that contains what you have in mind and what he wishes to bring. For now, there is no way you can proceed with the amendment. I think that is the best thing to do since you do not know that proposed amendment, neither do we have that information. So, we do not want to anticipate.

However, at the point of him bringing it, you will be free to bring an amendment because it will still be in this Session. You will be reacting to something that has been brought, if it does not go well with what you want to achieve...

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I have a suggestion, Hon. Chairman. Since he is yet to bring his amendment and my amendment was just trying to ensure that there is equity and equality in distribution of resources within the county as sometimes what governors do is to look at the areas which voted for them and ignore other areas, they could look at that when they are bringing the amendment, then I will not have to bring a further amendment.

Hon. Chairman: Okay. Hon. Chairman. Is he in the House?

Hon. Josphat Kabinga (Mwea, JP): We have heard, Hon. Chairman. We will do that. Thank you.

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

(Clause 62 deleted)

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

Clause 63

Hon. Chairman: We have the Chairman, Departmental Committee on Labour and Social Welfare and a proposed amendment by Hon. Edith Nyenze. If the Chairman's amendment is carried, the one by Hon. Nyenze falls. Hon. Chairman, proceed.

Hon. Josphat Kabinga (Mwea, JP): Thank you Hon. Chairman. I beg to move:
THAT, Clause 63 of the Bill be deleted.

This clause is on county government functions which is now re-arranged in a new part.

(Question of the amendment proposed)

Hon. Chairman: Very well. Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, I have no problem because I think the Chairman is trying to re-organise and re-order. I just want to go on record that Hon. Nyenze had requested me to move her amendment and I had already notified the Hon. Speaker, just so that it goes on record. Thank you.

Hon. Chairman: Okay, so then the fate will be as earlier pronounced but now done by a different person.

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

(Clause 63 deleted)

*(Proposed amendment by
Hon. (Ms.) Edith Nyenze withdrawn)*

Clause 64

Hon. Chairman: The Chairperson will move an amendment and Hon. Millie Odhiambo will move a further amendment.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman. This again is a very important clause. I beg to move:

THAT Clause 64 of the Bill be amended—

- (a) in sub clause (1) by deleting the words “foster care, adoption” and inserting the words “placement in alternative care”;
- (b) in sub clause (2) by deleting the words “one year” and substituting therefor the words “six months”;
- (c) by deleting sub clause (3);

- (d) by deleting sub clause (4);
- (e) by deleting sub clause (5) and substituting therefor the following—
 - “(5) The Cabinet Secretary may collaborate with a county government for purposes of establishing a children rescue centre under subsection (1).”
- (f) by inserting the following new sub clause immediately after sub clause (5) —
 - (6) The placement of a child in a children rescue centre shall only be done in cases where no alternative care placement is for the time being available to the child.
 - (7) A children rescue centre may admit a child to its care—
 - (a) in an emergency situation and the child is referred to the centre by way of an interim care order or a care order; or
 - (b) if the child is taken to the institution by an authorised officer or any person who has reasonable cause to believe that the child is in need of care and protection.

There are several reasons for this amendment, Hon. Chairman. First and foremost, it is meant to enhance clarity in sub clause (1) and in sub clause (2). We are amending to ensure that rescue centres take a shorter time dealing with children once they are taken there. That is very important. I want Members to take note that some of the facilities handling children have been taking time to plan evil on the children. We are proposing to make the time shorter so that once children are put in some of these centres, they should be taken to the right place in good time. That is one of the very important things that we are bringing in. So there are those several amendments but this one mainly focuses on the period that our children will be kept in some of these facilities.

We are also amending sub-clause 5 to clarify the role of the Cabinet Secretary in establishing rescue centres and pave way for the collaboration with county governments. This was a missing link.

We are also deleting sub-clauses 3 and 4 in order to retain establishment of rescue centres as a function of the Cabinet Secretary. This is because if we left it open, it would be interpreted in many ways including police officers or persons in charge of the centres giving excuses for admission of children. So we want to clean it up but my main focus is on time.

Hon. Chairman, I beg to move.

(Question of the amendment proposed)

Hon. Chairman: Hon. Millie, do you want to speak to this amendment before a decision is made? Actually, you do not need to because it is going to be a further amendment, and you will have a say. We can dispose of the Chair’s first.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Okay, Thank you.

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

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

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

Hon. Chairman: Let us move to Hon. Millie Odhiambo’s further amendment.

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

THAT, Clause 64 of the Bill be amended in subsection (1) by inserting the following words “in every county” immediately after the words “child rescue centres”.

I am seeking to ensure that the Cabinet Secretary in consultation with the counsellor, and by Notice in the *Gazette*, establish child rescue centres in every county. Our counties have sufficient money to establish these centres. There is therefore, no reason for example to say that a child being rescued in Homa Bay be taken to Migori, Kisumu or Kisii when we have county rescue centres. This will make our counties more responsible.

I want to thank the Chair for some of the proposed amendments in the same clause which resonate well with reality. He proposes insertion of a new sub clause (7) which states:

“A children rescue centre may admit a child to its care—

(a) in an emergency situation and the child is referred to the centre by way of an interim care order or a care order; or

(b) if the child is taken to the institution by an authorised officer or any person who has reasonable cause to believe that the child is in need of care and protection.”

I support the proposals by the Committee that seek to ensure that each county has its own rescue centre.

Thank you.

Hon. Chairman: Very well.

(Question of the amendment proposed)

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

(Clause 64 as amended agreed to)

Clause 65

Hon. Chairman: Hon. Millie Odhiambo, you have a proposal.

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

THAT, Clause 65 of the Bill be amended by inserting the following new subsection immediately after subsection (2)-

(3) “The child protection units established under subsection (1) shall be disaggregated by gender with clear sections for boys, girls and intersex children.”

The amendment seeks to ensure that the child protection units that are established are disaggregated by gender with clear sections for boys, girls and intersex children. So long as we provide for this in law, different agencies can ensure that this happens. Right now, they are exploring the possibility of setting up one in Suba North with the police. Women Representatives can also establish them using the National Government Affirmative Action Fund. The national

Government can also do it so long as it is in law. We need to ensure that there is disaggregation by gender for intersex children, girls and boys.

Thank you.

(Question of the amendment proposed)

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

(Clause 65 as amended agreed to)

Clause 66

Hon. Chairman: Can we have the Chair? If the amendments by the Chair succeed, Hon. Millie Odhiambo's falls.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman. This is another drastic proposal by the Committee. I beg to move:

THAT the Bill be amended by deleting Clause 66 and substituting therefor the following new clause—

Charitable
Children's
Institutions.

66. (1) No person shall register or operate a Charitable Children's Institution except as provided in law.

(2) The Council shall —

(a) keep and maintain a register of all Charitable Children's Institutions registered or approved by the Council prior to the commencement of this Act;

(b) prescribe the minimum standards and conditions for operation of existing Charitable Children's Institutions

(3) An existing Charitable Children's Institution shall ensure that every employee of the institution holds a valid certificate ascertaining that they have no pending criminal investigations;

(4) Without prejudice to the generality of subsection (4), the Council—

(a) shall inspect and assess whether the facilities and operations of existing Charitable Children's Institution conform to the minimum standards and conditions set out in this Act and the regulations;

(b) may deregister a non-compliant existing Charitable Children's Institution.

(2) Any person who—

(a) operates an existing Charitable Children's Institution contrary to the provisions of this Act;

(b) admits a child to the care of an existing Charitable Children's Institution which is not approved by the Council; or

(c) implements or attempts to implement a children's welfare programme, or to operate a Charitable Children's Institution in the name of a Public Benefits Organisation, religious organisation or other association, whether incorporated or unincorporated, or otherwise in contravention of this subsection; Commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five million shillings, or to both.

