

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 1st December 2020

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: I will issue Communication a little later when we get to business.

PETITIONS

ACTIVITIES OF NZOIA QUARRY LIMITED

Hon. Speaker: Hon. Members, pursuant to Standing Order 225(2)(b) requiring the Speaker to report to the House any Petition other than those presented by Members, I wish to report to the House that I have received a Petition from members of the Manyoni Community in Lugari Sub-County, Kakamega County.

The Petitioners are farmers who predominantly rely on subsistence farming and also keep domestic animals. In 2017, Nzoia Quarry Limited acquired land in the area for purposes of mining of stones. As a result of poor environmental impact assessment of the quarry, environmental pollution occasioned by operations of the factory has been disastrous. Deafening noise caused by the blasting machine operations has affected the learning environment in neighbouring schools and is detrimental to the health of children, the sick, expectant women and the elderly. In addition, dust emitted from the mining activities has caused air pollution which has resulted in respiratory problems, caused redundancy in the growth of crops and limited availability of clean water for domestic use.

Hon. Members, the Petitioners further aver that the presence of trucks carrying heavy loads of quarry materials have resulted into rapid deterioration of infrastructure by weakening of bridges and rendering roads impassable during rainy seasons. The petitioners are concerned that Nzoia Quarry Limited has not made any attempts to integrate with the local community through offering of opportunities nor through corporate social responsibility activities. Efforts by the petitioners to have the matter resolved by relevant stakeholders have been futile.

The Petitioners, therefore, pray that the National Assembly makes recommendations that it deems fit in addressing the circumstances raised in this Petition, including ensuring that Nzoia Quarry Limited compensates the affected persons and realigns its operations so as to exist harmoniously with the locals.

Hon. Members, pursuant to the provisions of Standing Order No.227, this Petition stands committed to the Departmental Committee on Environment and Natural Resources for

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consideration. The Committee is required to consider the Petition and report its findings to the House and the Petitioners in accordance with Standing Order 227 (2).

I thank you.

RESETTLEMENT OF SQUATTERS OF TUCHA/KIANDOGORO
FOREST ON SOLIO RANCH VILLAGE 5

Hon. Members, there is yet another Petition, which I have received from residents of Tetu Sub-County, representing evictees from Tucha/ Kiandogoro Forest.

The Petitioners affirm that they are part of 534 households that were duly vetted on 11th October 2017 by a committee led by the Deputy County Commissioner, Tetu Sub-County. The Petitioners state that they were evicted from Tucha/Kiandogoro Forest in 1988 with a promise to be resettled at Solio Ranch Vilage 3. Unfortunately, people who were not validated as evictees ended up being the beneficiaries, leaving the legitimate beneficiaries homeless and destitute.

The Petitioners assert that in 2008, a major resettlement was done to evictees from Kabaru, Naro Moru and Hombe in Mount Kenya Forest and those evicted from Kabage and Zaina in Aberdare Forest, leaving out evictees from Tucha/Kiandogoro Forest. Currently, the Tucha/Kiandogoro Forest evictees are scattered all over Nyeri County. Most of them work as casual labourers with limited chances of making a living from agriculture, the main economic activity, due to lack of land to cultivate. The Petitioners claim that Village 5 of Solio Ranch is still vacant and unsettled on.

Hon. Members, the efforts of the Petitioners to have the matter resolved by the relevant authorities have culminated into the Regional Commissioner, Central Region advising them, vide a letter dated 18th December 2019, to file a Petition to Parliament since the matter required intervention from several Government agencies.

The Petitioners, therefore, pray that the National Assembly intervenes to have these evictees resettled.

Pursuant to the provisions of Standing Order No.227, the Petition, therefore, is committed to the Departmental Committee on Lands for consideration. The Committee is required to consider it and report its findings to the House and Petitioners in accordance with Standing Order No.227(2).

I see there are a few comments. Let us start with the Member for Kimilili.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker. I just want to comment on the first Petition by the constituents of Lugari Constituency. It is very important that any contractor who is involved in any kind of activities ensures mitigates pollution. If he is mining, he must ensure that the pits are properly filled to prevent them from posing as health hazards to the communities.

The Committee's report will also be used to find out what the Government can do in other areas. Those pits are all over the country. I support the Petition.

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

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

On top of what the Member has stated, one of the best mitigation exercises has been done by the Mombasa Cement. They have covered up pits and created forests. That should be the standard because this is happening all over the country.

It is not only this particular pollution. There are others who emit a lot of dust. Cases of death due to respiratory problems, especially of children, have already been reported. This time, the Committee and the House need to be heard on this so that the environmental impact assessment

is complied with and the company is then forced, after such activities, to make sure that they improve the environment, especially if they can create forests as is the case with the Mombasa Cement.

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

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I support the Petition by the constituents of Lugari on the company that is engaging in quarrying.

With regard to issues about quarrying, the Departmental Committee on Environment and Natural Resources - and I have seen the Chair - needs to come up with a common policy especially on the road network towards the quarry site. Many of those people just collect stones and blocks, but do not care about the roads. As a Member of Parliament, you have used resources to prepare that road. You have used funds from the Kenya Rural Roads Authority (KeRRA) to construct the road, but they do not take care of it. We need a policy on holding them accountable whenever they do that.

On the second Petition by residents of Tetu, forest evictees have undergone a lot of trauma. It is not just limited to Tetu. It also spills to over into areas where we have forests like Mt. Elgon Forest, where people were evicted from Smith Farm and Soronzo Farm. These are farms with LR numbers. They have been evicted. We brought a Petition to this House. The Committee went to the site and made recommendations, but, unfortunately, those recommendations have not been implemented. The Ministry of Lands appeared before the Departmental Committee on Lands and admitted that they collected money. The Government received money from those communities, especially Soronzo Farm, Smith Farm and others. They got money from poor Kenyans who settled in those farms. Eventually, the Government gazetted those farms, those people were evicted from the forest during the time of the Sabaot Land Defence Forces (SLDF) and are still suffering. Nothing has been done to assist those communities.

As the Committee also looks into that, past injustices that have been committed against those communities should be looked into. I hope the Committee on Implementation can look at some of those reports and have them expedited. When you begin a new petition and similar old petitions have not been solved, the House might be working in futility and we do not want that.

Hon. Speaker: I do not know whether everybody understands what SLDF stands for. That must be the Sabaot Land Defence Forces. Let us have Hon. Wangwe.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. I wish to comment on the Petition from residents of Lugari especially Manyonyi. Lugari Constituency is my neighbour. The concerns that they have raised actually happen.

The National Environment Management Authority (NEMA) should be cognisant of the fact that approval of licences should not be confined to the environment where the mining will take place. They should consider the environment in totality in terms of the shipment of the material from where they are mining to the end user. If NEMA could consider the route from the quarry up to how lorries get to the tarmac, these concerns would not be raised. The NEMA has left it open and destruction of infrastructure is ongoing, but they only concentrate on the quarry itself. Therefore, it is my take that NEMA takes cognisance of that fact whenever they give out licences to miners.

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

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Speaker for the opportunity. I want to comment on the second Petition on the evictees who, from what I hear, are almost becoming squatters in their own region.

One of the biggest problems we have as a country is land. When you listen to that Petition, the provincial administration and the Ministry of Lands seem to be involved. Maybe as this Committee deals with this, they need to figure out exactly who should deal with matters of land. Is it the National Land Commission? Many people go to different offices seeking solutions. They spend a lot of time, energy and money, but they cannot get help. It is important to figure out who can handle this matter to its logical conclusion, so that these issues stop being a bother to Kenyans continually.

Hon. Speaker: They say that because of the many agencies involved, the Regional Commissioner advised that it was better for them to go to Parliament. In exercise of their rights under Article 118 of the Constitution, they have come to the right place.

Finally, let us have Hon. Mutunga, Member for Tigania West.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Speaker for the opportunity to comment on the first Petition by the people of Lugari.

The environmental impact assessment is done to not only take care of the environment, but the people as well. Its purpose is to make sure that the people are not affected. When we transport hazardous substances, there should be precaution even on the routes that the substances cover and the handling processes themselves. There is a question when people are affected. It means that the impact has gone very far. Therefore, NEMA needs to move with speed to make sure that they do the correct environmental impact assessment, especially the impact on the people themselves, so that we can classify the substances as either hazardous or non-hazardous and then look at the handling processes themselves.

Hon. Speaker: Let us have Hon. Njomo Kang'ethe.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Speaker. Mining is one of the economic activities that can really change the economy of our country yet it is also one of the activities that really mess up our environment.

In the last Parliament when we were doing the mining law, I had the opportunity to go for a study tour in Australia which is one of the best mining destinations and where environmental matters are taken very seriously. Our NEMA has a long way to go to be able to manage our environment, right from the way we extract building stones from our quarries, to the way we transport sand and go messing up and dropping sand particles along the road. There is so much that needs to be done. I would like to challenge NEMA to take their work seriously so that we improve on our mining activities.

There is a survey which is going on to try and establish where our minerals are, so that it is easier for us to extract them. As this is going on, it is very important for NEMA to pull up its socks, so that we do not mess our environment as we try to build our economy. We must build our economy and environment in the right way.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Kangema.

Hon. Clement Kigano (Kangema, JP): Thank you, Hon. Speaker. I rise to support the first Petition. It puts in mind matters of NEMA. This is the umpteenth time that we have matters on NEMA and their lethargy in administering mining matters.

The country is depleted. It has mining sites and pits that are not rehabilitated or reclaimed. There are many examples to see. For example, along Thika Road, Ndaragwa Constituency, Kenol and between Kenol and Murang'a Town. This House and the country should re-think why we have NEMA. You can visit a site which has no ablution. You can see another site that was a wetland. I have spoken on matters of wetlands here. Our lives depend on them. If you visit many places, you

will find buildings coming up in wetlands which are already reclaimed. For example, in Kiambu Road. The junction on the Northern Bypass and Kiambu Road is built up. Other examples are Ngong' Hills and Murang'a Town. All these are matters of NEMA. As a country, we should ask ourselves these matters because our lives depend on the environment. What is the role of NEMA? Should this country have NEMA? Should we rehabilitate NEMA? Should we have a fresh NEMA with new or imported staff from Australia or elsewhere to administer our environment?

Thank you, Hon. Speaker.

Hon. Speaker: Member for Nyaribari Chache.

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Speaker for the opportunity to speak to this Petition. Whereas we appreciate the impact of industrialisation in a country, we have to do it in a structured way that will not hurt our economy. The people whom we represent require safety which can only come from this House.

We have cases where mining is done, especially in Kisii County where I come from. The quarries which are left behind cause more harm than good to the community. The harvesting system that is used to harvest stones which are later crashed to become ballast is old-fashioned and dangerous to the environment and community. In my neighbouring constituency, Bobasi, ballast harvesting causes damage to the community. Houses are destroyed. Courtesy of the explosions, women abort. The NEMA should come up with a standard way which ensures that people harvest sand and ballast using modern technology. There are ways which can be used to do it better.

We want to support our economy and ensure that it grows. We cannot do it without the industries. However, they have to use modern technology which will not cause harm or danger to the people whom we represent. The dust from mining causes a lot of asthma in the community. Research which was conducted confirmed our worst fears. Part of the challenges that cause asthma in the neighbouring community where ballast harvesting is being done is the dust from the ballast. We have to engage NEMA which needs to improve its way of doing things, so that they can protect the country and the economy. Treatment of the diseases is very expensive.

With those few remarks, I support the "Motion" which is timely. Thank you.

Hon. Speaker: Maybe you came after I read out the Petition. There is no Motion. Comments and clarifications on petitions are very limited. When you introduce some other dimensions, it becomes very difficult. The Member for Maara who is also the Chairman of the Departmental Committee on Environment and Natural Resources.

Hon. Kareke Mbiuki (Maara, JP): Thank you, Hon. Speaker. At the outset, I acknowledge the Petition from the people of Lugari Constituency and at the same time appreciate the sentiments by Hon. Members in regard to the management of our environment.

As we appreciate the work which is being done by the exploiters of our natural resources, we should also be cognisant of the environmental impact associated with this mining. Quite a number of Members have raised several issues to do with NEMA. It has been having challenges even in recruitment of experts. Many of the experts who are hired by NEMA to come up with environmental impact assessment reports are teachers who normally do very short courses. They are given the consultancy jobs to undertake this important work. We shall call upon NEMA to review the hiring and training of the consultants. They need to be trained professionally in matters to do with the environment, so that they can come up with environmental impact assessment which conforms to the laws of the country.

The NEMA faces a big challenge in terms of compliance. It normally goes out of its way to issue licences with conditionalities. However, the compliance of those conditionalities becomes

a very big problem. Hon. Kigano Muturi has indicated the issues of wetlands. The other day, we went to Kilifi County where Mzuri Sweets Company was licensed by NEMA to reclaim vast pieces of wetland. When my Committee visited the site and raised serious issues on the reclamation of that wetland, NEMA suspended that licence. The NEMA fails completely in compliance of the licence conditionalities that they issue. I want to make an undertaking and promise this House that the Departmental Committee on Environment and Natural Resources will be seized with this matter. We will expeditiously file our report in this House.

I thank you, Hon. Speaker.

Hon. Speaker: The last Member to contribute is Hon. Sakwa Bunyasi.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Speaker. I rise to have an input in this Petition. First, I support it. I share the sentiments of my colleagues who have talked about the after-effect and the need to restore the physical environment as much as possible.

I also want to emphasize the second-order effects that occur on health long after the act may be over either in water or air. I want to put particular emphasis on the oversight of these activities. The law and NEMA are in place. The remarks of the Chairman of the Committee have touched the soft underbelly of NEMA. By virtue of the actors and in cases where they go before them, they are unsure which way to act and they wait to see where the leaning goes before they arise. I have experienced instances of indecisiveness and vague letters with the NEMA. Their work is supposed to be science-based and perhaps that translates to something that is continuously controversial. We need a more decisive NEMA.

This is a real issue. As we look at specific cases such as those implied in this very timely Petition, we should now also think more deeply about NEMA. It was not a joke when Hon. Kigano suggested that maybe they should hire experts from outside. They are not using the scientists and policy makers they have effectively. That is a real issue there.

With those few remarks, I hope that a lot of these will come out in the discussion around the Petition. I support the Petition.

Hon. Speaker: The first Petition is referred to the Departmental Committee on Environment and Natural Resources; that is the Petition from the residents of Lugari. The second Petition by the residents of Tetu is referred to the Departmental Committee on Lands.

Next Order!

PAPERS LAID

Hon. Speaker: Majority Whip, you may have the Floor.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of House:

Reports of the Auditor General and Financial Statements in respect of the following institutions for the year ended 30th June 2019 and the certificates therein-

- (a) State Department for Livestock.
- (b) State Department for Correctional Services.
- (c) Machakos University.
- (d) Cash Transfer Program for orphans and vulnerable children - IDA Grant No. 097272-KE.

Thank you, Hon. Speaker.

Hon. Speaker: Next is the Chairman of the Members Services and Facilities Committee. I am wondering why you are tabling Reports of things that happened in August and October last year.

Hon. Ezekiel Ombaki (Nyaribari Masaba, NAPK): I am sorry, Hon. Speaker. This is because of COVID-19 and we had to go to a retreat before we came up with the report. We are sorry that we are tabling them a little bit late.

Hon. Speaker: I think even the Secretariat in your Committee stand indicted. Surely, they ought to have prepared those reports, so that they would be relevant because I can see they are very useful reports. I went through them and they are very useful reports, but you can proceed.

Hon. Ezekiel Ombaki (Nyaribari Masaba, NAPK): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of House:

Reports of the Committee on Members Services and Facilities on-

- (1) Leadership Seminar held in Kuala Lumpur, Malaysia on 26th to 30 August 2019.
- (2) Study visit to the Legislative Assembly of the Republic of Canada on 14th to 18th October 2019.
- (3) Study visit to the Parliament of Turkey of 14th to 20th October 2019.

Thank you, Hon. Speaker.

Hon. Speaker: Next is the Chairman of Departmental Committee on Labour and Social Welfare, Hon. Mwathi.

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of House:

Reports of the Departmental Committee on Labour and Social Welfare on its consideration of-

- (1) A public Petition regarding payment of salary arrears to staff of the Kenya Postal Corporation of Kenya (KPC).
- (2) The Employment Amendment Bill (National Assembly Bill No. 79 of 2019).
- (3) Report on fact-finding visit on social protection measures put in place by the Government in combating COVID-19 pandemic in the Coastal Region.

I thank you.

Hon. Speaker: Very well. The Chairman of Departmental Committee on Finance and National Planning. Can we have the Vice-Chairperson, Hon. Waihenya Ndirangu?

Hon. Isaac Ndirangu (Roysambu, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of House:

Report of the Departmental Committee on Finance and National Planning on its consideration of the agreement for the avoidance of double taxation between the Government of the Republic of Kenya and the Government of the Republic of Mauritius (Legal Notice No. 114 of 2020).

Hon. Speaker: Very well. The Chairman of Departmental Committee on Administration and National Security.

Hon. Paul Koinange (Kiambaa, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of House:

Report of the Departmental Committee on Administration and National Security on its consideration of the Narcotics Drugs and Psychotropic Substances (Control Amendment Bill 2020).

Thank you very much, Hon. Speaker.

Hon. Speaker: The Chairman of Departmental Committee on Lands.

Hon. (Dr.) Racheal Nyamai (Kitui South, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of House:

Report of the Departmental Committee on Lands on its consideration of a Petition by residences of Chepchas regarding historical land injustices in Chepchas area in Bomet and Kericho counties.

Thank you very much, Hon. Speaker.

Hon. Speaker: Very well. The Chairman of Departmental Committee on Education and Research.

Hon. (Ms.) Florence Mutua (Busia (CWR), ODM): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of House:

Report of the Departmental Committee on Education and Research on the Petition regarding imminent closure of the Jomo Kenyatta University of Agriculture and Technology (JKUAT), Kakamega Campus by Hon. Titus Khamala.

Thank you.

Hon. Speaker: Very well. Next Order!

NOTICES OF MOTIONS

Hon. Speaker: The Chairperson on the Select Committee on Implementation, Hon. Ole Kenta. Is Hon. Ole Kenta present?

Next is the Vice-Chairperson of the Departmental Committee on Finance and National Planning. Hon. Waihenya, you are giving Notice. All you need to do is to press the intervention button.

ADOPTION OF REPORT ON AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION BETWEEN KENYA AND MAURITIUS

Hon. Isaac Ndirangu (Roysambu, JP): Hon. Speaker, I am not seized of that Notice yet.

Hon. Speaker: It is the Notice of Motion for Adoption of the Report which you have just tabled.

Hon. Isaac Ndirangu (Roysambu, JP): Hon. Speaker, I beg to move the Motion.

Hon. Speaker: No, you are not moving. Order No. 6 is Notices of Motion.

Hon. Isaac Ndirangu (Roysambu, JP): Thank you, Hon. Speaker for indulging me.

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

THAT, the House adopts the Report of the Departmental Committee on Finance and National Planning on its consideration of the Agreement for the avoidance of double taxation between the Government of the Republic of Kenya and the Government of the Republic of Mauritius laid on the Table of the House on Tuesday, 1st December 2020 and pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act, 2012 approves the Agreement for the avoidance double taxation between the Government of the Republic of Kenya and the Government of the Republic of Mauritius.

Thank you, Hon. Speaker.

Hon. Speaker: Chairman of the Departmental Committee on Labour and Social Welfare.

MEASURES TO COMBAT COVID-19 PANDEMIC IN COASTAL REGION

Hon. Peter Mwathi (Limuru, JP): Hon. Speaker, I beg to give Notice of the following Motion:

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THAT, this House adopts the Report of the Departmental Committee on Labour and Social Welfare on a fact finding visit on social protection measures put in place by the Government in combating COVID-19 Pandemic in the Coastal Region laid on the Table of the House Tuesday, 1st December 2020.

Thank you.

Hon. Speaker: For the second time, the Chairperson of the Select Committee on Implementation, the Hon. ole Kenta. Or let us have the Vice Chair, Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Speaker, I saw my Chair around, but I am wondering why he is not in the Chamber. Let me find out.

Hon. Speaker: He was merely supposed to give Notice of a Motion for adoption of a status report on the question of non-payment of former employees of the Kwale International Sugar Industry.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Speaker, I am aware that the report is ready and the Motion is also ready for notice. Give me a few minutes I find out.

Hon. Speaker: He can do it on Thursday.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you.

Hon. Speaker: He can do it on Thursday morning since he has chosen to be away. It is very much unlike Hon. ole Kenta.

Next Order.

ORDINARY QUESTIONS

Hon. Speaker: The first Question is by the Member for Trans Nzoia, the Hon. Janet Nangabo, who has written to request that the Member for Vihiga asks the Question on her behalf, Hon. Beatrice Adagala.

Question No.343/2020

REHABILITATION OF KITALE TOWN RAILWAY NETWORK

Hon. (Ms.) Beatrice Adagala (Vihiga CWR, ANC): Hon. Speaker, I wish to ask Question No.343/2020 on behalf of the Member for Trans Nzoia, Hon. Janet Nangabo, to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

- (i) What immediate plans are in place to rehabilitate and revamp the railway network to Kitale Town in Trans Nzoia County, to enable farmers along the North Rift Region who rely on agricultural economic activity to transport their produce to markets?
- (ii) Does the Ministry intend to synchronize the Kitale Line rehabilitation programme with the ongoing works at other railway lines such as the Nakuru, Gilgil and Nyahururu routes?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Transport, Public Works and Housing.

The next Question is by the Member for Nyando, Hon. Okelo.

*Question No.345/2020*MEASURES TO ENSURE FLOOD PRONE SCHOOLS IN
NYANDO RESUME LEARNING IN 2021

Hon. Jared Okelo (Nyando, ODM): Hon. Speaker, I beg to ask Question No.345/2020 to the Cabinet Secretary for Education:

- (i) Could the Cabinet Secretary explain what action the Ministry is taking to ensure that schools in Nyando Constituency that have been affected by flooding are ready to accommodate pupils and students upon resumption of schools in January 2021?
- (ii) What efforts is the Ministry making to ensure that learning in these flood-prone schools remains uninterrupted or unhindered during rainy seasons?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Education and Research.

The next Question is by the Member for Lamu County, Hon. Captain (Rtd.) Ruweida.

*Question No.351/2020*MEASURES TO ALLEVIATE THE
PLIGHT OF BAJUN PEOPLE

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Hon. Speaker, I rise to ask Question No.351/2020 to the Cabinet Secretary for Interior and Coordination of the National Government:

- (i) Could the Cabinet Secretary explain the measures taken by the Ministry to address the plight of the Bajun people of the Coastal region who have endured years of neglect, disservice and historical injustice in their own motherland?
- (ii) What specific affirmative and other measures is the Government pursuing to assist Internally Displaced Persons from among the Bajun community in securing their livelihood?

Thank you, Hon. Speaker.

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

The next Question is by the Member for Rabai, Hon. Kamoti Mwamkale.

*Question No.355/2020*POLICY MEASURES TO PURCHASE AND MARKET
CROPS FROM FARMERS IN KILIFI COUNTY

Hon. William Mwamkale (Rabai, ODM): Hon. Speaker, I rise to ask Question No.355/2020 to the Cabinet Secretary for Agriculture, Livestock and Fisheries:

- (i) What policy measures has the Ministry put in place to facilitate the purchase and marketing of crops from farmers who have experienced a bumper harvest and have excess stock of the produce in particular cassava farmers in Kilifi County?

- (ii) Could the Government consider compensating such farmers who have failed to secure market for their excess produce despite investing millions of shillings as encourage by the Government through bank loans that have accumulated interests and other charges?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Agriculture and Livestock.

The next Question is by the Member for Starehe.

Question No.359/2020

PROVISION OF FOOD AND RELIEF COMMODITIES DURING CALAMITIES

Hon. Charles Njagua (Starehe, JP): Hon. Speaker, I rise to ask Question No.359/2020 to the Cabinet Secretary for Devolution and ASALs:

- (i) Could the Cabinet Secretary explain the plans put in place by the Ministry to ensure food and relief items are kept in stock for emergencies such as droughts, famine and other calamities?
- (ii) What steps has the Ministry taken to mitigate against any inadequacies and provide the much-needed food and other relief commodities when droughts and other calamities happen?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Agriculture and Livestock.

Member for Subukia, Hon. Gachobe. Member for Subukia.

(The Clerk-at-the-Table consulted the Hon. Speaker)

Hon. Speaker: Is this Hon. Jane Kihara? Have you been sent by Hon. Gachobe?

Question No.365/2020

RECRUITMENT OF CHIEF FOR WEI LOCATION, SUBUKIA SUB-COUNTY

(Hon. (Ms.) Jayne Kihara consulted the Speaker)

Hon. Members, the Member says that he is still held up in traffic. He can ask the Question on Thursday morning. The Question is deferred to Thursday morning.

(Question deferred)

Next is the Question by the Member for Kiambu, the Hon. Jude Njomo Kang'ethe.

*Question No.366/2020*SALE OF HIGHLY ADDICTIVE NICOTINE TO MINORS
AND YOUTH IN KENYA

Hon. Jude Njomo (Kiambu, JP): Hon. Speaker, I beg to ask the Cabinet Secretary, Ministry of Health the following Question:

- (i) Is the Cabinet Secretary aware of the sale of a highly addictive nicotine product with the brand name “LYFT” which is sold in pouches in retail outlets countrywide, particularly in Kiambu Constituency?
- (ii) What action, if any, has the Ministry taken to ensure that the sale of this product is restricted to adults, considering that the target market seems to be unsuspecting minors and youth, causing adverse health complications, addictions and increased school dropout rates?
- (iii) Could the CS clarify whether the product is registered as a drug in Kenya, and confirm whether sufficient tests have been conducted with respect to its purity and grade of ingredients used in its manufacture?
- (iv) What are the recorded short-term and long-term side effects of “LYFT nicotine pouches” on humans, and how has the Ministry sensitized the public about the side effects?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Health.

(Hon. Kimani Ichung’wah spoke off record)

The Member for Kikuyu seems to know that it is not locally manufactured. Hon. Jude Njomo, did not seem to know that.

The next Question is by the Member for Naivasha.

*Question No.367/2020*ISSUANCE OF KCSE CERTIFICATE BEARING ANOTHER
PERSON’S PHOTOGRAPH TO MS. NJAMBI E. KIMANI

Hon. (Ms.) Jayne Kihara (Naivasha, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Education the following Question:

- (i) Is the Cabinet Secretary aware that one Ms. Njambi E. Kimani, an orphan of Index No. 27537502/037, sat her KCSE in Kiambogo Secondary School, Naivasha Constituency, in 2013 and was issued with a Kenya Certificate of Secondary Education (KCSE) certificate No. KCSE/13 0744474 bearing a photograph of another person?
- (ii) What action is the Ministry taking to ensure that Ms. Kimani is issued with a KCSE Certificate bearing her photograph?

- (iii) Could the CS explain what steps are in place to correct such errors whenever they arise?

Thank you, Hon. Speaker.

Hon. Speaker: That Question will be replied to before the Departmental Committee on Education and Research.

In the next segment, let us have the Majority Whip.

STATEMENT

PREPARATION FOR BURIAL OF THE LATE HON. JUSTUS MURUNGA MAKOKHA

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. Pursuant to the Standing Order No.43(1), I wish to make a Statement to the House regarding the preparation for burial of the late Member for Matungu Constituency, Hon. Justus Murunga Makokha.

It has now been confirmed that the burial of the late Member will take place on Saturday, 5th December 2020, at his home in Matungu Constituency. I also wish to inform the House that the requiem mass in this regard will be held at Saint Stephen Anglican Church of Kenya (ACK), along Jogoo Road, on Thursday, 3rd December 2020, starting at 2 p.m. Members and staff are invited to attend, but with strict observance to the Ministry of Health's COVID-19 protocols.

I also wish to thank Members of the *Ad-Hoc* Committee established by the Parliamentary Service Commission to spearhead the burial process for the efforts made so far towards the preparations.

I thank you, Hon. Speaker.

Hon. Speaker: The next Statement is by the Member for Teso North, Hon. Kaunya. Do you have a card?

REQUEST FOR STATEMENTS

KILLING OF EZEKIEL ODERA BY A POLICE OFFICER IN TESO NORTH

Hon. Oku Kaunya (Teso North, ANC): Thank you, Hon. Speaker. My microphone was not working.

Pursuant to the Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson, Departmental Committee on Administration and National Security on the killing of Mr. Ezekiel Odera by a police officer in Teso North Constituency.

Last Friday, on 27th November 2020, a group of armed police officers undertook patrol of Malaba area of Teso North Constituency in a bid to ostensibly curb the sale of illegal brew and to ensure adherence to the COVID-19 protocols including the wearing of masks by members of the public. During the course of the patrol, the police officers were heckled by a group of *boda boda* riders who were not comfortable with their approach. In response, to the heckling, one of the police officers shot and killed a 27-year-old Mr. Ezekiel Odera, an innocent and unarmed bystander from Kajeji Village in Teso North. In further aggravation of the situation, police officers used excessive force to disperse residents who were holding peaceful demonstrations against the shocking act of impunity.

It is in view of this alarming turn of events that I seek for a statement from the Chairperson, Departmental Committee on Administration and National Security. Hon. Speaker, I am a Member

of that Committee and I did inform the Chairperson. However, because of the public interest in this issue, I wish to ask the following:

- (i) Has the police officer responsible for the killing of Mr. Odera been arrested and arraigned in court?
- (ii) What specific compensation shall the Government accord the family of the late in the light of the fact that he was a bread winner and an innocent victim of police recklessness?
- (iii) What specific procedures are police officers expected to follow in ensuring adherence to COVID-19 protocols and other aspects of routine patrol in order to avoid unnecessary tension and confrontations with members of the public?
- (iv) What immediate action is the Ministry of Interior and Coordination of National Government taking to transfer police officers who have served at stations in Teso North Constituency for more than three years?

Hon. Speaker, I would like to mention that the public explanation of eyewitnesses indicates that this young man was shot because he did not wear a mask. Something of interest is that, in the police occurrence book (OB), the indication is that the officer shot in the air to disperse the crowd. That does not add up because this young man was neither in the air nor in any tall building. He was a bystander on the ground.

Hon. Speaker, I thank you for giving me that opportunity.

Hon. Speaker: Well. Your Chairperson is in the House. Hon. Koinange, do you wish to say anything about that?

Hon. Paul Koinange (Kiambaa, JP): Thank you, Hon. Speaker. I spoke to Hon. Kaunya yesterday when he told me of his concern.

Even before getting the Statement through the process here, I have already spoken to the Independent Policing Oversight Authority (IPOA). They have said that I should get a report by tomorrow. If you allow me, I will on Thursday give an advance report of what is happening on the ground.

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

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Hon. Speaker, I am sorry I had stepped out. I hope it is a Statement.

Hon. Speaker: Yes, you are giving a response to a request for a Statement by Hon. Didmus Barasa. He is also a Mutua.

MEASURES TO ADDRESS EMBEZZLEMENT OF FUNDS IN PUBLIC SCHOOLS

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Thank you, Hon. Speaker. I have a response to a request for Statement by Hon. Didmus Barasa, the Member for Kimilili on the measures the Ministry of Education, Science and Technology has put in place to address embezzlement of funds in public schools.

Hon. Speaker, the Ministry has instituted the following measures:

- (i) Appointment of Board of Management (BoM) for every school - the boards have been assigned the responsibility of managing school resources.
- (ii) Enhanced disclosure on utilisation of resources through adoption of International Public Sector Accounting Standards' (IPSAS') financial reporting standards.

(iii) Introduction of risk management in schools to minimise incidents of loss and misappropriation of funds;

(iv) Devised the Financial Management Instructions Manual for schools to improve accountability.

(v) Training schools finance managers on management principles and bursars on management of resources.

(vi) On-site audit of school funds as per the Public Finance Management (PFM) Act of 2012.

(vii) Revamped audit of school funds through establishment of the Directorate of Schools Audit and recruitment of additional auditors.

(viii) Enhanced collaboration with other agencies such as the Teachers Service Commission (TSC) to ensure that school administrators are subjected to administrative actions when audit findings are negative.

(ix) The Ministry has factored support under the PFMR strategic plan 2018-2023 to strengthen financial management systems at the school level.

Hon. Speaker, the second part of the request was on the status of the forensic audit of the Financial Year 2019/2020 requested by the BoM of Kimilili High School and whether the Ministry has taken action against the persons involved in the embezzlement of funds.

The audit was conducted from 29th July to 7th August 2020 pursuant to a request by the BoM of St. Luke's Boys High School, Kimilili, to conduct a forensic audit of books of accounts of the school for the period starting January 2020 to date. A preliminary audit report was forwarded on 5th October 2020. As the investigations continue, the Ministry has sought further information from the Registrar of Companies on details of the directors of the companies mentioned in the report.

Hon. Speaker, the third part of the request was on whether the Cabinet Secretary could provide a list of the suppliers and contractors who have been contracted to supply goods and services, stating the names of the directors in the said companies and itemised goods and services supplied by each, and state the criteria used in awarding contracts and tenders at Kimilili High School.

A search for the directors of the companies which supplied goods to the school is yet to be concluded at the Registrar of Companies in Nairobi. However, the audit team made the following observations on the procurement process:

- (i) There was irregular procurement of works, goods and services. The school procured goods and services for the construction of a tuition block at a cost of Kshs9,509,793 without following due procurement process. Similarly, the school approved the construction of a multipurpose hall which by the time of the forensic audit the school had incurred an expenditure totaling Kshs56,656,063.35 as at 30th April 2020.
- (ii) At the time of the audit, the project was not yet completed despite incurring expenditure that had exceeded the initial estimate of Kshs55 million to completion.

On implementing a project without a budget, it was observed that there were two capital projects during the year 2020 - construction of a tuition block using the Maintenance and Improved Fund and continuation of the multipurpose hall. However, the school had not drawn budget estimates for the aforesaid projects. During the tendering process, there was only one applicant called Komavi Enterprises who was awarded the tender for supply of hardware materials, but there was none for building materials and it was resolved that the school would source, seemingly using direct sourcing.

On the itemised goods and services supplied, various suppliers made deliveries of the said items although with varying prices. For instance, a sample of suppliers of different items in the school is indicated below. There is a very long list of the supplies that were bought. There is a very long detailed table there, of suppliers and what was bought.

Hon. Speaker, the last part of the Statement request was on whether the Cabinet Secretary could provide financial statements of any funds received from M/s Jenkins Check by the said school and give an account on how the funds have been utilised since 2007.

The audit of funds received from on M/s Jenkins Check is not yet complete and more time is required to comprehensively audit the expenditure related to the monies received from the said M/s Jenkins Check.

Thank you, Hon. Speaker. The Statement is signed by Prof. George A.O. Magoha, CBS, Cabinet Secretary.