I am calling it a drastic proposal because having conducted public participation with many stakeholders, the Committee came to a conclusion that this country needs to close down children care institutes referred to as Charitable Children Institutions (CCIs) over a period of 10 years, and encourage the country to take the direction that other countries have taken of family care instead of putting children into homes. This has been successfully done in places like Rwanda. We believe that, that direction will ensure that we bring up our children who are in need of care in a family set-up, and are not in a home that looks like a cage that might bring up children who are not well guided in the family life. Therefore, we propose to delete this clause, and replace it with a new one.

(Question of the amendment proposed)

Hon. Chairman: Let us have Hon. Millie Odhiambo since this will have a direct impact on what she wants to propose.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Chairman. Whereas I have no problem with proposed amendment to Clause 66, I just wish to draw the attention of the Chair that by this provision, we are not stopping people from institutionalising children. I know it is a Government policy not to institutionalise children as a means of last resort, provided these stringent standards are laudable and good. I do not have a problem with the penalties on these ones because on the other one, we were penalising people for running programmes. This one is for running a home which is totally a different thing. You get many cases of abuse in many homes and I know that from experience.

The only challenge that I am facing is that he is proposing a deletion and a new clause. The way we are moving is bringing complex ways. I do not know whether I would request the Chair of the Committee to adopt one of my proposed amendments so that he can bring it as a further, amendment. The further amendment will be at (b). It states:

“Specify whether the institution is intended for the accommodation of male, female or intersex children, or for all.”

That is just for clarity in terms of the children who will be in the centre. This is because my other amendments are affected by the proposed deletion and insertion of New Clause 66. That is my only proposal that I think might still hold. In light of the fact that we are moving a deletion, with your guidance, Chair, you could advise. The Chair has moved a deletion that does not quite affect my (b) yet, in a way it affects it because there is nothing further to amend. That is why I am requesting the Chair to look at my proposed amendment on Page 995 which is appearing as Clause 66(b).

Hon. Chairman: What is the gist of your amendment?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): The gist of my amendment is to show or clarify whether these homes are accepting male, female, intersex children or all genders. It needs to clarify when you set up such institutions. That is all. The rest will definitely fall off.

Thank you.

Hon. Chairman: Hon. Chair, what is your proposal on the substitution?

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, is it my chance?

Hon. Chairman: Yes.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman.

We like the way she has put it, but I would like to advise that there would be many standards to be set up by the Council, and that will be one of them. When we will be revising New Clause 35 that is where you need to see whether what you are proposing...

Sorry, Hon. Chair. I am again addressing her directly. I forgot that you had advised me. That is when the Member will see whether the standards she is bringing in are taken care of or not. I am however assuring her that there will be many standards.

Having observed many gaps in the running of these homes, we are proposing serious measures to be undertaken by the Council so that they can be run in an appropriate way.

Thank you, Hon. Chair.

Hon. Chairman: Hon. Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Chair, I was rising in support of the Chair, and also, Hon. Millie Odhiambo in these amendments.

Hon. Chairman: Which one are you supporting because they are two? Maybe you should speak to the amendments which are on the Floor because we are trying to see if there is any procedure that has been done on Hon. Millie's amendment. It looks like it is only going to work if there is a re-committal. At that point then, you will have seen what is before the House. As for now, let us just deal with more of the Chair's proposal.

Hon. Gichimu Githinji (Gichugu, JP): I agree with the Chair's proposal but at the same time, I support what Hon. Millie Odhiambo has said that we should at least, have specification of the gender somewhere to avoid a situation whereby these children are mixed up, which may lead to the abuse that we are avoiding. I am however happy that the Chair has agreed to accommodate the amendment at some point before the Bill is concluded.

Hon. Chairman: Hon. Millie, and probably, Hon. Gichimu, we have two things here:

One, is that a re-committal can resolve that issue, but most importantly, if you see what I see here, it says that the standards and conditions that are going to be set out in this Act could also be done under regulations. So, those are two areas that you can look at. In the meantime, we will specifically deal with what is before us.

(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)*

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

(Clause 66 as amended agreed to)

Clause 67

Hon. Chairman: We have a similar situation as the previous one. We will therefore, start with the Chair who is proposing a deletion.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman. I beg to move:

THAT, the Bill be amended by deleting Clause 67.

In the same way, we are proposing to delete Clause 67 since the provision deletes registration of charitable children institutes or institutions for specified categories. The Committee is proposing that no registration of new homes will be carried out as earlier indicated.

I beg to move and request the Committee to support.

Hon. Chairman: All right. Maybe I should give Hon. Odhiambo a chance to contribute to this before we proceed.

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

I do not have a problem with the deletion because mine was basically seeking to enhance the said clause. The deletion might serve my purposes, and even better.

I support.

Hon. Chairman: All right. It looks like it is getting easier.

(Question of the amendment proposed)

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

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

(Clause 67 deleted)

Clause 68

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 68 of the Bill be amended in sub clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

(a) a valid certificate issued by the relevant body certifying that there are no pending criminal investigations against the person or convictions for the offences under the Fourth Schedule;

This seeks to enhance clarity on the clause which aims to safeguard the welfare of children by ensuring that existing children institutions are not managed by criminals.

Hon. Chairman: Very well. Hon. Maanzo

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Chairman.

The clarity put in Clause 68 is very important because many a times, we rely on conviction rather than proceedings before a court of law, and this one relates to an investigation of proceedings and not just conviction. This makes it much better owing to the fact that the welfare of children is the main thrust in this new law, and the way the courts have settled it in judgements so far.

I thank you.

(Question of the amendment proposed)

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

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

(Clause 68 as amended agreed to)

Clause 69

Hon. Chairman: Hon. Millie Odhiambo, you have an amendment on this one.

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

THAT, Clause 69 of the Bill be amended in subsection (2) by inserting the following new paragraph immediately after paragraph (a)-

“(aa) the usual place of abode or home is not conducive to the well-being of the child;”

What Clause 69 does is that it provides for the overriding objectives of charitable children institutions. In sub-clause 2, it says: “The placement of a child in a charitable children institution shall be done as a last resort in cases where...” and it goes ahead to give two cases. I am trying to indicate one where people do not usually think of, which is at the usual place of abode or home that is not conducive to the well-being of the child. This is because many children are abused at home. If the home is not conducive to the child, that should also be another reason. We have seen parents who harm their children online. So, even where it is a parent who is harming the child, that should be a reason for placement even as a last resort. So, it should not only be in the two cases which are said here.

Thank you, Chair. I move.

(Question of the amendment proposed)

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

(Clause 69 as amended agreed to)

Clause 70

Hon. Chairman: We have the Chair's proposal and that of Hon. Millie Odhiambo, which are going to be a further amendment. Let us start with the Chair.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chair. I beg to move:

THAT Clause 70 of the Bill be amended in sub clause (1) by inserting the following words immediately after paragraph —

“(aa) a children's rescue centre established by the Cabinet Secretary under Clause 64;”

This is to clarify that children rescue centres are not to be run by non-state actors, but rather by the Government. The term here is “rescue centres” which is different from “homecare centres.”

Hon. Chairman: Very well

(Question of the amendment proposed)

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

(Clause 70 as amended agreed to)

Hon. Chairman: Let us go to Hon. Millie Odhiambo's amendment. Just a minute, please.

(Hon. Chairman consulted the Clerks-at-the-Table)

Hon. Odhiambo, just go ahead and move it, but with a small typo which you need to correct on record. I do not know if you picked it?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I have noticed.

Hon. Chairman: Once it goes on record, it is automatically resolved.

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

THAT, Clause 70 of the Bill be amended in subsection (2) by deleting the word “may” and substituting therefor the word “shall”.

Hon. Chairman, the reason why we should not have children institutions is if they are not able to provide children with medical care, education or training. It should not be optional. Once you have institutionalised children there, you should ensure that if they are sick, they should get medical care, as well as education and any form of training. So, I am just proposing that we move it from “may” to “shall.”

(Question of the amendment proposed)

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

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

(Clause 70 as amended agreed to)

Clause 71

Hon. Josphat Kabinga (Mwea, JP): Thank you Hon. Chairman, I beg to move:

THAT, Clause 71 of the Bill be amended by deleting the words “Chief Executive Officer” wherever they appear and substituting therefor the word “Council”

We are just replacing the Chief Executive Officer with the Council on an understanding that the Council is the governing body of the National Council for Children Services and therefore all applications should be made to it.

(Question of the amendment proposed)

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

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

Clause 71 as amended agreed to)

(Clause 72 agreed to)

Clause 73

Hon. Josphat Kabinga (Mwea, JP): Thank you Hon. Chairman, I beg to move:

THAT, Clause 73 of the Bill be amended by deleting sub clause (2) and substituting therefor the following new sub clause (2)—

“(2) Where a child is admitted to a Charitable Children’s Institution in accordance with subsection (1), the Charitable Children’s Institution shall—

(a) within twenty-four hours, inform the Secretary that it has admitted a child; and

(b) institute care proceedings under Section 152 of this Act within seven days of the admission. “

This is to provide for steps to be taken by the charitable children’s institute upon receipt of a child. More so, as I indicated earlier on, to ensure that there are no delays in that particular facility, the child should be processed and taken to the right place as quickly as possible.

(Question of the amendment proposed)

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

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

(Clause 73 as amended agreed to)

(Clause 74 agreed to)

Clause 75

Hon. Chairman: We will have two amendments here, the first one by the Chair of the Committee. If it is carried, Hon. Millie Odhiambo's will fall.

Hon. Josphat Kabinga (Mwea, JP): Thank you Hon. Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 75.

The proposal is to remove approved officers from the Bill to avoid conflict of power with the authorised officers who have the same function as prescribed in this Bill. So, we are trying to avoid conflict in the implementation of the Bill.

I thank you.

Hon. Chairman: Very well.

(Question of the amendment proposed)

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

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

(Clause 75 deleted)

Clause 76

Hon. Chairman: On this one, the Hon. Chairman will move the amendment by the Committee and Hon. Millie Odhiambo will move a further amendment

Hon. Josphat Kabinga (Mwea, JP): Thank you Hon. Chairman. I beg to move:
THAT, Clause 76 of the Bill be amended by deleting the word "Director" and substituting therefor the word "Secretary"

This is about nomenclature. The Directorate of Children Services is no longer headed by a Director, but by a Secretary in terms of title.

I thank you Hon. Chairman.

(Question of the amendment proposed)

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

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

(Clause 76 as amended agreed to)

Hon. Chairman: Let us have Hon. Millie Odhiambo move a further amendment.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you Hon. Chairman, I beg to move a further amendment to sub-clause 76 (6).

THAT, Clause 76 of the Bill be amended in subsection (6) by deleting the words “five hundred thousand” and substituting therefor the words “one million”;

I seek to ensure that any person who disrupts an authorised officer in the course of performing his duty is punished. The penalty is enhanced. The penalty provides for imprisonment for a term not exceeding three years or to a fine not exceeding Ksh500,000. When you just say; “not exceeding Ksh500,000, it means the highest the magistrate can go for is Ksh500,000. However, when you put Ksh1million, if there is a lot of impunity then the magistrate has a leeway of up to Kshs1million. So, this is to give a little bit more discretion to the magistrate where the case of abuse is higher.

I thank you Hon. Chairman.

(Question of the amendment proposed)

Hon. Chairman: Let us have Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Hon. Chairman, I like Hon. Millie’s amendment of enhancing penalty. Somebody can pay the fine and get away with an offence. So, I support that further amendment of raising fine up to Ksh1 million.

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

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

(Clause 76 as amended agreed to)

Clause 77

Hon. Chairman: Hon. Chairman will move the amendment by the Committee and Hon. Millie Odhiambo will move a further amendment.

Something that is noteworthy here is that there seems to be a small issue with the Committee’s amendment. There is some defect which needs to be cured. As you amend, you can see you are removing the CEO and putting the council which in the text, it would mean the council shall prepare and submit to the council again. We want to get to know whether you actually...

Hon. Josphat Kabinga (Mwea, JP): We are doing that in sub-clause 1 only. We want to amend the statement as it appears there. In sub-clause 1 only, not wherever it appears.

Hon. Chairman: So, how will it read so that we have it on record?

Hon. Josphat Kabinga (Mwea, JP): I seek your guidance whether we need to recommit this or we can just correct it. Can I read it?

Hon. Chairman: You can move it in an amended form.

Hon. Josphat Kabinga (Mwea, JP): Let me read it. Hon. Chairman, I beg to move:

THAT, Clause 77 of the Bill be amended by deleting the words “Chief Executive Officer” in sub-clause 1 and substituting thereof with the word “Council”.

Hon. Chairman: Now that makes a lot of sense, but for the record, it means, therefore the Child Welfare Programme shall notify the council and the secretary, is that so? It is the council. That is okay. Therefore, you are moving in an amended form.

(Question of the amendment proposed)

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

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

Now let us go to Hon. Millie Odhiambo's proposal.

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

THAT, Clause 77 of the Bill be amended-

- (a) in subsection (2) by deleting the words "and the Council may approve or withhold its approval of such programme or part of it as the Council may determine, taking into account the best interests of children.";
- (b) by deleting subsection (3) and substituting therefor the following new subsection-
 - (3) No person shall run a child welfare programme that is not in the best interest of the child.
- (c) by deleting subsection (4) and substituting therefor the following new subsection-
 - (4) The council shall develop regulations on permissible programs to be run by child welfare institutions.
- (d) by inserting the following new subsections immediately after subsection (4)-
 - (5) Any person or institution who runs a program except as provided under subsection (4) may in the first instance be warned and for subsequent violations, the institution may be deregistered.
 - (6) No action shall be taken against an individual or institution under subsection (5) unless they have been given an opportunity to respond to the allegations against them.
 - (7) Any person aggrieved by the action taken by the Council to deregister an organisation under subsection (5), may appeal to the High Court within a period of thirty days from the date of the deregistration.

Hon. Chairman, this goes to some earlier amendment where I was concerned about taking punitive measures for non-compliance with programmes.

Hon. Chairman, what I am seeking to do is that the council should ensure that people undertake programmes that promote the best interest of the child. Where the person does not run a programme that promotes the best interest of the child, he shall first be warned. If there are subsequent violations, then the institution may be deregistered and no action shall be undertaken unless the individual or institution has been given an opportunity to respond to the allegations. Any aggrieved person after de-registration may also apply to court for action so that instead of making it a criminal offence where you jail somebody...

Again, I am giving that background where people out of good faith are actually just running programmes and also so that what we do not also see, perhaps which the Committee did not consider, is sometimes when you give too much power and authority to specific institutions which tend to abuse it. For example, I may want to run a programme in Tharaka Nithi as we did at some point and somebody does not like my faith and so they tell me: “No, here in Tharaka Nithi we do not want programmes on girls. We want programmes on boys.” So, if you refuse then I need to have a chance to explain why I must run that programme and if you are being dictatorial, then I need to have an appeal process, but not criminalising this. So, it is basically in consonance with the other proposed amendment which we had already deleted.

Thank you.

(Question of the amendment proposed)

Hon. Chairman: Yes, Chair.