Hon. Speaker: Hon. Barasa.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker. I first want to thank the Chair for providing this very detailed Statement. Going through this Statement, it is very clear that we have money that is lost. The report is very clear on the specifics where improprieties were recorded. I just want to ask the Cabinet Secretary to give an undertaking on how much time he requires to provide the full report, specifically on the amount of money that this school received from M/s Jenkins Check of the UK and how that money was spent. Also, the Cabinet Secretary has not provided an answer to one of the questions I asked: What action has the Cabinet Secretary taken or is going to take against the people who were involved in embezzlement of these funds? From the response, it is very clear that these are people who are supposed to be in prison. We have a number of students who have dropped out of this school during that time because of the construction. A sum of Kshs56 million was used to construct a multipurpose hall, which is still incomplete. That is money parents were asked to pay on top of what the Government had approved. So, we need to know from the Cabinet Secretary what action he has taken or the action he is going to take. Is he going to dissolve the BoM? Is he going to forward this report to the Directorate of Criminal Investigations (DCI) and the Director of Public Prosecutions (DPP) for prosecution so that this can act as a deterrent to other school principals who always engage in this kind of financial impropriety?

Thank you, Hon. Speaker.

Hon. Speaker: The DPP will require investigations. So, it cannot go to the DPP before investigations have been carried out by whomever. More importantly, Hon. Didmus Barasa, you said the Cabinet Secretary has not “said.” I want to ask the Cabinet Secretary. I am looking for the Cabinet Secretary around and I am not seeing him.

(Laughter)

Hon. Florence Mutua, you could be the person Hon. Didmus Barasa has in mind as the Cabinet Secretary. Perhaps you could take up the matter and communicate to the Cabinet Secretary because the Cabinet Secretary is not here.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Thank you, Hon. Speaker. It is clear the audit was not complete as the response has come. Once the audit is complete, I am sure the necessary steps will be taken by the necessary organisations.

Thank you.

Hon. Speaker: Next response is by Hon. Kareke Mbiuki. Kindly, have the Floor.

PERENNIAL LANDSIDES AND MUDSLIDES NANDI HILLS

Hon. Kareke Mbiuki (Maara, JP): Thank you, Hon. Speaker. Hon. Alfred Keter sought for a Statement on perennial landslides and mudslides in parts of Nandi Hills Constituency pursuant to Standing Order 44(2)(c). He specifically, raised the following concerns in his Statement:

- (i) What are the immediate actions the Ministry is taking to address the issue of landslides and mudslides that have recently affected Kapchanga, Lengon, Kimwogi and Uson areas of Nandi Hills Constituency and led to destruction of property and displacements?
- (ii) What actions has the Government taken to ensure that families and residents affected, and in particular the young children and the vulnerable people suffering the most have access to basic needs especially food, shelter and other essential services?
- (iii) What plans does Government have to ensure that affected people are settled in safer grounds?
- (iv) What future plans and precautionary steps has the Government taken to ensure that no further loss of lives and property is experienced as a result of mudslides and landslides in the country and in particular Nandi Hills Constituency?

On the immediate actions the Ministry is taking to address the issue of landslides and mudslides that have recently affected Kapchanga, Lengon, Kimwogi and Uson areas of Nandi Hills Constituency and led to destruction of property and displacements, NEMA as a coordinator and regulator, and a Member of disaster committee alongside the other members of the disaster committee, which included the Ministry of Interior Coordination, Red Cross and the county government carried out the following activities:

- i. Evacuation of affected residents to relatively safer places i.e. Cherondo Primary School was done where comprehensive care was given to evacuees.
- ii. Provision of basic needs such as foodstuffs including maize flour, sugar, beans, cooking oil, rice, salt, milk by the county government and other stakeholders through Kenya Red Cross and the Disaster Management and Coordination Committee to which NEMA is a member.
- iii. Provision of non-food items such as mattresses, blankets, soap, washing powder, candles and toilet tissue rolls.
- iv. On site medical attention was availed by provision of emergency medical care at the main camp. Voluntary standby nurses provided medical services.
- v. Thw NEMA and KRCS carried out rapid assessment and reporting on all the affected areas to identify and analyse damages brought by the mudslides to residents, animals, agricultural crops, environmental impact etc.

The Ministry of Environment and Forestry had earlier, through its project the Lake Victoria Environmental Management Project Phase II, now concluded, carried out community driven projects in various parts of the county. The monitoring reports attached to this Statement outlines some of the interventions including tree planting.

The Committee engaged the Ministry of Environment and Forestry for responses on the above concerns raised by Hon. Keter. I, therefore, wish to respond to the above issues as follows:

A mudslide is a mass of mud and other earthy material that is falling or has fallen down a hillside or other slope whereas a landslide is a collapse of a mass of earth or rock from a mountain or cliff. Mass wasting is the transfer or movement of rock or soil down slope primarily by gravity.

Each year during the rainy seasons, landslides and mudslides adversely affect the following areas in the country, Nandi Hills, Tinderet, Mosop and Aldai sub-counties of Nandi County, West Pokot County, Murang'a County and Elgeyo Marakwet County among other counties due to human settlement on these steep gradient areas. The resulting effect has been the loss of lives and property.

Hon. Speaker, on actions the Government has taken to ensure that families and residents affected, and in particular, the young children and the vulnerable people suffering the most have access to basic needs especially food, shelter and other essential services, I will respond as follows:

The Ministry, through NEMA and the Metrological Department, who are members of the disaster committee have been involved in the disaster mitigation measures. However, the specific Government departments concerned which include Special Programs, the presidency and county governments are found in other ministries, and could handle this question more effectively.

Hon. Speaker, on plans the Government has to ensure that affected people are settled in safer grounds, the Ministry of Environment and Forestry in consultation with other relevant ministries and departments have initiated a mapping and zoning of all risk places in the county and several sub-counties which are experiencing a similar problem. On completion, this will contribute to the completion of the major proposal already being developed for rehabilitation and contingency plans for interventions.

The Kenya Meteorological Department has been issuing weather advisories which include movement to safer grounds. Given that land issues fall in the Ministry of Lands and Physical Planning docket, the advice would be not only on resettlement of affected persons, but to also give guidance on the tenure of no longer habitable sloppy areas with a view for rehabilitation of such degraded land. Specifics of such resettlement may also be availed from the Ministry responsible for Special Programs and the Disaster Management Committee. As a member of the Disaster Committee, the Ministry will give advisories and advise on environmental safeguards.

On future plans and precautionary steps, the Government has undertaken to ensure that no further loss of lives and property is experienced as a result of mudslides and landslides in the country and in particular in Nandi Hills Constituency

The Ministry has enumerated a number of interventions including afforestation of the hilly Nandi Escarpment by engaging in tree planting activities, which shall be undertaken even as communities continue to live in these fragile areas before a solution is found. The detailed response to the Statement has been annexed to this Statement and Hon. Keter has been given a copy too.

I beg to submit.

Hon. Speaker: Hon. Keter, kindly have the Floor. I am not seeing him. The Member is not even present. You should have just tabled it without necessarily reading it out.

Next Order!

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move the following Procedural Motion:

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THAT, pursuant to the provisions of Standing Order 30(3)(a), this House orders that should the time appointed for adjournment of the House today be reached before conclusion of business appearing under Order No.12 on the Order Paper, the sitting of the House shall stand extended until the conclusion of the said business.

As Members are aware, we have suffered some delay in the processing of Bills. Now that we have some agreement on some Bills that we could process, and we are going away this week, when we discussed this within the House Business Committee, it was the feeling of the Committee that we seek the indulgence of the Members so that we are able to process two Bills today which have been waiting for a long time and which are just about to be concluded especially the Tea (Amendment) Bill that has gone through extensive consultations and which we then need to take back to the Senate for further reconsideration of our amendments. If we are able to clear that today or latest put the Question on Thursday morning, then we would be able to communicate to the Senate before they go for a break. Then they can rearrange how they will do it.

We have done this before. I gave an indication to the House that as much as we are having limited time, should the need arise, we would be calling upon the House to show Kenyans that this House can rise to the occasion and serve Kenyans in the hour of need. Such hour of need is today. I want to ask Members that we prepare ourselves psychologically and also physically to spend some little time beyond 7.00 O'clock. Depending on how much we interact in the course of the Committee, with limited debate, we would be able to process far much faster. However, we anticipate that at least we will require at least an extra two hours of your time today which will be a great contribution to our great republic.

I beg to move and ask the Whip of the Majority Party Hon. Wangwe to second.

Hon. Speaker: Hon. Wangwe, kindly have the Floor.

Hon. Emmanuel Wangwe (Navakholo, JP): Hon. Speaker, I do second that the House adjourns as per the Order Paper. Without necessarily anticipating debate, I was once a Vice-Chair of the Departmental Committee on Agriculture, Livestock, and Fisheries. The Tea Bill is followed by the Sugar Bill. The issues to be canvassed in the Tea Bill are very weighty and they touch on every section of the country. Therefore, as we anticipate to go on a long recess, let us finalise on the Bill, so that Kenyans can, at least, live with a finalised position with regard to matters tea.

Hon. Speaker, with that comment, I beg to second.

(An. Hon. Member walked across the Chamber as the Speaker was on his feet)

Hon. Speaker: Order! Order! You start moving and you do not even look aside!

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: Is it the desire of the House that I put the Question?

Hon. Members: Yes.

(Question put and agreed to)

MOTION

INQUIRY INTO UTILISATION OF FUNDS APPROPRIATED TO THE MINISTRY OF HEALTH IN 2019/20 FOR THE COVID-19 PANDEMIC

THAT, this House adopts the Report of the Departmental Committee on Health on its Inquiry into the Utilization of the Funds Appropriated to the Ministry of Health in the Financial Year 2019/20 for the Control and Management of the COVID-19 Pandemic, with Focus on the Kenya Medical Supplies Authority (KEMSA), laid on the Table of the House on Thursday, October 1 2020, - subject to insertion of the following further Recommendations-

PPEs held by the Kenya Medical Supplies Authority

30. That, within fourteen days (14 days) of the House adopting this Report, the Ministry of Health reviews the status of all Personal Protective Equipment (PPEs) held by Kenya Medical Supplies Authority (KEMSA) with a view to distributing the same to all public hospitals guided by the respective COVID-19 caseload, for use frontline medical staff in public hospitals;

31. That, thereafter, all public hospitals should not charge any Kenyan citizen admitted in their facilities due COVID-19 the cost of Personal Protective Equipment (PPE) used while undergoing treatment;

Provision of Group Life Insurance Cover

32. That, within seven (7) days of adoption of this Report, the National Treasury and the Ministry of Health remits the Kshs 500 million to the National Hospital Insurance Fund (NHIF) as approved by National Assembly in the Supplementary Appropriation Act (No. 2) of 2020 for the provision of Group Life Insurance Cover by National Hospital Insurance Fund (NHIF) Scheme, that includes COVID-19 cover for all medical staff working in all Counties and the National Referral Hospitals;

33. That, within twenty-one (21) days of receiving the Kshs 500 million for the Group Life Insurance Cover, the National Hospital Insurance Fund (NHIF) ensures that all medical staff in the counties and national referral hospitals are placed under the Group Life Insurance Cover;

Comprehensive Medical Cover

34. That, within the fourteen days (14 days) of the House adopting this report, the Council of Governors ensures that all the nineteen (19) counties that have no medical cover for its medical staff, sign-up for the Comprehensive Medical Cover through the National Hospital Insurance Fund (NHIF).

35. That, the National Treasury and Council of Governors establishes a centralized pool of medical cover through the National Hospital Insurance Fund (NHIF) Comprehensive Medical Scheme for all county medical staff. The Scheme should be in place at the beginning of the Financial Year 2021/22 and that the Ministry of Health and Counties do make provisions of the same in their respective FY 2021/22 budgets;

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Medical staff Allowances

36. That, within the fourteen (14) days of adoption of this Report, the Ministry of Health and Governing Councils of University of Nairobi, Kenyatta University, Moi University and Jomo Kenyatta University of Agriculture and Technology pays all pending Call Allowances to doctors as per the Collective Bargaining Agreement (CBA) and the Return-To-Work Formula of March 14, 2017, signed between the Ministry of Health, Council of Governors and Kenya Medical Practitioners and Dentist Union;

37. That, within the fourteen days (14 days) of adoption of this Report, the Ministry of Health engages the Salaries and Remuneration Commission (SRC) on the need to enhance the Risk allowance for medical staff with a view to replacing the COVID-19 allowance for frontline medical staff that was initially paid for the three (3) months but lapsed in June 2020;

Facemask for the most vulnerable

38. That, within the fourteen days (14 days) of adoption of this Report, the Ministry of Health ensures that the procurement of re-usable facemask worth Kshs 300 million for vulnerable persons in the society is concluded and the masks be distributed to all students in public schools, the needy and vulnerable persons in the country; and,

Medical Insurance Cover and Arrears for Contract staff

39. That, within the fourteen (14) days of adoption of this Report, the Ministry of Health ensures that all medical staff employed on contract for handling isolations facilities are provided with a NHIF Comprehensive Medical Cover, and further, all their pending salary arrears from August 2020 are paid promptly.

Lead Agency in Investigations

40. That, where two or more agencies are recommended to undertake investigations, the Ethics and Anti-Corruptions Commission shall be the Lead Agency.

(Hon. (Ms.) Sabina Chege on 26.11.2020)

(Debate concluded on 26.11.2020)

Hon. Speaker: Hon. Members, debate on this Motion was concluded last week and what remains is for the Question to be put, which I hereby do.

I think for the benefit of the House, I will need to read out these further recommendations in addition to the existing ones, No.30 in the main Report.

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

THAT, this House adopts the Report of the Departmental Committee on Health on its Inquiry into the Utilization of the Funds Appropriated to the Ministry of Health in the Financial Year 2019/20 for the Control and Management of the COVID-19 Pandemic, with Focus on the Kenya Medical Supplies Authority (KEMSA), laid on the Table of the House on Thursday, October 1 2020, - subject to insertion of the following further Recommendations-

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31. That, thereafter, all public hospitals should not charge any Kenyan citizen admitted in their facilities due COVID-19 the cost of Personal Protective Equipment (PPE) used while undergoing treatment;

Provision of Group Life Insurance Cover

32. That, within seven (7) days of adoption of this Report, the National Treasury and the Ministry of Health remits the Kshs 500 million to the National Hospital Insurance Fund (NHIF) as approved by National Assembly in the Supplementary Appropriation Act (No. 2) of 2020 for the provision of Group Life Insurance Cover by National Hospital Insurance Fund (NHIF) Scheme, that includes COVID-19 cover for all medical staff working in all Counties and the National Referral Hospitals;

33. That, within twenty-one (21) days of receiving the Kshs 500 million for the Group Life Insurance Cover, the National Hospital Insurance Fund (NHIF) ensures that all medical staff in the counties and national referral hospitals are placed under the Group Life Insurance Cover;

Comprehensive Medical Cover

34. That, within the fourteen days (14 days) of the House adopting this report, the Council of Governors ensures that all the nineteen (19) counties that have no medical cover for its medical staff, sign-up for the Comprehensive Medical Cover through the National Hospital Insurance Fund (NHIF).

35. That, the National Treasury and Council of Governors establishes a centralized pool of medical cover through the National Hospital Insurance Fund (NHIF) Comprehensive Medical Scheme for all county medical staff. The Scheme should be in

place at the beginning of the Financial Year 2021/22 and that the Ministry of Health and Counties do make provisions of the same in their respective FY 2021/22 budgets;

Medical staff Allowances

36. That, within the fourteen (14) days of adoption of this Report, the Ministry of Health and Governing Councils of University of Nairobi, Kenyatta University, Moi University and Jomo Kenyatta University of Agriculture and Technology pays all pending Call Allowances to doctors as per the Collective Bargaining Agreement (CBA) and the Return-To-Work Formula of March 14, 2017, signed between the Ministry of Health, Council of Governors and Kenya Medical Practitioners and Dentist Union;

37. That, within the fourteen days (14 days) of adoption of this Report, the Ministry of Health engages the Salaries and Remuneration Commission (SRC) on the need to enhance the Risk allowance for medical staff with a view to replacing the COVID-19 allowance for frontline medical staff that was initially paid for the three (3) months but lapsed in June 2020;

Facemask for the most vulnerable

38. That, within the fourteen days (14 days) of adoption of this Report, the Ministry of Health ensures that the procurement of re-usable facemask worth Kshs 300 million for vulnerable persons in the society is concluded and the masks be distributed to all students in public schools, the needy and vulnerable persons in the country; and,

Medical Insurance Cover and Arrears for Contract staff

39. That, within the fourteen (14) days of adoption of this Report, the Ministry of Health ensures that all medical staff employed on contract for handling isolations facilities are provided with a NHIF Comprehensive Medical Cover, and further, all their pending salary arrears from August 2020 are paid promptly.

Lead Agency in Investigations

40. That, where two or more agencies are recommended to undertake investigations, the Ethics and Anti-Corruptions Commission shall be the Lead Agency.

APPROVAL OF THE CONVENTION ON INTERNATIONAL HYDROGRAPHIC ORGANIZATION

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Accession to the Convention on the International Hydrographic Organization (IHO), laid on the Table of the House on Tuesday, 17th November 2020, and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012 approves the Accession to the Convention on the International Hydrographic Organization (IHO) by the Republic of Kenya.

(Hon. Katoole Metito on 26. 11. 2020)

(Debate concluded on 26.11.2020)

Hon. Speaker: Again, Hon. Members, debate on this Motion was concluded last week. What remains is for the Question to be put, which I hereby do.

(Question put and agreed to)

BILL

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. Speaker: Hon. Members, before we commence Second Reading of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020), and the Committee of the whole House on the Bill, I wish to draw your attention to Notice No. I on page 1197 of the Supplementary Order Paper. You will realise that there are two categories of parts of the Bill that have been withdrawn. The first category relates to parts withdrawn following joint resolution of the Speakers of the Houses of Parliament under Article 110(3) of the Constitution. These consist of all provisions proposing to amend the following Statutes as contained in the Bill:

- (a) The Housing Act (Cap. 117);
- (b) The Basic Education Act, 2013 (No. 14 of 2013);
- (c) The Political Parties Act 2011 (No. 11 of 2011); and,
- (d) The Public Procurement and Asset Disposal Act, 2015 (No. 33 of 2015).

Hon. Members, the second category refers to parts withdrawn by the Hon. Leader of the Majority Party on 15th July 30th July and 28th August 2020, with the Hon. Speaker's consent, as contained in the Notice. This means that all the 14 provisions, as listed in the Order Paper, have been withdrawn and will not be considered at all by the House. I have also received representation in my Chambers regarding proposed amendments to the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015. The proposals contained in the original Bill were intended to provide for the administration of other benefits - Not pension - entitled to retired Speakers of Parliament, the Chief Justice and Deputy Chief Justice and to factor such benefits in the respective estimates of the Parliamentary Service and the Judiciary.

Hon. Members, whereas that was the intent of the initial proposal as published in the Bill, my attention has been drawn to a proposed amendment by the Departmental Committee on Finance and National Planning relating to the inclusion of pension and other benefits for retired Deputy Speakers. However noble the aim of the Committee was in its proposal, the recent court ruling on the matter of Nairobi High Court Petition Number 284/2019 as consolidated with Nairobi High Court Petition Number 353/2019: The Senate of the Republic of Kenya and Others versus the

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Speaker of the National Assembly of the Republic of Kenya and Others and for which the National Assembly has filed an application for stay of execution, will mean that any matter touching on the two Houses of Parliament contained in this Bill will be put in abeyance.

In addition, it is my view that the amendment may also encroach on the powers of the Salaries and Remuneration Commission as stipulated under Article 230(4) (a) of the Constitution, which provides that:

“(4) The powers and functions of the Salaries and Remuneration Commission shall be to –
(a) set and regularly review the remuneration and benefits of all State Officers;”

Hon. Members, as your Speaker, and even as a possible future beneficiary of part of the amendments relating to the administration of benefits, I have the option of allowing the provisions to proceed for debate. However, for the good of future holders of this office, I instead choose to order that the entire provision relating to the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 be withdrawn to allow for comprehensive consultations between, amongst others, the Parliamentary Service Commission, the Judicial Service Commission (JSC), the Salaries and Remuneration Commission (SRC) and the National Treasury. Consequently, the provisions of the Bill relating to the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 hereby stand withdrawn and will not be considered at the Second Reading and the Committee stage of the Bill.

Further, Hon. Members, as you may notice from the Order Paper, there are amendments proposed by the Hon. Gathoni Wamuchomba, MP to the Kenya Roads Act, 2007. However, this Act is not one of those being proposed for amendments in the Bill as published. Therefore, the amendment falls outside the scope of the Bill and goes against the provisions of Standing Order 133(5).

These amendments are therefore inadmissible, and shall not be considered by the House at Committee stage, if reached today or later in the week.

The House and Members affected are accordingly informed and guided.

I thank you Hon. Members.

Hon. Kimani Ichung'wah (Kikuyu, JP): On a point of order.

Hon. Speaker: Yes, Hon. Ichung'wah. What is your point of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I rise on a point of order under Standing Order 47(3)(b) and also on previous communication from your seat regarding issues that are constitutional in nature as we legislate.

Hon. Speaker, appreciating the guidance that you have given in your communication in some of the provisions in this Bill, there are other provisions which I find to be unconstitutional and some that openly flout provisions of the Constitution, particularly the amendments relating to the Accountants Act No. 15 of 2008. The amendment to the Accountants Act seeks to introduce trainee accountants as a category of persons to be subject to the Act. It also makes some additional provisions in that respect.

In particular, it provides that a trainee accountant shall be a person registered under Section 17(2A) of the Examinations Board and who is undertaking professional accountancy education or training and persons practising accountancy initially as part of professional development towards qualification as an accountant.

Further, the amendment provides that any person wishing to undertake examination in accountancy shall first register with the institute as a trainee accountant.

Hon. Speaker, it is notable that the amendment, therefore, seeks to compel any person wishing to undertake examination in accountancy to first register with the Institute of Certified

Public Accountants of Kenya (ICPAK). The House will recall that in the last two years, this particular amendment has come to this House and has not seen the light of day, particularly because of the unconstitutionality of this provision that has been unfortunately sought by my colleagues in ICPAK. Article 36(2) of the Constitution is quite clear. It spells out that a person shall not be compelled to join an association of any kind. The ICPAK, by all definitions, is an association of professionals. I am a professional accountant by training. I worked as an accountant for close to 10 years. I trained without being compelled by anybody to join any association.

I worked in some of the top blue-chip companies in this country including subsidiaries of multinational companies like Unilever PLC and audited some of the top global audit firms in the world. I was never compelled to join the Institute of Certified Public Accountants of Kenya (ICPAK). It, therefore, defeats me why years after qualifying as an accountant, I would seek to compel my constituents, young men and women, who may not have the means, to first register with such an institute before sitting for examinations.

This brings me to Article 43(1)(f) of the Constitution which is part of our very progressive Bill of Rights. It gives every person the right to education, including those who are training as accountants. The import of this provision is that nobody should be denied the opportunity to pursue any manner of education, even those training as accountants on account of not being able to join an association.

Therefore, I find both what is provided for in the Bill and the further amendment proposed by the Chair of the Departmental Committee on Finance and National Planning, to be falling flat, contrary to the Constitution. They seek to deny young people who want to train as accountants the opportunity to first train.

Hon. Speaker, in your other life before you became a Member of Parliament and consequently our Speaker, you served in the legal profession. There are many lawyers in this House, including senior and serious counsels, like Hon. Otiende Amollo, who I see here. He will tell you that even in the legal profession, nobody is compelled to join the Law Society of Kenya (LSK). We cannot be telling our students at the Parklands Law School that, for you to sit for examinations you must first register with the LSK.

The import of these amendments is that they are telling young Kenyans who are training as accountants that they must be members of ICPAK. I have told you of my experience over the years, while I worked as a professional accountant and up to date, I have not registered with ICPAK. It is an association where anybody should have the freedom to join or not. Lawyers and engineers are not compelled to join any association.

Why should accountants be compelled and we deny our young people in this country an opportunity to first train as accountants. Once they qualify, the institute... This is a conversation we had last year. I remember it was very well articulated by the Leader of the Minority Party, Hon. John Mbadi, that probably, it was time ICPAK engaged those of us in the profession to look at accountants wholesomely and make amendments in a substantive Bill that will amend the Accountants Act, but not to seek to introduce these amendments which in their very nature are unconstitutional and will be denying our young men and women an opportunity to train. We should allow them to train and once they qualify as certified accountants then they may find ways of compelling or making them join the institute.

Hon. Speaker, your position as the Chair of the Parliamentary Service Commission (PSC) will bear us witness that there are many legal officers serving and offering us very good legal counsel in our Committees yet, they are not members of the LSK.

The same way there are many accountants, others who are not practising and others serving both in the corporate and public sector that must not and should not be compelled to join this institute.

Hon. Speaker, mine is just to beg and ask you, in your wisdom, as you did in your other life to rule on the balance of probability. We risk if we pass these amendments, to be going against the Constitution and to be denying our young people opportunities to train as accountants when this country dearly needs services of well trained and qualified accountants.

Hon. Speaker, with that I ask you to offer guidance as to whether, maybe, the owner of this Bill, the Leader of the Majority Party, would be convinced to drop these amendments. Maybe, you will find them to be flouting the Constitution and not properly before the House.

Hon. Speaker: Maybe the owner of the Bill, Hon. Kimunya, who is himself an accountant can respond.

Hon. Amos Kimunya (Kipipiri): Hon. Speaker, I find the intervention by Hon. Ichung'wah rather unfortunate, especially because he will have an opportunity to canvass the same feelings in the Second Reading.

I actually do not know the unconstitutionality of this Bill, because the Accountants Act is very clear. The ICPAK has been given the power by this very House to regulate all accountants. Accountancy begins from training up to when one practises. There has been a *lacuna* in terms of the people who have not qualified, but have been working for so long describing themselves as accountants.

When you look at this, within the wider war on graft and the reforms needed to sort out corruption in this country, there is no corruption that takes place in any organisation without the involvement of an accountant. This is because they are the ones who pay the final amounts, ensure the money is disbursed or payment is processed. The ones who are qualified are regulated by ICPAK and the ones who are not qualified and keep saying they are still under training, in as much as they are senior accountants, are not regulated by the institute. The nation knows this is an accountant, but there is no legal body mandated to regulate that kind of person.

These amendments were coming from that perspective, so that someone does not portray himself or herself as an accountant working for an organisation yet he is not. Once you state you are accountant, everyone assumes you must be under the regulation of the Accountants Act through ICPAK.

We must also remember that in 2008, we changed the regulation of accountants. Previously, we used to have the Registration of Accountants Board. It would register everyone and then propose you to join the ICPAK after sitting the examinations of the Kenya Accountants and Secretaries National Examination Board. This House in its wisdom removed the Registration of Accountants Board. So, we only have the Kenya Accountants and Secretaries National Examination Board, that basically processes students, examines them but cannot regulate them. They are then handed over to ICPAK for regulation.

Without the Registration of Accountants Board, there are only two bodies - the examiner and the regulator. Some students have finished while others have exhausted their chances of ever finishing their exams yet, they call themselves students. There are those who have finished, like Hon. Ichung'wah and do not want to be regulated by ICPAK. They continue working as accountants and portraying themselves as accountants in the public, but there is nowhere one can check if this person is regulated or not.

I think that is the whole basis of the amendments that took place in 2008. They need to know there is Amos Kimunya who wants to join the accountancy profession, so as to be monitored

and facilitated in training by the ICPAK. After passing exams, you register as a member so as to practise and get continuous professional development so as to ensure that you are a member in good standing.

Even when vetting a person, we state that it has to be somebody who is an accountant of good standing. The institute knows you from the time you were a student to the time you were to practise. Nobody is being told that he or she cannot join ICPAK, which I think is the spirit. You are being told that once you decide to become an accountant, you must register through ICPAK. It is a process. Once you decide to become a Member of Parliament, you register through a political party. Are you compelled to join a political party? You are not. It is the same reasoning. If you want to join Parliament you must, first, join a political party or you contest as an independent candidate.

However, in this case, there is also provision that once you become an independent member, you cannot also join a political party. So, here we are. I am sure every profession has a way. There is a situation with the medics, once they complete their university education, they must work as interns before they can be registered. You are not being compelled. It is part of your training. It is an industry standard.

Hon. Speaker, I do not see the unconstitutionality of this provision and, therefore, I urge you to rule that there is nothing unconstitutional in this matter. Let the matter continue. Let Hon. Kimani and others canvass through the Second Reading. In fact, Hon. Kimani Ichung'wah has brought amendments on the same clauses. So, he actually agrees that the matter should be on the Order Paper and, therefore, it should be processed.

During the Committee stage, he will have an opportunity to move his amendments and convince the House to either support him or support the Kenyan people on the war on graft. This is the fundamental thing we need to have at the back of our minds; that, the regulation of accountants is part of a wider war on corruption. Corruption has really eaten into the fabric of this society. The institute can help, in this way, to regulate accountants. Lawyers and engineers have their own mechanism. The totality of each of these professional bodies trying to rein in their members will result in a collective effort that will fight corruption in this country. I believe it is for the benefit of every Kenyan that we stop losing billions of shillings that we lose every other day. Any opposition to this provision is, perhaps, an indicator that we are not serious about the war against corruption. If we can fail to support the institute in the regulation of its members at the different stages of their professional training and development, it shows that we are not serious.

Hon. Speaker, I just wanted to give some background information so that Members and you can make a decision, but I do not see anything unconstitutional. If you aspire to be a doctor, you are told the pathway towards that goal is to, first, register with the National Education Management Information System (NEMIS) in primary school. Then you must register with a certain school, sit for exam and pass well. All those are preconditions for you to move forward. It is not that it is constitutional or that you are being forced to join a school. You are not being forced to register with the Kenya National Examinations Council (KNEC). These are prerequisites for you to qualify. I look at this in exactly the same way.

That is all I have.

Hon. Speaker: Let us not make it a debate because I think I am able to give a way forward. Hon. Ichung'wah, do you want to say something?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, I appreciate what the former Chair of ICPAK, and now the Member for Kipipiri and Leader of the Majority Party has said, but we must appreciate that unlike in the other professions that Hon. Kimunya has mentioned, this

particular provision is introducing a proviso in law requiring those who intend to train as accountants to join the institute. That denies Kenyans the right to education. Educate Kenyans to become accountants; if you want further professional development, or to regulate accountants who have first been trained, then you make laws that will allow regulation of people who have already been trained.

What the Leader of the Majority Party has not responded to is the fronting of the right to education and, secondly, on compelling a student to join an association. The Constitution is clear that no person shall be compelled to join an association of whatever nature, be it a professional association or an institute like ICPAK or LSK. That is why LSK allows lawyers to go through their professional training and sit for examinations without being hindered and then they are regulated when they go out to practise. That is all we are asking for Kenyans who seek to train and be educated as accountants. First, educate and train them and, if you want you can then regulate them. There is no time limit as to when we can legislate on how the institute and, indeed, the Government can regulate the conduct of accountants. We cannot deny Kenyans their right to education and compel them to join associations.

Tomorrow another profession, maybe the association of evangelical societies or evangelical preachers or some form of religious grouping, will also seek to create legislation that says in order for you to train in a certain profession, you must first be a member of an institute. I beg to submit that Hon. Kimunya has not responded to issues of how we are denying Kenyans the right to train and the right to education by attempting to compel them to be members of associations.

Hon. Speaker: May I understand all these interventions. Do all the Members who have pressed the intervention button want to address me on this matter? There is no need for just general comments. We can make progress. Let me just say that the Bill has been availed to me and in it is the Act that Members seek to amend. That is the Accountants Act No.15 of 2008, whose Section 17 is intended to be amended as provided hereunder:

“The examinations board shall, prior to registering a person to undertake an examination in accounting, require that the person be registered as a member of the institute.”

That is the current provision. This is in the Act in Section 17(2) (a). That is what is sought to be amended. Accountancy is a profession, like Hon. Ichung’wah has just said. Nobody is forced to join the profession. I imagine that everybody with their open eyes and mind chooses to join whatever profession. If you choose to be a surveyor, you know where to go and how you will start. If you finally wish to be registered, you also know the processes. So are all other professions. I think if we extended the meaning in Article 36(2) of the Constitution that nobody shall be compelled to join any association of any kind, there will be no guide to any profession. If you want to join Hon. Otiende Amollo in his revered profession, you know what you are supposed to do. You have seen a number of people who have been going to court very frequently. I do not want to mention names. They are never registered even there as lawyers. They go there as just ordinary folks from the street. This is because if they purported to refer to themselves as lawyers, even though we have heard that they are taking instructions, obviously they will run into trouble with the law, the Advocates Act and, of course, several other processes would then follow.

Let us proceed with this Bill, since I am informed that Hon. Ichung’wah has proposed an amendment to persuade his colleagues that there is merit in what he is saying. I think to block this Bill from being considered because it may turn out to be unconstitutional at this stage, may not be advisable. Therefore, I rule that the Bill proceeds to Second Reading and when the time comes for

the Committee of the whole House, and now that we have approved the proposed amendments by Hon. Ichung'wah, then they will be placed before the membership to consider.

For the time being, we proceed with the Second Reading.

BILL

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker.

Hon. Speaker, I beg to move the following Motion: -

THAT, the Statute Law (Miscellaneous Amendment) Bill (National Assembly Bill No. 15 of 2020) be now read a Second Time.

The Statute Law (Miscellaneous Amendment) Bill of 2020 was published on 3rd June, 2020, under the signature of my predecessor. This is in keeping with the practice of making various amendments to the various laws which ordinarily would not require separate Bills and then they are consolidated within one omnibus Bill.

This Bill initially contained 35 or 36 old statutes, several of them have been removed, some earlier and some as late as today. Eventually, we will be considering on a net basis, I believe 23 of the statutes.

The Bill was first read on Tuesday 23rd June 2020. Thereafter, it was committed to the various departmental committees for consideration within the respective mandates of the committees, further to your communication of 25th June.

In this connection, I wish to commend the nine departmental committees that have been considering this Bill with the lead being taken by our own Justice and Legal Affairs Committee (JLAC), the Departmental Committee on Administration and National Security, Departmental Committee on Finance and National Planning, Departmental Committee on Labour and Social Welfare, Departmental Committee on Transport, Public Works and Housing, Departmental Committee on Education and Research, Departmental Committee on Communication, Information and Innovation, Departmental Committee on Energy and the Departmental Committee on Trade, Industry and Cooperatives. Generally, all Bills have found their way into JLAC for consolidation.

Now, just looking through some of the highlights, the first Bill is the Interpretation and General Provisions. This is more of an editorial issue, to harmonise the definition of "Kenya Defence Forces" in the Act of 2012, to recognise the Attorney-General, who is to administer matters relating to the legal sector. That is more of editorial.

In the Records Disposal Act, we are basically empowering the Chief Justice to make rules on disposal of records of Employment and Labour Relations Court. The Penal Code still refers to the Commissioner of Police. We have since moved on with the Inspector-General of Police, so it is a nomenclature.