Hon. Josphat Wachira (Mwea, JP): Thank you, Hon. Chairman. Let me be on record again by saying that I am at pains to accept this particular amendment. As I indicated earlier on, notification of programmes that are being implemented in this country is not about the council having a lot of powers. It is about there being order in the way we implement activities especially activities that relate to our children. Just as the honourable Member alluded to, here could be several people implementing activities relating to the girl-child in a given county. If the council is not aware, the boy-child will be left out and vice versa. So, in this section, we are talking about notification. I ask the honourable Member to reconsider this notion that we are giving powers to the council. We are giving the council functions that will enable it have order in the way we implement activities relating to our children in this country. On this one, I wish to reject.

Hon. Chairman: Let us have Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Hon. Chairman, you know for every authority, there has to be a way of sanctioning it, if it acts beyond its powers or is unreasonable. That is a principle in the Constitution. That is why people go for judicial review. I think what Hon. Millie Odhiambo is asking for is very much justified so that there is somebody else who can deal with the authority or that particular council, in case it misuses it.

I thank you, Hon. Chairman.

Hon. Chairman: So, are you opposing or supporting?

Hon. Daniel Maanzo (Makueni, WDM-K): I am supporting Hon. Millie Odhiambo.

Hon. Chairman: Hon. Millie Odhiambo, just see if you can convince the Chair quickly.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, I actually just wanted to clarify to the Chair. If you actually look at my amendment, it is not taking the power from the council, but it says: “No person shall run a child welfare programme that is not in the best interest of the child.” Then in that case, it means that the council can then decide that these and these programmes are not in the best interest of the child, but when you decide and tell the council that they are the ones who will tell you “Run a programme on Female Genital Mutilation” or “Run a programme on early marriage”...

We know a lot of Non-Governmental Organisations are supported by donors and your donor may not support that. So, how will you run a programme that you do not have money for or you have been funded to run specific programmes and the council is telling you do another? Doing it does not take away the power of the council, but we are wording it in a manner that gives room that the council can then provide for programmes that are not in the best interest of the child.

However, it also says that where that is not done, you can deregister once you have given these people an opportunity to be heard, instead of just saying the council has said “Do not run this programme and if you run it we jail you.”

Hon. Chairman, this reminds me of 1972. I think I was probably in Class one or something. This is really draconian.

Hon. Chairman: Hon. Millie, you do not have to be very specific about years.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, I do not remember where I was in 1972.

Hon. Chairman: Some of these Members are very good with calculating age on the basis of what you said.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, am I worried about my age? I am 55 and very proud of it. I do not hide because for my age, I am very beautiful.

Hon. Chairman: I can see Hon. Kabinga is nodding and saying, “So, she is that young?” Let us hear what Hon. Kabinga has to say because he seems to have a problem as the Chair.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I am trying to read what is included in the Bill itself. I would want the proposer to also read Clause 77(2) of the Bill because in my opinion, it is not in line with what she is explaining. Please read Clause 77(2) of the Bill so that we can be on the same page. This is about information relating to the proposed Child Welfare Programme referred to in sub-clause (1). All we are saying is that the council, having been notified, can approve or disapprove. This is what we are saying is very necessary. We cannot allow people to just implement activities without somebody following them up.

Hon. Chairman: Hon. Members, I think I have given you sufficient time to amicably resolve this matter. Please resolve it loudly enough for anybody to have a decision that is clear one way or the other. Having given you that opportunity to prepare yourself to be clear, I will put the Question.

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

(Clause 77 agreed to)

Clause 78

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 78 of the Bill be amended —

(a) by deleting the words “Chief Executive Officer” wherever they appear and substituting therefor the word “Council”;

(b) in sub-clause (5) by deleting the word “Director” and substituting therefor the word “Secretary”.

We are replacing the title “Chief Executive Officer” with the word “Council”. In sub-clause 5, we are also deleting the word “Director” and substituting with the word “Secretary” as explained earlier.

Thank you.

(Question of the amendment proposed)

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

put and agreed to)

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

(Clause 78 as amended agreed to)

(Clause 79 agreed to)

Clause 80

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 80 of the Bill be amended by inserting the following new sub clause after sub clause (1)-

“(1A) The purpose of remand homes is to hold children in conflict with the law as a matter of last resort for their care and protection during trial before a verdict or placement”.

This proposed amendment is meant to address the current practice where children who need care and protection, but are not in conflict with the law, are placed in remand homes, which should not be the case. They should be placed in family-based alternatives such as kinship and other willing families.

(Question of the amendment proposed)

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

(Clause 80 as amended agreed to)

Hon. Chairman: Hon. Kabinga, when you are voting, make sure your microphone is off. Otherwise, you will have undue advantage over the rest of the Members. Any other Member should also do so.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I do not wish to have any advantage. I take note of that.

Thank you.

Clause 81

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 81 of the Bill be amended—

(a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;

(b) in subclause (1) by inserting the word “rehabilitation,” immediately after the words “to provide”.

In the first amendment, we are deleting the word “Director” and replacing it with the word “Secretary”. This is because of the nomenclature, as explained before. In the second

amendment, we are inserting the word “rehabilitation”. This is to clarify the role of rehabilitation homes. They offer rehabilitation services to children.

(Question of the amendment proposed)

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

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

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

Hon. Chairman: I, therefore, proceed to give Hon. Millie Odhiambo an opportunity to move her further amendment.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, I beg to move: THAT, Clause 81 of the Bill be amended by inserting the following new subsection immediately after subsection (7)-

(7A) Any person aggrieved by the decision to deregister a rehabilitation school under subsection (6) and (7) may appeal to the High Court within thirty days.

That is a good governance and human rights standard, that whenever a person is aggrieved, he should appeal.

Thank you.

(Question of the amendment proposed)

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

(Clause 81 as amended agreed to)

Clause 82

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 82 of the Bill be amended in sub clause (2) by deleting sub clause (d) and substituting therefor the following new paragraphs —

“(d) separate sections for various risk categories;

(e) a counsellor or psychologist.”

This amendment seeks to accommodate other risk categories and also the nomenclature of the Directorate of Children Services being headed by the Secretary, and not the Director.

(Question of the amendment proposed)

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

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

(Clause 82 as amended agreed to)

Clause 83

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 83 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

The amendment seeks to correct the nomenclature by replacing the term “Director” with a Secretary of the Children Services.

Thank you, Hon. Chairman.

(Question of the amendment proposed)

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

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

(Clause 83 as amended agreed to)

Clause 84

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 84 of the Bill be amended by deleting the word “Director” and substituting therefor the word “Secretary”.

The amendment seeks to correct the nomenclature. We are replacing the word “Director” with the word “Secretary”.

(Question of the amendment proposed)

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

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

(Clause 84 as amended agreed to)

Clause 85

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

THAT, Clause 85 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

This is the same case as in Clause 84. The amendment seeks to correct the nomenclature. We are replacing the word “Director” with the word “Secretary”.

(Question of the amendment proposed)

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

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

(Clause 85 as amended agreed to)

Clause 86

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 86 of the Bill be amended in subclause (1) by deleting the word “Director” and substituting therefor the word “Secretary”.

This is the same case. We are replacing the word “Director” with the word “Secretary”. It is about the nomenclature.

(Question of the amendment proposed)

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

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

(Clause 86 as amended agreed to)

Clause 87

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 87 of the Bill be amended in subclause (1) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

This is the same case. We are replacing the word “Director” with the word “Secretary”.

(Question of the amendment proposed)

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

(Question, that the word to be inserted in

place thereof be inserted, put and agreed)

(Clause 87 as amended agreed to)

Clause 88

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 88 of the Bill be amended —

(a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;

(b) in sub clause (1) by inserting the word “psychologist” immediately after the words “advice of a”.

In Clause 88, we have two amendments. One is on nomenclature, replacing the word “Director” with “Secretary”. The second one is to insert the word “psychologist” immediately after the words “advice of a”. We are including a psychologist as one of the professionals who can recommend that a child in a rehabilitation school should be removed to a health facility.

Thank you, Hon. Chairman.

(Question of the amendment proposed)

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

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

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

(Clause 88 as amended agreed to)

Clause 89

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 89 of the Bill be amended in sub clause (1) by deleting the word “tenor” and substituting therefor the word “tenure”.

Here, we are only correcting a grammatical error where we have the word “tenor” changed to “tenure.”

(Question of the amendment proposed)

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

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

(Clause 89 as amended agreed to)

Clause 90

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I beg to move:

THAT, Clause 90 of the Bill be amended —

(a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;

(b) in sub clause (4) by deleting the words "foster care or adoption" and substituting therefor the words "appropriate alternative family care."

Here, we have two amendments. In the first one, it is nomenclature again, replacing the word “Director” with “Secretary”. In the second one, we are deleting the words “foster care or adoption” and substituting thereof the words, “appropriate family care” This is to accommodate all categories of alternative family care services to our children.

(Question of the amendment proposed)

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

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

(Clause 90 as amended agreed to)

Clause 91

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, for clarity, my names are Kabinga Wachira Wathayu Wamwea, Member for Mwea. You can also call me Wamuchele. That is also my name.

Hon. Chairman: That is good. I almost thought you said Wamuchene.

Hon. Josphat Kabinga (Mwea, JP): *(Laughter)* No, Hon. Chairman, I said Wamuchele.

Hon. Chairman, I beg to move:

THAT, Clause 91 of the Bill be amended —

(a) in sub-clause (1) by inserting the words “borstal institution” immediately after the word “school”;

(b) in sub-clause (4) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;

(c) by inserting the following new sub clause immediately after sub clause (5):

“6. The Cabinet Secretary shall prescribe regulations for composition and conduct of an inspection committee.”

There are three justifications to this. First is to ensure that all borstal institutions are among the statutory institutions that should be inspected by the inspection committee. The other one is replacing the word “Director” with the word “Secretary” as earlier explained. The third one is a

new sub-clause that seeks to delegate legislative powers to the Cabinet Secretary to make regulations on the composition and conduct of the inspection committee.

(Question of the amendment proposed)

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

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

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

(Clause 91 as amended agreed to)

Clause 92

Hon. Chairman: Hon. Millie Mabona Akoth Odhiambo.

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

Hon. Chairman, I beg to move:

THAT, Clause 92 of the Bill be amended by inserting the following paragraph immediately after paragraph (d)—

(da) academic qualifications for persons to be employed in children’s institutions;

This amendment seeks to include, as part of the regulations, academic qualifications for persons to be employed in children’s institutions.

(Question of the amendment proposed)

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, as a clarification, in the Bill, paragraph (e) provides that there will be regulations for the training and remuneration of persons employed in remand homes, rehabilitation schools, child rescue centres and child protection centres. I am wondering whether the proposal by Hon. Millie is not covered in that particular paragraph (e).

Hon. Chairman: Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): No, it is not covered. I am a lawyer by training, and so my qualification is LLM, but I can receive further training. There is nothing stopping me from receiving further training. So, when it says under (e) “the training and remuneration of persons”, it could mean that before you get in, you are trained specifically on that, but what is your qualification before you are trained on children’s issues? What is happening is that we have a lot of quacks that work in this sector. There should be some minimum qualifications for people working so that we do not get people who are not qualified working in this sector. We should say, for instance, that, if you want to work as a counsellor, what your qualifications are. We know many people who claim they are counsellors, but they just know how to talk to their neighbours, but that does not make them counsellors. In my view, it does not cover. Qualification is very different from training or remuneration.

Hon. Chairman: I believe Hon. Kabinga should have a say on it. What is the specific concern you have?

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman. I am a student of law to add to the many professions that I currently possess. Even here, I am still learning. On this one, it was an error on our part to reject Hon. Millie's position. We accept it.

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

(Clause 92 as amended agreed to)

(Clause 93 agreed to)

Clause 94

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman. I beg to move:

THAT, Clause 94 of the Bill be amended in sub-clause (7) by deleting the words "and substitute for the sentence an order under Section 148 (2)".

The phrase that we are deleting is not related to this sub-section. It is misplaced.

(Question of the amendment proposed)

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

(Clause 94 as amended agreed to)

(Clause 95 agreed to)

Clause 96

Hon. Josphat Kabinga (Mwea, JP): I beg to move:

THAT, Clause 96 of the Bill be amended in sub-clause (4)(b) by deleting the word "Director" and substituting therefor the word "Secretary".

This is a nomenclature change where "Director" is being replaced with "Secretary" as it is.

(Question of the amendment proposed)

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

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

(Clause 96 as amended agreed to)

Clause 97

Hon. Chairman: Hon. Grace Millie Odhiambo *geza-geza* Akoth Mabona.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): All those names. Thank you, Hon. Chairman.

I beg to move:

THAT, Clause 97 of the Bill be amended by deleting the words “or any conduct contrary to decency or morality” and substituting therefor the words “of a sexual nature”.

The amendment seeks to replace the words “decency or morality” with the words “of a sexual nature” so that it will be that way in any proceedings relating to an offence against or by a child, or any conduct of a sexual nature. If you look at the wording of the Sexual Offences Act, which repealed quite a number of provisions of the Penal Code, we moved away from using words like “decency and morality,” because decency is very vague. Somebody can say the way I am dressed is against decency. Because of religious considerations, a person may want me to wear a headscarf or a long skirt.

When you are dealing with issues of a sexual nature, we know they are offences covered under the Sexual Offences Act. When you deal with decency or morality, that is very vague and subjective. What is moral to you is not moral to me, and what is decent to you is not decent to me, but a sexual offence is provided under the law. I am not aware of any offence of morality or decency under the law. They were repealed because they were being used against girls and women.

(Question of the amendment proposed)

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

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

(Clause 97 as amended agreed to)

Clause 98

Hon. Chairman: Let us start with the amendment by the Chair, and then we go to the further amendment by Hon. Odhiambo.

Hon. Josphat Kabinga (Mwea, JP): I beg to move:

THAT, Clause 98 of the Bill be amended in sub-clause (2) by inserting the words “or chronic illness” after the word “disability” in paragraph (b).

We are including a child’s chronic illness as a matter to be considered by the court while making a decision or issuing an order relating to a child.

(Question of the amendment proposed)

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

Hon. Chairman: I proceed to ask Hon. Millie Odhiambo to process her further amendment.

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

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

I beg to move:

THAT, Clause 98 of the Bill be amended—

(a) in sub-section (2) by—

(i) inserting the words “or where the child is intersex” immediately after the words “has a disability” appearing in paragraph (b);

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

(g) the customs and practices of the community to which the child belongs and the need to ensure that the child easily integrates while not subjected to harmful cultural practices;

(b) in sub-section (8) by deleting the word “one” and substituting therefor the word “five”.

In sub-section 2, I just wanted to add something after the words “has a disability”. One of the things the court should consider is whether a child is an intersex. The orders the courts make should be informed by whether the child is an intersex.

Paragraph (g) talks about the customs and practices of the community to which the child belongs and the need to ensure that the child integrates with customs that are not harmful.