On the Public Holidays Act, Members, you remember that what we used to celebrate on 10th October has since been renamed "Utamaduni Day". Hence it is just to rename that day and recognise the change where people are supposed to be looking at cultural issues and reflecting on how to help one another and the country.

In terms of Fire Arms Act, this is editorial. It is just to rename the Commissioner of Police as Inspector-General. The Official Secrets Act is also one of the other Bills being proposed. This is to define some of the terms including what data is and what telecommunication apparatus are. It is meant to harmonise it with modern technology. Production of data by a person who also controls any communication apparatus used for sending and receiving data to and from Kenya, is placed within the ambit of Official Secrets Act.

On the Kenya Roads Board Act, the amendment seeks to provide for the minimum number of meetings the board can have at any given time. Under the *Mwongozo* Code the board is told they must hold a meeting every month but the general standard is, at least, not more than four meetings in a year. This is for good governance.

On Statistics Act, again we are looking at giving the board the power to cancel, revise or adjust data, if it is found to be inaccurate. So long as data has inaccuracies, it is of no use to anyone, hence we need to give the board the opportunity, once inaccuracy has been established, to cancel that data so that nobody can depend or use it for decision-making.

Provision under the Employment Act is meant to remove references to contributions of the National Housing Development Fund. It is also aimed at harmonising references to the Kenya Defence Forces Act and also to exclude the Coast Guard Service from its provisions.

On the Accountants Act, we have had a discussion on this and basically, as you rightly stated Hon. Speaker, there is already a current provision in Section 17(2A) that the examination board requires one to be a Member of the institute. When you go to the Accountants Act itself, the member of the institute is assumed to be a qualified member. So, you cannot be a student, yet a member is the one who is qualified. This amendment now creates a student category. The board requires you to become a member, but you can only become a member of the institute when you are qualified. So, to meet the requirements of the examination board, this basically creates a category of student membership, so that there is a member who has qualified and a member who is a student. Therefore, when we pass this, we will ensure that there is applicability of what is already within Section 17 (2A) of the Act. It is more of editorial so that student members are not told they cannot register because they are not members, yet there is no category right now within the Accountants Act for student membership. This is something that I forgot to mention when I was replying.

The Judicial Service Act is meant to reduce the post-qualification years of experience as a legal researcher from two years to one year. Basically, this is to enable people moving into legal research to move in earlier than it is in the current law.

On the Kenya National Commission of Human Rights, it is basically an elaboration of the function of the commission and to update the provision relating to the appointment of members to the commission. The function shall now include "...to advise the State on the ratification of, or accession to, international and regional treaties relating to human rights."

The other one is the Employment and Labour Relations Court Act, basically to empower the Chief Justice to make rules for delegation of specified powers. On the Ethics and Anti-Corruption Commission Act, the amendment seeks to allow the Ethics and Anti-Corruption Commission to institute proceedings for recovery of corruptly acquired assets located outside Kenya.

The National Police Service Commission Act also proposes to amend the Act to create clarity in respect of the Inspector-General of Police; that is editorial.

The Public Appointments (Parliamentary Approval) Act, which is important to us, proposes to increase the period during which a House of Parliament shall consider a nomination

and table its report from the current 14 to 28 days. You will agree that every time we have vetting of officers, committees usually come back here to say they want an extension of time. It is unrealistic to expect that we are to get all these things within 14 days. You end up with the wrong quality. By doubling the time to 28 days, we will have a better situation.

The amendment to the Universities Act of 2012 seeks to provide for establishment, by charter, or degree awarding institutions specialising in national security issues and to apply some of the provisions of the Act relating to administration and management of universities to those institutions. Members may be aware that we have a highly respected and established National Defence College, which has been offering degrees in collaboration with other universities. It is time to actually get them an independent charter.

However, because they operate in a different sector from the civilian kind of operations, it may be necessary to exempt them from some of the provisions of what would be required of the University of Nairobi (UoN) or Catholic University because they are doing some things that are of high security in nature.

That could apply also in terms of any other university that is doing atomic energy or something restricted that they may not necessarily be put to the same governance structure as that of a generic university. Again, this is a very straightforward thing, to facilitate the creation of the National Defence College as a degree awarding institution. In addition, to recognise that they are in a unique sector that may require different sets of rules while ensuring that their degrees' credibility will never be doubted. You are not awarding degrees for Kenya; you will be awarding degrees for the world.

The amendment on the Kenya Law Reform Commission Act is to provide the powers of the Attorney-General with respect to communication at the Commission and to streamline membership of the *ex officio* members of the Commission. The amendment on the Scrap Metal Act of 2015, is to provide for powers of police officers during investigations under the Act.

The amendment on the Investment and Financial Analysts Act of 2015, is to streamline the day-to-day operations of the institute within the Act. It includes some provisions providing, among other things, that a person shall not become a chief investment officer, or head an investment department or function, in a firm investing public funds, or a firm in the practice of investment and financial analysis. A person shall not perform verification, certification and advice of investment of funds in public entity, or a firm in the practice of investment and financial analysis, unless the person is registered as a certified investment and financial analyst and holds a practicing certificate and annual licence issued by the Registration committee.

This is so that we do not have anyone purporting to be an investment adviser, you give them money, you lose it and there is nowhere you can have any recourse because the people you are giving your money or taking advice from in terms of where you need to invest and which shares are increasing, are not under regulation by anyone. Again, it is part of the bigger issue of protecting the public from unscrupulous people who may want to masquerade as professional advisers, yet they are not subject to any regulation.

On the Court of Appeal (Organisation and Administration) Act of 2015, the Bill proposes to amend the Act to provide for the vacation dates of the courts and to harmonise them with those applying in other courts. It is a harmonisation issue.

On the Witness Protection Act of 2016, the Bill proposes to amend the Act to, among other things, give reference to the correct citation of the Public Audit Act and provide that the legislation and regulatory provisions on classified procurement and disposal of assets shall apply *mutatis mutandis* to the agency.

Lastly, on the Kenya Coast Guard Act of 2018, the Bill proposes to amend the Kenya Coast Guard Act to include Kenya Wildlife Service (KWS) and the Kenya Forest Service (KFS) as bodies from which the service can recruit officers. It also proposes to expand the technical committee of the Service and to standardise the ranks in the Service with the Defence Forces.

Hon. Speaker, I believe the details of the Acts being amended are contained in the Bill. The Memorandum of Objects and Reasons is very clear in terms of what happens. The various committees have gone through it. I have seen quite a number of amendments that they will be bringing as part of making it even better for us to do justice to this Act. It is a fairly straightforward Act because these are minor editorial things, they may be important, but they do not warrant bringing a whole Act.

On all the Bills, where we thought that fundamental issues were being introduced, we consulted and withdrew them so that they can come within a bigger framework to have coherence within a Bill. The danger we have is one small item and then a flurry of amendments are made, but because there is no reference to the mother Bill, when eventually it is read together with the original Bill, you find inconsistencies and incoherence coming in. That is best brought within the framework of a comprehensive amendment to a Bill. We now limit ourselves to just these that I have enumerated within my moving notes.

Hon. Speaker, I do not need to belabour the point. Today is a busy day like we said. I would like to ask Members that we give priority to the committees that looked at this Bill, then the chairpersons can share with us exactly what they came up with and if we are in agreement, we do not need a lot of debate. We need to move on to the other business of the House, noting the time limitations that we have. I must also take this opportunity to thank you for agreeing to stay on tonight until we, at least, complete the two Bills before us and have it on record before we go on recess. I do not have to save Bills that we could have finished tonight.

With those remarks, I beg to move and ask Hon. Clement Kigano, Chair of the Departmental Committee on Justice and Legal Affairs, who consolidated all these Bills to second.

Hon. Speaker: Hon. Clement Kigano.

Hon. Clement Kigano (Kangema, JP): Hon. Speaker, I rise to second the amendments that are sought in the Statute Law (Miscellaneous Amendments) Bill No. 15 of 2020.

My Committee considered four matters that fell under it and also considered the reports submitted by the seven other committees. Pursuant to Standing Order No. 199 (6), we consolidated all the reports and made them one Report, which we tabled on 15th October 2020.

All the matters that were raised by the Bills were advertised through the daily newspapers on 30th July this year. I can confirm that all the memoranda and presentations made by stakeholders and others were duly considered. I will ask the other chairpersons to give a synopsis of their own individual amendments.

The four amendments that fall under the jurisdiction of the Departmental Committee on Justice and Legal Affairs speak for themselves. What I will say more or less applies to the other Committees so I will try to save time. I plead with my Co-Chairs not to repeat what applies to the four amendments that I will stipulate.

The first amendment that fell under my Committee is the Records Disposal Act. We sought to effect an amendment under Section 2(1) to include the environment and land courts. These are courts of the same status as the High Court that are now stipulated under the Constitution but were not then contemplated by the Records Disposal Act. The Committee supports the amendment and resolved that the provisions intended as proposed will empower the Chief Justice to make rules regarding disposal of records.

The second Act was the Political Parties Act. This was spent through the House Business Committee so I have no comments on that.

The second substantive amendment falls under the Kenya National Commission on Human Rights (KNCHR). That amendment sought to include the KNCHR as the party that approves and ratifies treaties. However, the Treaty Making and Ratification Act No.45 of 2012 recognises the Office of the Attorney-General as the domiciled department on matters concerning treaties. They have no justification to usurp the powers of the Attorney-General. We seek to delete that amendment.

The next law is the Kenya Law Reform Commission Act. We seek to delete the proposed amendment and substitute Section 8(1) (b) of the Act with a new subsection (b) to be one member appointed by the Attorney-General through an open and competitive process. That refers to the members of the Commission.

In the second amendment, we seek to stipulate that the member, thereof, shall be an advocate of the High Court. We seek to insert those words immediately after the words “Law Society of Kenya” appearing in the proposed amendment to Section 8(1) (c) of the Act. There is again justification for this. The provision clarifies that the representative of the Law Society of Kenya be an advocate of the High Court to avoid the possibility of unqualified persons like the persons who the erstwhile Member of Parliament, Hon. Ichung’wah, spoke of as being quacks, being appointed to be members of the Kenya Law Reform Commission. You must be an advocate of the High Court.

In the third amendment, we seek to insert the words “appointed under sub-section 1(ca), (d) and (e) immediately after the words “Chief Justice” appearing in the proposed new Section 8(3) of the Act. There is justification for this. We need to clarify that the public officers appointed as members of the Kenya Law Reform Commission under those provisions are the ones being designated as *ex officio*.

The last amendment under my Committee domicile is the Court of Appeal (Organisation and Administration) Act No.28 of 2015. The Chief Justice, through his office, sought an amendment to Section 26(1) to increase the period during which judges who serve in the Court of Appeal shall recess, in addition to normal leave days. The Committee was of the view that increasing the duration of the court recess will lead to an increased case backlog in the Judiciary leading to additional costs to litigants and other stakeholders in the law and justice sector. We seek to delete that amendment that was sought by the Chief Justice.

With those remarks concerning the four Bills that fall under the Departmental Committee on Justice and Legal Affairs, I beg to second and call other Committee Chairpersons to speak about their own amendments.

(Question proposed)

Hon. Speaker: Let us have Hon. Koinange.

Hon. Paul Koinange (Kiambaa, JP): Thank you, Hon. Speaker.

The Departmental Committee on Administration and National Security was tasked to consider various proposed amendments to statutes that fall under its purview. They are:

- (i) The Public Holidays Act Cap.109;
- (ii) The Firearms Act Cap.114;
- (iii) The Official Secrets Act Cap.187;
- (iv) The National Police Service Commission Act No.30 of 2011; and

(v) The Kenya Coast Guard Service Act No.11 of 2018.

The Statute Law (Miscellaneous Amendments) Bill, 2020 intends to amend the Public Holidays Act Cap. 109 in order to delete the words “minister” and “district” and substitute them with the words “cabinet secretary” and “sub-county”. This is to align them with the terminologies as used in the Constitution.

The Bill seeks to amend the Act in order to rename Moi Day as *Utamaduni* Day. In the Firearms Act, Cap.114, the Bill proposes to amend various sections of the Act in order to replace the use of the term “Commissioner General of Police” with “Inspector-General” in line with the National Police Service Act.

In the Official Secrets Act, Cap.187, the Bill proposes to amend the Act in order to harmonise its provision with the structure of codes and other State offices which are established by the Constitution. It also proposes to amend the Act to harmonise it with advances in technology. In the National Police Service Commission Act, 2011 (No. 30 of 2011), the Bill proposes to amend Section 10(2) of the Act in order to correct an error in the section by deleting the misplaced word “concerned”.

Finally, with regard to the Kenya Coast Guard Service Act, 2018 (No. 11 of 2018), the Bill proposes to amend the Act to include the Kenya Wildlife Service and the Kenya Forest Service as bodies from which the Service can recruit officers. It also proposes to expand the Technical Committee of the Service and standardise the ranks in the Service with the Kenya Defence Forces. While considering the proposed amendments with the mentioned statutes, the Committee observed the following:

(i) That, the proposed amendments to the Public Holidays Act, Cap. 110 are in order as the implication of the amendment is to harmonise the terms which are applied in the Act with the Constitution and to rename Moi Day as *Utamaduni* Day;

(ii) That, the proposed amendment in the Firearms Act, Cap. 114 are in order as the implication of the amendment is to replace the reference to the Commissioner General of Police with the Inspector-General in line with the National Police Service Act of 2011;

(iii) That, in the proposed amendments in the Official Secrets Act, Cap. 187, the implication is to harmonise the provision in the Act with the structure of codes. It also proposes to amend the Act to harmonise it with advances in technology. The Committee further observed in the proposed amendment to Section 6 of the Act that there was need to provide for extent of limitation to the right to privacy. The Committee proposed national interest as the criterion that may warrant a Cabinet Secretary to seek limitation of one’s right to privacy. The Committee also observed that the exercise of such power should be subjected to external verification by the code in making information available to the Cabinet Secretary or any other authorised person.

(iv) The proposed amendment to the National Police Service Commission Act, 2011 (No. 30 of 2011) is in order as the implication of the amendment is to correct an error; and

(v) That, the proposed amendments to the Kenya Coast Guard Service Act, 2018 (No. 11 of 2018) are in order as the implication of the amendment is to include KWS and the KFS as bodies from which the Service can recruit officers. The Committee noted that the amendment proposed seeks to expand the Technical Committee and standardise the ranks in the Service with the KDF.

I thank you, Hon. Speaker. I beg to move the proposed amendments.

Hon. Speaker: Hon. Mutua.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Thank you, Hon. Speaker. The Departmental Committee on Education and Research handled the Universities Act No. 42 of 2012.

I beg to move that the Schedule to the Bill be amended by deleting the proposed new paragraph (c); and by inserting the following new subsection immediately before the proposed new subsection 3—

“(2A) Despite the subsection (1), the President may, on the recommendation of the Commission through the Cabinet Secretary, and on the advice of the National Security Council, establish a specialised degree awarding institution specialising in national security issues.”

The amendment seeks to further improve the amendment which is proposed in the Bill to give the President the power to establish specialised universities specialising in national security issues. While the Committee noted that there is need for the establishment of a university to offer standardised studies on national security matters, there is further need to involve the National Security Council (NSC) in its establishment. The NSC is established under Article 240 of the Constitution. It is mandated to exercise supervisory control over national security organs and perform any other functions prescribed by national legislation. The amendment will, therefore, ensure that a university which specialises in national security matters shall be established by the President on the recommendation of both the Commission for University Education and NSC.

The amendment, therefore, restates what is contained in the proposed new paragraph (c) which the Committee proposes to delete and introduce the aspect of the advice of the NSC.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Mwathi. Which Statute did your Committee consider? Did your Committee consider anything?

Hon. Peter Mwathi (Limuru, JP): Yes, Hon. Speaker. The Departmental Committee on Labour and Social Welfare considered Section 2 of the Employment Act, 2007 which deals with definition of “salary”. There was a proposal to do away with the term “basic salary”.

The Committee held a meeting and agreed that we shall move an amendment to ensure that we do not remove the words “basic salary”. The moment we remove the term “basic salary” in an employee’s payment, it means that the employer can decide what quantum forms your basic salary. Therefore, if there are any benefits that accrue pursuant to the amount that is paid to you as basic salary, then it will be calculated on what the employer will have decided as your basic salary. We will move an amendment to retain the term “basic salary” in the Bill.

Hon. Speaker, I support the Bill. At the appropriate time, I will move that amendment.

Hon. Speaker: Hon. Omboko Milemba.

Hon. Omboko Milemba (Emuhaya, ANC): I will speak on this proposed amendment. Can I proceed?

Hon. Speaker: Yes, please.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. As I support the Omnibus Bill, I want to specifically speak on the amendment of the Employment Act. That concerns the amendment to remove the basic salary which is very important. It is the base upon which all calculations of other deductions of an employee are done.

The basic salary is usually calculated after valuing the job. That is what we have currently in Kenya as job evaluation. We evaluate the job one will do and then we put a basic salary. If you follow the basic salary issue further, you will realise that it is very vital to protect it because it is usually fully taxable. If it is very high, you will certainly welcome a very high tax regime and vice versa. Removal of that will actually put workers in a situation where employers decide on the tax regime without a basis. It is also a basis for the other statutory deductions. That may include annual gratuity and all other deductions made on the salary based on the basic salary.

I want to assert that if we remove that term in the labour movement and even for the Members of Parliament (MPs), then the basis upon which those statutory deductions will be done, will be swayed and can be changed anytime.

In fact, the International Labour Organization (ILO) talks about this. It says that the basic salary is not easily changeable. You may not reduce it, but you may deal with all the other benefits above the basic salary which add to the gross salary. This may include overtime and other allowances.

Therefore, Hon. Speaker, without much ado and because today is a very busy day, I wanted to weigh in that the basic salary needs to be protected.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairperson of the Departmental Committee on Finance and National Planning.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Speaker. My Committee also had a chance to look at the Statute Law (Miscellaneous Amendments) Bill. We went through all the other amendments, some of which have fallen off. The ones that have stayed include the Accountants Act of 2008. As was explained by senior accountant and Chairman of the Institute at one time, this is basically to bring in the student accountants as members of the institute.

Our concern at the time was that if one brings in trainee accountants, is it just for the basic reason of raising revenue for ICPAK? They explained that these members would join at no fee. We have an amendment that we have discussed with the Majority Leader together with Hon. Kimani Ichung'wah who is also a senior accountant and we have agreed that for avoidance of doubt, we will move a further amendment to include the fact that when trainee accountants are recruited, they will not be required to pay any fee. So, we want to include that in the amendment for avoidance of any doubt.

Hon. Speaker, the Retirement Benefits (Deputy President and Designated State Officers) has been shelved for later considerations.

The other Bill we had is the Investment and Financial Analysts Act of 2015, which essentially says that we do not want rogue people moving around saying that they are investment and financial analysts, when all they are doing is conning Kenyans left, right and centre. We want people to be registered with the institute so that we know who an investment analyst is. This is because we have a lot of quacks who seek to help people invest here and there.

We had an amendment on the Order Paper which we will be reconsidering because of the issue of funding for this institute from the Exchequer. We had said we were averse to that idea. However, we have discovered that this is only for regularisation purposes because it is minimally being funded. So, we will be reconsidering that amendment when we come to Committee of the whole House.

For today, those are the Bills that we had here as the Departmental Committee on Finance and National Planning and we support.

Thank you, Hon. Speaker.

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

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. First of all, I have two roles to play today. One, I will comment as an MP, but secondly, and the most important one, I am representing the Chairperson of the Departmental Committee of Trade, Industries and Cooperatives, who has asked me to weigh in on this matter on his behalf.

As a Committee, we were asked to look at the proposed amendments under the Scrap Metal Act. The drafters of the amendments in the Statute Law (Miscellaneous Amendments) Bill simply

misunderstood quad and spectrum in respect to the Scrap Metal Act. So, at the Committee of the whole House, as a Committee, we have proposed that the amendments that purpose to talk about a police officer as an inspector above the rank of an inspector is misplaced because he is emerging as an officer appointed at the National Police Service, yet this inspector is appointed under Section 29 (1) of the Scrap Metal Act. We will make those amendments at the most appropriate time.

Hon. Speaker, now as a representative of the people of Funyula, as we have always said in the past, the question of Statute Law (Miscellaneous Amendments) Bill, is an area that we need further refinement because some of the issues raised in this Bill are normally very fundamental. In the past, we have complained here that for this case, it had 38 statutes being amended. You cannot do justice to 38 statutes in the given period of time.

After the withdrawals under Article 110(3) of the Constitution, by the Leader of the Majority Party, we are left with 24 statutes. Again, some of them are so fundamental. Yes, we have a few that are editorial issues and a few are matters to align the Constitution or the various Acts to the Constitution. But in totality, these are matters that even members of the public are concerned about. As I was seated here, quite a number of text messages have been coming through. How can you deal with some of the fundamental issues through a Statute Law (Miscellaneous Amendment) Bill that does not give members of public adequate time to look at the various issues?

Hon. Speaker, allow me to make a comment on the Kenya Coast Guard Service Act. It was meant to protect our maritime boundaries. As we stand here, we passed it some time back. The President launched it some time back, but full operationalisation has been very slow - painfully slow. As a result, people who go fishing within Lake Victoria continue being brutalised by the police and thugs from Uganda who come all the way to the Kenyan boundaries.

Mhe. Wanjala from Budalangi and I share the same unit based at Port Victoria. Whenever we are under attack and we call them, they say that they have no fuel, no tugboat or even gas and ammunition to confront the thugs from Uganda. As I speak here today, I have a constituent who was shot twice on the thighs within the waters of the lake in Funyula Constituency. We have followed up the matter. The Coast Guards and security systems keep telling us that there is nothing they can do because they have no facilities. They have no ammunition and they have nothing. We hope that the proposed amendments allowing them to hire officers from Kenya Forest Service and other paramilitary services, will allow them adequate facilities to enable them respond to the issues.

Finally, if this amendment had come on its own under Cap. 109, I would have obviously been reluctant to approve the change of Moi Day to *Utamaduni* Day. Those of us who drank milk and who lived through the Nyayo era remember the patriotic songs and the grandiose that accompanied President Moi during occasions. We feel that the word “Moi” ought to have been left to stand.

Hon. Speaker, with those few remarks, I support.

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

Hon. Sakwa Bunyasi (Nambale, ANC): Hon. Speaker, I have something else in mind. I will just skip this and save time.

Hon. Speaker: Okay. The Member for Mwea? The Member for Kimilili? Member for Roysambu? Member for Lari? Ala! All these people have put in their cards.

Let us have the Member for Dagoretti South.

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Speaker. I was looking forward to speaking to an agenda that is coming up later. Thank you for the opportunity.

Hon. Speaker: Let me get an indication from the Member for Othaya before I even give him the chance. Is it about this one, or about the tea?

(Hon. Gichuki Mugambi spoke off record)

I knew it is about tea. Member for Gichugu, I am sure you also want to speak about tea. So, these are tea girls or tea boys. How come I do not see the name of Hon. (Dr.) Otiende Amollo?

(A Member spoke off record)

It is defective. At some point, he was the one on top of everybody else. I have been wondering what has been happening. We will have Hon. Ichung'wah, then we go to Hon. Otiende Amollo.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. Let me also rise to support the Statute Law (Miscellaneous Amendments) Bill. I just want to speak to two issues. The first one is the one we were conversing on the registration and the role of accountants, especially trainee accountants. As it has been adequately articulated by the Chair of the Departmental Committee on Finance and National Planning, Hon. Nyasuna, following consultations with the Leader of the Majority Party, we have agreed that we can do a further amendment that will exempt trainee accountants from being levied any fee to join ICPAK. That way, we will protect students and young people from being compelled to pay fees so that those who pay fees to join ICPAK are people who are already working. That will protect our young and very vulnerable youth who want to train as accountants.

Let me also say, because this is a discussion we have had with the former Chair of ICPAK, Hon. Kimunya, it is time we looked at the Accountants Act wholesomely and not these small amendments. There are many things we need to do. If we want to support the fight against corruption, we need to regulate the accountants' profession better rather than just regulating those who sit for exams. It is those who are already working and those who seek to work as accountants that we need to regulate.

I also want to speak to the amendments relating to the Universities Act. The Chair of the Departmental Committee on Administration and National Security, Hon. Koinange will agree with me that even in our television discussions, we see many people whenever there is a terrorist attack calling themselves security experts. If we ask who they are and what training they have gone through, we realise many of them are police corporals who probably left the force unceremoniously but masquerade as experts in security. Therefore, part of the provisions of the Universities Act is to create specialised institutions that will award degrees in security matters. At the time the world and this country is confronted by the challenge of terrorism, issues to do with the crime of money laundering and narcotics, we need degree awarding institutions that will confer degrees to people who have trained specifically on security matters so that when people claim to be experts in security, they would be people who have been trained by institutes or universities that have been accredited and given charters by the Commission for Higher Education. I therefore support this particular provision on Section 2 of the Universities Act. I have amendments to that effect.

I have also seen amendments from the Chair of the Departmental Committee on Education and Research and the Leader of the Majority Party. We are also in discussion on what to do with the amendments.

In finishing, let me also touch on the proposed amendments, although we may have an opportunity to do that in the Committee of the whole House, on the question of telecommunication

companies giving data in as much as there is a provision to go to the High Court. We must be careful not to give powers to Cabinet Secretaries to compel organisations like Safaricom and other telecommunication institutes to give our personal data, especially communication from us to people on the pretext of national interest which is not even defined in the proposed amendment by the Chair of the Departmental Committee on Administration and National Security. We will converse on that one when we get to the Committee of the whole House.

I also take this opportunity to thank the Chair of the Departmental Committee on Finance and National Planning, Hon. Nyasuna, and the Leader of the Majority Party for seeing the logic of protecting trainee accountants because it is something that is very dear to me. I just had a conversation with the Member for Othaya and he told me that he trained as an accountant by just reading on his own. I asked him that supposing we told other young people in Othaya that they cannot train and he trained and qualified as an accountant, what would happen? Therefore, it is important even as we move forward to wholesomely look at the Accountants Act so that we better regulate the industry and sector such that I will be allowed to train and upon graduating and finishing my Section VI of the accounting profession, I can then enrol to be a member of ICPAK. As the Leader of the Majority Party says, for one to work or practise there must be continuous learning you go through ICPAK and probably be forced to meet certain qualifications that will enable you to be a member in good standing. We will continue to engage to ensure that we do what is in the best interest of the industry. I am happy that with the proposed amendments, we shall be able to protect our trainee accountants, students and young people in the country.

With that, I beg to support.

Hon. Speaker: Hon. Otiende Amollo. It looks like that machine is not proper.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. I want to support most of the sentiments already expressed here. Like some of my colleagues, I have sometimes had difficulties with the idea of too many amendments through the Statute Law (Miscellaneous Amendments). I am on record suggesting that we should as much as possible separate them.

On this one happily and by happenstance, a lot of the proposed amendments were dropped and we are now back to 23. We can live with that, even though that is still quite significant.

Speaking to some of the amendments, like the discussion the Leader of the Majority Party has just had with Hon. Ichung'wah, clearly, we will need to reexamine some of these provisions further. I am happy that they have come to some sort of consensus that it is not so much a constitutional issue, but an issue of principle. But even as we look at that principle, we must accept that professions must be regulated. When we say professions require self-regulation, it is not a form of suavity, it is a form of having a situation where they can deal with those who are rogue. As we do that, they will need, perhaps, as Hon. Ichung'wah says, to look at the Accountants Act afresh. Even as we make that amendment to introduce student accountants or student trainees, the Act confines itself to regulating accountants and the word "accountant" is defined and the definition does not appear to include a person who is still training to be an accountant. That is an issue that we will have to confront. In fact, Section 24 even appears to allow regulation in terms of age on who can be admitted. So those are very critical things that will need to be looked at.

The Chair of Departmental Committee on Justice and Legal Affairs spoke quite eloquently to the amendments by the Committee. Let me add two things for emphasis. The first one is that we also added the question of reintroducing a representative of the Public Service Commission in the panel that will be interviewing those people who join the Kenya National Human Rights Commission. We thought that is a very important Commission to be represented. At the same time, we were not persuaded that we should give the Kenya National Human Rights Commission

additional jurisdiction to advise the Government on treaties and international obligation because that is already a role of the Attorney-General. We thought the Kenya National Human Rights Commission has its role set out.

When it comes to the Law Society of Kenya, of course, we added that it must be an advocate of the High Court, but because of time we did not refine it further. However, with the events that are now unfolding at that body, it is clear that whenever we say that the Law Society of Kenya (LSK) should appoint, we will have to go ahead and determine how that is to be done. This is because I foresee, very soon, we might end up with two appointees and, unfortunately, we will then have the role of determining who the legitimate appointee is.

Hon. Speaker, we were not persuaded to adopt the additional recess for the Court of Appeal for a number of reasons. First, we noted the history of the idea of the recess of the courts in April, August and December. It is a history that is actually foreign to us. This was brought at a time when most of the judges were white and were from abroad. So, they needed time to go back, especially during the summer, to also enjoy part of the recess with their families. That is why you find that it is a recess that is only unique mostly to lawyers. The accountants will ask: Why is it that we do not get that kind of recess?

We also noted that there is the annual leave that is provided for. We appreciate that judges are overwhelmed right now, especially in the Court of Appeal. It is unfortunate that there are judges who have not been appointed. Now, even a certificate of urgency in the Court of Appeal takes months. However, we thought, first, that those are things that can be determined administratively. It needs not be written into a statute. Secondly, in any case, it will add to the backlog. Therefore, we thought that this can be regulated separately.

Lastly, the Coast Guard is an issue for all of us who have constituencies that are along the lakes. Rarieda Constituency has over 200 kilometres of the lake. When we passed the Kenya Coast Guard Service Act, we believed that it was going to protect our people from the invasions from other countries. While I am sure they are trying to do that, we have ended up with another problem. Some of the coast guards, especially those based in some of those areas, because they are unable to confront those people, have now turned to our fishermen. The fishermen who they came to protect are now asking us: “Why did you ask those people to come here?”

We really think, even as we support this amendment – and my Chairman of the Departmental Committee on Administration and National Security is also here – they must be told that they are supposed...

Hon. Speaker: Let us have the Member for Suba North.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker, for giving me this opportunity. I want to align myself to the sentiments expressed by Hon. (Dr.) Otiende Amollo, especially on the issues relating to the Court of Appeal and other issues pertaining to lawyers. The reason I am doing this is because I am often a very diligent Member. I have not had time to look critically at those amendments for the same reasons that Hon. (Dr.) Oundo has said that, sometimes, the amendments are too many and with our multiple roles including constituency roles, it becomes very difficult, and sometimes almost intimidating to even start looking at them.

We have spoken a lot about the need to limit the number of Bills that are brought by miscellaneous amendments. For that matter, I just want to speak to the one issue on the Coast Guard. I just come this morning from my constituency and it is coincidental that yesterday, I was speaking to fishermen, specifically two of them called Onyango and Odoyo from Rusinga Island. They sent me to come and say that the Coast Guard issue is a problem because the coast guards

are no longer protecting fishermen. Instead, they are the ones who are harassing fishermen. What we are doing here is trying to beef up their capacity, but their capacity is being beefed up to harass fishermen.

So, I am not persuaded by this amendment because we are not going to be beefing up their strength when their strength is being used to harass fishermen. As a House, we need to put them on notice because this is a new institution. If they continue that way, the same House that set them up can cause them to disappear. That is because when it comes to the issues of fishermen, we are not going to take them lightly. For some of us, that is the only source of livelihood for our people.

At one point, by coincident, I was at Rusinga Island when there was a problem at a beach called Itare. So, I ran over there, and they were saying that they were being harassed by the police from Uganda. I must congratulate the members of the public because they arrested the alleged police officers and I found them when they had brought them to dry land. However, when we assessed the police officers whom they had arrested, they turned out to be Kenyan police officers who were masquerading to be police from Uganda. That was before we brought the Coast Guard. I am told that on the Busia side, they have chased them away. So, we want to tell them that if they are joking, we will chase them from our islands in Suba North the same way they were chased from Busia. We are not going to joke with them. Let them come to protect our people from Tanzanians and Ugandans that are harassing our people. Let them not be part of the problem.

Having said that, I wish to abstain from voting either “yes” or “no” because I have not had an opportunity to look at the issues that we have at length. I am concerned because I know we have had time, and you may challenge me that we have had time but, again, going by the multiple roles we play, it becomes challenging when you have too many Bills. I was hoping that we would have time between now and the time it comes to the Committee of the whole House, and I am seeing that we are having the Committee of the whole House immediately. So, I wish to abstain. I will not support giving more powers to the Coast Guard to harass our people.

Thank you.

Hon. Speaker: Hon. Millie, I have never known you to complain about shortage of time, especially when it comes to this particular aspect of a Member of Parliament’s legislation. I have known you to be always ready, diligent and available.

Let us now have Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to support. The two issues which, as we go ahead, will need your guidance in future is that there were provisions which were in this Bill. If you allow me, I will cite them. There were provisions like the Evidence Act, Cap. 80; the Anti-Corruption and Economic Crimes Act, 2003; the Public Officers Ethics Act; the Proceeds of Crime and Anti-Money Laundering Act; the Leadership and Integrity Act of 2012 and the Bribery Act. Those are very important amendments which are in this Bill.

I totally concur with the Leader of the Majority Party because I have set precedence. At any stage, any Bill may be signed by the Leader of the Majority Party through the concurrence of the Speaker. You can withdraw certain clauses. Going forward, for us to protect the independent institutions and commissions that are answerable to this House, at some stage – maybe next year – you will need to give direction. For example, you do not expect the Office of the Auditor-General to go through the Cabinet Secretary of the National Treasury and Planning for his amendments to be discussed in this House. That is an independent office which is only answerable to Parliament. That is what they have been doing. So, you expect the Auditor-General, the Director of Public Prosecutions (DPP), the Directorate of Criminal Investigations (DCI), the Controller of Budget, the Ethics and Anti-Corruption Commission (EACC) and many other constitutional commissions

to send amendments through the Executive. That means they are subjected to the bureaucratic ratchet of the Executive and yet, they are independent institutions.

Under the presidential system of government, where the three arms of government are independent of each other, we expect those institutions to prepare quarterly reports. Those institutions include the Financial Reporting Centre and the Asset Recovery Agency. In other words, they are called the multi-agency team.

I think they can sit and see that there is need and a gap in terms of legislation in the war against corruption, money laundering and organized crime. Parliament, as an independent institution, needs to find a mechanism. Through your Office, I think those are part of the reforms that are attributed to you during your tenure. Maybe, you will discuss during the next leadership retreat, that those independent institutions can either use the Departmental Committee on Justice and Legal Affairs as the avenue and vehicle or a Speaker or an individual Member. I will prefer that the committees that oversee those institutions carry the amendments. That is so that we do not look like we are subjecting them and denying them certain legislative proposals that they feel, if the House enacts them, will improve their day to day duties either in the war against corruption or organized crimes. That is why I feel the ten items from the Criminal Procedure Code Cap 75 up to the Bribery Act of 2016 all look like amendments from independent institutions which report to Parliament. They do quarterly reports and are oversighted by Parliament in terms of budget and administration. So, I do not want them to go back again. I have given an example of the Auditor-General. The Auditor-General cannot be going through them. It is the CS for the National Treasury.