In sub-section (8), it is just enhancing the sentence to a person who contravenes the provisions of sub-sections 5 and 6, which talk about concealing the face or identity of a child in court. We have seen people violating that a lot. I gave an example the other day where you find police circulating a child who has been sexually abused in court. I thought we need to enhance the sentence from “not exceeding Kshs100,000” to “not exceeding Kshs500,000”. Providing “not exceeding” gives leeway to the court. It is an upper cap. The court can still give a lesser sentence. Where we see there is impunity, the court has a larger discretion.

(Question of the amendment proposed)

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

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

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

(Clause 98 as amended agreed to)

Clause 99

Hon. Chairman: Let us start with the Chair, and Hon. Odhiambo will move the further amendment.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman. I beg to move:

THAT, Clause 99 of the Bill be amended in sub-clause (4) by deleting the words “in any case where the child is charged with any of the offences under the Seventh Schedule”.

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

We are only ensuring that all children in conflict with the law receive legal representation, not selectively as it is.

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

Hon. Chairman: What is your point of order, Hon. Millie Odhiambo?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I am not too sure whether I got the amendment correctly. It does not appear like that is what the amendment is doing, because the Chair's amendment on Clause 99 states, "Clause 99 of the Bill be amended in sub-clause (4) by deleting the words "in any case where the child is charged with any of the offences under the Seventh Schedule". My amendment is actually seeking to do what the Chair is saying.

Hon. Chairman: Well. That serves the purpose. So, what is it that you are having a quarrel with?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I am just informing the Chairman that what he is moving is not what he is stating. They are a bit different. He should be on record about his amendment.

Hon. Chairman: Please, confirm the amendment you are processing.

Hon. Josphat Kabinga (Mwea, JP): Hon. Chairman, I am moving an amendment to Clause 99, which seeks to delete the words 'in any case where the child is charged with any of the offences under the Seventh Schedule'. We are proposing to delete all that. When we include all that, it is like saying that when the child has been charged under the Seventh Schedule, then that child does not get legal services. It is exactly the way it is.

Hon. Chairman: I think Hon. Kabinga is moving the correct amendment. That is his amendment. So, Hon. Millie Odhiambo, stick to your amendment. Let us proceed.

(Question of the amendment proposed)

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

Hon. Chairman: Hon. Millie Odhiambo, now process the further amendment.

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

I beg to move:

THAT, Clause 99 of the Bill be amended by—

(a) deleting sub-clause (1); and,

(b) deleting the words "who has not attained the age of 16" appearing in sub-clause (2).

The reason is more or less what the Chairman is proposing. He was saying that a child who is in conflict with the law should not get legal aid only in certain circumstances. What I am saying is that a child is a child, so long as one is below 18 years. So, it should not be that a child only gets legal aid when he or she is below 16 years. Otherwise, why are we calling you a child? So long as you are below 18 years, you are a child. Let us not start creating distinctions about children.

Hon. Chairman: Hon. Millie Odhiambo, as you process your amendment, we need to have the text. What you are saying does not seem to be on the Order Paper. We need to capture the text of the amendment.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, I will give you the text in relation to the amendment to Clause 99(2).

Hon. Chairman: If you are giving us the text now, remember there will be need for an approval process. If you move it, it is something that we do not have an idea of. You either move what you had originally intended to move or have the other amendment undergo the approval process.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, it would make sense if I move the two amendments together. So, let me give you the text of the amendment.

Hon. Chairman: You will probably not succeed even if you do that, because I am looking at the relevant Standing Order, which is 133(2), which says:

“No amendment shall be moved to any part of a Bill by any Member, other than the Member in charge of the Bill, unless a written notification of the amendment shall be given to the Clerk twenty-four hours before the commencement of the sitting at which that part of the Bill is to be considered in Committee”

We have to be consistent in our way of doing things. If it is something that is agreeable to the Member in charge of the Bill, that is Hon. Kabinga in this case... But even Hon. Kabinga is in charge of the Bill on behalf of the Leader of the Majority Party. What do you propose?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, I know we have done what I was about to do in the past. But to save time, I will move my amendment and if it passes, then we will recommit the clause. It does not make sense for us to delete sub-clause (1) and retain sub-clause (2) as it is.

Hon. Chairman: Let us be clear about the first one. What is the gist of the amendment to sub-clause (1)?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): The gist of my first amendment is to remove 16 years of age and let children be children. Sub-clause (2) retains the 16 years. I had actually forwarded the amendment, but I think it was erratically not captured. What it means is that if we manage to delete sub-clause (1), sub-clause (2) will remain hanging, which does not make sense. It refers to a child who has not attained the age of 16 years, which is the same thing referred to in sub-clause (1). I suggest that I move the amendment to sub-clause (1). If it passes, then we will recommit the clause and amend sub-clause (2) so that it is consistent.

Hon. Chairman: That makes perfect sense. What will happen is that at the same time we are processing the amendments, we will be looking at the text of the further amendment. But we will not have sufficient time to apply our minds to it.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, although sometimes we have done that, let us stick to your proposal.

Hon. Chairman: I think you are getting a little older in the House now. We are just two months from exiting this term.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): That is okay, Hon. Chairman. I beg to move:

THAT, Clause 99 of the Bill be amended by deleting sub-clause (1).

The sub-clause provides that children who should access legal aid should be below 16 years. There is no reason to say that because a person who is 17 is also a child. The sub-clause provides a discriminatory standard.

Hon. Chairman: Very good. I think that is fair.

(Question of the amendment proposed)

(Question, that the words to be left

out be left out, put and agreed to)

(Clause 99 as amended agreed to)

Clause 100

Hon. Chairman: We have reached the magic 100 mark of this long Bill. Chairman, please, process your amendment.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman. I beg to move:

THAT, Clause 100 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) —

“(3) Where the court orders or summons an expert pursuant to subsection (1), a party to the proceedings shall be given an opportunity to submit their views before the court makes an order.”

This is necessitated by the fact that a court conducting proceedings sometimes calls for an expert report, which at times is not provided to all parties. This goes against the tenets of a fair hearing and trial. The proposed amendment seeks to mandate the courts to avail such reports and receive the views of the parties.

(Question of the amendment proposed)

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

(Clause 100 as amended agreed to)

Clause 101

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chairman. I beg to move:

THAT the Bill be amended by deleting clause 101 and substituting therefor the following new clause —

Appointment of
guardian ad litem.

101. A court before which a child is brought, and especially where that child is not represented by an advocate, may appoint guardian *ad litem* for the purposes of the proceedings in question and to safeguard the interests of the child.

This is to enhance clarity on the provision. As drafted in the Bill, it is likely to create confusion for the end user. Let all children benefit from this and should the court deem it fit to have a guardian appointed as per the age, it will direct so.

[The Chairman (Hon. Moses Cheboi) left the Chair]

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

(Question of the amendment proposed)

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

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

(Clause 101 as amended agreed to)

(Clauses 102, 103 and 104 agreed to)

Clause 105

Hon. Josphat Kabinga (Mwea, JP): Thank you Hon. Temporary Deputy Chairman.

I beg to move:

THAT, Clause 105 of the Bill be amended in sub clause (4) by deleting the word “Director” and substituting therefor the word “Secretary”.

Here is a nomenclature change whereby the Directorate of Children Services is now headed by Secretary and not Director.

(Question of the amendment proposed)

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

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

(Clause 105 as amended agreed to)

Clause 106

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, you have a proposal to amend this clause.

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

THAT, Clause 106 of the Bill be amended—

(a) in sub clause (1) by inserting the words “taking into account the child’s evolving capacity” immediately after the word “child” appearing in paragraph (c);

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

“(2) Where a custody order is made giving custody of a child to one parent, or in the case of joint guardians, to one guardian, the court may order that the person not awarded custody shall nevertheless have all or any rights and duties in relation to a child other than the right to actual possession, jointly with a person who is given custody of the child.

In sub-clause 1, I am proposing that we insert the words “taking into account the child’s evolving capacity” immediately after the word “child”. This section is about the principles that the court would use in making custody orders in relation to a child.

In sub-clause (c), it says the court will take into account the ascertainable wishes of the child. However, I am saying that the court should take into account the evolving capacity of the child. A child who is three years old may wish to go with a parent that gives sweets but may not have the best interest of the child. So, even as we are taking the ascertainable wishes of the child, we need to look at the evolving capacity of the child. A child who is three and one who is 17 years have totally different perceptions in terms of what they want. So, that is my proposal for (c).

In sub-clause (2,) I am proposing that we delete what is there and provide that where a custody order is made giving custody of a child to one parent, or in the case of joint guardians, to one guardian, the court may order that the person not awarded custody shall nevertheless have all or any rights and duties in relation to a child other than the right to actual possession, jointly with a person who is given custody of the child.

So, the fact that you have physical custody does not preclude you from paying fees for instance. So, the physical custody alone does not preclude you from other duties. So, that is what my proposed amendment to Sub-clause (2) is about.

Question of the amendment proposed)

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

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

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

(Clause 106 as amended agreed to)

Clause 107

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, you have a proposal to this one.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. Although it is late, I just noticed that I had forwarded a proposed amendment also to Clause 106 that was not covered. I will look at it and consult with the Chairman about its importance and recommit.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 107 of the Bill be amended in sub clause (2) by deleting the words “not exceeding” appearing immediately after the words “fine” and substituting therefor the words “of not less than”

This basically means we are enhancing the sentence.

I thank you, Hon. Temporary Deputy Chairman.

Question of the amendment proposed)

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

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

(Clause 107 as amended agreed to)

(Clauses 108, 109, 110, 111 and 112 agreed to)

Clause 113

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, you have a proposal to this one.

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

THAT, Clause 113 of the Bill be amended by —

(a) deleting paragraph (a) and substituting therefor following new paragraph—

“(a) It shall be the joint duty and responsibility of both parents to maintain the child whether or not the parents are married to each other.”

(b) numbering the paragraph appearing immediately after paragraph (d) as paragraph (e).

That is something we have discussed before which relates to something else which I will be recommitting. The wording I have used is the wording under Article 53 of the Constitution.

(Question of the amendment proposed)

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

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

(Clause 113 as amended agreed to)

(Clauses 114, 115 and 116 agreed to)

Clause 117

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

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

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

THAT, 117 of the Bill be amended—

(a) in the marginal note by deleting the words “father of child born out of wedlock” and substituting therefor the words “presumptive guardians”

(b) in sub clause (2)—

(i) by deleting paragraph (g)

(ii) in paragraph (h) by deleting the words “or knowing that he was not legally married to the mother of the child”

Hon. Temporary Deputy Chairman, one of the first things we are doing or seeking to do is to delete the marginal note which says “financial provision by step parents and father of child born out of wedlock” when actually it relates to presumptive guardians. So I am actually suggesting that we remove the words “father of child born out of wedlock” to replace them with the words “presumptive guardians”.

I am proposing to amend sub-clause (2) by deleting (g) which is saying that one of the things the court will look at is the financial capacity of any of the child’s siblings. I am not aware of any law that obligates a sibling to take care of a child. For a parent, yes but a sibling may or may not. It is not obligatory.

In paragraph (h), I am proposing to delete the words “or knowing that he was not legally married to the mother of the child”. Again, this is in relation to what I have indicated about Article 53.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, I have just looked at the Bill. Actually what you are amending is in paragraph (i) but what is indicated is (h). However, this will be taken care of. You can just give an indication so that it goes on record.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I actually agree with you. I made reference to what is in the Order Paper as (h) but actually I was referring to (i) which is the same issue on whether the respondent assumes responsibility of the maintenance of the child. So, I move for paragraph (i).

The Temporary Deputy Chairman (Hon. Christopher Omulele): That is very well. Therefore, I will now have a retake on that.

(Clause 117 as amended agreed to)

(Clauses 118, 119, 120, 121, 122, 123 and 124 agreed to)

Clause 125

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I beg to move my amendment but by providing a further amendment to my own amendment because I think the drafters did not capture it. I think it was a lot. This is because I had proposed deletion of sub-clause (1) and gave new one but what they have done is provide exactly the same one. So, what I am proposing is deletion of the words on the second last paragraph which is on the father of a child born out of wedlock so that we delete the words “or the father of a child born out of wedlock”. Otherwise, there is no amendment. They have actually provided exactly what is in the Bill. So, my amendment...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, you run in contravention of our Standing Order No. 143 that requires that if you want to move an amendment, it must be formal. Probably, it is only the Chair...

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, maybe you need to clarify this. It is true a Chair can move a new amendment but I can bring an amendment to my amendment. That is actually allowed. This is my amendment. The other one where I let it go is because I was in a different clause. However, this one is the same clause which I am moving a further amendment to my own amendment. That is actually allowed by the Standing Orders. If I have my own amendment, I am allowed to move a further amendment to my own amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): That is sensible.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I am actually saying I am moving my amendment with a further amendment to my amendment by deleting the words “or the father of a child born out of wedlock” which is in the Order Paper.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Proceed, Hon. Millie.

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

THAT Clause 125 of the Bill be amended—

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

(1) In this Part—

“guardian” means a person appointed by will or deed by a parent of a child or by an order of court to assume parental responsibility over a child on the death of the parent of the child either alone or jointly with the surviving parent of the child, or the father of the child born out of wedlock in accordance with the provisions of this Act;

“presumptive guardian” means a person or persons who are not parents or legal guardians of the child, but who ordinarily exercises care and control over the child singly or jointly with the spouse or one or both parents of the child.

(b) in sub clause (9) by inserting the following new paragraph immediately after paragraph (a)

“(aa) the power to create a Trust Fund for the child in respect to any estate of the child.”

However, I am moving a further amendment by deleting the words “or the father of a child born out of wedlock” which is appearing in the third and second last sentences or immediately before the words “in accordance with the provisions of this Act”. That is my further amendment to my own amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): You are in order, Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Further, the amendment is to also indicate what a presumptive guardian means. Also in sub-clause (9) by inserting a new paragraph

(aa) just before (a) which is without prejudice to (6) and (7). The guardian appointed should have the power to create a fund for the child in respect of any estate of the child before we then say what the powers are. So they need to have a power to create a fund before then we give them the powers.

(Question of further amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have the Chair.

Hon. Josphat Wachira (Mwea, JP): Thank you, Hon. Temporary Deputy Chairman. Whereas we do not have any problem with the first amendments, the second one on the presumptive guardian does not seem to have been used anywhere in the Bill or if it is, maybe the Hon. Member could refer us to the page where it is used.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, do you want to clarify for the Chair?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes, Hon. Temporary Deputy Chairman. We just passed an amendment making the marginal note ahead on the issue of presumptive guardian. It is an amendment we have just done now. Let me just check and confirm for you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): If you look at the Order Paper, it is at 117.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I understand what the Chair is talking about.

Hon. Temporary Deputy Chairman, in Clause 117, the marginal note becomes presumptive guardians. We have changed the marginal note to presumptive guardian. Therefore, we will define what it is. However, we can pass it and then once we consult, it can be subject to recommittal. It was already passed in the marginal note in Clause 117.

The Temporary Deputy Chairman (Hon. Christopher Omulele): I can see it. She makes sense.

Hon. Josphat Kabinga (Mwea, JP): I need your guidance, Hon. Temporary Deputy Chairman. Do we define marginal notes?

The Temporary Deputy Chairman (Hon. Christopher Omulele): They are definitive of what is in the body of any work.