I beg to support.

Hon. Speaker: Well, I think in the last Leadership Retreat of August of this year, it was resolved that those independent constitutional commissions and independent offices are at liberty to approach, as you have rightly said, the committees that oversee them, with proposals where they think there are weaknesses or lacuna in existing legislation and propose improvements by way of amendments. That is so that, indeed, the committees are the ones which own those amendments when they come to the Floor of the House. That is the route to go. I think that is what was agreed in the last Leadership Retreat. Therefore, that is for all those many commissions. For instance, if it is the Salaries and Remuneration Commission (SRC), it is at liberty to approach the Departmental Committee on Finance and National Planning. If it is the Kenya National Human Rights Commission (KNHRC) or the Commission on Administrative Justice (CAJ) and several others, they should approach the Departmental Committee on Justice and Legal Affairs. There are others which deal with matters to do with refugees. There are very many committees that would really help. It is only fair that many of those bodies and independent offices understand how Parliaments work. It looks like many of them assume that Parliament works only when people go for rallies over the weekends. They should just approach. Feel free. They can even write to the Clerk and the Clerk will forward their requests to the relevant committees. It has always worked. I have seen people in the health sector have always written and they have always been given a hearing by the Departmental Committee on Health and very many other committees anyway. It is only those bodies that need to appreciate that there is an opportunity and good avenue for their matters to be ventilated through the House. In any event, even when they bring those proposals, they will still be subjected to further public participation where more stakeholders will appear before the committees alongside themselves so that the mix or the blend of what comes out of that kind of engagement will only help us make better laws.

Member for Seme, is it on this one or is it on tea?

(Hon. (Dr.) James Nyikal gestured to the Speaker)

It is on this one. Very well.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker, for giving me the opportunity to contribute to this. As I stand to support, I want to say what everybody has said.

The miscellaneous amendment process, to some extent, disadvantages Members except Members whose committees are involved. It is because the amendments are too many. If you want to look at it, you will have to read three documents at the same time if they are that many. We have said many times that we look at it so that we do not bring in substantive issues. Maybe, we will have to find a process of putting that in the Standing Orders.

But having said that, I am in support of many of the amendments. But I want to weigh in on the one of coast guards. We have 11 beaches in my constituency. What the law on coast guards was meant to do has completely missed the point. It was actually supposed to guard local people against Uganda and Tanzania who are the biggest problem, but it has turned on local fishermen. That is what is happening. Now they are implementing some rules and regulations, maybe, from the Kenya Maritime Authority in a very illogical manner. For example, now there is the issue of coxswains. Fishermen who are just using simple boats with simple engines which they have been using for years or just oars are now required to have a coxswain certificate. In order to be trained to get the coxswain certificate, they have to pay Kshs70,000. It is as if they are going to pilot large ships. It is a problem.

When they go and find out that they are using the wrong nets, that is okay. But it is really not in their area. They have come into that other area of fishing regulations. The way they treat those people is actually very crude. They beat them up and take bribes. So, I think they have to find out what exactly they are supposed to do. I think they are not properly resourced to do what they are supposed to do. We will have to look at it. I think the amendments would have been to see how they can be strengthened and get better resourced so that they can tackle the bigger enemy. You know when you get somebody to protect you from outside and then he turns around and starts harassing the children in the home, that is really not acceptable.

I also do not see why we want to link it with the Wildlife Service and the Forest Service. This is an institution that should just recruit its own people directly to serve. So, I think we have expressed this. If it goes on, we will have to relook at the whole idea of the coast guard services.

There are also other amendments that have come in that I support - like amendments on the Universities Act and on the Security Training Act. I think it is important that, if we are going to have people trained in security services, there has to be involvement of the National Security Council (NSC) and the involvement of the Chairman of the NSC and the University Commission that they work together. It is because you can see that when it gets to higher levels of security, even people and experts get killed. So, the information that will be used is not the information that can be open research and open data. I think that is something that I support.

It is true on the Official Secrets Act. With the technology we have, it has to change from the little pink paper we have been signing and people now have mobile phones. People have those WhatsApp pages and so on. So, a lot of information can be passed there. Again, when you start to limit - as it has been noticed and said by the Committee, that you may limit individual freedom, we need to look at how that is managed within the constitutional requirement. That is important.

I was also a bit concerned about the Anti-Corruption and Economic Crimes Act which is saying that, maybe, after 24 months, the officers that were restricted or were out of employment can apply back and that the commission has to appraise. I think we should be very strict when we

come to corruption. It should be clear. In other areas, in employment, if you are in court for issues of corruption, you actually are on suspension and that stays. If we start looking like they have been punished too much, I think that is an area that we really should worry about in terms of fighting corruption.

Hon. Speaker: Very well. Hon. Members, I think I had tried to find out all the Hon. Members who had put their cards and wanted to contribute to this. I think the last one was Hon. Nyikal. I, therefore, call upon the Mover to reply, there being no other Member who wants to contribute on this. Hon. Kimunya, you have the Floor.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. I wish to thank Members of the various committees for taking time to go through their work with a fine toothcomb. The Chairs have articulated what the committees deliberated on and brought here either by way of amending or concurring with the Bill.

I also agree fully with the sentiments of Hon. Duale about the independent bodies. I confirm that, indeed, we discussed that within the Leadership Retreat on how best we can process business coming from those independent bodies without it being seen that we are interfering with their independence. Hence, that may not be an issue in future.

I also want to thank Hon. Kimani Ichung'wah for bringing in the issue of how to protect the young unemployed accountants from being barred from accessing training and yet, they may not be able to pay. It is now very clear that they would not be required to pay. I believe the Chair of the Departmental Committee on Finance and National Planning and the Members have agreed on a formulation. When we come to the Committee of the whole House, we will propose the formulation on how to protect that category of people who are not employed, do not have an income, but are desirous of joining the professional body for regulation. This is so that money does not become a barrier for them to enter into the regulation pipeline. I believe we have a win-win situation for that.

I also want to alert Members on the following. I know there are some concerns on data. Hon. Otiende has said much on opening up of data. Hon. Ichung'wah has also mentioned the same thing. The people who sign up to the Official Secrets Act do so because of certain... They are exposed to those secrets. We expect that they will not divulge the information. I am sure that if you turned Hon. Nyikal up-side-down, overnight, there are things he will not tell you and yet he knows them. There are things that I know but I will not tell you. This is because of our own exposure and what we sign. I think it is important we extend that.

I have seen some amendments come in within other initiatives that are planning to amend the Constitution. One of the things that are being enshrined is data rights within the Bill of Rights. Again, there will be protection of people within the Bill of Rights in terms of the electronic data that you have. Once you sign the Official Secrets Act, it is known that the data that you access through your phones could also be...

In the USA, for example, the twitter accounts belonging to the outgoing President have already been taken over and the data has been archived because it is considered as official secrets. I think that is part of the thing that we should know, going forward, is that whatever you have kept electronically in your head, can be downloaded and then you can walk away without any official secret. How you download what is in the head is through conscience. What is contained within your phones and everything else that was there should be a matter for the State.

I want to thank everyone for agreeing. So that we can make progress, allow me to ask that even as we move to the next stage, please, let us move with the same co-operation. That way, we will prosecute this Bill to its logical conclusion in the next couple of minutes.

With those few remarks, I beg to reply.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. Chairman: Order, Hon. Members. We are now in the Committee of the whole House. We are dealing with the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.5 of 2020). We can now proceed.

Hon. Members, kindly give us a minute. We are dealing with something here.

INTERPRETATION AND GENERAL PROVISIONS ACT (CAP. 2)

Interpretation and General Provision Act Cap.2, Section 3

(Section 3 agreed to)

(Provisions relating to Interpretation and General Provision Act Cap.2 agreed to)

THE RECORDS DISPOSAL ACT (CAP. 14)

The Records Disposal Act Cap.14, Section 2(1)

Hon. Chairman: Let me call the Mover on this one. Kindly have the Floor. You are the Mover of the amendment, Hon. Kigano.

Hon. Clement Kigano (Kangema, JP): All the amendments were moved by the Leader of the Majority Party.

Hon. Chairman, I propose...

Hon. Chairman: Just a minute.

(Loud consultations)

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

Hon. Chairman (Hon. Moses Cheboi): As you prepare yourself, what is it Hon. Duale?

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, you know the Leader of Majority is the Mover of the Bill. The amendments belong to committee chairs. So, if the Leader

of Majority has no amendments, he will only come at the tail-end of this period. I really want the Chairs, led by Hon. Kigano, to prepare so that they can move and have the justifications so that we can move faster.

Hon. Chairman: Okay. That is actually the position and I can confirm it. That is the position and as we had done, we had already given a chance to the Chairman of the Committee on Justice and Legal Affairs, who is the Mover of that specific amendment. Therefore, I am sure he is now ready. I can see from the signals that he is actually ready.

Hon. Clement Kigano (Kangema, JP): Hon. Chairman, I beg to move...

Hon. Chairman: Kindly have the microphone. Yes! You are now okay.

Hon. Clement Kigano (Kangema, JP): I am most grateful to Hon. Duale for that little advice. Hon. Chairman, I beg to move:

THAT, the schedule to the Bill be amended—

(a) In the proposed amendments to the Records Disposal Act (Cap. 14)—

Insert the words “Environment and Land Court” immediately after the words “Employment and Labour Relations Court” appearing in the proposed amendment to section 2 (1) of the Act.

Hon. Chairman (Hon. Moses Cheboi): Very well.

(Question of the amendment proposed)

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

(Section 2 (1) as amended agreed to)

(Provisions relating to the Records Disposal Act Cap.14 as amended agreed to)

Hon. Chairman: Are we not done with that? We have finished with your part. You want to go to the second one? Then you are going a bit too fast for us the Member for Kangema.

THE PENAL CODE (CAP. 63)

The Penal Code Cap.63, (Section 52 (3) (b))

Hon. Chairman: Hon. Members, since there is no amendment, let me put the Question.

(Section 52 (3) (b)) agreed to)

(Provisions relating to the Penal Code Cap.63 agreed to)

THE PUBLIC HOLIDAYS ACT (CAP. 109)

The Public Holidays Act Cap.109, (Section 3)

(Section 3 agreed to)

(Schedule agreed to)

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(The provisions relating to Public Holidays Act Cap.109, agreed to)

THE FIREARMS ACT (CAP. 114)

The Firearms Act Cap. 114, (Sections 2, 27(8), 29(3), 38(1), 38(2), 38(3), 38(4) and 39(2)

(Sections 2, 27(8), 29(3), 38(1), 38(2), 38(3), 38(4) and 39(2) agreed to)

(The provisions relating to Firearms Act Cap. 114 agreed to)

THE OFFICIAL SECRETS ACT (CAP. 187)

The Official Secrets Act (Cap. 187), Section 2(1)

(Section (2) (1) agreed to)

Section 6

Hon. Chairman: Let me call the Mover on that one. You have an amendment but let me first propose the Question. Hon. Koinange, we are now doing section 6 which is a proposed amendment by the Committee on Administration and National Security. I can give you a minute to consult on that one. Are you prepared, Hon. Koinange, or I can see there are still some consultations? Actually, Hon. Koinange, I can see you have proposed to delete Section 6. Therefore, you can simply move that one quickly and give us the justification.

Hon. Paul Koinange (Kiambaa, JP): Hon. Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Official Secrets Act (Cap. 187), by deleting the proposed amendments to section 6 and substituting therefor the following—

S.6 Delete and substitute therefor the following new section—

Production
of data

6. (1) Where it appears to the Cabinet Secretary that it is in national interest to do so, the Cabinet Secretary may, apply to the High Court for an order, requiring any person who owns or controls any telecommunications apparatus used for the sending or receipt of any data to or from any place outside Kenya, to produce to the Cabinet Secretary or any person named in the order, the original or transcripts of all such data and all other documents relating to such data.

(2) Any person who fails to comply with a request made under subsection (1) shall be guilty of an offence and liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

Hon. Chairman: Well, I will proceed to propose anyway but, of course, we would have been happier with some justification. This is still okay because I know Members have the Order Paper.

(Question of the amendment proposed)

(Loud consultations)

Hon. Chairman: What is it?

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An Hon. Member: Which one are you dealing with?

Hon. Chairman: What is it? I am dealing with Sections 10 (1) 10 (2) and 19 (1) of the Official Secrets Act, Cap. 187.

Hon. Kimani Ichung'wah (Kikuyu, JP) Is it the one on the production of data?

Hon. Chairman: We cannot exchange in that manner. If you have an issue, you must do it in the normal manner.

Hon. Kimani Ichung'wah (Kikuyu, JP): On a point of order.

Hon. Chairman: Member for Kikuyu, what is it?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, I beg your indulgence because that is why I was being rather uncouth in my engagements with you. This particular Section 6 on production of data, the Chair did not explain the import of this amendment. This, to me, looks like a very dangerous provision. The Chair is telling us that where the Cabinet Secretary thinks it is in the national interest to...

Hon. Chairman: Hon. Member for Kikuyu, what has happened, unfortunately for you, is that we have already dealt with that amendment and it has been carried. What you need to do next time, you raise an issue at the right time. Being an Alliance High School Alumni, you can very quickly pick up on something that is still being discussed. Unfortunately, this one has already gone through. I actually gave you an opportunity thinking that you wanted to deal with Section 10, which is already gone. What I am doing now is putting the omnibus Question for that particular Act. So, let us finish with the Member for Kikuyu first. The unfortunate bit is that it is gone. So, we are going to put the omnibus Question. You have a choice if you have an issue. You can handle it at that particular point. So, let me give...

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Chairman. I belong to this Committee. I know we have gone far in terms of this amendment. But if you look at the Order Paper, there might be need for the re-committal of this Section.

Hon. Chairman: That is fairly interesting from a Committee Member. You should have handled this at the Committee level. I will give a chance to Hon. Duale and then to the Leader of the Majority Party and we will proceed.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Chairman. In my opinion, Hon. Ichung'wah is out of order. This is because, first, we have passed Section 6. We are at Sections 10 (1) 10 (2) and 19 (1). These are more like replacing the "Attorney-General" with the "Director of Public Prosecutions." So, this is just realigning the Act with the Constitution. However, I warn Members that, as they think of re-committal, they should look at both what is in the Bill and the amendment of Hon. Koinange, which has passed, so that we see which one we are comfortable with. Hon. Ichung'wah, do not incite Members that we should kill the whole of it. There are some parts which are just procedural; like replacing the "Attorney-General" with the "Director of Public Prosecutions". So, as we think of doing the re-committal on Section 6 (1), let us look at what is in the Bill and what the Committee is recommending. So, which one are we comfortable with?

Hon. Chairman: I am now giving a chance to the Leader of the Majority Party. As I do that, Hon. Members, kindly be keen because, sometimes, we move fast because we have to deal with this thing quite fast and then you take us back.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Chairman. We pray I move very fast. I know Committee Stage is still unfamiliar territory for most of the Members. What happened in Section 6, just for the record, is that if it is in the public interest, the Cabinet Secretary could demand that somebody produces the data and the apparatus. What the Committee did was to say

that where it appears to the Cabinet Secretary that it is in the national interest, the Cabinet Secretary may apply to the High Court for an order requiring a person to produce the data. So, the protection of the person is already in-built. It will not be the Cabinet Secretary to order. The Cabinet Secretary will have to go to court to seek an order to compel somebody to produce the data. I think that is in tandem with the production of any other data. I think that is good. That is what Members have passed. I just want to allay your fears that what you have passed is the right one amendment, which requires the Cabinet Secretary to go to court to seek an order. That is just for the record.

Hon. Chairman: Just to clarify, Members. I am not opening it any more. The reason why I stepped back is because I put the wrong Question, which I want to put it right. We are now putting the Question with amendments.

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

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

(Section 6 as amended agreed to)

(Sections 10 (1), 10 (2) and 19 (1) agreed to)

(Provisions relating to the Official Secrets Act, Cap. 187 as amended agreed to)

THE KENYA ROADS BOARD ACT, 1999 (NO.7 OF 1999)

The Kenya Roads Board Act, 1999 (No.7 of 1999), Second Schedule Paragraph 3

(Second Schedule Paragraph 3 agreed to)

New Section (7) (1) (b)

Hon. Chairman: Is that not a different one? Hon. Pkosing, kindly move Second Reading of the New Section.

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

THAT, the Schedule to the Bill be amended—

(1) in the proposed amendments to the Kenya Roads Board Act, 1999 by inserting the following new amendments in their proper numerical sequence—

s.7 (1) (b) Delete the words “Executive Director” and substitute therefor the words “Director-General”.

(Question of the new section proposed)

(New section read the First Time)

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

Hon. Chairman: Second Reading. Move the Second Reading.

Hon. David Pkosing (Pokot South, JP): Hon. Chairman, I beg to move the Second Reading of the Kenya Roads Board Act in the Schedule, as it is in the Order Paper.

Hon. Chairman: Now, how you do it, Hon. Pkosing – and I know you are a seasoned Member – is that it is just read a Second Time. Then we proceed with that particular new section 7 (1) (b).

Hon. David Pkosing (Pokot South, JP): Hon. Chairman, I propose that Section 7 (1) (b) be read a Second Time.

Hon. Chairman: Very well. So?

Hon. David Pkosing (Pokot South, JP): So, Chair, the import of that is only one thing, which is to call the Director-General of the Kenya Roads Board the “Director-General”. That is what we are seeking from what it was called before, the “Executive Director”. The problem with the Executive Director is that you cannot know whether that is the Director-General, the CEO or a Board Member. That is why my Committee, through public participation and the Government, found it fit to realign the title of the occupant of that office with other Director-Generals in the roads sub-sector.

I thank you, Hon. Chairman

Hon. Chairman: Okay. Let me propose the Question.

Hon. Chairman: I will give chance to a maximum of two Members, starting with Hon. (Dr.) Oundo. Take the next microphone if you are having a problem with yours.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Chairman. The Departmental Committee has not been very clear. He said that they are changing the title from that of “Executive Director” to “Director-General”, claiming that that is what happens in other areas. I do not know whether this was subject to public participation, and that members of the public accepted the change from “Executive Director” to “Director-General”.

Hon. Chairman: Hon. Oundo, the Chair was very clear. He indicated that there was public participation. He said there were consultations. He has simply said that it is a change from one title to another. You have an opportunity to either negate or support it, which is okay. But he has actually explained it.

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

Hon. Chairman: What is it, Hon. Duale?

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, if you read the Report of that Committee, you will find even in the advertisement for public participation, the Clerk of the National Assembly subjected particular provisions to respective committees. So, anything to do with roads went to the Departmental Committee on Transport, Public Works and Housing. Anything to do with labour went to the Departmental Committee on Labour and Social Welfare.

If you read it, public participation took place and this is just aligning. The rest of the other roads agencies have Director-General’s. We are changing the Kenya Roads Board (KRB) from having an Executive Director. So, put the Question and we move on.

Hon. Members: *Tuendelee.*

Hon. Chairman: Hon. Nyikal, and that should be the last one.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Chairman, I am inclined to support this. But there is another explanation needed. Whenever you use the words “Director General” it means there are other directors. That would have been quite easy to understand. But when you use Executive Director, that does not tell you what is happening below. So, if it means that there are other directors and then the Director-General, in that case, I support.

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

(The new section was read a Second Time)

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

New Section 12

Hon. Chairman: The Mover to move Second Reading. That is Hon. Pkosing again.

Hon. David Pkosing (Pokot South, JP): Hon. Chair, I beg to move:

THAT, the Schedule to the Bill be amended —

(1) in the proposed amendments to the Kenya Roads Board Act, 1999 by inserting the following new amendments in their proper numerical sequence—

s.12 Delete the words “Executive Director” wherever it appears and substitute therefor the words “Director General”.

Insert the following new subsection immediately after subsection (3) —

“(4) The Director General shall hold office for a period of five years and shall be eligible for re-appointment for one further term of five years.”

This is to delete the words “Executive Director” wherever it appears and substitute therefor the words “Director General”. This is just cleaning up wherever Executive Director was in the main Act to replace with Director-General. Thank you.

Hon. Chairman: Very well. Hon. Members, I think that is fairly straight forward. We have already passed the other one.

(Question of the new section proposed)

(New Section read the First Time)

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

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

Hon. Chairman: What is your point order again?

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman. Section 12 has another subsection (4) on the tenure of five years. We should do it together.

Hon. Chairman: Okay. It is still under Section 12 anyway.

Hon. David Pkosing (Pokot South, JP): Hon. Chairman, I have said it is a clean-up. But as you have guided me, let me proceed with subsection (4) as Hon. Duale has said. We are

proposing that the Director-General shall hold office for a period of five years and shall be eligible for reappointment for a further final five years.

Hon. Chairman, through public participation, it was found out that, in the infrastructure industry, when you give a Director-General three years, and when you are designing a road, it takes about one year for planning; another year for looking for money or budget and, by the time you want to implement your work, you have no time.

So, in terms of policy direction, the entire infrastructure is moving to five years. That is why we are proposing a five-year term renewable only once. Depending on performance, you can only get another one term. If you do not perform, you only serve for one term. If you perform, you serve for two terms. Even if you are the best, after the second term, you go home and give another Kenyan an opportunity.

Thank you, Hon. Chair.

Hon. Chairman: Hon. Members, allow me to propose the Question. You will have your time.

It is now open for debate and I will give two Members a chance. I will give Hon. (Dr.) Makali Mulu the first chance.

Hon. Makali Mulu (Kitui West, WDM-K): Thank you, Hon. Chairman. While I support the first amendment in terms of deleting where the Executive Director appears and replacing with Director-General, I want to oppose the second one. I want to know what the *Mwongozo* says about parastatals. That is because even in the other commissions, we are giving the Director-Generals a six-year non-renewable term.

Why do you want to have a Director-General for 10 years in an institution? On a serious note, it does not make sense. We would rather talk about a 3-year or 4-year renewable term. Five years plus another five years is 10 years! I oppose.

Hon. Chairman: Okay. Is that Hon. Tonui?

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Hon. Chairman. I also wish to oppose this amendment. Five years is a very long period for an appointment. Five years is only for elective positions. For appointing positions, it needs to be three years. Thank you. I oppose.

Hon. Chairman: Well, that is over. I am proposing to put the Question.

Hon. Members: No!

Hon. Chairman: Let us hear the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Chairman, I think we need to look at where we are coming from. KRB basically is the one that raises monies and disburses them to the different agencies like Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KeRRA). Its span goes beyond several.

The original Act that created KRB had five years. So, as we align this, we are talking in terms of the changes in the other bodies that created three years, and this one was left hanging. So, it is being changed to state the term of the Director-General. If you go back to what was in the original law, it was five years. I believe if you look at public participation in the Report, you will find the people said roads construction is a long term thing. Remember this is not at KeRRA, KURA or KeNHA. This is the Roads Board that fund-raises the monies and then disburses to the different agencies. Since it was five years, let us respect the wishes of the public participation and give the five years.

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

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(The new section was read a Second Time)

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

New Section 26(1)

Hon. Chairman: I call upon the Mover to move Second Reading for the new Section. Let us proceed

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

THAT, the Schedule to the Bill be amended —

- (1) in the proposed amendments to the Kenya Roads Board Act, 1999 by inserting the following new amendments in their proper numerical sequence—
- s.26(1) Delete the words “Executive Director” and substitute therefor the words “Director General”.

This is just like the earlier one that was removing the words “Executive Director” and replace therefor with “Director General” It is just cleaning up.

(Question of the new section proposed)

(New section read the First time)

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

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

(The new section was read a Second Time)

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

New Section 28

Hon. Chairman: Let us have the Mover to move Second Reading.

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

THAT, the Schedule to the Bill be amended —

- (2) in the proposed amendments to the Kenya Roads Board Act, 1999 by inserting the following new amendments in their proper numerical sequence—

s.28 Delete the words “Executive Director” and substitute therefor the words “Director General”.

It is the same as the earlier said, that wherever “Executive Director” is mentioned, we remove that and replace with the earlier one, which is “Director General”.

(Question of the new section proposed)

(New section read the First Time)

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

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

(The new section was read a Second Time)

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

New Section 29

Hon. Chairman: Mover, please move the Second Reading.

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

THAT, the Schedule to the Bill be amended —

(1) in the proposed amendments to the Kenya Roads Board Act, 1999 by inserting the following new amendments in their proper numerical sequence—

s.29 Delete the words “Executive Director” and substitute therefor the words “Director General”.

What is it, Hon. Chair? We are deleting “Executive Director” and replacing with “Director-General”. I thank you.

(Question of the new section proposed)

(New section read the First Time)

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

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

(The new section was read a Second Time)

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

New Second Schedule, Paragraph 5(1)

Hon. Chairman: Let us have the Mover to move Second Reading.

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

THAT, the Schedule to the Bill be amended —

(1) in the proposed amendments to the Kenya Roads Board Act, 1999 by inserting the following new amendments in their proper numerical sequence—

Second schedule, paragraph 5(1)	Delete the words “Executive Director” and substitute therefor the words “Director General”.
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What is it? Remove the words “Executive Director” and replace with “Director General”. It is as simple as that.

(Question of the new second schedule proposed)

(New second schedule read the First Time)

(Question, that the new second schedule be read a Second Time, proposed)

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

(The new second schedule was read a Second Time)

(Question, that the new second schedule be added to the Bill, put and agreed to)

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

THE STATISTICS ACT, 2006 (NO. 4 OF 2006)

The Statistics Act, 2006 (No. 4 of 2006), Section 23

Hon. Chairman: I thought we have not done the amendments by the Member for Kiambu. Those were dropped. So, we are now going to provisions relating to the Statistics Act.

(Section 23 agreed to)

(Provisions relating to the Statistics Act, 2006 (No. 4 of 2006) agreed to)

THE EMPLOYMENT ACT, 2007 (NO. 11 OF 2007)

The Employment Act, 2007 (No. 11 of 2007), Section 2

Hon. Chairman: I see there is a proposal by the Chairman of the Departmental Committee on Labour and Social Welfare.

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Hon. Peter Mwathi (Limuru, JP): Hon. Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to section 2 of the Employment Act, 2007 by deleting the words “basic salary”.

Basically, we are retaining the words “basic salary” which is...

Hon. Chairman: Chair, I am not so sure that, that is the position. Are you not proposing a deletion?

Hon. Peter Mwathi (Limuru, JP): I said “as per the Order Paper”. When I say “as per the Order Paper”, with your guidance, I thought it is carried as the Order Paper provides.

Hon. Chairman: So, you are proposing a deletion. You know I am trying to bring some Members who probably have not seen it up to speed.

Hon. Peter Mwathi (Limuru, JP): I know this procedure, but I can read if you want.

Hon. Chairman: No, I just wanted to know whether it is a deletion.

Hon. Peter Mwathi (Limuru, JP): Yes.

Hon. Chairman: Proceed now. It was just for Members to know.

Hon. Peter Mwathi (Limuru, JP): Hon. Chairman, the basic salary should be retained. It was removed in the Miscellaneous Bill. The reason behind it is that this is the basis upon which most benefits for employees are calculated. Therefore, we are proposing to retain it and hence that amendment be deleted.

Hon. Chairman: Very well. That is exactly what I wanted you to capture so that I can put it well here.

(Question of the amendment proposed)

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

(Section 2 as amended agreed to)

(Sections 3(2) and 31A agreed to)

(Provisions relating to the Employment Act, 2007 (No. 11 of 2007) as amended agreed to)

THE ACCOUNTANTS ACT, 2008 (NO. 15 OF 2008)

The Accountants Act, 2008 (No. 15 of 2008), Section 17 (2A)

Hon. Chairman: Let us proceed. I have called the Chair of the Departmental Committee on Finance and National Planning, Hon. Gladys Wanga, the Member for Homa Bay.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Chairman, I beg to move:

THAT, the Schedule to the Bill be amended—

- (a) in the proposed amendments to the Accountants Act, 2008 by deleting the proposed amendment to section 17(2A) and substituting therefor the following amendment—
- s. 17(2A) Delete and substitute therefor the following new subsection—

(2A) A person seeking to undertake examinations in accountancy as prescribed by the Examination Board shall be

registered with the Board, and with the Institute as a trainee accountant.

This Section is speaking to the issue of trainee accountants.

Hon. Chairman: I am trying to look at it. Between the one by Hon. Wanga and the other one by Hon. Ichung'wah, which one should come first? If you have agreed that yours is coming first, then it means if it is taken, yours falls.

Hon. (Ms.) Gladys Wanga (Homa Bay, ODM): Hon. Chairman, we actually built consensus.

Hon. Chairman: Let us start with the first ones, Section 4(2) and then Section 4, and then now we come to that other one which you seem to have had consensus.

The Accountants Act, 2008 (No. 15 of 2008), Sections 4(2) and 4

Hon. Chairman: Is that Hon. Ichung'wah? We are dealing with Sections 4(2) and 4.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, just for the record, as Hon. Nyasuna Gladys Wanga was contending, it is that we have built consensus just like we are trying to do with BBI. We have also built consensus on this one. Consensus only moves the country forward. Therefore, there is a further amendment that Hon. Gladys is doing that creates the proviso that we wanted, so that I am able to withdraw mine. We had already consulted that I will drop mine on the proviso...

Hon. Chairman: You simply need to withdraw that, Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, I must explain the import of the withdrawal.

Hon. Chairman: The consensus between you and Hon. Nyasuna can be left for another day. If it has...

Hon. Kimani Ichung'wah (Kikuyu, JP): In fact, it is Hon. Nyasuna and the former Chair of the Institute of the Certified Public Accountants, currently the Leader of the Majority Party, Hon. Kimunya, that have come to a consensus. Therefore, there has been consensus. I can confirm that we can now be able to protect the trainee accountants. But also for the record, Hon. Chair, we have committed that we will re-look at the Accountants Act wholesomely so that we also...

Hon. Chairman: That is withdrawn and so, we can leave the politics out of it. You have withdrawn.

(Sections 4(2) and 4 withdrawn)

Section 17 (2A)

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Chair. Hon. Chair, I beg to move:-

THAT, the Schedule to the Bill be amended—

(a) in the proposed amendments to the Accountants Act, 2008 by deleting the proposed amendment to section 17(2A) and substituting therefor the following amendments.

s.17(2A)	Delete and substitute therefor the following new subsection- (2A) A person seeking to undertake examinations in accountancy as prescribed by the Examination Board shall be
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registered with the Board, and with the Institute as a trainee accountant.

As Hon. Kimani Ichung'wah has correctly pointed out, we did build consensus with very senior accountants - Hon. Kimunya and Hon. Ichung'wah. That is because the consensus came on time. The other consensus they are talking about has been overtaken by events.

This particular section deals with the issue of trainee accountants becoming members of the Institute of Certified Public Accountants. That is what the amendment is dealing with.

I beg to also move, with your permission, the further amendment to this amendment, which will make this amendment now read:

“A person seeking to undertake examinations in accountancy as prescribed by the examination board, shall be registered with the board, and with the institute, as a trainee accountant.

The further amendment goes ahead to say:

“Provided that, that person shall not be required to pay the institute any fee for the registration as a trainee accountant, if the person is not employed.”

Hon. Chair, that is self-explanatory. What we are saying is this: Trainee accountants' needs to register for purposes of their examinations.

In the further amendment by Hon. Ichung'wah which I am moving, in the event the person is not employed, they should not be required to make any payment to the institute. That way, they are protected.

Hon. Chair, I beg to move.

Hon. Chairman: Now, Hon. Members, we will first deal with the further amendment first. I think that is what we need to do. Then we can come back to anything else.

(Question of the amendment proposed)

I will give two Members to speak to this. Who is that Member up there? Yes, and it is yourself. So, proceed.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Chairman, I am not so sure this is a neat way of doing the amendments, on two accounts: One, it is discriminatory. Secondly, it will be cumbersome for the examination board to keep on undertaking a head count of who is employed and who is not. I think we need to look for a neater way, probably by way of a regulation that the Minister or whoever is in charge can do a regulation on how to govern the rest. This is discriminatory and it is going to be cumbersome to determine who is employed and who is not.

Hon. Chairman: You know, you are one of the Members who complained earlier that there were not very good explanations. Now, you are saying it is discriminatory and you are leaving it at that. You are not even stating what is discriminatory so that Members can also be with you. What is the discrimination so that I give another Member to my right?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Chairman, why would you ask those who are employed to pay and ask those who are not employed not to pay? What if somebody makes a choice to refuse to be employed so that he/she mischievously refuses to pay? We must apply the Constitution uniformly - the Bill of Rights.

Hon. Chairman: Okay. Hon. Kabinga.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Chair. I really want to support the amendment by Hon. Wang'a. Hon. Chair, this is in line with what we want for our youth. We do acknowledge that when our youth are training, they do not have money to register or even pay

their loans. That is why we are talking about a tax holiday for our youth. This is in line with what BBI is proposing and I think we really need to support it.

Hon. Chairman: I will give two Members. Let us start with Hon. Nyikal, and then I come to Hon. Duale.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Chair, the discrimination is like this. Take two young men, one is not employed, but one says I am going to be a fisherman somewhere and my job is not even related to accounting. But because I am now in that employment I am supposed to pay, while the other person who is not in employment and we are doing the same course will not pay. It is actually discriminatory. It is assuming that employment is to do with accounting. In this case, you can be employed anywhere else or you can be self-employed. How will you take care of that discrimination? It is discrimination.

Hon. Chairman: Allow me to give a few Members a chance and then I will close. Hon. Duale, then I will go to Hon. Iringo and then Hon. Githinji. Quickly!

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, in as far as the institute is concerned – and I am a father of an upcoming accountant... You know, this institute was even charging students for subscription fee. There was an abuse. So, this amendment by the Departmental Committee on Finance and National Planning is not discriminatory. It is helping. Those of us who are not accountants: those of us who are not members of this board and who do not know the institute and those of us whose children are not in that line, we better listen to the accountants. Let us listen to the Chair of Departmental Committee on Finance and National Planning who has done public participation - not planners like Prof. Oundo.

Hon. Kubai Iringo (Igembe Central, JP): Hon. Chair, I support the amendment by Hon. Chair of the Departmental Committee of Finance and National Planning and the Committee. I thank them for building a consensus on this one. Some of those students do not even have fees to pay for their education. When you put other levies, it becomes very difficult. But if you get into employment, either direct or self-employment, then you can join the institute. There is no problem. I support.

Hon. Chairman: Hon. Githinji Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): For the record, I oppose the entire amendment even with the riding further amendment to it. That is because you cannot be a member of an institute which you have not qualified to be in. This is an institute of professionals. How then do you register to be a member of an institute when you are still learning and you have not become a member of that profession? This is premature and I oppose for the record.

Hon. Chairman: Hon. Kimunya, the Leader of the Majority Party. We will then make progress.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Chair. It is important. I know some Members may not have been here when we were in the Second Reading and, hence, are not following what we are doing. The current Act as it is says that for you to be registered as a student, you must be a member of the institute. That is what the current Act says. So, what this amendment is seeking to do is to create a new category for students' membership. Then, further, in the event that, that student member is not employed, we are insulating them from being charged a fee. But for those who are employed, they should pay a fee. What we are basically saying is that as a student; somebody could be sitting for their Section 6 Accounting. He could be a senior accountant earning half a million Kenya shillings! Do you want to treat him in the same category as the young chap who just finished university and wants a career? That is not discrimination; it is protection of those who cannot afford.

Hon. Chairman: Now, Hon. Members, you have the opportunity to make your decision.
(Question, that the words to be left out be left out, put and agreed to)

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

Hon. Chairman: I would have asked Hon. Kimani Ichung'wah to withdraw his amendment, but I think it is dropped. It is automatically dropped. No question about asking him to amend. We had said if it is carried, this is over!

(Section 17 (2A) as amended agreed to)

(Provisions relating to the Accountants Act, 2008 (No. 15 of 2008) as amended agreed to)

THE JUDICIAL SERVICE ACT, 2011 (NO. 1 OF 2011)

The Judicial Service Act, 2011 (No. 1 of 2011), Section 7

(Section 7 agreed to)

(Provisions relating to the Judicial Service Act, 2011 (No. 1 of 2011), agreed to)

THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS ACT, 2011 (NO. 14 OF 2011)

The Kenya National Commission on Human Rights Act, 2011 (No. 1 of 2011), Section 8

Hon. Chairman: There is an amendment by the Chairman, Justice and Legal Affairs Committee (JLAC).

Hon. Clement Kigano (Kangema, JP): Thank you, Hon. Chairman. I beg to move:

THAT, the Schedule to the Bill be amended-

(b) in the proposed amendments to the Kenya National Commission on Human Rights Act, No. 14 of 2011-

(i) Delete the proposed amendment to section 8 of the Act;

Hon. Chairman, I beg to move that the deletion of the proposed amendment to be part of the Bill.

Hon. Chairman: No. You can put it neater. You are proposing that that Section be deleted.

Hon. Clement Kigano (Kangema, JP): Yes.

Hon. Chairman: Then we proceed.

Hon. Clement Kigano (Kangema, JP): This is justified by the fact that the proposed amendment that we seek to delete sought to remove the representative of the Public Service Commission (PSC) from the selection panel to recommend persons for appointment as members of the Commission.

(An Hon. Member spoke off record)

Yes. That is Section 8. I am dealing with Section 8.

Hon. Chairman: Yes, and you are proposing a deletion.

Hon. Clement Kigano (Kangema, JP): Yes. Deletion! That the proposed removal is not justifiable since the PSC has the mandate to promote the values and principles of Public Service and Article 232 of the Constitution.

Hon. Chairman: Well. It did not come out clearly but when I give some Members to discuss it, probably, it will.

(Question of the amendment proposed)

I will give two Members a chance.

(Hon. Aden Duale spoke off record)

Off course, I had to propose, Hon. Aden Duale. I had to propose because that is the only opportunity that you will have now to discuss. Proposal is the first step. What is it, Hon. Aden Duale?

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, I thought Section 8 of the Kenya National Commission on Human Rights Act 2011 talks about functions. That is to advise the State on the ratification or cessation to international and regional treaties relating to human rights.

My good friend and elder is dealing with the deletion of the proposed amendment to Section 11(2). I want him to deal with the proposed amendments to Section 8 on the functions so that we are clear. Probably, the one he read was on the deletion to the proposed amendments to Section 11(2).

Hon. Chairman: We have to be very clear and you will have to help us, Chairman of the Departmental Committee on Justice and Legal Affairs. There appears to be an issue because when it comes to Section 11(2), you will be proposing a deletion.

Hon. Clement Kigano (Kangema, JP): Hon. Chairman, we are seeking to delete the amendment that he sought.

Hon. Chairman: We will have a problem with that because in Section 11(2), you will not be proposing any deletion as far as my records are concerned. You will be doing that when it comes to Section 11(14). I wanted to know whether you are proposing a deletion to Section 8.

Hon. Clement Kigano (Kangema, JP): Yes, we are proposing a deletion of the amendment to Section 8. The justification for this is that the Commission has a wide mandate under Section 8. Therefore, there was no need for them to seek to perform a function bestowed on the Attorney-General by the existing law.

Hon. Chairman: It is clearer now. You have proposed a deletion. Can I put the Question? Let me put the Question because this is fairly straightforward.

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

(Section 8 agreed to)

(Section 11(2) agreed to)

Section 11(14)

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

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

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, the Chair of the Departmental Committee on Justice and Legal Affairs wants to delete. In the Bill, he is also deleting. If you look at the Bill, Section 11 (14) has been deleted.

Hon. Chairman: Probably, he is deleting the deletion. You then go back to the original position. I simply follow the request by the Members.

(Loud consultations)

Now you will be going back to the Section 11(14).

Hon. Clement Kigano (Kangema, JP): We need to retain because---

Hon. Chairman: Which one do you want to retain?

Hon. Clement Kigano (Kangema, JP): Section 11...

Hon. Chairman: We are now doing a deletion there. So, therefore, retaining!

Hon. Clement Kigano (Kangema, JP): So, we need then... It is the same thing. We need... Thank you, Hon. Chairman. It is the same thing. We need to retain and, therefore, that is the justification.

Hon. Chairman: Okay. Actually, it is like the previous one. You are deleting the proposed deletion and so it remains.

Hon. Clement Kigano (Kangema, JP): Yes. So, I do not have to explain.

Hon. Chairman: Absolutely. You have done right. I will open it up and Members can contribute to it.

(Question of the amendment proposed)

I will give an opportunity to two Members.

Hon. Aden Duale (Garissa Township, JP): Hon. Chair, there is a matter of procedure.

Hon. Chairman: Yes, what is the procedure?

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, the procedure is this: The Chairman wants to retain Section 11(14) the way it was before in the parent Act. So, as the Chair of the Departmental Committee on Justice and Legal Affairs, I want him to first explain. You have not given him the chance to explain why he wants to retain Section 11(14) in the principal Act. From there, we can then debate.

Hon. Chairman: Maybe you can explain, so that Members can be with you. Give the Member the microphone.

Hon. Clement Kigano (Kangema, JP): The justification for this is that the proposed amendment seeks to remove the representative of the Public Service Commission from the selection panel for recommendation of persons for appointment as members of the Commission. The proposed removal is not justifiable since the PSC is the body which has the mandate to promote the values and principles of public service under Article 232 of the Constitution.

Hon. Chairman: Okay. That is fairly straightforward.

Hon. Aden Duale (Garissa Township, JP): Put the Question.

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

(Section 11(14) as amended agreed to)

*(Provisions relating to the Kenya National Commission on
Human Rights Act (No. 14 of 2011)
as amended agreed to)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT, 2011

The Employment and Labour Relations Court Act, (No. 22 of 2011) Section 27

(Section 27 agreed to)

*(Provisions relating to the Employment and
Labour Relations Court Act, (No. 22 of 2011) agreed to)*

THE ETHICS AND ANTI-CORRUPTION ACT, 2011

The Ethics and Anti-Corruption Act, (No. 22 of 2011), Section 11(1)(j)

(Section 11(1)(j) agreed to)

*(Provisions relating to the Ethics and Anti-Corruption
Act, (No. 22 of 2011) agreed to)*

THE NATIONAL POLICE SERVICE COMMISSION ACT, 2011

The National Police Service Commission Act, (No. 30 of 2011), Section 10(2)

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

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

(Section 10(2) agreed to)

*(Provisions relating to the National Police Service
Commission Act, (No. 30 of 2011) agreed to)*

THE PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL) ACT, 2011

The Public Appointments (Parliamentary Approval) Act, (No. 33 of 2011), Section 8(1)

(Section 8(1) agreed to)

*(Provisions Relating to the Public Appointments
(Parliamentary Approval) Act, (No. 33 of 2011)
agreed to)*

THE UNIVERSITIES ACT, 2012

The Universities Act, (No. 42 of 2012), Section 24

The Temporary Deputy Chairman (Hon. Christopher Omulele): I call on the Mover to move the Second Reading.

Hon. Members: There is an amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Alright, move the amendment.

Hon. Amos Kimuya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended-

(a) in the proposed amendments to the Universities Act (No. 42 of 2012) –

In the proposed amendment to Section 24 by deleting the proposed new subsection (3) and substituting therefor the following new subsection—

“(3) The provisions of Part V of this Act shall apply to an institution established under this section with such modifications as may, with the approval of the Cabinet Secretary and the Commission, be specified in the respective Charter”.

Hon. Temporary Deputy Chairman, the import of this amendment is that we have provided for the creation of specialised universities to offer security-related courses. We are saying that the provisions of Part V, which is the governance of those universities, may be modified for those people I had mentioned while moving. The Bill had excluded who will do the modification and the changes. We are now saying that with the approval of the Cabinet Secretary and the Commission for Higher Education which regulates universities and decides on who gets a charter or not, those will be specified in the respective charters.

Therefore, there are checks and control; a Cabinet Secretary who does it, the Commission will regulate and then the modifications will be part of the charter to make sure the university cannot abuse and will have to be straitjacketed in terms of what they want to do. It is a straightforward amendment and I know there was a similar amendment coming in from the Departmental Committee on Education and Research and one from Hon. Ichung’wah, but we have agreed that we consolidate everything into my amendment and the others will lapse.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): I see interest from Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, this is a very important amendment. First, the provisions in the Bill are very critical to our country and the further amendment by the Leader of the Majority Party makes it even far much better and

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improved. What are we talking about? We are saying that for the first time in the history of Kenya and in the region, we are going to give charters to universities specialising in national security. What are we talking about? Already, we have the infrastructure and we are the leaders in the region. We are talking about the Kenya Defence College in Karen that now gets students at high level from the whole region. We have the National Intelligence Service Academy in its headquarters. We want the academy to also get a charter and be a pool for the whole region. Kenya is a player in the region. We have the Kenya School of Monetary Studies and the Kenya School of Government.

This is a very important amendment. I am sure it is a boost to our national security organs, specifically the current Kenya Defence College in Karen and the National Intelligence Service Academy along the Thika Superhighway.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): That is a very good contribution. Hon. Ichung'wah, Member for Kikuyu.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I was consulting with the Leader of the Majority Party on new sub-section (c), which creates universities specialising in national security issues, so that we have a proviso that says that these specialised universities should be specialised public universities specialising in national security, so that tomorrow we do not have a situation where we will be dealing with private universities. Matters of national universities should be left to public universities.

The other issue I was consulting the Leader of the Majority Party on is that the amendment, by and large, has the same import as that of the Leader of the Majority Party. However, despite having the same import, mine seeks to create a proviso to provide that despite Section 24(1) the President may, on the recommendation of the Commission through the Cabinet Secretary, and on the advice of the National Security Council, establish public degree awarding universities or institutions specialising on national security issues. It is my view that on matters to do with public security, we ought to give the President powers to establish such an institution even without reference to the provisions of Section 24(1).

As much as I was in consultation when you called me out, I beg to say that with my amendment, if we agree with the Leader of the Majority Party as other Members contribute, we give the President express powers to create such an institute without being hindered by the provisions of Section 24(1).

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. Hon. Member for Kikuyu, proceed to consult.

We will have Hon. Iringo Kubai. Hold on, Hon. Kubai Iringo. The Leader of the Majority Party wants to say something.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I have consulted with the Departmental Committee on Education and Research and with Hon. Ichung'wah. I believe the amendment by the Departmental Committee on Education and Research, which also mirrors what Hon. Ichung'wah has, has merit. So, I would like to withdraw mine in favour of the amendment by the Departmental Committee on Education and Research.

The Temporary Deputy Chairman (Hon. Christopher Omulele): So, the proposed amendment by the Leader of the Majority Party is withdrawn.

(Proposed amendment by Hon. Amos Kimunya withdrawn)

Therefore, we shall move to the proposed amendment by the Chair of the Departmental Committee on Education and Research.

Hon. Duale, what is out of order?

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Chairman, this is a question on procedure. After Hon. Kimunya moved his amendment, you put the Question. At that stage, you now need to give the House to decide after you have already proposed. There is no way Hon. Kimunya will come back and withdraw his amendment unless that will negate the amendment. That is an issue of procedure.

The Temporary Deputy Chairman (Hon. Christopher Omulele): They have confused me.

Hon. Aden Duale (Garissa Township, JP): I think they have confused him. This is not a public or a private university. This is a specialised university within the ambit of the national security institutions. As we speak, you can walk to the University of Nairobi and do a security-related course or peace building, but if it is a National Intelligence Service Academy or the Kenya Defence Forces College, then they must have the exclusive right on who to admit. It cannot be a public university and it cannot be subject to public and private universities. I cannot go and build a university similar to the one of the KDF in Karen even if I have the charter.

So, we should continue with the one of Hon. Kimunya and then you put the Question.

(Hon. Kimani Ichung'wah spoke off record)

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Member for Kikuyu, what is out of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, in relation to what the former Leader of the Majority Party, Hon. Duale, is saying, if you look at the import of what I was saying and Hon. Kimunya's amendment, you will notice there is also an amendment by the Departmental Committee on Education and Research.

(An Hon. Member spoke off record)

No, they are not dropped. Both the Committee's amendment and Hon. Kimunya's cover what I wanted to do in my amendment. Therefore, I want to propose that if Hon. Kimunya can move his amendment and the Committee also is able to move their amendment, then I would have to drop mine. If Hon. Kimunya's amendment goes alone without that one of the Departmental Committee on Education and Research, I have no option, but to push on the parts of my amendment that relate to the issues that have not been covered in Hon. Kimunya's.

Therefore, I would like to propose that Hon. Kimunya moves his, we dispense with it, and then we go back to the Committee's amendment which covers the bit that I have covered in my amendment that Hon. Kimunya's amendment has not covered. Let us finish with Hon. Kimunya's amendment and then we go to the Committee's. If not that, they both drop, and we go with mine.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Kimunya, the Leader of the Majority Party, what do you desire to do with your proposed amendment?

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, for good order, we should allow the Committee to move their amendment under Clause 24(c) because mine is

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coming under Clause 24(3). So, if they first move their amendment in Clause 24 covering (c), which comes before my amendment on Clause 24(3), then we will not get the confusion that was coming in.

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo, what is out of order?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I am requesting that we get the electronic page so that we are able to follow even as they are moving the amendments. In the past, because we have been using the manual one or the hard copy, we could tell the specific electronic page even when Hon. Ichung'wah is talking to his amendment. When Kimunya is speaking, what is the electronic page so that we are able to follow?

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let me give direction on the way we are going to deal with this. Hon. Kimunya had already moved his proposed amendments. We had not yet put the Question on it. I have listened to Hon. Duale; I have listened to Hon. Kimani of Kikuyu. I have also looked at the proposed amendment by the Departmental Committee on Education and Research. It looks like if the amendment that is proposed by the Committee is carried, then the amendment proposed by the Leader of the Majority Party and the one by Hon. Kimani will fall by the way and they will have been carried. So, for order and for the good of the House, I propose that we deal with the proposed amendments by the Committee first. I will, therefore, direct the Committee, through Hon. Wambugu, to proceed to deal with the proposed amendments by the Committee.

Hon. Millie, I am still consulting on your issue about the digital page. I will get back to you. Proceed, Hon. Wambugu.

Hon. Ngunjiri Wambugu (Nyeri Town, JP): Thank you very much, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Universities Act, No.42 of 2012—

- (a) by deleting the proposed new paragraph (c); and;
- (b) by inserting the following new subsection immediately before the proposed new subsection (3)—

“(2A) Despite subsection (1), the President may, on the recommendation of the Commission through the Cabinet Secretary, and on the advice of the National Security Council, establish a specialized degree awarding institution specializing in national security issues.”

The justification for this is that the amendment seeks to further improve the amendment proposed in the Bill to give the President the power to establish specialised universities specialising in national security issues. While the Committee noted that there is need for establishment of a university to offer studies on matters of national security, there is further need to involve the National Security Council in establishment of the university. The NSC is established under Article 240 of the Constitution and is mandated to exercise supervisory control over national security organs and perform any other functions prescribed by national legislation.

The amendment will therefore ensure that a university established to specialise in national security issues shall be established by the President on the recommendation of both the

Commission for University Education and the NSC. The amendment therefore restates what is contained in the proposed new paragraph (c) which the Committee has proposed to delete and introduces the aspect of the advice of the NSC.

I 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
be inserted, put and agreed to)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Now, as per my directions, if the one by the Committee has been carried as it has been carried, the one by the Member of Kikuyu falls by the way. Leader of the Majority Party, yours also falls by the way. Leader of the Majority Party, the legal counsel is raising issue about your amendment. Have you dropped it, for the record? Just go on record, so that it is on record.

(Loud consultations)

Hon. Amos Kimunya (Kipipiri, JP): Out of abundance of caution, I beg to move my amendment to Section 3 as proposed in the Order Paper which is basically to capture what has not been moved by the Committee.

Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Schedule to the Bill be amended-

(a) in the proposed amendments to the Universities Act (No. 42 of 2012)-

In the proposed amendments to Section 24 by deleting the proposed new subsection (3) and substituting therefore the following new subsection-

“(3) The provisions of Part V of this Act shall apply to an institution established under this section with such modifications as may, with the approval of the Cabinet Secretary and the Commission, be specified in the respective Charter”

The import of this is to link the creation of universities and the provisions of Part V of the Universities Act, which is not covered by the Committee. Basically, it is also to open up the current Section 3 to say who will provide those modifications – the Cabinet Secretary and the Commission rather than just leaving it that there shall be modification of the provisions. For order, I will therefore, move.

The Temporary Deputy Chairman (Hon. Christopher Omulele): I agree with the Leader of the Majority Party.

(Question of 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)

(Section 24(3) as amended agreed to)

Member for Kikuyu, Hon. Ichung'wah, you had proposals to some new subsections – subsection (5) and (6). What do you want to do with them?

Hon. Kimani Ichung'wah (Kikuyu, JP): Sorry, Chair. I was still consulting with the Vice-Chair of the Departmental Committee on Education and Research. The new Section 6 is covered. That is what the Leader of the Majority has moved. That is why I said once he moves and the Committee moves, it is covered. What I was consulting the Vice-Chair on was the amendment by the Committee to the new Section 5.

“Despite subsection (1), the President may on the recommendation of the Commission through the Cabinet Secretary and on the advice of the National Security Council establish public degree awarding universities or institutions specializing in national security issues”.

It has been covered except minute details. This is establishment of “public degree awarding universities.” If there is a way, we could capture the two words – “public” and “universities” as further amendments to the amendment by the Chair of the Departmental Committee on Education and Research as an enrichment to what the Committee have done.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Member for Garissa.

Hon. Aden Duale (Garissa Township): Hon. Temporary Deputy Chairman, we deal with amendments procedurally in this House. You have given direction that we start with the amendments from the Departmental Committee on Education and Research and then we deal with amendments from the Leader of Majority. You have dropped Hon. Ichung'wa's amendment. What Hon. Ichung'wa is trying to tell us is not even that. It is that we pick some part of his proposed subsection (5) called “public” and bring it in. If you read the amendment in the Bill, you will see that it is about specialised universities. As we speak, you can walk to the University of Nairobi, which is a public university and enrol for security-related courses. However, this particular amendment is geared towards specialised security courses under the direction of the National Security Council. That is to say, “How do you upgrade the Kenya Defence College, which is a regional college in Karen? How do you upgrade the National Intelligence Service Academy along Thika Road?” Therefore, we cannot mix these two. In addition, we have dropped the one for Hon...

The Temporary Deputy Chairman (Hon. Christopher Omulele): You are absolutely right, Member for Garissa Township. Hon. Kimani, that bus has left. It is not available for you now. I think it is done.

(Loud consultations)

Hon. Members, allow me to put the Question.

*(Provisions relating to the Universities Act, (No. 42 of 2012)
as amended, agreed to)*

THE KENYA LAW REFORM COMMISSION ACT, 2013

The Kenya Law Reform Commission Act, (No. 19 of 2013), Sections 8(1)(b), 8(1)(c) and 8(3)

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Hon. Clement Kigano (Kangema, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Schedule of the Bill be amended –

(c) in the proposed amendments to the Kenya Law Reform Commission Act, 2013 (No. 19 of 2013-

(i) Delete the proposed amendment to section 8 (1) (b) of the Act and substitute therefor the following new proposed amendment –

Delete and substitute therefor the following new paragraph-

(b) one member appointed by the Attorney-General through an open and competitive process;

(ii) Insert the words “who shall be an advocate of the High Court of Kenya” immediately after the words “Law Society of Kenya” appearing in the proposed amendment to section 8 (1) (c) of the Act.

(iii) Insert the words “appointed under sub-section (1) (ca) (d) and (e)” immediately after the words “Chief Justice” appearing in the proposed new section 8(3) of the Act.

Hon. Temporary Deputy Chairman, part (i) of the proposed amendment seeks to reduce the number of members that are appointed...

The Temporary Deputy Chairperson (Hon. Christopher Omulele): Hon. Kigano, let us deal with them one at a time.

We deal with Section 8(1)(b) first. So, allow me to propose the Question on this one.

Hon. Clement Kigano (Kangema, JP): With regard to Part (i), the amendment seeks to reduce the number of members that are appointable by the Attorney-General, from two to one. The current membership of the Commission is six and we need to reduce this to five to reflect decision-making, so that we avoid the question of being in a dilemma when there is a tie. When they are six, you will have a stalemate.

That is the main reason. To avoid a stalemate

(Question of the amendment proposed)

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

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

(Section 8(1)(b) as amended agreed to)

Sections 8(1)(c) and 8(3)

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

Hon. Clement Kigano (Kangema, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Schedule to the Bill be amended –

(c) in the proposed amendments to the Kenya Law Reform Commission Act, 2013 (No. 19 of 2013-

(ii) Insert the words “who shall be an advocate of the High Court of Kenya” immediately after the words “Law Society of Kenya” appearing in the proposed amendment to section 8 (1) (c) of the Act.

(iii) Insert the words “appointed under sub-section (1) (ca) (d) and (e)” immediately after the words “Chief Justice” appearing in the proposed new section 8(3) of the Act.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Leader of the Majority party, you are interrupting the senior. He is on the right track.

Hon. Clement Kigano (Kangema, JP): I am justifying why I need this amendment. The amendment seeks to clarify that the representative of the Law Society of Kenya shall be an advocate of the High Court to avoid the dilemma that the Member for Kikuyu was talking about - to avoid the possibility of having unqualified persons being appointed to represent the society.

The Temporary Deputy Chairman (Hon. Christopher Omulele): I hear you very clearly.

(Question of the amendment proposed)

(Question, that the words to be inserted

be inserted, put and agreed to)

(Sections 8(1)(c) and 8(3) as amended agreed to)

(Sections 9(2) and 12 (2) agreed to)

(Provisions relating to the Kenya Law Reform Commission Act, (No. 19 of 2013) as amended agreed to)

THE SCRAP METAL ACT, 2015

The Scrap Metal Act, (No. 1 of 2015), Section 30(1)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Mover. Hon. Oundo, are you standing in for the Chair, Trade, Industry and Cooperatives?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Yes. Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendment to the Scrap Metal Act, 2015 by deleting the proposed amendment to Section 30.

The justification is that there seems to be a misunderstanding because the inspector that is referred to is appointed under Section 29 (1) of the Scrap Metal Act and refers to a person appointed by the Cabinet Secretary and who has adequate training in metallurgy or a related field of study. The proposed amendment is thus misplaced and should be deleted. I thank you.

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

(Proposed amendment by Hon. Kanini Kega dropped)

Section 30(1) as amended agreed to)

(Provisions relating to the Scrap Metal Act (No. 1 of 2015) as amended agreed to)
THE INVESTMENT AND FINANCIAL ANALYSTS ACT, 2015

The Investment and Financial Analysts Act, (No. 13 of 2015), Sections 18(1)(e), 20, 32 and 34

(Sections 18 (1)(e) and 20 agreed to)

Section 32

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

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I would like to step down this particular amendment to the Investment and Financial Analysts Act, 2015. The justification is that the Committee was deleting these sections requiring funding from the National Treasury, but in actual sense...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, if you are dropping, you do not need to justify.

(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)

Section 34

Hon. Kubai Iringo (Igembe Central, JP): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Iringo what is out of order?

Hon. Kubai Iringo (Igembe Central, JP): On a point of order, Hon. Temporary Deputy Chairman. If I may refer you back, Hon. Millie asked a question and you have not answered yet. We are lost, as the Movers move with the hard copies, we cannot follow with the electronic one. Can we get guidance so that we can move in tandem? We are now lost and cannot trace where we are. What is on the soft copy is not flowing with the hard copies they are using.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. That is a genuine concern, Hon. Iringo. I will ask the secretariat to allow me to guide the Members on where the amendments are on the electronic page on our desks.

Hon. Chair, Departmental Committee on Finance and National Planning proceed.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I beg to drop this particular amendment.

(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. Hon. Iringo, I am concerned, but allow me to proceed as they try to sort us out.

(Provisions relating to the Investment and Financial Analysts Act, (No. 13 of 2015) agreed to)

THE COURT OF APPEAL (ORGANIZATION AND ADMINISTRATION) ACT, 2015

The Court of Appeal (Organization and Administration) Act, (No. 28 of 2015), Section 26(1)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Proceed Hon. Kigano.
Hon. Clement Kigano (Kangema, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended-

(d) in the proposed amendments to the Court of Appeal (Organization and Administration) Act, No. 28 of 2015-

Delete the proposed amendment to section 26(1) of the Act.

The justification is that the section sought to increase vacations for Judges of the Court of Appeal...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Kigano, just let me guide Members. The page is 1199 as per my physical copy that I have here. I do not know whether it is the same on the electronic copy.

Proceed, Hon. Kigano.

Hon. Clement Kigano (Kangema, JP): The proposed amendment seeks to delete, so as to increase the duration for vacation of the Judges of the Court of Appeal. The provision that was there was archaic. It still provides for summer vacation, autumn vacation and all that. So, we seek to reduce this to normal statutory leave for judges because the present status is that if this goes on, it will increase the backlog of cases leading to additional costs to litigants and other stakeholders in the law and justice sector.

We agree with the submissions of the LSK that the Court of Appeal should be set in a flexible judicial calendar rather than a statute. Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, I am sure this one is of interest to you. I believe she is okay with it. Hon. Kigano, this amendment has been long overdue.

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

(Section 26(1) as amended agreed to)

(Provisions relating to the Court of Appeal (Organization and Administration) Act, (No. 28 of 2015) as amended agreed to)

THE WITNESS PROTECTION ACT, 2015

The Witness Protection Act, (No. 16 of 2016), Sections 3J, 3K(2) and 3K(2)(4)

(Sections 3J, 3K (2) and 3K (2)(4) agreed to)

(Provisions relating to the Witness Protection Act (No. 16 of 2015) agreed to)

THE KENYA COAST GUARD SERVICE ACT, 2018

The Kenya Coast Guard Service Act, (No. 11 of 2018), Sections 2, 6(2)(a), 7, 13(2) and 14(2)

(Part II of the First Schedule agreed to)

(Provisions relating to the Kenya Coast Guard Service Act (No. 11 of 2018) agreed to)

(Clause 2 agreed to)

(Title agreed to)

Clause 1

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

THAT, Clause 1 of the Bill be amended by inserting the words “and shall come in force upon assent” immediately after the words “Statute Law (Miscellaneous Amendments) Act, 2020.”

This is to define the date this Act comes into force.

I beg to move.

(Question of the amendment proposed)

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

(Clause 1 as amended agreed to)

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

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its recommendation of the Statute Law (Miscellaneous Amendments) Bill, and its approval thereof, with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): We will now proceed to the next Bill, which is the Tea Bill, for consideration.

Hon. Members, I plead with you to remain patient, so that we can deal with this particular Bill as we had agreed much earlier.

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

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

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Order, Members. We now go to the Tea Bill 2018. It is a fairly longer Bill, but I am sure we have the strength and tenacity to push it. So, please, spare some bit of energy to keep moving. We will move fairly fast with a balance of not letting many people speak to one clause, but also not stifling the space for Members to contribute. We will do a balance of that so that we can move.

THE TEA BILL

(Clauses 3 and 4 agreed to)

Clause 5

The Temporary Deputy Chairperson (Hon. Patrick Mariru): There is an amendment by Hon. Chairperson. Chairperson, please.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairperson, I beg to move:

THAT, Clause 5 of the Bill will be amended by deleting Clause 5 and substituting therefore the following new clause:

Functions of the

Board

5. The functions of the Board shall be to —

- (a) develop, promote and regulate the development of the tea industry;
- (b) co-ordinate the activities of individuals and organizations within the tea industry;
- (c) facilitate equitable access to the resources, facilities and benefits of the tea industry by all interested parties;
- (d) make recommendations to the Cabinet Secretary on the formulation of policies, plans and strategies for the regulation of the tea sector;
- (e) register tea factories, small scale tea growers, medium scale tea growers, large scale tea growers, warehouse operators, tea packers, tea buyers, exporters, importers, tea brokers, management agents, tea auction organisers, commercial tea nurseries, commercial green leaf transporters;
- (f) license manufacturers;
- (g) promote best practices and standards in the production, processing, marketing, grading, storage, collection, transportation and warehousing of tea;
- (h) facilitate marketing and distribution of tea through gathering and dissemination of market information and monitoring of the local and global supply-demand situation;
- (i) co-ordinate prioritization of research in tea;
- (j) regulate the sale, import and exports of tea;
- (k) develop, implement and coordinate a national tea marketing strategy;
- (l) prescribe the maximum period and minimum amount for payment of green leaf;
- (m) promote and advise on strategies for value addition and product diversification;
- (n) promote demand and consumption of tea locally and internationally;
- (o) identify market needs and trends and advise the Cabinet Secretary on issues related to national and international tea trade;

- (p) collaborate with national and international trade bodies on tea related matters;
- (q) monitor, conduct surveillance and enforce compliance with tea standards, this Act and any regulations made under it;
- (r) advise the national government on levies, fees and import or export duties on tea;
- (s) advise the county governments on agricultural cess and fees;
- (t) oversee the efficient utilization of available Board's funds;
- (u) undertake capacity building, technology transfer and technical assistance to the counties on matters related to tea;
- (u) carry out such other functions as may be assigned to it by this Act, and any written law while respecting the roles of the two levels of governments."

The amendment seeks to provide for continuous list of functions to the board, provide for additional functions and correct the board's functions on registration and licensing of tea dealers. The amendment provides additional functions to the board, which enhances the role of the board and consolidates the functions of the board which appear elsewhere in the Bill.

(Question of 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 Chairperson (Hon. Patrick Mariru): There is an amendment to Sub-clause 2 by Hon. Tonui. That will not be considered because the Chairperson's has been carried. That one of Hon. (Ms.) Cecily Mbarire shall also not be moved in light of the passage of that of the Chairperson.

Hon. Chairperson, do you have something to say? Very well. In that case, the two get dropped automatically. Let me put the global Question. The understanding is let us start with Hon. Tonui.

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Hon. Temporary Deputy Chairman. You remember the Speaker directed that we go through a winnowing process. In that process, the Committee assigned me to move this one so that they could move others. Some of those amendments which I proposed were taken over by the Committee. So, for me not to be left empty handed, they proposed that I tackle this one, but we all agreed on all these amendments. So, I do not know because they were slightly different from those of the Committee. We are simply adding the functions of the Tea Board of Kenya.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Hon. Tonui and Hon. Mbarire, because I think it falls under the same, we had the amendment by the Chairperson. What the Chairperson technically had proposed is to delete Clause 5. Let us move together so that then you can understand. You had intended to amend what the Chair had proposed to delete, together with Hon. Cecily Mbarire. The House, having made a decision on deletion of Clause 5, then you have nothing to amend because the clause is gone and substituted with a new clause. So, it is

important Members that we go slowly. That is why I put the Question and no Member was contributing to it.

The House has carried the Chair's amendment. Technically, there is no Clause 5 as you had purposed to amend and substitute that with another clause. The House has already resolved on that. Hon. Tonui, I am lingering on you so that we can move together. It is important. I know you have been here the whole afternoon. Get the microphone. That one does not seem to be working. Could you move to the one next, so that we can save a bit of time? I am sorry that it is taking a bit of time. It is the microphone. We need to give Hon. Tonui an opportunity.

Hon. Members, because there are quite a number of amendments, I encourage you to go along with us because this will happen quite a bit. When several Members propose amendments, one takes precedence over the others.

Hon. Tonui, what did you have to say?

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Hon. Temporary Deputy Chairman. Clause 5 is on the functions of the Tea Board of Kenya. There are several functions listed there. I am simply adding to those functions. The amendment proposed by the Chair was also on additional functions of the same. Since I am moving additional functions of the Tea Board of Kenya, I do not believe they have been negated by the Chair's amendment. My amendment is simply adding on to the number of functions which are already there. Even if you check on his amendment online, which I cannot access here, you will see that he is talking of parts (d), (e) and (f) which are unrelated to what the Chair has done. When you say that my amendment has been overtaken by events, you are assuming that Clause 5 is only dealing with one function. It has several subsections.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let me guide you, Hon. Tonui, because we can dispense with this quickly. Members, please, take note of what I am saying. This will happen quite a bit. The Chairman deleted Clause 5 and substituted it with another clause. The original Clause 5 has been deleted and is gone. Hon. Tonui, your amendment was amending Clause 5(1)(c). Go along with me. I am lingering here a bit. I know it is taking time, but it is important for the Members to understand. Hon. Tonui, you are amending Clause 5(1)(c). If you look at the new clause that has been brought in by the Chair, there is no Clause 5(1)(c). It was in the original one which was proposed to be deleted by the Chair and the House has resolved on it. Your amendment has no "house". The "house" has been demolished by the resolve of the House. That also goes for the amendment by Hon. Mbarire.

Hon. Members, we have to make progress on that.

*(Proposed amendments by Hon. Ronald Tonui
and Hon. (Ms.) Cecily Mbarire dropped)*

(Clause 5 as amended agreed to)

Clause 6

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

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 6 of the Bill be amended in sub-clause (1) by inserting the following paragraphs immediately after paragraph (c)—

“(ca) collaborate with such bodies or organisations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the object and purpose for which the Board is established;

(cb) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;”

(cc) ensure the proper and effective performance of the functions of the Board;

(cd) manage, control and administer the Tea Fund for purposes that promote the object and purpose of this Act.”

The amendment seeks to provide for additional powers to the proposed Tea Board of Kenya which are critical in enabling it to perform its functions effectively.