Hon. Josphat Kabinga (Mwea, JP): Do we go ahead and define them again?

The Temporary Deputy Chairman (Hon. Christopher Omulele): If they are explanatory, there is no harm in making something clear.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I can say something.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes, Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, if we have made reference in the marginal note of presumptive guardian and we do not explain what it is, I can let it pass here but bring it in Clause 2, which is still on definition. That is still okay. Then we can sit and look at it in Clause 2. This was an advice from the Legal Department. I can withdraw it and then move the other amendments. We will move it in Clause 2. I highly suspect that we may not finish tonight.

Hon. Josphat Kabinga (Mwea, JP): Thank you.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I move the amendment without the definition of “presumptive guardian.”

*(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona
on definition of “presumptive guardian” withdrawn)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well, Hon. Millie. You have withdrawn the proposed definition of “presumptive guardian.” Hon. Chairman, do you agree with that?

Hon. Josphat Kabinga (Mwea, JP): Yes, I am happy with that now.

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

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

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

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

Hon. Chairman, you also have a proposed amendment.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 125 of the Bill be amended in sub clause (9) (c) (ii) by deleting the word “Director” and substituting therefor the word “Secretary”;

It is about nomenclature. We are replacing the word “Director” with the word “Secretary” as we have done before.

(Question of the amendment proposed)

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

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

(Clause 125 as amended agreed to)

(Clause 126 agreed to)

Clause 127

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. You will excuse us because some of us are about to reach the end of our thinking capacity. It has been a long day with many amendments.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 127 of the Bill be amended in sub clause (5) by deleting the word “regarding” appearing in paragraph (d) (i).
This is a typographical error because it does not make grammatical sense.

(Question of the amendment proposed)

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

(Clause 127 as amended agreed to)

Clause 128

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

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairman, in this clause we have new Clause 128A, which will come later.

The Temporary Deputy Chairman (Hon. Christopher Omulele): You have a proposal to amend Clause 128. The new clauses will come later.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairman, we are inserting Clause 128A immediately after Clause 128.

The Temporary Deputy Chairman (Hon. Christopher Omulele): That is alright. There is no amendment. It is a new clause.

(Clause 128 agreed to)

Clause 129

The Temporary Deputy Chairman (Hon. Christopher Omulele): Both Hon. Chairman and Hon. Millie have proposed amendments on this clause. We shall start with Hon. Chairman.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 129 of the Bill be amended –

(a) in sub clause (1) by deleting the words “be determined” and substituting therefore the word “expire”; and,

(b) in sub clause (3) by deleting the word “Director” in paragraph (d) and substituting therefor the word “Secretary”.

The expiry of a guardianship is 18 years unless the court determines otherwise. We also want to align this clause with the nomenclature changes as the Director of Children Services is now the Secretary of Children Services.

Thank you.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo, you have a proposal to amend this clause too.

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

THAT, Clause 129 of the Bill be amended in sub clause (3) by deleting the words “prior to the child’s eighteenth birthday” appearing in the opening statement.

The reason I am suggesting this is that you find very many cases where a parent discovers about the problem after the child’s 18th birthday. You are then stuck because it is not your fault. It should not be limited to a discovery beyond a child’s 18th birthday.

Clause 129 (2) of the Bill deals with a child who suffers from mental or physical disability. We have dealt with many such cases in the past. One guardian or parent suffers because the issue was not discovered before the child’s 18th birthday. It is wrong to provide for that. Even if it is discovered after, it should be under exceptional circumstances as opposed to within the 18th birthday.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chairman, do you have something to say to this?

Hon. Josphat Kabinga (Mwea, JP): Yes, I have.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Proceed.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairman, we have a problem in this one. We have already passed in my amendment that guardianship terminates at age 18 unless it is determined otherwise by the court. Therefore, the statement that Hon. Millie wishes to delete qualifies the fact that the application for extension must be commenced before a child attains age 18. Thereafter, it is out of the scope of the guardianship, as I have just said.

Therefore, we oppose the amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I may reconsider to the extent that we define a child up to 18 years. So, my amendment, even though well-meaning, maybe self-defeating. We actually have very many serious cases where a child is beyond 18, has a mental incapacity and we find one person suffering while others go scot-free. However, age 18 is beyond the scope of the Act.

I understand and withdraw my amendment.

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): That is very good of you, Hon. Millie. I therefore now proceed on the basis that Hon. Millie has withdrawn her proposal to amend the clause.

(Clause 129 as amended agreed to)

Clause 130

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Hon. Millie Odhiambo.

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

THAT, Clause 130 of the Bill be amended in sub clause (6) by inserting the following new paragraph immediately after paragraph (c)—

“(d) an interested person

The appointment of a guardian may be terminated at any time by an order of the court on application in the prescribed form and it provides very specific people. It should not just be limited to those specific people. It can also be by an interested person because the way we move about it even under the Constitution is that an interested person should be able to move an issue in relation to a child. If we only limit it to a parent or guardian or to a child to whom the appointment relates or to a relative, sometimes they may not have the interest of the child and the child may be too young. So, we may need an interested person.

Hon. Mohamed Duale (Dadaab, KANU): On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Just hold on for a second, Member for Dadaab. I will give you an opportunity after I finish proposing.

(Question of the amendment proposed)

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairman, this is an area we do not have much problem but we are just wondering who the interested person is. All along we have defined people who are related here but who is this interested person? The Mover can tell us. Other than the guardian, who is this other interested person?

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, can you clarify?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes, Hon. Temporary Deputy Chairman. When I was a lawyer at the Cradle, I was an interested person that I could bring a case in relation to a child. I could also not be working at the Cradle but I am a neighbour who sees that something wrong is happening. I am an interested person in that case but for clarity...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Basically, what you are saying, Hon. Millie is that interested party is a technical term that is used in legal...

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes. I am also saying that for clarity, we can define it.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair.

Hon. Josphat Kabinga (Mwea, JP): The reason I asked the Mover to clarify is because in this Bill, there is the Secretary of Children Services who is technically supposed to represent all the interests of a child. Anybody who has an interest has a leeway of directing it through the Secretary of Children Services. So, when we now introduce this term in the Bill, we have a problem with that because as I said the Secretary is the authorised officer to represent all matters of a child and anybody with any interest can channel the interest to the Secretary. I see no reason why we would want to add something that is not fully defined in this Bill.

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Member for Dadaab, were you rising on a point of order? Proceed.

QUORUM

Hon. Mohamed Duale (Dadaab, KANU): Thank you, Hon. Temporary Deputy Chairman. I want to bring to your attention the fact that we do not have quorum as per Standing Order No.35.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Thank you. You have a point, Hon. Dahir. It is evident that we do not seem to have quorum.

I therefore now direct that the Quorum Bell to be rung for 10 minutes.

(The Quorum Bell was rung)

Hon. Ichung'wah, you are not appropriately dressed. That is completely disorderly.

An Hon. Member: He is coming for Kshs. 5,000.

The Temporary Deputy Chairman (Hon. Christopher Omulele): I now direct that the Bell stops ringing. It is evident that we might not be able to reach the quorum that we require.

(Several Members walked on the aisles)

Order, Members. You can resume your seats so that we do what we have to do to bring this to a close. I wish to put it on record that we are unable to raise quorum. We will now move to report progress.

(The House resumed)

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

REPORT

THE CHILDREN BILL

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, pursuant to Standing Order 35(2)(b), I beg to report that quorum was not realised upon expiration of 10 minutes of ringing the Quorum Bell.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 6.16 p.m., this House stands adjourned until Tuesday, 17th May 2022, at 2.30 p.m.

The House rose at 6.16 p.m.