(Question of the amendment proposed)

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

(Clause 6 as amended agreed to)

Clause 7

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by Hon. Chair, Hon. Githinji and Hon. Millie Odhiambo. Hon. Millie’s amendment depends on the decision that the House takes on the Chairperson’s amendment.

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

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 7 of the Bill be amended—

(a) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (c) —

“(ca) the Principal Secretary responsible for the National Treasury or a representative nominated by the Principal Secretary in writing;”

(b) by inserting the following new sub-clause immediately after sub-clause (2)—

“(2A) The appointment of the Chairperson or members of the Board under subsection (1) (a), (d), (e), (f) and (g) and shall take into account the gender, regional and other diversities of the people of Kenya.”

The amendment seeks to provide for a representative from the National Treasury which is the key Ministry in funding and management of State corporations. It is missing in the proposed Tea Board of Kenya. The amendment also seeks to provide for consideration of gender parity, regional or other diversities since this is a constitutional requirement.

The Temporary Deputy Chairman (Hon. Patrick Mariru): We shall deal with Clause 7(1) first.

(Question of the amendment proposed)

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

Hon. Gichimu.

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Give me a minute, Hon. Gichimu. What is it, Hon. Millie?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I am not too sure whether the amendments that have been proposed by the Chairman of the Committee deal with my issue.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, you are correct. The Chairman's amendment is related to Hon. Githinji's amendment. Hon. Githinji, you have the Floor.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Okay. Thank you. Can I, please, know from the Chair the page where the amendment is in the Order Paper, so that I can check whether it relates to mine?

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is on Page 1209, Hon. Millie. Hon. Gichimu, please.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Chairman. For guidance of the Members, my amendments in Clause 7 are on Page 1228 on the Order Paper.

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

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 7(1) –

(a) by deleting paragraphs (d), (e), (f) and (g) and substituting therefor the following new paragraphs–

“(d) one person of either gender, who shall have knowledge and experience in the tea sector and be from either the East and West tea blocks, nominated alternately by the Council of Governors;

(e) four persons, two of either gender, representing and elected by small-scale and medium scale tea growers from the East and West of the tea blocks:

Provided that two persons shall be from each of the tea blocks;

(f) one person elected and representing large-scale tea growers;

(g) one person elected and representing tea traders;”

The justification is that we need to create a representation of the Council of Governors in the Tea Board of Kenya alternately from the two blocks which have been defined and referred to both in the Bill and the Schedule. The representation of the persons from the small-scale tea growers ought to be gender sensitive and elective. It brings clarity as to how these people will be picked.

I move to have the clause amended.

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

(Question of the amendment proposed)

Let me give Hon. Millie an opportunity to say something on this one.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Chairman. My proposed amendment only relates to (e), which is on the four persons with two of either gender representing small holder tea growers from the East and West blocks. I introduced East and West block because of the way it is currently worded. It is not so clear because when you say “tea

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growing areas”, that is not clear. So, if his amendment passes, then I am happy because that will be catered for. My only concern is his amendment in relation to the early amendment that has been proposed by the Chair of the Committee. I do not know whether they have looked at the amendments together because then he is adding more. In case it is going to clash, so that my amendment does not get lost, then perhaps we can go sub-section by sub-section. This is in the event his amendments clash with those of the Chair of the Committee.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Well, Hon. Githinji’s amendment is already proposed in a global manner. Let us see how the House resolves on this one.

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

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

We have another amendment by Hon. Chairperson still under Clause 7(2). Hon. Githinji dealt with Clause 7(1). Now we have Clause 7(2) by the Chairperson.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 7 be amended –

(b) by inserting the following new sub-clause immediately after sub-clause (2)—

(2A) The appointment of the chairperson or members of the Board under subsection (1) (a), (d), (e), (f) and (g) shall take into account the gender, regional and other diversities of the people of Kenya.

The amendment seeks to provide for consideration of gender parity, regional balance and other diversities since this is a constitutional requirement.

(Question of the amendment proposed)

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

(Clause 7 as amended agreed to)

Clause 8

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairman, you have an amendment.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 8 and substituting therefor the following new clause—

Term of appointment.

“8. (1) The persons appointed under section 7 (1) (a), (d), (e), (f) and (g) shall serve for a term of three years renewable for one further term.

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(2) The persons appointed under section 7 (1) (a), (d), (e), (f) and (g) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times but not more than six months shall lapse between one appointment and another.”

The amendment seeks to refer to correct provision of the membership of the Tea Board of Kenya arising out of the previous amendments affecting the composition. Further, the amendment seeks to provide for different appointment dates to ensure that there is continuity in the Board’s operations at all times since it is the practice to have different expiry period of terms of office for members of the Board.

(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 8 as amended agreed to)

Clause 9

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

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

THAT, Clause 9(a) of the Bill be amended by deleting the words “the permission of the chairperson” appearing immediately after the words “the Board without” and substituting therefor the words “notifying the chairperson”.

A member of the board absents himself or herself by notifying the chair, but not seeking permission. It is children who seek permission. At our level, we notify. That is good governance practice.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is just tidying up.

(Question of the amendment proposed)

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

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

(Clause 9 as amended agreed to)

(Clauses 10, 11 and 12 agreed to)

Clause 13

The Temporary Deputy Chairman (Hon. Patrick Mariru): There is an amendment by the Hon. Chairman.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 13 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub-clause—

“(3) A person is not qualified for appointment under subsection (1) unless the Person —

- (a) holds a relevant degree from a university recognized in Kenya;
- (b) has at least ten years knowledge and experience in a relevant field;
- (c) has at least five years’ experience in a position of senior management;
- (d) meets the requirements of Chapter Six of the Constitution.”

The justification is that the amendment seeks to provide for additional qualifications requirement for a person to be appointed as a Chief Executive Officer. The amendment seeks to provide for ten years knowledge and experience in a relevant field and meeting the requirements of Chapter Six of the Constitution. This will enhance the effectiveness of the Chief Executive Officer.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is Clause 13.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I wish to oppose that amendment. We want to include young people instead of increasing the number of years of experience to ten. By five years, what else do you need to learn? A person with five years’ experience is good enough to be an executive for purposes of promoting young people.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mwirigi, do you want to say something?

Hon. John Paul Mwirigi (Igembe South, Independent): Yes, Hon Temporary Deputy Chairman. I want to support what Hon. Millie has said. Five years are good enough.

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

Hon. (Ms.) Sabina Chege (Murang’a CWR, JP): Thank you, Hon. Temporary Deputy Chairman. I want to support the Chair and oppose what Hon. Mwirigi has raised. There will be several other positions. Since it is the Chief Executive Officer who is supposed to steer the company, ten years’ experience is important. We are talking about a tea sector that deals with very many stakeholders. So, the exposure is very important. I support young people getting positions, but there are other positions they can get in the board.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have one or two persons. Let us go to the far end, Hon. Mose. Is that Hon. Mose?

Hon. John Mose (Kitutu Masaba, JP): Hon. Temporary Deputy Chairman, I also want to support the Chair for the simple reason that we are dealing with a crucial sector and experience will enable the Chief Executive Officer to do proper management. Five years of experience, even

my colleague here, Millie, will tell you that experience matters because even in the Law Society of Kenya, we have left leadership to young people and they have given us lots of problems.

I support the ten years' experience.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Mose. Do not raise the profession where you and I are members. That is on a light note. Who is this Member? Yes, Hon. Kirima.

Hon. Christopher Omulele (Luanda, ODM): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Just a minute, Hon. Kirima. There is a point of order. What is it Hon. Omulele?

Hon. Christopher Omulele (Luanda, ODM): Hon. Temporary Deputy Chairman, with absolute respect and a lot of humility for my senior, the Hon. Mose, on the LSK, the protagonists there have more than ten years' experience.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Mose is well guided.

Hon. Kirima!

Hon. Moses Kirima (Central Imenti, JP): Hon. Temporary Deputy Chairman, as a small-scale tea farmer and as a member of a number of professions, it is high time we did anything which can promote the interest of the youth. I support my learned friend Hon. Millie Odhiambo on that side and Hon. John Mwirigi. As for my colleague, Hon. Mose, on the other side said, there is a clause in the Law Society of Kenya Act which says that for one to be even a judge, he must have practised for a certain period. So, five years is the minimum period required; for a farmer or anybody who wants to be appointed as a director, five years' experience is quite a lengthy period. That is an experienced person. We should encourage the youth to come up and not hide because they are lacking experience. Who cannot be called an experienced person after being in a position for five years? If three years are enough, what about five years? This is quite a lengthy period. So, we should reduce it to five years. It should not be 10 years.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let us make progress. Clearly, we have quite a day. I would like the Members to make a decision on this.

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

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

(Clause 13 as amended agreed to)

(Clause 14 agreed to)

Clause 15

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

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

THAT, Clause 15 of the Bill be amended in sub-clause (3) (d) by deleting the word “seven” appearing immediately after the words “at least” and substituting therefor the word “five”.

This is a position of corporation secretary and it requires seven years’ experience. I do not know why it is a requirement for a corporation secretary. At least, the other one you were talking about a Chief Executive Officer (CEO) position. This is a corporation secretary. Why should we put seven years? We are excluding young people. I want to agree with the Deputy Speaker that even when we make reference to Law Society of Kenya (LSK), many of the people who are fighting there have experience of 10 years and above.

The issue of experience also comes with a person’s temperament. It is not just about the age alone. There are many older people who behave like 20-year-olds and many 20-year-olds who behave like they are 80 years old. We should not just block people because of age. So, I am proposing that we reduce it from seven to five years.

Thank you.

(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 15 as amended agreed to)

Clause 16

The Temporary Deputy Chairman (Hon. Patrick Mariru): There is an amendment by Hon. Millie.

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

THAT, Clause 16 of the Bill be amended by—

- (a) renumbering the existing provision as sub-clause (1);
- (b) inserting the following new sub-clause immediately after sub-clause (1)—“(2) In employing staff, the Board shall take into account the gender, regional and ethnic diversities of the people of Kenya, youth and persons with disabilities.”

What it seeks to do is in the same spirit as the amendment that was proposed by the Chairperson that it should take into account gender, regional balance and ethnic diversities of the people of Kenya, and youths and Persons with Disabilities (PWDs). So, it is basically re-emphasizing what is constitutional.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear only one contribution on this from Hon. Tonui, then we make progress.

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Hon. Temporary Deputy Chairman. I do not know if the issue is about the face of Kenya, because tea farming is done in certain regions

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only. So, I do not know how this one is being introduced. I know the funding of those functions also comes from those regions. It is sort of a regional activity.

So, I oppose it.

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

Hon. Japheth Mutai (Bureti, JP): Hon. Temporary Deputy Chairman, I just wish to support Hon. Millie in the sense that despite the fact that she is from a certain region, what we are talking of is the country Kenya where everyone is free to work anywhere in the country and for such an organisation. What Millie is introducing is good in the sense that it makes sure that we do not have people from one region and same sex working here. It actually ensures that the provision is expressively in the Act itself.

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, you want to inform who?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): The Member who was on the Floor.

Hon. Japheth Mutai (Bureti, JP): I am well informed.

(Laughter)

The Temporary Deputy Chairman (Hon. Patrick Mariru): He says he is well informed. Hon. Osotsi, finally, then we make progress.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairman, I want to support this amendment by Hon. Millie because it will resolve employment issues in the tea sector. I come from Vihiga County that grows tea. We have a tea factory there and three quarters of the employees of that tea factory are not from the county of Vihiga. So, this kind of amendment will sort out this anomaly.

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

(Clause 16 as amended agreed to)

(Clauses 17 and 18 agreed to)

Clause 19

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

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 19 of the Bill be amended by inserting the word “First” immediately after the words “with the”;

It is actually tidying up that sentence. Clause 19 says “the business and affairs of the board of directors shall be conducted in accordance with the schedule”. It is because we have a schedule that needs to be followed. I just added to it to read; “the business and affairs of the board of directors shall be conducted in accordance with the First Schedule”. It is because there are several schedules. Therefore, it is really to be specific and tidy up so that there is clarity on the schedule.

(Question of the amendment proposed)

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

(Clause 19 as amended agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will now propose the question on Part III: Clauses 20, 21, 22, 23 and 24.

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

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

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I actually have a proposed amendment to Clause 20.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Just a minute, Hon. Millie. I think the decision taken by the House will have an implication to your amendment. So, I will come to you.

Hon. (Ms.) Millie Odhiambo Mabona (Suba North, ODM): Hon. Chairman, my worry is that if you do a global proposal the way you are doing, it means that it does not give room for me to propose my amendment unless we go clause by clause.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, I hear your concern. The Hon. Chair is proposing a deletion of the entire four clauses and a substitution of a new one. In that case, yours must fall depending on, if this one is carried. He is proposing a deletion of the entire part. We take it as an entire part. You notice it is only here that we are doing Part III – all of it together.

Hon. (Ms.) Millie Odhiambo Mabona (Suba North, ODM): Where is it?

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is on Page 1209. He is deleting the entire part which carries all those Clauses. The amendment will have implication to your amendment.

Hon. Chair, kindly have the Floor.

NEW PART

Hon. Silas Tiren (Moiben, JP): Hon. Chairman, I beg to move:

THAT, the Bill be amended by deleting Part III and substituting therefor the following new Part III —

PART III- REGULATORY PROVISIONS

Role of county
governments
in the development
of tea

20. (1) Pursuant to the Fourth Schedule of the Constitution –

(a) the Board, on behalf of the national government, shall be responsible for licensing and charging of levies;

(b) each county government shall implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for—

- (i) the development of tea grown within the county;
- (ii) tea disease and pest control;
- (iii) markets within the county;
- (iv) cooperative societies within the county;
- (v) register commercial tea nursery operators; and,
- (vi) soil and water conservation.

(2) In order to achieve the objects and purposes of this Act, the national and county governments shall provide an enabling environment for the development of the tea sector.

Registration of
small scale tea
growers and
medium scale
tea growers

21. (1) A small scale tea grower and medium scale tea grower shall register with the tea factory to which the respective tea growers deliver green leaf or purple leaf using the prescribed form.

(2) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of small scale tea growers and medium scale tea growers and the appeal process in case of refusal or denial of registration.

(3) Every tea factory shall keep or cause to be kept for statistical purposes, a register of all small scale tea growers and medium scale tea growers registered under subsection (1) specifying—

- (a) the name of the small scale tea grower and medium scale tea grower;
- (b) the location, size and parcel number of the land on which the tea is grown;
- (c) the net weight in kilograms of green leaf delivered and amount paid submitted annually;
- (d) the variety of tea grown; and,
- (e) such other information as the Board may prescribe.

(4) Where the tea factory has reasonable cause to believe that a person whose particulars are so recorded has ceased to be a small scale tea grower and medium scale tea grower, it may, after giving that person written notification by registered post of its intention to do so, remove their name from the register.

(5) The register referred to in subsection (6) shall be prima facie proof of the fact that a person is a registered small scale tea grower or medium scale tea grower.

(6) The tea factory shall furnish the Board with particulars of all registered small scale tea growers or medium scale tea growers in such manner as the Board may prescribe.

(7) A person shall not sell or offer for sale green leaf unless the person is registered with a tea factory in accordance with this Act.

(8) A tea factory shall only buy green leaf from its registered tea growers.

(9) A small scale tea grower or medium scale tea grower shall not sell green leaf to any person other than the tea factory where they are registered.

(10) A small scale tea grower or medium scale tea grower wishing to change the tea factory where they deliver their green leaf shall inform their respective tea factory by giving a minimum notice of thirty days.

(11) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding six months, or to both.

Board of directors
of tea factory
limited companies

22. (1) The Board of Directors of tea factory limited companies shall be a maximum of five members.

(2) The Board shall put in place mechanisms to ensure that not more than two-thirds of the Board of Directors of tea factory limited companies elected or appointed are of the same gender.

(3) The Board of Directors of tea factory limited companies shall be elected through a democratic system of one grower, one vote.

(4) Where a Board member for tea factory limited companies is temporarily unable to perform their duties, the Board may appoint another person from the respective block to act in their place during the period of absence

Registration of
large scale
tea growers

23. (1) A large scale tea grower shall register with the Board in a prescribed form and shall pay the prescribed fee.

(2) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of large scale tea growers and the appeal process in case of refusal or denial of registration.

(3) A person who grows tea in contravention of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or to both.

Tea grower
certificate

24. The manager of a tea factory shall issue a certificate of registration to a small scale tea grower, medium scale tea grower or a large scale tea grower in the form prescribed in regulations.

Licensing of
manufacturers.

24A. (1) A person shall not manufacture tea for sale except under and in accordance with a licence issued under this Act.

(2) A person shall apply for a manufacturing licence to the Board in a prescribed form and shall pay the prescribed fee.

(3) The Board may, after consultation with the Cabinet Secretary —

(a) issue a manufacturing licence, in accordance with this Act;

(b) refuse to issue the licence on any ground which may appear to the Board to be sufficient and inform the applicant in writing of the reasons thereof;

(c) cancel, vary or suspend any licence if in the findings of the Board, the licensee is found to have contravened the regulations made under this Act for the operation of manufacturing entities.

(4) A manufacturing licence issued under this section shall in addition to authorizing the holder to carry on the business set out in subsection (1), also authorize the holder to carry out the business of packing and blending tea.

(5) Before the issuance or renewal of a manufacturing licence for a tea factory limited company the Board shall satisfy itself that the applicant has a procurement policy providing for competitive procurement of goods and services.

Register of
Manufacturers

24B. The Board shall maintain a register, in such form as prescribed in regulations, of all manufacturers licensed under this Act and shall enter therein, in respect of each tea factory —

- (a) the full names of the manufacturer;
- (b) the date of issue of the licence;
- (c) particulars of any cancellation, suspension or variation of the license; and,
- (d) any other particulars the Board may deem necessary.

Illegal manufacture,
possession, etc.

24C. (1) A person commits an offence if the person—

- (a) manufactures tea for sale in contravention of this Act;
- (b) buys, sells, offers for sale, transports or has possession of tea which to the person's knowledge or belief—

(i) has been grown, manufactured or processed otherwise than in accordance with this Act;

(ii) is from a non-registered grower or dealer of such crop.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding five years, or both.

(3) If a person is in possession or has control of tea for which the person is unable to account to the satisfaction of a crop inspector under this Act, such tea shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.

(4) If a person is convicted of an offence under this section, the court shall order that any tea and any vehicle, vessel or other conveyance in relation to which an offence has been committed shall be forfeited to the Government unless, in the case of a vehicle, vessel or other conveyance, the court deems it necessary, for reasons to be recorded by it in writing, not to do so.

Registration of
warehouse
operator.

24D. (1) Every warehouse operator shall register with the Board.

(2) A person shall not store tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of warehouse operators and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of tea packers

24E. (1) Every tea packer shall register with the Board.

(2) A person shall not pack tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea packers and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a tea buyer, exporter or importer.

24F. (1) A person who intends to carry on the business of tea buying, tea exporting or tea importing shall register with the Board.

(2) A person shall not carry on the business of buying tea, exporting or importing tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea buyers, tea exporters and tea importers and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Tea imports.

24G. (1) A person who imports tea into Kenya shall prior to importation—

(a) provide evidence that the teas they intend to import are not available in the local market or at the tea auction;

(b) provide a sample of the teas to be imported and pre-import verification certificate from the country of origin; and

(c) obtain pre-import approval from the Board.

(5) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a tea broker.

24H. (1) Every tea broker shall register with the Board.

(2) A person shall not negotiate the purchase or sale of tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for—

(a) the procedure for registration of a tea broker and the appeal process in case of refusal or denial of registration;

(b) the maximum number of tea factories that shall be served by a tea broker.

(4) The remuneration paid to a tea broker by a tea factory limited company and a tea buyer or exporter for services rendered shall not exceed zero point seven five per centum of the gross sales by the broker.

(6) A person who contravenes subsections (2) and (4) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a
Management agent.

24I. (1) Every management agent shall register with the Board.

(2) A person shall not perform or offer professional services to a tea factory unless the person is registered in accordance with this Act.

(3) Every management agent shall submit annual returns to the Board and a copy to the respective county government in the form prescribed.

(4) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a management agent and the appeal process in case of refusal or denial of registration.

(7) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Management agent
agreement.

24J. (1) A person who intends to manufacture or deal in tea may engage the services of a management agent upon such terms and conditions as may be agreed in the management agreement between them.

(2) A management agent shall sign a management agreement with each tea factory limited company that they intend to offer management agent services to.

(3) A management agreement between a management agent and a tea factory, shall be—

(a) submitted to the Board for review and approval before execution by parties; and

(b) for a period of five years, and may be renewed upon expiry at the discretion of the tea factory.

(4) The remuneration for services rendered by a management agent to a tea factory limited company shall not exceed one point five per centum of the net sales value of the tea sold per year.

(5) The staff costs for personnel seconded to the tea factory limited company by a management agent shall be borne by the management agent.

(6) Company Secretarial services shall be excluded from services to be offered by a management agent to a tea factory limited company.

(7) A tea factory shall recruit its own in-house Company Secretary or outsource the service.

(8) Despite subsection (7), a tea factory may enter into an arrangement with one or more tea factories to have a joint in-house Company Secretary.

(9) A director of a tea factory shall not serve as a director in another company having a direct or indirect commercial relationship with the tea factory where the person is serving as a director.

(10) Where the provisions of subsection (9) apply, a director of a tea factory shall forthwith relinquish his or her position.

Registration of a tea auction organizer.

24K. (1) Every tea auction organizer shall register with the Board.

(2) A person shall not deal in tea as a tea auction organizer unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a tea auction organizer and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Auction process.

24L. (1) All teas processed and manufactured in Kenya for the export market with the exception of orthodox and specialty teas shall be offered for sale exclusively at the tea auction floor.

(2) All tea factory limited companies shall register with the Board and the auction organizer to participate in the tea auction directly and not through management agents.

(3) An auction organizer shall establish an electronic trading platform for the auction of tea that will be usable and accessible to all players in the value chain.

(4) A buyer shall pay in full the value of the tea bids they have won at the auction before collecting or taking custody of the tea.

(5) Tea brokers, buyers and the auction organizers shall ensure that the proceeds from the sale of tea are remitted to the tea factories accounts within fourteen days from the date of the auction.

(6) A tea factory shall within thirty days of receipt of the proceeds of the sale of tea, pay tea growers—

(a) at least fifty per centum of payment due for green leaf delivered every month;

(b) the balance due to the tea grower within three months from the end of financial year.

(7) An auction organizer shall develop trading rules to govern its operations and the trading rules shall be submitted to the Board for approval.

Registration of commercial green leaf transporters.

24M. (1) A person who intends to carry on the business of commercial green leaf transporter shall register with the Board.

(2) A person shall not carry on the business of commercial green leaf transporter unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of commercial green leaf transporters and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a commercial tea nursery.

24N. (1) A person who intends to establish a commercial tea nursery shall register with the county government where they intend to establish a tea nursery.

(2) A person shall not establish a commercial tea nursery unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of commercial tea nurseries and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Considerations before registration and licensing and renewal.

24O. (1) The Board shall, before registering, licensing or renewing a registration or license under this Act, satisfy itself that—

(a) the applicant has complied with the provisions of this Act and any other relevant law; and

(b) the applicant or the directors of the company are fit and proper for the function for which they seek a licence or registration.

(2) In determining whether a person is fit and proper, regard shall be had to—

(a) whether they have taken part in any business practice in the tea value chain that in the opinion of the Board was fraudulent, prejudicial or otherwise improper; or which otherwise discredited their method of doing business; and,

(b) whether they have been directors of a company or entity whose licence or registration certificate has previously been revoked or suspended by the Board for any cause.

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No. 17 of 2015.

(3) In determining whether a person or director is fit and proper, the Board shall have due regard to the provisions of the Fair Administrative Action Act, 2015, the Companies Act, 2015 and any other relevant law.

Conditions of a licence.

24P. (1) A licence issued under this Act shall be subject to such conditions as the Board may determine and as are specified in the licence and to any conditions which may be prescribed.

(2) The Board shall consider the professional and moral suitability of a person applying for a license and satisfy itself that such a person is a fit and proper person for the grant of the license.

(3) For the purposes of this section, the criteria for assessing the professional or moral suitability of a person applying for a license shall be as prescribed in the Second Schedule.

(4) In considering an application for a license, the Board may require to be satisfied as to—

- (a) the financial condition and history of the applicant;
- (b) the integrity of its management;
- (c) the professional and moral suitability of the persons proposed to manage or control applicant;
- (d) the adequacy of the capital structure of the applicant; and
- (e) the public interest which will be served by the granting of the license.

(2) The Board may at any time during the validity of a license —

- (a) vary the conditions of the license; or
- (b) impose conditions or further conditions on the licence.

Application for renewal of a license.

24Q. (1) An application for the renewal of a licence under this Act shall be made to the Board in a form prescribed not later than the first day of the month of June in which the current licence is due to expire.

(2) Despite subsection (1), a late application may be made upon payment of a late application fee as may be prescribed by the Board.

Revocation or alteration of a licence.

24R. The Board may revoke, alter or suspend a licence issued under this Act if in its opinion—

- (a) an offence under this Act, or in respect of the licensed activity under any other written law, has been committed by the licence holder or any employee of the licence holder; or
- (b) a condition of the licence has been contravened or not complied with.

Surrender of licence.

24S. (1) The holder of a licence which is revoked shall immediately surrender it to the Board.

(2) A licence holder may at any time surrender the licence to the Board and the licence shall cease to have effect immediately.

Appeals to the High Court.

24T. (1) An applicant for or holder of a licence who is aggrieved by a decision of the Board may appeal to the High Court on or in respect of—

- (a) the grant, refusal, renewal, variation or revocation; or
- (b) the conditions imposed on the grant, renewal or variation, of a licence.

(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision.

Approval of fees charged.

24U. Any fee, commission or other dues charged by a broker, management agent or an auction organizer shall be subject to prior approval by the Board.

Declaration of
Blended teas.

24V. (1) A person who blends any or various grades of tea produced in Kenya with any other tea produced outside Kenya shall declare the percentage of Kenyan tea on the packaging and on the blend sheet.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Taxation of tea.

24W. (1) Fees imposed by a county government shall not in any way prejudice national economic policies, economic activities across county boundaries or national mobility of goods, services, capital or labour.

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(2) The Cabinet Secretary shall, using the structures established under the Intergovernmental Relations Act, put in place mechanisms to harmonize fees and charges on tea across counties.

Tea value addition.

24X. (1) All tea buyers or exporters shall value add at least forty per centum of their annual Kenya tea exports within eight years of the commencement of this Act.

(2) The Cabinet Secretary shall in accordance with regulations made under this Act and in consultation with the Board, facilitate the establishment of Common User Facility for tea value addition as may be prescribed.

Hon. Temporary Deputy Chairman, the amendment seeks to delete Part III of the Bill and substitute it with the New Part III. The existing Part III provides for a role of national and county governments: Clause 20, Registration of the Tea Growers; Clause 21, Licensing; Clause 22, Form of Licensing; Clause 23 on Dissemination of Market Information; Clause 24 seeks to provide clarity on the role of national and county Governments in the Development of tea and registration of various tea dealers; Regulation of tea importers; Regulation of the offshore process; Provision of blended tea, taxation of tea; and provision for tea value addition.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Have you done the import of why you are doing that?

Hon. Silas Tiren (Moiben, JP): Yes.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Brighton, kindly have the Floor. Hon. Tonui, it is not you for now. I will give you a chance later.

Hon. Leonard Yegon (Konoin, JP): Hon. Chair, I have an amendment to Section 23 (A).

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Brighton, you have to wait for the decision of the House on Hon. Chair's. It is the same circumstance as that of Hon. Millie Odhiambo. Hon. Millie, I see you want to say something as a contribution. I had said I would give a chance to Hon. Tonui. Kindly, have the Floor. Thereafter, I will also give you a chance to contribute.

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Chair. There is this part of the Bill on Clause 20 which says that one of the functions given to the county governments is to market tea within the counties only. I think it is quite unfair.

In Bomet for example, we have sought markets internationally. We have even gone to Iran to look for market. We have in fact signed some Memorandum of Understanding (MOU) with the

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Government of Iran. So, when we try to restrict the counties to only seek markets within the counties, I believe it is unfair.

I want to object and oppose this one strongly.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Tonui, I am not trying to cut you short. However, which clause are you reading? Is it the New Clause proposed by the Chair or the Bill itself? This is because in the Bill, the Chair is actually deleting Part III and substituting it with an entirely New Part III. As you contribute, it is important to be clear on whether you are reading a part of the Bill that is being deleted and substituted with another part.

However, what the chairperson is proposing is actually, in what I have read, page 1209. It is the New Part III that the chairperson is...

Hon. Ronald Tonui (Bomet Central, JP): I think there is also confusion because we have it online and we are having it rough running from the Bill itself and to the amendments being proposed. I thought we need to be guided on how we combine the two when we are online. However, when I peruse through this, I can see that and when if it is going to go through, it is going to be quite unfair. That is the one, which I want to oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Therefore, Hon Chairperson and for the other Members, as we get to the other Members so go to 12... This is because I hear what Hon. Tonui is saying and it is important for every member here to move along with what is happening. Therefore, Hon. Members, on the Supplementary Order Paper, what the Hon. Chairperson is proposing the substitution is on 1209 on the Supplementary Order Paper. Therefore, before Hon. Mutai, I had given Millie a chance to say something.

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

(Hon. Moses Kirima spoke off-record)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, just a minute because it is important to carry all the members.

Hon. Moses Kirima (Central Imenti, JP): Hon. Temporary Deputy Chairman I am saying that what we are reading in these gadgets is not in tandem with what the Chairperson of the Departmental Committee on Agriculture, Livestock, and Fisheries is reading to us. The hardcopy and the soft copies are not the same. Mine is in tandem with what the Hon. Tonui has just told us. Therefore, we do not know this other one that is coming. This is because what has just been read by Hon. Tonui is what we have.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kirima, do you have page 1209 on your Spplementary Order Paper?

Hon. Moses Kirima (Central Imenti, JP): Yes, I have.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Page 1209 of the Order Paper?

Hon. Moses Kirima (Central Imenti, JP): Yes

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is exactly what we are dealing with.

Hon. Moses Kirima (Central Imenti, JP): So, now what we are saying is that what is being read as the new amendment is what we do not have.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kirima, what is being proposed by the Chairperson, Part III, is the new one. It is on page 1209 and you are saying you are on that page.

Hon. Moses Kirima (Central Imenti, JP): Yes, I am there.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is exactly the new Clause that is being proposed by the Chairperson.

(Hon. Sabina Chege spoke off-record)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Page 1209. However, as the Clerk sorts that out, I will come to the issues being raised. Hon. Millie please.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I would like to propose that in future, while we are in the Committee of the whole House that we actually have hard copies. It makes it easier because when we are following hard copies and soft copies it becomes a bit complicated.

However, because I had proposed amendment to Clause 20, I would want to say that I have looked at what the Chairperson is proposing and his part (b) is very similar because what they are doing is designating roles to the counties and to the national Government. Therefore, if you look at the roles that he has assigned to the counties, they are very similar to the roles that my proposal is suggesting for the counties.

However, this is my appeal to the Chairperson. If you look at my proposals relating to the national Government, he does not have them. I do not have procedurally the right to bring amendments on my feet. Therefore, if you find that the suggestions I am giving are in order, I would request you to adopt them from my amendments as the roles of the national Government.

In addition, my proposal for the national Government included:

The National Government shall develop policies and regulations under this Act; Develop policy for marketing Kenyan tea internationally- which the counties do not have the mandate; Ensure the protection of intellectual property rights over its owners- this is because sometimes you go to the United Kingdom (UK) and you are given tea which is Kenyan tea which is branded as English tea; Develop policy on labor standards in the tea sector; Develop policy on consumer protection; Develop policies on land planning as relates to tea growing; Build capacity and provide technical assistance to county governments on new developments and technologies in the tea sector- that can only be done- because it is a standard setting- at the national level.

Hon. Temporary Deputy Chairman, if we pass the amendments by the chair, which I support, mine will fall by the road side, including the good amendments I have in relation to the national Government. So, I am appealing to the Chairman, if he can adopt and propose the amendments, which I cannot do procedurally.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Millie Odhiambo! In terms of procedure, her amendment is dependent on the decision made by this House on the Chairperson's amendment. Nothing stops the Chair from being convinced by a Member and adopting that as his, although that is entirely his decision.

What is it Hon. Mbarire? We will hear a few people then make progress.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Millie has raised some important issues, but I think some of them are already ably taken care of under the functions of the Tea Board.

Actually, almost all of them. Maybe, she needs to cross-check and see what might be missing out. Under the functions of the Tea Board, there were quite many.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Can we finally hear one person then make progress?

Hon. Gichimu Githinji (Gichugu, JP): A further clarification, that is, if we are on the same page with other Members. Part III is sought to be amended entirely. It runs from Clause 20 to Clause 24. So, look at all those clauses. Maybe, what is missing in Clause 20 or another clause may be found elsewhere.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well, Hon. Members. I think we are on the same page. Let us make progress.

One minute for Hon. Mutunga.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Temporary Deputy Chairman. The reason there appears to be some confusion is because the Chair is not reading the amendment. The Chair is giving the import or the justification. So, the amendment is there and then that part is covering about three Clauses, 20 to 23. So, right now we are only dealing with Clause 20.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. You seem to have understood. Hon. Sabina, must you speak to this? I am trying to balance the load that is ahead of us.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Chairman. I am going to be very brief. I wanted to raise the issue that Hon. Tanui had raised. This is on what the Chair has read as the new amendment on 20 (b) which states:

“Each county government shall implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for—

- (i) the development of tea grown within the county;
- (ii) tea disease and pest control;
- (iii) markets within the county;
- (iv) cooperative societies within the county;
- (v) register commercial tea nursery operators
- (vi) soil and water conservation.”

I wish to dwell on (iii), that is, markets within the county. It is a very important matter that was raised, that is, whether the restriction is just within the county and, if a county found markets for its people out of the country, then what will the scenario be if they are only allowed to market within the county? That is part of the new proposal. It is good for the Chairman to give us clarity on the matter.

I thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Members, let the Members make a decision on this. That is why it is a debating Chamber.

*(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)*

(Part III as amended agreed to)

Hon. Members the implication of that is that Hon. Millie Odhiambo's amendment falls. As I had said earlier, and a few Members had got it, this covers Clauses 20 to 24.

Clause 25

The Temporary Deputy Chairman (Hon. Patrick Mariru): There is an amendment by the Hon. Chairman. As you can sense from the Members, it is important to take the Members slowly. Let them understand. Possibly if you can say the page, it will be helpful for the Members. However, do not be too slow. The most important thing is to say which page. Members are very sharp. They are able to tell. If you say the page, you will keep moving.

Clause 25

Hon. Silas Tiren (Moiben, JP): This is what clause?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Clause 25.

Hon. Silas Tiren (Moiben, JP): Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let me help you Chair, it is on page 1222 so that we move together.

Hon. Silas Tiren (Moiben, JP): Hon. Members, I think you have heard that clearly, it is on page 1222.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, you can be moving, the Members are already there.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 25 of the Bill be amended by—

(a) inserting the following paragraph immediately after the introductory statement—

“(a) such monies as may be appropriated by the National Assembly;”

(b) re-numbering the existing paragraphs (a), (b), (c), (d) as (b), (c), (d), (e), respectively.

The justification is that the amendment seeks to provide for monies as appropriated by the National Assembly which had been omitted as one of the sources of funds for the Board. The monies appropriated will enable the Board to carry out its mandate.

Thank you.

(Question of the amendment proposed)

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

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Hon. Temporary Deputy Chairman. I wish to support this amendment. In fact, the original Order Paper had this amendment. As we all know, this sub-sector is not supported by the Government.

Considering that the sugarcane industries are built by the government. The farmers in the tea sector are not supported in any way. The tea factories are owned by the farmers themselves. They contribute to build them. So, if the Tea Board of Kenya can be funded, at least, partially by the National Government, I believe that is a welcome idea.

I support.

(Question, that the words to be inserted)

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be inserted, put and agreed to)

(Clause 25 as amended agreed to)

Clause 26

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

Hon. Silas Tiren (Moiben, JP): Thank you. Clause 26 is on page 1222. Hon. Temporary Deputy Chairman I beg to move:

- THAT, Clause 26 of the Bill be amended —
- (a) in sub-clause (1) by deleting the word “three” appearing immediately after the words “at least” and substituting therefor the word “six”;
 - (b) by deleting sub-clause (3) and substituting therefor the following new sub-clause—
“(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.”
 - (c) by inserting the following new sub-clause immediately after sub-clause (3)—
“(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the Cabinet Secretary.”

The justification is that the amendment seeks to align the provisions with the clause of Public Finance Management (PFM) Act and Regulations. The period of preparation and presentation of annual estimates is prescribed in section 31-43 of the PFM Act, 2012 and PFM Regulations 2015. 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 26 as amended agreed to)

Clause 27

The Temporary Deputy Chairman (Hon. Patrick Mariru): There is an amendment by the Hon. Chair. It is still on page 1222 of the Supplementary Order Paper.

(Hon. Kimani Ngunjiri stood on the gangway)

Hon. Ngunjiri do not in any way be between the Chair and the House when I am guiding it.

Hon. Silas Tiren (Moiben, JP): Thank you. Clause 27 is on page 1222. Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 27 and substituting therefor the following new clause—

Accounts
and
audit.

27. (1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure and assets of the Board.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Board together with—

- (a) a statement of the income and expenditure of the Board during that year; and
- (b) a statement of financial position of the Board on the last day of that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

The justification is that the amendment seeks to align the provisions of the PFM Act, Regulations and the International Public Sector Accounting Standards (IPSAS). The period for preparation and presentation of Financial Statements is prescribed under Section 101 (4), the PFM Act 2012 and PFM Regulations 2015.

Further under Article 229(4) of the Constitution, the Auditor-General is required to audit financial statements and give a Report six months after the end of the financial year. Therefore, it is not feasible to present it together with financial statements after three months. In addition, financial statements are prepared in accordance with IPSAS accrual. The term balance sheet is no longer used in accounting and should be deleted.

(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 27 as amended agreed to)

Clause 28

Hon. Temporary Deputy Chairman (Hon. Patrick Mariru): There is an amendment by the Chair. Hon. Members, that is page 1223. Chair, just be keen to let the Members know the small flaw that you are amending just for flow and grammar around Clause 2 so that the Members move together.

Hon. Silas Tiren (Moiben, JP): I will explain. I think that is part (b).

Hon. Temporary Deputy Chairman (Hon. Patrick Mariru): Move it together but on Clause 2, just pronounce yourself on that.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 28 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “balance sheet” appearing immediately after the words “and the annual” and substituting therefor the word “statement”;

- (b) in sub-clause (2) by deleting the words “balance sheet” appearing immediately after the words “publish the report,” and substituting therefor the word “statement”;
- (c) in sub-clause (3) by deleting the words “balance sheet” appearing immediately after the words “submit to Parliament the reports,”.

I wish to move the same clause in an amended form.

Hon. Temporary Deputy Chairman (Hon. Patrick Mariru): Tell Members what you are doing in (b).

Hon. Silas Tiren (Moiben, JP): Before I go to the justification, what I am doing in the Bill is deleting the words “balance sheet” appearing immediately after the words “publish in the report”. Because there will be a repeat of the word “statement” since we are supposed to replace it with “statement”, we are not substituting it with statement. I hope we understand. This is so that we do not have “statement” twice as we continue in the next. That is why we wish to move Clause 28 in an amended form in part (b). The justification is that financial statements are prepared in accordance with international public sector accounting standards and the term “balance sheet” is no longer used. So, we are deleting that. I hope you understand. Are we together? 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 28 as amended agreed to)

(Clause 29 agreed to)

Clause 30

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

Hon. Cecily Mbarire (Nominated, JP): I have a new amendment inserting a clause 29A if you look at your Order Paper.

Hon. Temporary Deputy Chairman (Hon. Patrick Mariru): That is a new clause, is it not?

Hon. Cecily Mbarire (Nominated, JP): Yes, after 29. I have seen you are going to 30 before I bring in the 29(a).

Hon. Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mbarire, I understand your apprehension but being a new Clause, it comes at the end. So, we will still come back to Clause 29 not as an amendment but a new clause because you will have to do Second Reading.

Chair, you have an amendment to Clause 30.

Clause 30

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 30 of the Bill be amended by—

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

(b) deleting the expression “(2)” appearing immediately before sub-clause (2);

Clause 30 of the Bill provides that the board shall arbitrate dispute arising between any parties under the Act. The Clause provides for a compulsory arbitration which may be challenged by the parties in dispute. The amendments, therefore, deletes it.

Hon. Temporary Deputy Chairman (Hon. Patrick Mariru): Have you addressed yourself to (b)?

Hon. Kathuri Murungi (South Imenti, Independent): On a point of order!

Hon. Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Kathuri, what is your point of order?

Hon. Kathuri Murungi (South Imenti, Independent): Thank you, Hon. Temporary Deputy Chairman. I think as the Chair moves these amendments, he should give us the import of his amendments so that we can move in tandem with him. So, when he proposes any amendment, he should explain the import of that amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is what he has been doing. Hon. Chair, Hon. Kathuri is saying you give more details. That is a valid query and issue by Hon. Kathuri and for other Members. Hon. Chair, do you want to take another stab on Clause 30? Just the import.

Hon. Silas Tiren (Moiben, JP): We can also give Members so that they can also help us. Is that okay?

The Temporary Deputy Chairman (Hon. Patrick Mariru): You want to have another Member to sit for you?

Hon. Silas Tiren (Moiben, JP): No, Hon. Temporary Deputy Chair. I was just suggesting that you give the opportunity to other Members of the committee.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is okay but it is only after you have moved and I have proposed the question, that we can open it up, then a Member of the committee or any other Member can speak to it. Hon. Chair, have you done the import of Clause 30?

Hon. Silas Tiren (Moiben, JP): Yes.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Take it again for the sake of Hon. Kathuri.

Hon. Silas Tiren (Moiben, JP): Thank you. Let me just take it again for the purposes of Members. I hope I will be a bit slow then.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 30 of the Bill be amended by— (a) deleting sub-clause (1); (b) deleting the expression — (2) appearing immediately before sub-clause (2);

Clause 30 of the Bill provides that the board shall arbitrate these Bills arising between any parties under the Act. The Clause provides for compulsory arbitration which may be challenged by the parties in dispute. The amendment, therefore, deletes it. I hope we are together.

(Question of the amendment proposed)

Hon. Ronald Tonui (Bomet Central, JP): I wish to oppose this amendment because this arbitration process where disputes can be handled before you go to court through the board, reduces cases which should reach the court. You know the court process is expensive. In any case, Part II is also opening that option. If you are not satisfied with what the arbitration process in the board, you can still go to the board. The levies can be in order so that expenses can be reduced.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us listen to a Member who has not spoken on this one. Hon. Melly.

(Hon. (Ms.) Cecily Mbarire spoke off the record)

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chair. I support the Chair because that amendment is trying to address the issue where the board is trying to compulsorily put Members into arbitration yet they have the option of going out. So, by deleting this section, the board will not belabor itself into an issue that will even be driven into the courts later on.

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

Hon. Joseph Nduati (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Chairman. I also want to support the Chair. I do not think the board will have the capacity to arbitrate in such matters.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mbarire, what were you saying?

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Chair, I wanted to explain that my proposed New Clause 29 is also providing for a procedure of complaints and investigation by the board. It becomes necessary. It is not compulsory but if anybody or any party in this Act feels aggrieved; there is a procedure that should be followed. That is the reason party was also deleted.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Hon. Mwaniki, you have not spoken to this one.

Hon. (Ms.) Wangari Mwaniki (Kigumo, JP): Thank you, Hon. Temporary Deputy Chairman. First of all, I want to appreciate the Chair because he called all of us for a meeting. The paper he is presenting was as a result of an effort by all the Members that we joined him and his committee to be able to harmonise the very many amendments that had been brought before this House. What he is trying to explain is the operating word “shall”. He is saying if you have a dispute, you have an option to go to the board or elsewhere. You cannot tie people who have a dispute paper

It will tie people who have a dispute to just go to the Board should they prefer the court option, for example. So, I think that is what he is trying to...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Let us make progress on this one.

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

(Clause 30 as amended agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, as at now, there is no amendment on Clause 31, but there is new Clause 31A coming later.

I can tell Hon. (Ms.) Odhiambo Mabona that you are not as tired as I thought.

(Clause 31 agreed to)

Clause 32

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by the Chair and Hon. (Ms.) Eve Obara. The one of Hon. (Ms.) Eve Obara is dependent on the fate of the Chair's one.

An Hon. Member: Hon. Temporary Deputy Chairperson, I also have an amendment on Clause 32.

The Temporary Deputy Chairman (Hon. Patrick Mariru): On Clause 32? It must be a new amendment. That will be a new amendment; it is not an amendment. It is a new Clause. It will come later. So, Hon. Commissioner, hold your horses.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 32 of the Bill be amended by deleting it and substituting therefor the following new Clause:

General
penalty.

32. A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or a fine not exceeding twice the value of the tea or tea products or, to imprisonment for a term not exceeding one year, or to both.

Hon. Temporary Deputy Chairman, Clause 32 provides for a fine of not less than Kshs20,000 or fine not exceeding twice the value of tea or tea products, or to an imprisonment for a term not exceeding six months or to both. Those penalties are not punitive. The amendment, therefore, enhances it.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. (Ms.) Eve Obara, would you like to say something? You have an amendment.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you, Hon. Temporary Deputy Chairman. The amendment seeks to align the penalties...

The Temporary Deputy Chairman (Hon. Patrick Mariru): No, you are not moving your amendment now, Hon. (Ms.) Eve Obara. I just gave you an opportunity to speak to the Hon. Chair's amendment because yours will depend on what the House decides on the Hon. Chair's amendment. Would you want to say something?

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Do I speak to what I had amended?

The Temporary Deputy Chairman (Hon. Patrick Mariru): No, we are dealing with the Hon. Chair's amendment. I am magnanimous enough to give you an opportunity to speak to the Chair's amendment because yours comes later depending on what the House decides on this one.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Hon. Temporary Deputy Chairperson, can you allow me to speak to mine?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let the House...

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Point of information, Hon. Temporary Deputy Chairperson.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Who do you want to inform?

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): You are next to her there, Hon. (Ms.) Odhiambo-Mabona. I can tell that you have lobbied. What information do you want to give to Hon. (Ms.) Eve Obara, who is your neighbour there?

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Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairperson, because Hon. (Ms.) Eve Obara is my sister, the information I wanted to give is that if she wants to speak to her issue, it is okay. That is, if she actually connects it to what the Departmental Committee Chair is saying. If the Chair's amendment falls, she will not get a chance to speak to hers and she has been waiting here very patiently for a long time. All she can say is, maybe, hers is similar to the Chair's or it is different from the Chair's so that we also get to know what her proposal is all about. It also informs us in deciding whether we are supporting the Chair's amendment or Hon. (Ms.) Eve Obara's.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. That is very good information to your neighbour, Hon. (Ms.) Eve Obara. Hon. (Ms.) Obara, you can speak to the Chair's amendment, but you coach it out like it is around yours.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Hon. Temporary Deputy Chairman, can you just give yours once again so that I pay attention to what you are saying?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. I am not sure that will hold. You can get more points as we hear from Hon. Mutai.

Hon. Japheth Mutai (Bureti, JP): Hon. Chairman, at first glance, the amendment by Hon. Obara leads me to believe that it is similar to what the Chair is moving. If you look at it closely, it is the same amendment. I would like to tell my colleague that if she has the time, she can chip in because it is a similar amendment. If she has the time, she can look at it. It is the same amendment. There is concurrence between your amendment and that of the Chair.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well, Hon. Members. Hon. Obara, can the House make a decision? I think we should.

*(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 32 as amended agreed to)

Hon. Eve Obara, your amendment falls.

Clause 33

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

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

Regulations 33. (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Regulations made under this Act may provide for—

(a) the regulation of the production, processing, importation and exportation of tea;

(b) the procedure of registration of tea brokers, small scale tea growers, medium scale tea growers, large scale tea growers, commercial green leaf transporters, tea packers,

tea buyers, tea importers, tea exporters, management agents, auction organisers, warehouse operators, commercial tea nurseries;

- (c) the procedure of licensing of tea manufacturers;
- (d) the forms to be used in the application for registration, licensing, contracts and related activities;
- (e) the prescribed areas for planting tea;
- (f) the appeal process in case of refusal or denial of a licence;
- (g) monitoring of the entire value chain in the tea sub-sector;
- (h) regulation of the conduct of tea auction including the volumes of tea to be sold through auction or through direct sales;
- (i) the promotion of fair and proper governance structures in institutions along the tea value chain in the interest of tea growers;
- (j) rules to avoid conflict of interest in the ownership and dealings between tea growers, tea factories and tea dealers;
- (k) the criteria for the pricing of green leaf;
- (l) maximum fees charged by players along the value chain;
- (m) the tenure of board members for tea factory;
- (n) procedures for ensuring internal democracy in tea growers' institutions and organizations;
- (o) value addition of tea exports and imports;
- (p) control of pests and diseases;
- (q) any fee charged under this Act;
- (r) the regulation of contracts between growers, tea factories and other players in the tea industry;
- (s) tea safety including transportation, processing and market standards of tea;
- (t) submission of returns and reports by the holders of licences and registrations under this Act;
- (u) regulation and controlling the method of blending, packaging and labelling of tea for purposes of traceability;
- (v) standards, and the manner of grading and classification of made tea products under this Act; and
- (w) anything required to be prescribed under this Act;

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(3) For the purposes of Article 94(6) of the Constitution—

(a) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;

(b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

The justification is that the amendment seeks to expand the areas that the regulations would cover in order to effectively regulate the tea industry.

(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 33 as amended agreed to)

Clause 34

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 34 of the Bill be amended—

(a) by renumbering the existing provision as sub-clause (1);

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

“(2) The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the expression “Tea.....Camellia spp.””

The justification is that the amendment seeks to correctly do a consequential amendment to the Crops Act.

(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 34 as amended agreed to)

Clause 35

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 35 and substituting therefor the following new clause—

Transfer
of assets
and
liabilities

35. All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Tea Directorate of the Agriculture and Food Authority and the Tea Research Institute of the Kenya Agricultural and Livestock Research Organisation, shall, on the date of commencement of this Act, vest in the Board and the Foundation, respectively, subject to all interests, liabilities, charges, obligations and trusts affecting that property

The justification is that the amendment seeks to provide for the transfer of assets and liabilities vested in the Tea Directorate of the Agriculture and Food Authority and the Tea Research Institute of the Kenya, Agricultural and Livestock Research Organisation to the proposed Tea Board of Kenya and the proposed Tea Research Foundation.

(Question of the amendment proposed)

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

Hon. Kathuri Murungi (South Imenti, Independent): Hon. Temporary Deputy Chairman, I concur with the Chair of the Committee. As much as I agree with him, it is always good to support him so that he can see that we concur with what he is saying. I support his amendment and encourage him to continue with that spirit because I can see he is definitely improving the tea sector.

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

Hon. Christopher Omulele (Luanda, ODM): Hon. Temporary Deputy Chairman, what he has said is important.

This particular amendment is very important because tea is one of those crops that require constant research. One of the reasons we have decline in tea production and quality in this country is because the Tea Research Foundation was neglected when the tea sector was put under new arrangement. This is a very good amendment. I fully support it.

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

Hon. Joseph Kipkosgei (Kuresoi South, JP): Thank you, Hon. Temporary Deputy Chairman. I wish to support the amendment. However, I can see that there is something which is missing. Previously the Tea Board of Kenya had assets like huge buildings which were taken by Agriculture and Food Authority (AFA). The Chair is informing me that it is captured somewhere. So, there are no losses.

Hon. Silas Tiren (Moiben, JP): All the assets and liabilities are captured in the amendment.

Hon. Joseph Kipkosgei (Kuresoi South, JP): Are they captured well?

Hon. Silas Tiren (Moiben, JP): Yes.

Hon. Joseph Kipkosgei (Kuresoi South, JP): Okay. Thank you. I am guided, Chair.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Didmus, must you really speak on this amendment or we make progress?

Hon. Member: We make progress.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us make progress.

*(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)

Clause 36

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson, you have an amendment.

Hon. Silas Tiren (Moiben, JP): Clause 36 is on page 1226 in the Order Paper.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 36 and substituting therefor the following new clause—

Pending proceedings

and claims 36. All legal proceedings and claims pending in respect of actions and activities to which this Act apply shall be continued or enforced by or against the Board and the Foundation in the same manner as they would have been continued or enforced by or against the Agriculture and Food Authority and the Kenya Agricultural and Livestock Research Organisation had this Act not been enacted.

The amendment seeks to provide for continuity of pending proceedings and claims into the proposed Tea Board of Kenya and Tea Research Foundation.

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 36 as amended agreed to)

(Clause 37 agreed to)

Clause 38

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson, you have an amendment.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. This amendment is on page 1226.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 38 and substituting therefor the following new clause –

Existing licences
and registrations.

38. All licences and registrations existing before the appointed day shall remain valid until their expiry, and subsequent and registrations shall be issued under this Act.

The amendment seeks to provide clarity on existing licenses and registrations. It also seeks to provide for smooth transition of registration and licensing under the Act.

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 38 as amended agreed to)

Clause 39

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you have an amendment.

Hon. Silas Tiren (Moiben, JP): The amendment is in page 1226. Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 39 and substituting therefor the following new clause—

Transfer of staff

39. (1) The staff of the Tea Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall be the staff of the Board.
- (2) The staff of the Tea Research Institute employed by the Kenya Agricultural and Livestock Research Organisation prior to the commencement of this Act, shall be the staff of the Foundation.

The amendment seeks to provide for transfer of staff who are employed in the Tea Directorate by AFA and those who are in the Tea Research Institute who are employed by Kenya Agricultural and Livestock Research Organisation (KALRO) to the proposed Tea Board of Kenya and Tea Research Foundation.

Thank you.

Question of the amendment proposed)

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

Hon. Kathuri Murungi (South Imenti, Independent): Thank you, Hon. Temporary Deputy Chairman. I support this amendment because very many organisations transit without such laws. Many Kenyans have suffered. I support this amendment because nobody will flout the rules.

All the Kenyans employed by the Agriculture and Food Authority (AFA) and those working with the KALRO which is leading in research will be absorbed by the Tea Board.

Also, Hon. Chair, with your Committee, you must make sure that the Tea Board has enough resources to cater for all these people who will be accommodated by the Board.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Mutai then we put the question.

Hon. Japheth Mutai (Bureti, JP): My concern on this is that not all the staff of AFA or KALRO will be doing work related to what the Tea Board will be doing. What happens to those staff then? What this Section implies is that all the staff in its entirety will be absorbed. In the Tea Directorate not all the staff will be doing the same function as that of the Tea Board.

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

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): Thank you, Hon. Temporary Deputy Chairman for the chance to contribute. I would like to thank Hon. Mutai and tell him that these people are permanent and pensionable members of staff. The fact that they were recruited to

work under the Tea Directorate, it would mean that they are part of the bigger picture and reason why we are going to lapse and repeal the AFA Act 2014, for us to strengthen this.

It only means that we would require to top up more members of staff with the workload that is ahead of us with regard to tea in the country.

Thank you.

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

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Temporary Deputy Chairman. These staff members are specialized. Right now, they are under the Tea Directorate. We are not talking about all the staff in AFA; we are talking about the staff who directly under the Tea Directorate. These are the staff who were formerly in the Tea Board of Kenya transferred to AFA. So, we are transferring them back.

On the other hand, the staff who moved from the Tea Research Foundation went into KALRO when Kenya Agricultural Research Institute (KARI) moved into KARLO after the change of the Act. Therefore, we want to transfer them back to the Tea Research Foundation to continue doing research on tea.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Osotsi. Sorry Hon. Kathuri. Are you on a point of order?

Hon. Kathuri Murungi (South Imenti, Independent): You know my good friend Hon. Mutunga is referring to 'KARLO', but Members are floating, maybe they think he is referring to 'CAROL'. So, Hon. Mutunga you must be guided on these issues.

(Laughter)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order! Hon. Kathuri, you are bordering on being out of order, but let us have Hon. Osotsi.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I wanted to explain what KARLO is.

The Temporary Deputy Chairman (Hon. Patrick Mariru): No! You do not need to explain.

(Laughter)

I am sure Hon. Kathuri knows.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairman, this is a transition class somehow, because the staff are transitioning from AFA to the Tea Board. I would like the Chair to give more clarification because they are transitioning Staff but they are not talking about anything to do with their benefits like pension.

Can you clarify on that?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Members let us make progress. Hon. Munene has not spoken. We must also make progress. Hon. Munene has not spoken on this on. Hon. Munene, you may proceed.

Hon. Munene Wambugu (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Chairman. As much as I support the proposal by the Chairman, we need to be very careful because

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from the time we pass this and the time it becomes law, there could be change of staff. We need to have guidance on that because, even currently, all the staff who used to be on the Tea Board, some of them were taken to other directorates within AFA. We know very well that currently, AFA is mostly maintained by the resource from tea.

Therefore, we need to be careful such that between now and when the Bill becomes an Act, there is no monkey business. Some staff would want to go to the new Tea Board and maybe they came to AFA from say the sisal industry. We need to make sure that they are not taken to the Tea Directorate before the new Act comes into force.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, I must put the question on this one.

(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 39 as amended agreed to)

Clause 40

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Hon. Chairman is seeking a deletion.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 40.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I am told that you need to consult on this Clause with the legal counsel. Take a quick a minute. Or maybe what we can do is propose the Question so that the House is not left in some uncomfortable abeyance as you consult. Move Clause 40 then as Members discuss, you can consult.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 40.

The justification is that the amendment seeks to delete the provision since it provides for an appointed day which is redundant.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What do you mean? The Chair did not understand that.

Hon. Silas Tiren (Moiben, JP): Let me read it again. The amendment seeks to delete the provision since it provides for an appointment day which is redundant.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, consult quickly with the legal counsel as I open the Floor. Yes, Hon. Omulele.

Hon. Christopher Omulele (Luanda, ODM): I also do not know why he would wish to delete this when it provides for the day when the Act comes into operation. Does he not desire this Act to have an operation date or what is he trying to do?

(Loud consultations)

This is a totally new Bill.

(An Hon. Member spoke off record)

It may be prudent for the Chair of the Committee to leave this one as it is.

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

Hon. John Mose (Kitutu Masaba, JP): Hon. Temporary Deputy Chairman, I just want to associate myself with Hon. Omulele. If we leave it like this, we will be leaving it floating. We need to operationalise it at the end of the day. The amendment the Chair seeks to do away with will actually render null and void what we have been dealing with.

Hon. Silas Tiren (Moiben, JP): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Hon. Chair is on a point of order. What is it?

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, we want to withdraw the amendment to Clause 40.

The Temporary Deputy Chairman (Hon. Patrick Mariru): If he has withdrawn it, that is it.

Let us hear from Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. When dealing with Clause 40, we need to look at it in relation to what “appointed” refers to. It says “appointed day” means the day this Act comes into operation. That is in relation to this part. Where is “appointed” referred to in this part? That is in 36, “...on or after the appointed day, all action suits or legal proceedings pending by or against the agriculture...” So, it means it is giving you what the appointed day is because if we look at the definition section, there is no definition of “appointed day”, so, it will create a crisis if you drop “appointed day.” You actually need “appointed day.”

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. (Ms.) Millie, in fact, what you should do, there is a New Clause 38 that relates and that is where the Chairperson is dropping because if I could read Clause 38, it reads:

“All licences and registrations existing before the appointed day shall remain valid until their expiry, and subsequent licences and registrations shall be issued under this Act.”

Technically, by the Chairperson dropping “not to delete now” saves Clause 38. So, what the Chairperson has done is completely correct. In any case, we cannot discuss it because the Chairperson has dropped it.

Hon. Members, the Chairperson has dropped that amendment, and therefore, that Clause has no amendment.

(Clause 40 agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): The next is New Clause 23A. You will get the page in a minute. Hon. (Ms.) Millie, you will get the page in a minute.

Hon. Members, the New Clause 23A was actually by Member for Konoin, Hon. Brighton, but that Clause has been captured by New Part III. So, the New Clause is now captured under New Clause 24B which is part of Part III that the House carried earlier. So, Hon. Brighton, yours is already carried there.

New Part: 24Y, 24Z, 24ZA and 24ZB

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us get the page, Hon. Members. These are new clauses. I am told that it is Page 1219. Hon. Members, it is important that we carry along on this one. It is on Page 1219 of the Supplementary Order Paper. So, that New Part IIIA covers New Clauses 24Y up to 24ZB. Being new clauses, the Chairperson, you have to move for the Second Reading.

Hon. Chairperson, please move for the Second Reading of New Part IIIA, covering those clauses. It is on Page 1219 of the Supplementary Order Paper. Just take your time Chairperson.

You got it. Proceed.

Hon. Silas Tiren (Moiben, JP): Part IIIA is on appointment of crop inspectors. I beg to move as it is on the Order Paper.

The Temporary Deputy Chairman (Hon. Patrick Mariru): You will need to move the Second Reading. You will have to say “be now Read a Second Time” and then give the import.

New Part IIIA

Hon. Silas Tiren (Moiben, JP): Thank you Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following new parts immediately after Part III—

PART IIIA – APPOINTMENT OF CROP INSPECTORS

Appoin
tment
of crop
inspect
ors. 24Y. (1) The Board may appoint qualified persons to be crop inspectors for the purposes of this Act.

(2) For purposes of subsection (1), the Board may, by regulations, prescribe the qualifications for a crop inspector.

Entry
and
inspecti
on. 24Z. A person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—

(a) enter any land or buildings occupied by the holder of a manufacturing licence issued under this Act, or a person registered under this Act;

- (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence or registration are being complied with; and,
- (c) may require any person found thereon to give such information as the person may require.

Powers
of
entry.

24ZA. (1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—

(a) perform the functions or exercise the powers conferred by this Act or any other written law;

(b) make enquiries or carry out a search to ascertain if this Act is being complied with;

(c) demand the production by a licence holder of the licence for examination;

(d) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or,

(d) do any other thing authorized under this Act.

(2) The owner or occupier of or any person on land or in premises or a vehicle which is entered under subsection (1) shall render such reasonable assistance as may be required by the inspector.

(3) A person who refuses, unreasonably delays or fails to comply with a requirement under subsection (2) commits an offence.

Obstru
ction of
inspect
ors.

24ZB. (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding three years, or both.

They will have powers to enter premises and shall not be obstructed. I think I will have to go back because I am doing it quickly.

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is okay, Chair. Just take your time because the Members are listening.

Hon. Silas Tiren (Moiben, JP): The amendment seeks to provide a New Part IIIA to provide for the appointment of crop inspectors. The crop inspectors will ensure that the provisions of this Act are enforced and they will have powers of entry into premises and shall not be obstructed.

Thank you.

(Question of the new parts proposed)

(The new parts read the First Time)

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

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

(The new parts were read a Second Time)

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

New Part IIIB

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, if you could move for Second Reading. That is New Part IIIB, New Clauses 24ZC and 24ZD. That is on page 1220, Hon. Members.

Hon. Silas Tiren (Moiben, JP): Yes, I beg to move that Part IIIA be now Read Second Time. Thank you. I beg to move:

THAT, the Bill be amended by inserting the following new parts immediately after Part III—

PART IIIB – ESTABLISHMENT OF TEA LEVY AND TEA FUND

Establishment
of Tea
Levy.

24ZC. (1) The Cabinet Secretary may by notice in the *Gazette*, impose a levy to be levied on tea exports and imports, to be known as the tea levy.

(2) The levy imposed through a notice under subsection (1) shall be collected by the Board at a rate not exceeding one per centum of the auction value for teas sold through the auction and at such times, being not earlier than one after the date of publication of the notice, in such a manner, as is specified in the notice.

(3) The levy on tea imports shall be charged at a rate of one hundred per centum of the value of the imported teas.

(4) The levy imposed under this section shall be levied and collected in such manner as the Cabinet Secretary may prescribe through regulations.

(5) The tea levy collected under subsection (2) shall be apportioned as follows—

(a) fifty per centum shall be applied by the Board for income or price stabilization for tea growers;

(b) fifteen per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;

(c) twenty per centum shall be remitted directly to the Tea Research Foundation;

(d) fifteen per centum shall be applied for infrastructure development in the tea sub-sector on a pro rata basis.

(6) A person who fails to pay the tea levy imposed under this Act commits an offence.

Establishment
of a Tea
Fund.

24ZD. (1) There is established a Fund to be known as the Tea Fund which shall be managed by the Board.

(2) The Fund shall consist of-

(a) monies appropriated by the National Assembly;

(b) monies from the tea levy;

- (c) monies from a source approved by the Board;
- (d) grants and donations made to the Board.
- (3) The Board shall apply the monies received into the Fund to—
 - (a) income or price stabilization;
 - (b) research and development.

The amendment seeks to empower the Cabinet Secretary to impose a levy on the import and export of tea to be paid into the proposed Tea Fund. One of the major challenges in the tea sub-sector has been the fluctuation of tea prices. There is great need for a price stabilization mechanism. That is why the amendment seeks to provide that a 50 per centum of the Tea Levy shall be applied by the Board for income or price stabilization for tea growers. The levy shall also be remitted to the proposed Tea Research Foundation and used for infrastructure development. All this will develop the tea industry.

Thank you.

(Question of the new parts proposed)

(New parts read the First Time)

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

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

Hon. Kathuri Murungi (South Imenti, Independent): I would like to have clarification from the Chair. Is Clause 24ZC (3), which says “The levy on tea imports shall be charged at a rate of one hundred per centum of the value of the imported teas” correct? Is it 100 per centum? Let me get some clarification. Is 100 per centum a levy?

Hon. Members: Yes! Of imported tea.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kathuri, you have raised your question. I will give a chance to someone to respond. I do not want that crossfire between you and the other one on this other side.

Hon. Kathuri Murungi (South Imenti, Independent): I can see there are so many hands there. Maybe, one of them can respond.

The Temporary Deputy Chairman (Hon. Patrick Mariru): They will do. Let us start with Hon. Mbarire and then have a few others to respond as well.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Chair, this was an issue that we really discussed because this is imported tea. The whole idea was to discourage competition from tea from outside the country. We wanted a situation where we protect our tea and make it cheap and available to locals.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Just hold on, Hon. Kathuri.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): If you look at the entire Bill, you will also notice that one of the issues that we have put a lot of emphasis on is that of value addition. If we really have to add value on our own tea, then it is good we protect it from competition from outside.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Melly, you know Hon. Kathuri is sliding us into some crossfire. I will get back to you.

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Hon. Julius Melly (Tinderet, JP): Thank you, Chairperson. In the Committee, we actually discussed this exhaustively. One of the reasons is to protect the local tea industry. This is the section that is going to protect that sector. The funds that are going to be here... If we allow cheap imported tea and blend it with the local ones, by the end of the day, we will not protect our markets.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Catherine, kindly have the Floor.

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): Hon. Chair, the sole purpose of the Committee establishing this clause was to protect our tea at the Mombasa auction, to be specific. There is a lot of tea flooding our markets from our neighboring countries in the East African Community. The sole purpose and intent was to see that our farmers benefit by selling their tea at a competitive price, as much as we are doing tea blending. Number one is to make sure we stabilise the prices of tea growers and the market that they fetch.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Kabinga. He has not spoken.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Chairman. I congratulate the Chair of the Departmental Committee on Agriculture and Livestock for having come up with this amendment.

The issue of protecting our farmers is very important. We are facing those challenges in other areas. For example, importers of rice keep bringing in cheap rice. It is high time we levied imported products by 100 per cent or even more, so that we prevent importation of goods that can be produced in our country.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Millie, who comes from a place where there is no tea but fish.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. In our area, what we do is to consume. I am a friend of tea growers. This is an excellent amendment. It protects our tea growers and our local tea.

I am going to sit with the Chairman of the Departmental Committee on Agriculture and Livestock because he is the one who is going to do this. We are having the same problems in fishing. The President gave an Executive Order, but we cannot effect it until those amendments are brought by the Chairperson. I cannot bring it procedurally as a Private Member especially amendments on the Fund which shields fishermen and tea growers.

We should all support.

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

(The new parts were read a Second Time)

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

New Part IIIC

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

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THAT, the Bill be amended by inserting the following new parts immediately after Part III—

PART IIIC - ESTABLISHMENT OF THE TEA RESEARCH FOUNDATION

Establishment
of the Tea
Research
Foundation.

24ZE. (1) There is hereby established a body to be known as the Tea Research Foundation.

(2) The Foundation is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate?

Functions of
the
Foundation.

24ZF. (1) The Foundation shall—

- (a) promote, co-ordinate and regulate research in tea and tea diseases; and
 - (b) expedite equitable access to research information, resources and technology and promote the application of research findings and technology in the development of tea.
- (2) For the purpose of carrying out its functions the Foundation shall—
- (a) formulate policy and make policy recommendations to the Cabinet Secretary on tea research;
 - (b) prioritise areas for, and co-ordinate, tea research in Kenya in line with the national policy on tea;
 - (c) determine and advise the Government on the resource requirements for tea research in Kenya both at the national and county level;
 - (d) regulate, monitor and ensure that all tea research undertaken by other institutions or persons undertaking tea research is consistent with the national priorities specified in the relevant policy documents;
 - (e) formulate or approve medium and long term research plans, strategies and budgets of the Foundation;
 - (f) provide grants to institutions or persons desirous of carrying out research and training programmes which are consistent with the national research priorities and plans of the Foundation;
 - (g) support and promote the training and capacity building in relation to agricultural research;
 - (h) liaise with and ensure the co-ordination of institutions, agencies and persons involved in tea research;

- (i) establish platforms for the purposes of sharing research information, advancing research and transfer of technology and dissemination of information relating to advancements made in tea research;
- (j) conduct training in industry best practice and value-addition;
- (k) ensure continuance of performance improvement in the field of tea research; and
- (l) perform such other functions as may be conferred on it by this Act or any other written law.

The justification of this amendment is that it seeks to establish the Tea Research Foundation. Currently, the research function with regard to tea is undertaken by the institute under the Kenya Agricultural and Livestock Research Organization (KALRO) and is not being given the attention it deserves.

(Question of the new parts proposed)

(New parts read the First Time)

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

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

(The new parts were read a Second Time)

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

NEW PART

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new Part immediately after clause 29—

PART IVA - COMPLAINTS AND INVESTIGATION PROCEDURE

Complaint and
investigation
against a
licensee.

29A. (1) A person who is aggrieved by or is likely to be aggrieved by the contravention of any provision of this Act by a licensee may file a complaint requesting the Board to enforce the provisions of this Act against that licensee.

(2) The complainant shall, in the complaint, —

- (a) cite the specific provisions of this Act that the licensee has contravened or is likely to contravene;

- (b) state the facts relating to the alleged contravention or likely contravention; and
 - (c) attach any documents relevant to the complaint.
- (3) The Board shall provide a written response to the complainant within fifteen days of receipt of a complaint.
- (4) The Board may by written notification to the complainant, extend the review of the complaint by up to thirty days where it determines that a complaint raises—
 - (a) a novel issue whose disposition requires the Board to consider an issue that it has not previously addressed; or
 - (b) a complex issue whose disposition requires the Board to obtain significant factual information to resolve a difficult legal, factual or policy issue.
- (5) The Board may dismiss a complaint if—
 - (a) the complainant fails to show that it has been injured, or is likely to be injured as a direct result of the alleged contravention of the provisions of this Act as cited in the complaint;
 - (b) the factual allegations in the complaint are unsupported or are without merit;
 - (c) the factual allegations in the complaint, even if proven to be true, do not constitute a contravention of this Act or the regulations made thereunder; or,
 - (d) it concludes that the exercise of its enforcement discretion would not be appropriate.
- (6) Where the Board dismisses a complaint, it shall notify the complainant and provide a written explanation.
- (7) Where the Board admits a complaint, it shall issue a written notification to the licensee complained of and the complainant indicating—
 - (a) the specific provisions of this Act that the licensee has been alleged to contravene; and
 - (b) reasonable details of the alleged facts constituting the contravention.
- (8) A licensee that is the subject of a complaint shall, within fifteen days of receipt of the notification from the Board, submit a response providing the basis on which it disputes the allegations of contravention.
- (9) The Board shall, subject to section 29G on confidentiality, provide copies of all documents filed by each party to the other party.
- (10) The Board may—
 - (a) allow the filing of additional responses by the parties;
 - (b) upon application and for good reasons, extend time for the filing of any documents or replies by the parties to the complaint;
 - (c) request the complainant or the licensee complained of to submit additional information at any time during the course of the enforcement proceedings; or
 - (d) direct an independent audit or appropriate investigation of the operations and books of account of a licensee to obtain information relevant to the complaint.

Withdrawal of
complaint.

29B. (1) A complainant may, at any time and with reasons, withdraw its complaint in writing addressed to the Board and the licensee complained of.

(2) The withdrawal of a complaint shall not preclude the Board from taking enforcement action on its own motion in the public interest.

Decision on a
complaint.

29C. (1) The Board shall issue its decision on a complaint within sixty days of receiving all necessary information.

(2) Where necessary, the Board may, by written notice to the parties and before the expiry of the sixty-day review period, extend the time and specify the date by which it shall issue its decision.

Enforcement
action.

29D. (1) Where the Board intends to commence an enforcement action against a licensee on its own motion, the Board shall—

- (a) notify the licensee and clearly indicate the specific provisions of this Act the licensee is alleged to have contravened;
- (b) allow the licensee at least fifteen days to respond in writing with a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the licensee disputes the allegation; and,
- (c) issue its decision within sixty days of receiving all necessary information.

(2) Where necessary, the Board may, by written notice to the licensee and before the expiry of the sixty-day review period, extend the time and specify the date by which it shall issue its decision.

Interim
directive.

29E. (1) At any time during an enforcement proceeding, the Board may issue an interim directive to a licensee to cease and desist from any specified conduct.

(2) In determining whether to issue an interim directive the Board shall consider whether—

- (a) there is prima facie evidence that the licensee has contravened the provision of this Act;
- (b) continuation of the licensee's conduct is likely to cause serious harm to other licensees, consumers or the general public;
- (c) the potential harm of allowing the licensee to continue its conduct outweighs the burden on the licensee of ceasing the conduct; and
- (d) issuance of the interim directive is in the public interest.

Enforcement
measures.

29F. (1) Where the Board determines that a licensee has contravened any provision of this Act, the Board may take such enforcement measures as it considers appropriate, including—

- (a) issuing a written warning to the licensee;
- (b) directing the licensee to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Act;
- (c) directing the licensee to take specific remedial action;
- (d) declaring any agreement or contract void;
- (e) imposing a financial penalty relative to the period that the breach persists; or

(f) suspension or cancellation of the licence issued under this Act.

(2) A person aggrieved by the decision of the Board under this section may appeal to the High Court.

Confidentiality.

29G. (1) A party submitting information to the Board may request that the information submitted be treated as confidential.

(2) The Board shall grant a request for confidential treatment if the requesting party demonstrates, with reasonable specificity, that the information for which it requests confidential treatment contains commercially sensitive information or that the disclosure of the information would have a material adverse impact.

(3) For the purposes of this section, “commercially sensitive information” includes information—

(a) that is not otherwise available to the public; or

(b) whose disclosure would cause commercial harm to the party or otherwise provide a commercial benefit to the party’s competitors, including business procedures, practices, plans or its assessment of market conditions.

The New Part IVA seeks to provide the outline for procedure of lodging a complaint with the Board and also notification of the person complained against. It aims at empowering the Board to direct an independent audit or appropriate investigation of the operations and books of account of a licensee to obtain information relevant to a complaint.

The purpose of this New Part IVA is to give room for, especially, the small-scale farmers who have had many complaints, but did not have any room to raise them even when it was clear that money had been misused. They did not really have a fallback position. They had to go to court and were never given a chance for an out of court procedure of investigations. Therefore, we are giving the Board a chance to be able to lodge an investigation to a complaint and to direct an independent audit of the books of account of the various tea factories across the country. This is especially for those that are owned by the small-scale growers.

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

(Question of the new parts proposed)

(New parts read the First Time)

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

Hon. Jessica, you wanted to speak to this?

Hon. (Ms.) Jessica Mbalu (Kibwezi East, WDM-K): Very well, Hon. Temporary Deputy Chairman. I want to contribute because I know the position of the House. You have already proposed and put the Question.

The Temporary Deputy Chairman (Hon. Patrick Mariru): No. We have now proposed for it to be part of the Bill and, therefore, you can still speak to it.

Hon. (Ms.) Jessica Mbalu (Kibwezi East, WDM-K): Very well. Hon. Temporary Deputy Chairman, I want to support the amendment and congratulate Members from the tea zones. I can

see the Members are in the House. All of us consume tea. In every part of Kenya, we consume tea. Therefore, we really support the amendments.

On the New Part IVA regarding lodging of complaints, it is important. This House will recognize that I, being the Vice-Chairperson of the Public Accounts Committee (PAC), know what happens in the audited accounts. Therefore, I want to support the Mover, Hon. Cecily Mbarire, for ensuring that there are independent audits on the accounts of the Board. This will ensure that money is spent prudently.

I support.

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

Hon. Christopher Omulele (Luanda, ODM): Hon. Temporary Deputy Chairman, this is a wonderful idea that we must support. However, I am just wondering without deducing anything from what Hon. (Ms.) Mbarire has proposed here, whether going forward, we may want to consider coming up with a tribunal within the board. I imagine that there will be a plethora of complaints from farmers that would need a specialized unit to deal with this special area.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Mwathi, who has not spoken so far.

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Temporary Deputy Chairman. This is a very good proposal. I was just wondering but if it is provided for, then I will be educated on it. Would it be neater if we can have a form of complaint so that we can give a framework of how those who are complaining can present it to the tribunal as proposed by Hon. Omulele?

The Temporary Deputy Chairman (Hon. Patrick Mariru): I am sure Hon. (Ms.) Mbarire will have another stab at it. If you can be brief, we can have one minute each. Let us have Hon. Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman, although the amendments appear to have been carried, I would support my senior Hon. Omulele that since we are talking about matters that touch on the Act, the board is also part of the Act. So, we might find some complaints that also touch on the board and the board cannot sit and arbitrate on their own case. I think it is food for thought that we should find a way of getting a tribunal which would adjudicate on matters that would relate to the board and any other complaints.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The first part of the amendment has been carried, but not the second part.

Let us have Hon. Sabina.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Chairman. I thank Hon. Cecily Mbarire for that amendment and echo the sentiments of my colleagues that we need to have a tribunal as a way to address the complaints.

Currently, there are buying centers from my zone such as Kiangenye, Nduu-ini, Karura and Gikigie that have expressed their need to move from Githambo Tea Factory to Gacharage Tea Factory, which is just next to their tea buying centers but, until now, nobody has addressed those issues. They have not been picking their tea for the last two months and farmers are just languishing in poverty. The Kenya Tea Development Authority (KTDA) has kept quiet. The factories are telling them there is nothing they can do. I support that we need to have a dispute mechanism where complaints are addressed immediately.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Brighton, I am giving these Members because they come from tea growing areas. It is important to put a word on it.

Hon. Leonard Yegon (Konoin, JP): Thank you, Hon. Temporary Deputy Chairman. I support Hon. Mbarire's amendment so that in case of any complaint, there should be a way of

addressing it. I support the amendment of proposing an independent audit by the board. Initially, I had come up with a proposal that the Auditor-General looks into the books of accounts of KTDA. You have heard a number of complaints with regard to KTDA because no one looks into them. As we are discussing, there are issues that we have been putting forward that we always wanted a forensic audit to be done to KTDA. That is why we support it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. I was thinking we make progress but Hon. Mutai, if you could take just one minute.

Hon. Japheth Mutai (Bureti, JP): Hon. Temporary Deputy Chairman, just a quick one. On this issue, I wish to raise the fact that the Section 30 that we deleted was saying that the board shall arbitrate disputes. I am of the opinion that we should have a separate clause to allow the parties go for arbitration themselves. They ought to go for arbitration if there is a dispute such as between the licensee and the board. It is not only just about the person and the licensee. There should be a provision that whenever there is a dispute - before anything can go to court - where they are not satisfied with the decision, they should go for arbitration.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let us make progress. I will now put the Question.

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

(The new parts were read a Second Time)

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

New Clause 31A

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chairperson for Second Reading. It is on page 1223.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 31—

Offen
ces
and
penalt
ies.

31A. (1) A person commits an offence if the person—

- (a) without lawful excuse ignores or fails to obey any instruction issued by a member of the Board or an employee or agent of the Board in exercise of the powers or the performance of the functions of the Board under this Act;
- (b) willfully obstructs a member of the Board or an employee or agent of the Board in the discharge of their lawful duties; or
- (c) misrepresents, knowingly submits false or misleading information to a member of the Board or an employee or agent of the Board in exercise of the powers or the performance of the functions of the Board under this Act.

(2) A person who contravenes subsection (1) is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding five years, or to both.

(3) A person who is convicted of an offence under this Act shall in addition to any other penalty have his or her licence or registration suspended or cancelled for such a period as the Board may decide.

The Bill had not made any provision for a number of offences. The amendment provides for these offences. Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I rise to oppose these amendments. I want to urge the Chairman of the Committee to listen to me carefully. He had proposed a blanket amendment for all the other offences that may not be provided for under this Act. To an extent, this is actually repeating what was done.

The other reason which is more worrying to me is that this amendment makes criminal offences administrative actions. I will give you an example. When I was a new advocate of the High Court of Kenya, I was assigned to the then only Election Petition Court. I was made to work there for a whole year and refused to go on leave. But being who I am, after having asked my boss and she refused, I wrote a letter and proceeded on leave. If you followed this, I would have been charged with a criminal offence.

I hope you are listening very carefully. There are administrative things that cannot be criminal offence. It is saying a person commits an offence if, without lawful excuse, ignores or fails to obey any instruction issued by a member of the board. In this case, that means that because I refused to listen to my Chief Executive Officer (CEO) at that time, it would have been a criminal offence because I am a *'kichwa ngumu'*. I am sorry for using those words.

So, you cannot punish me for being *'kichwa ngumu'*, but you can punish me for the other provisions stated like if I stop the crop inspectors from getting into the premise and there is punishment provided for that. The other provision which we were sharing with Hon. Eve also gives punishment and there is a blanket one which covers every other offence.

So, actually, this is a very dangerous provision and I oppose.

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

Hon. Githinji Gichimu (Gichugu, JP): Hon. Temporary Deputy Chairman, I also agree with Hon. Millie Odhiambo that this is a provision that is likely to be subject of abuse. It talks of any member of the board. So, it does not clearly classify who should give instructions. So, if the lowest junior of the board gives instructions and you fail to obey, then you are liable to pay Kshs500,000 or thereabout.

I oppose.

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

Hon. Munene Wambugu (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Chairman. I do agree with Hon. Millie Odhiambo and Hon. Gichimu. This is an amendment we must oppose and drop. If we allow it without much ado, it is very clear that the employees and agents of the board will misuse it.

When they state “without lawful excuse”, what is that? It is very subjective and we will be criminalizing issues based on subjectivity. I think this is a poor way of trying to enforce the orders of the board.

I think the Committee did a very good job, but this one must be dropped. It is not good at all.

*(Question, that the new clause
be read a Second Time, put and negated)*

The Temporary Deputy Chairman (Hon. Patrick Mariru): That one falls. Chair, move New Clause 32A for Second Reading.

New Clause 32A

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 32—

Offences
relating to
body
corporate.

32A. If an offence under this Act is committed by a body corporate or any other association of individuals, a director, partner or any other person involved in, or acting or purporting to act in the management of its affairs commits an offence unless that person proves that—

- (a) the act or omission constituting the offence took place without the person’s knowledge; or,
- (b) the person took reasonable steps to prevent the commission of the offence.

This amendment seeks to provide for penalties for offences committed by a body corporate.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, please, note that there is a further Clause 32A that will come later. Let us prosecute this one first. Let us have Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I just needed to seek clarification from the Chair because New Clause 32A says:

“If an offence under this Act is committed by a body corporate or any other association of individuals, a director, partner or any other person involved in, or

acting or purporting to act in the management of its affairs commits an offence unless that person proves that—

(a) the act or omission...”

There is something missing in the construction of this clause. It is kind-of hanging. Unless we can be referred to another clause that it is anchored on, it is actually hanging. I know what they are trying to do is to hold corporate bodies accountable, which is a good thing but the way it is cast, it is a bit awkward. The legislative drafting here is a bit awkward. If the technical team could refer us to what clause it is linked to...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, maybe, it is also good to read Clause 32 and 32A together and see whether that makes sense. However, before then, let us hear from Hon. Gichimu. Chair, please take note of what Hon. Millie and the Members are saying.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman, on top of what Hon. Millie has said, the clause seems to shift the burden of proof to the accused person in this case. You are supposed to prove. In any offence, he who alleges must prove but if you look at the tail-end, it shows that the person who is being accused is supposed to prove otherwise.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, you may need to particularly note what Hon. Gichimu has said because you can never shift the burden of proof.

Next is Hon. Omulele.

Hon. Christopher Omulele (Luanda, ODM): Hon. Temporary Deputy Chairman, you have put it better than I could have put it. This provision is unconstitutional. You can never shift blame. The Constitution places the obligation to prove guilt on he who alleges. This one purports to shift the burden of proof to the person who is purported to have committed the offence. This provision is unconstitutional and must fall.

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

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. I read this differently. If an offence under this Act is committed by a body corporate, then what this is intending to do is to insulate the officers acting for that body corporate. So, if you look at it from that angle, it is probably the construction that has a problem, as Hon. Millie has said.

That if the offences committed by a body corporate, or any association of individuals, if you stop at that point, then a director, partner or any other person involved in or purporting to act for that body, is guilty unless the person proves that the act constituting took place without their knowledge and the person took reasonable steps to preempt the commission of the offences. So, we are here talking of removing liability. Just because the corporate did and you are the director, does not mean you are guilty unless you are part of the people perpetrating the crime. That is the way I read it. This insulates officers and directors from affairs of the company so long as you are not part of it.

It is probably just the comma after the “body corporate” and then put semi colon, which then breaks the sentence. That could be done editorially, so long as we get the principle. It has to be done here. So, perhaps, the Mover might want to move it in an amended form than to put a semi colon after ‘association of individuals’, so that you say: “If an offence was committed by a body corporate or association of individuals, then a director or partner or any other person engaged, is guilty unless the person proves that the act was...” So, the intention is good but the construction is poorly done to a point of causing confusion.

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): As I give you, Hon. Millie Odhiambo, I am happy that the Chair is consulting with the counsel because we need to find a way out. Hon. Millie, what is out of order?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Actually, Hon. Temporary Deputy Chairman, you have just said what I wanted to say. I want to thank Hon. Kimunya because you need an eye that is not legal. I could see there is something that is legally wrong, but it has actually been discovered. You must put the words, 'is guilty'. Otherwise, this does not make legal sense. I do not know what we can do in the meantime but, if the legal counsel can just help us construct the words 'is guilty' within the main sentence so that what the Speaker, Hon. Omulele is talking about makes sense... You are only guilty under certain circumstances. So, I think you have got what my concern is.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Omulele, you wanted to weigh in on this? I am waiting for the Chair to finish the consultations with the counsel.

Hon. Christopher Omulele (Luanda, ODM): Yes, for purposes of debate, I understand what my brother, the Leader of the Majority Party and my senior, Hon. Millie, are speaking to. There is a need to hold people who run those corporations and bodies responsible because, for a long time, we have had situations where corporates commit crimes and serious offences in this country, and they hide behind the corporate veil. What this is trying to do is analogous as far as I am concerned, to the practice in law, where the veil is lifted. It is a torturous process in law as it were. However, this is trying to make it easy here where the officers who run those corporations can be held liable as a matter of law. So, I think this is a new way of doing things so that we do not have to go through that litigious and long processes of the courts in lifting the veil where corporations are found to have been liable and the directors and other officers of that corporation hide behind the legal corporate identity of the company to say that they are separate from the company. This is a new tool that we have been making available to ourselves, but the drafting needs to be a little bit clearer so that we make it possible for the poor tea farmers who have been at the mercy of those people who run those corporations in the tea industry for long.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The counsel is working on it. Hon. Gichimu, you seem like you want to speak to it as we wait for the counsel to finish.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman, as explained, I think it is now clearer. If it is put in the right wording, it will not create the confusion that we had before with Hon. Christopher Omulele. With that explanation, I think it would be okay.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Very well! Hon. Amos Kimunya, the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I am happy with it. I think we are all clear. Basically, we are saying that all officers are liable for the offence of the company unless they can prove that they did not know — the act took place without their knowledge — or they took reasonable steps to prevent the commission of the offence. So, a director or anyone who was on duty and who did not know that there was coffee or tea in the store being taken away on that night cannot be taken to court because of whatever happened in the company.

A licensee doing something funny, if the licensee is a body corporate, can be sued and the directors will jointly and severally be sued unless they prove that on that board meeting that agreed to do something funny, they were not there. I probably can put it the opposite way that said it removes the vicarious. It actually puts in vicarious liabilities unless you can prove that you are not vicariously liable, if Hon. Christopher Omulele would support my legal interpretation in my limited way.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Shadrack Mose and after Hon. Mose, Hon. Chair, you must either way have resolved it because we may not be able to go round and round. The House has to make a decision if you do not.

Hon. Shadrack Mose (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Chairperson. Listening very carefully to this, there is something that has always been a serious problem when we are dealing with corporate entities. In most cases, directors or boards of directors hide behind the corporate veil, as my learned friend Hon. Omulele has said. So, if we can, at this stage, caution the directors that: “Look! You are not going to hide behind the corporate face so that you do something very cautiously and intentionally, but you go and say that it is the company that did that.”

If we can fashion this so that the aspect of responsibility is seriously given to those directors right from the beginning, it would help us a lot. The earlier position, as it was portending itself, was like we are criminalising the whole issue or making it unconstitutional. This is a good point and it is a good law that would be advancing to a higher level, so that we hold directors liable for their own acts, as the Leader of the Majority Party has said.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson, we must bring this to some closure.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. I had a suggestion that we pass it in the Second Reading and we recommit it so that we can look at it properly. Is that better?

The Temporary Deputy Chairman (Hon. Patrick Mariru): We do a recommittal?

Hon. Silas Tiren (Moiben, JP): Yes.

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

Hon. Silas Tiren (Moiben, JP): Is that okay?

The Temporary Deputy Chairman (Hon. Patrick Mariru): No, you cannot ask them. It is me to ask them.

Hon. Silas Tiren (Moiben, JP): Sorry. That is why I am asking you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Chair, we can always recommit it. So, we process it to the end and then we recommit if possible. Order! Hon. Members. Please, you have to vote.

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

(The new clause was read a Second Time)

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

Hon. Millie, if there is a recommittal, you can help with the language.

There is an additional New Clause 32A by Hon. Ben Momanyi. We are still on New Clause 32A. It is on page 1235.

Hon. Ben Momanyi (Borabu, WDM-K): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after clause 32—

Conflict
of laws.

32A. If any conflict arises between the provisions of this Act and any other Act with respect to the development of the tea crop, the provisions of this Act shall prevail.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new Clause was read a Second Time)

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

New Clause 32B

The Temporary Deputy Chairman (Hon. Patrick Mariru): That amendment is still by Hon. Momanyi. Please move for the Second Reading. The amendment is still on page 1235.

Hon. Ben Momanyi (Borabu, WDM-K): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 32—

Restraint
of
breaches
of this
Act.

32B. Any person who has reason to believe that the provisions of this Act have been, are being, or are about to be violated, may petition the High Court for –

- (a) declaration that the provisions of this Act are being, have been, or are about to be contravened;
- (b) an injunction, restraining any specified person from carrying out the contravention;
- (c) a writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under this Act; or
- (d) any other lawful remedy.

The justification is that the amendment also provides for recourse to a person if the provisions of this Act are violated. Where there is a violation, a person may petition the High Court.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kathuri, do you have an issue?

Hon. Kathuri Murungi (South Imenti, Independent): Thank you, Hon. Temporary Deputy Chairman. With a lot of respect for my Commissioner, why should we enact a law where if somebody feels violated... I am not a lawyer but, is it possible for us to put provisions in this Act for somebody who feels violated? What is the purpose of the courts? That should now be in the precinct for a person who feels that he has been violated.

The first clause was very good but the second one has a lot of malice. Currently, the KTDA and the Ministry of Agriculture, Livestock and Fisheries are in vicious cycles in court. Nothing is happening in the tea sector, including the election of directors. If we allow this to happen, we are saying that somebody can go to court tomorrow regarding what we have done in this House this evening up to now because there is a clause that allows him to contest in court. Members of this House, as we legislate, let us make laws for posterity. We should not make laws for certain individuals, sectors or corporations. I disagree with this and oppose the amendment.

I can see that the Leader of the Majority Party is agitated as I am. He can give us more guidance.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Omulele first.

Hon. Christopher Omulele (Luanda, ODM): Hon. Temporary Deputy Chairman, with a lot of respect to my senior, Hon. Momanyi, this new proposed amendment prescribes the remedies that a litigant may seek in court, which is not the business of legislation. There are many remedies that any person who is aggrieved by any action of this board can choose to go and claim from any court. This amendment prescribes this kind of *mandamus* which is a judicial review kind of remedy that is available to somebody who may approach the court. It is a very well prescribed, well-known and special remedy that is available. There is no need to prescribe it here. Whether we prescribe it here or not, it exists.

We do not need to limit the remedies that are available to anybody who may feel aggrieved by any action that has been taken by the actors in this proposed law. Therefore, I beg my brother to withdraw this amendment, so that we can move to other amendments.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Sabina, contribute quickly.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): My contribution will be brief. Some of us are here because we were brought up by tea farmers. We are also tea farmers. We want to protect the small-scale tea farmers.

Whatever we have done this evening, and Hon. Kathuri has alluded to it, might be in vain if we pass this clause. I urge Members of this House to reject it because it is not beneficial to the farmers who are here. It is beneficial to a few people whom we know on record that they are always in court. They use farmers' money shamelessly and then, at the end of the day, they pay them peanuts.

I reject this clause, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Catherine, contribute for one minute and then we make progress.

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): Hon. Temporary Deputy Chairman, I will contribute for one minute. In the spirit of every Member who has contributed to this clause, Hon. Sabina and Kathuri, I agree that there are some corporates like KTDA which love litigation. If you check their expenditure, they consume more than 46 per cent in the courts. Instead of anticipating a judicial review, we should withdraw this clause and protect the interests of the farmers. There are places where they can go for arbitration in cases where there are problems which do not need KTDA to spend money on their behalf. At times, they do this without the consent of the farmers.

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

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, maybe, Hon. Momanyi explained the amendment wrongly. It says that any person who has a reason to believe that the provisions of this Act have been, are being or are about to be violated, may petition the High Court. It does not say a person who is aggrieved. A person who believes that the provisions of the Act are being violated may go to court to seek an injunction, *mandamus* and any other lawful remedy.

The amendment empowers any person to be a policeman of the Act. If you feel that the Act is being....

(Loud consultations)

The amendment may be superfluous. However, let us not reject it because a person is aggrieved. This is somebody who believes that the provisions of the Act are being contravened.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Let us hear Hon. Kibeh.

Hon. (Ms.) Wanjiru Kibeh (Gatundu North, JP): Thank you, Hon. Temporary Deputy Chairman. I may not be a lawyer, but I want to disagree with the Leader of the Majority Party. The issue here is about us, as a House, prescribing that in case you are aggrieved or you do not agree with that, then you can go to court. It is very automatic in the Constitution that if there is conflict in law, then you can go to court for interpretation. That is my understanding.

Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Hon. Members, let us put the Question.

(Hon. Githinji Gichimu spoke off record)

Hon. Gichimu, if you take more than a minute, I will just make progress.

Hon. Gichimu Githinji (Gichugu, JP): Kindly, Hon. Temporary Deputy Chairman. This proposed amendment will open gates for busybodies. It is elevating this Act to the level of the Constitution. So, I oppose.

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

Hon. Members: Put the Question.

Hon. Munene Wambugu (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Chairman. This proposed amendment is audacious. The Constitution allows everyone to challenge any Act of Parliament, not just what we are trying to make here. We do not need to put it because nothing stops someone from challenging any Act which is being infringed. It is in the Constitution.

*(Question, that the new clause be read
a Second Time, put and negatived)*

Schedule

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have some amendments appearing on page 1226. Hon. Chair, you have an amendment. The fate of that of Hon. Mbarire, Hon. Gichimu and Hon. Millie is dependent on the decision of the House on the Chair's amendment.

Hon. Chairman, you may proceed. It is on page 1226 and 1227.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. On the New Schedule, is that it?

The Temporary Deputy Chairman (Hon. Patrick Mariru): No, it is not on the New Schedule. It is on the existing Schedule. We are doing amendments.

Hon. Silas Tiren (Moiben, JP): Thank you. I beg to move:

THAT, the Schedule of the Bill be amended—

(a) by deleting the title and substituting therefore the following new title—

“FIRST SCHEDULE”

(b) in paragraph 1(3) by deleting the word “five” appearing immediately after the words “by at least” and substituting therefor the words “two thirds of the.”

The justification is that the amendment seeks to provide for the First Schedule since the Committee will be proposing a new Second Schedule in the next amendments.

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

It is on page 1226.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, is it clear?

Hon. Members: No.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, just take the Members slowly. On page 1226 and 1227, there are two parts of that amendment. There is an amendment on the Title, that is, deletion and substitution of the Title. Then there is Paragraph (1) and (3) which is deletion and substitution of words.

The amendments by Hon. Gichimu, Hon. (Ms.) Mbarire and Hon. Millie are all around the Title. It is the same thing. We are dealing with the Title. So, Hon. Chair, please, proceed. You can still move it together.

Hon. Silas Tiren (Moiben, JP): I had read the Schedule and the justification. Should I continue or read it again?

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

Hon. Silas Tiren (Moiben, JP): I had actually done it. The amendment seeks to provide for the First Schedule since the Committee will be proposing a new Second Schedule in the next amendments.

Are we okay? The amendment also seeks to provide for the quorum for requesting for a special board meeting to be set as two-thirds of the board members in line with the best practice.

(Question of the amendment proposed)

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

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

(Schedule as amended agreed to)

New Second Schedule

The Temporary Deputy Chairman (Hon. Patrick Mariru): That should be page 1227. Hon. Chair.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the new Schedule immediately after the First Schedule-

SECOND SCHEDULE

CRITERIA FOR ASSESSING PROFESSIONAL OR MORAL SUITABILITY

1. In order to determine, for the purposes of this Act, the professional and moral suitability of persons, proposed to be directors and senior officers of a licensee, the Board shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—

- a) possession of adequate professional credentials or experience or both for the position for which the person is proposed;
- b) ability to recommend sound practices gleaned from other situations;
- c) ability to provide dispassionate advice;
- d) ability to avoid conflicts of interest in his or her activities and commitments with other organizations;
- e) ability to absent oneself from decisions when the person is incapable of providing objective advice.

2. For the purpose of and without prejudice to the generality of the provisions of paragraph (1), the Board, may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person—

- a) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
- b) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence or other malpractices;
- c) has taken part in any business practices that, in the opinion of the Board, were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited the person's methods of conducting business; or
- d) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on the person's competence and soundness of judgment.

3. The Board may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person as stipulated under the Act.

The justification is that the amendment seeks to describe the criteria to be used by the board in assessing the professional and moral suitability of persons proposed as directors or officers of an entity licenced under the Act.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the new second schedule proposed)

(New second schedule read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before I put the final Question on the new Second Schedule, there is still a further amendment on the new Second Schedule by Hon. Gichimu. Pronounce yourself on the page. What page would that be?

Hon. Gichimu Githinji (Gichugu, JP): It is on page 1228.

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is actually on page 1229.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new Schedules immediately after the First Schedule—

SECOND SCHEDULE [s. 2]

TEA BLOCKS

BLOCK	COUNTIES
EAST	Kiambu, Murang'a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, Meru and Narok.
WEST	Kericho, Bomet, Nakuru, Kisii, Nyamira, Nandi, Kakamega, Vihiga, Trans-Nzoia, Baringo, Bungoma, Elgeyo Marakwet and Uasin Gishu

Hon. Temporary Deputy Chairman, the introduction of this Schedule is because the word “blocks” has been referred to in the Act and it brings clarity to the Eastern and Western blocks by specifying the counties that fall under the two blocks which are referred to in the Act. So, it brings clarity when we talk about Eastern or the Western Block by naming the counties we are making reference to.

(Question of the new second schedule proposed)

(New second schedule read the First Time)

(Question, that the new second schedule be read a Second Time, proposed)

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

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I wish to support because this is actually more like my proposal. The Bill was referring to the West and East of the tea zones and we do not have West or East of the tea zones.

I also want to say something in relation to what an Hon. Member had indicated earlier. I want to indicate and remind us that the current Principal Secretary for Fisheries is from Meru and actually holds a PhD in Fisheries.

Secondly, part of my work at Master's level is intellectual property rights on plant genetic resources, including tea. I can be an expert in tea from a fishing area while Ntiba is an expert in fish from a tea area. So, I would want to encourage that even though we are using this for now, in future, we may actually have to amend when the people of Suba North would have found ways of planting tea in water.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Absolutely. Hon. Mbarire.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Chairman, I want to support this, but I am wondering whether it still remains a Second Schedule in view of the fact that we already had a Second Schedule as proposed. So, it should be Third Schedule.

The Temporary Deputy Chairman (Hon. Patrick Mariru): No, it should be on the First Schedule. That would be editorial now if we pass it.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Okay, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kathuri, we want to move faster.

Hon. Kathuri Murungi (South Imenti, Independent): Hon. Temporary Deputy Chairman, I have no major problem with this amendment by my friend, Hon. Gichimu, but there have been complaints all the time that the East Block, which comprises of counties in Kiambu, Murang'a, Nyeri, Embu, Tharaka-Nithi and Meru, fetches more tea prices than the West Block. So, segregating the tea sector into blocks is not the best thing to do because we are growing tea in Kenya.

The people from the West Block have always complained that the East Block, which has produced the Chairperson of KTDA Holdings, have always been getting higher returns than the Western Block. So, they have been uncomfortable with the Eastern Block. However, I have no problem. Mine is just a comment so that my brothers from the Western Block can know that there are no fishy deals in the management of the tea sector.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. The Hon. Leader of the Majority Party is saying that it is an arbiter, but it is necessary nevertheless.

Yes, Hon. Mutunga.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Temporary Deputy Chairman. The reason why we resorted to blocks is for purposes of ensuring that there is equitable representation, especially in the board. We could not also use the word "zone" or the word "region" because they mean different things in the sector. The sector has used those words to mean something very different.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Members, we must make progress on this one. It was the Second Reading by Hon. Gichimu.

Before I put that Question, let us hear from Hon. (Ms.) Sabina.

Hon. (Ms.) Sabina Chege (Muranga CWR, JP): Hon. Temporary Deputy Chairman, though I come from the East Block, I was just wondering – maybe Hon. Gichimu will clarify – about the categorisation. He said that the East Block comprises of Kiambu, Murang'a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, Meru and Narok counties. On the West Block, I see there is Kericho County. I thought Narok, Kericho and Bomet counties are on the same side. What informed him to put Narok on the East Block?

(An Hon. Member spoke off record)

Well, I know but, if a meeting of the East Block was to be held, let us assume, in Meru and the other one in Bomet, I do not know... That is why I am seeking for a clarification.

I support Hon. Gichimu's amendment. I was just asking why Narok was put in the East Block and yet, it would have been comfortable in the West Block. Sometimes even at the border, we suffer. They might have similar challenges as Kericho, Bomet, Nakuru and others from that side, rather than being on the other side that seem to be on the mountain.

I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Now that you support, I am sure Hon. Gichimu will explain it at some point.

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

(The new second schedule was read a Second Time)

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

(Title agreed to)

Clause 2

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairman, you have an amendment on Clause 2.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. I would wish to also move Clause 2 in an amended form by inserting the following definitions to the proposed Clause 2...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairman, it is good to pronounce yourself that you are moving Clause 2 in an amended form and put the import.

Hon. Silas Tiren (Moiben, JP): That is what I started with, Hon. Temporary Deputy Chairman. I wish to move Clause 2 in an amended form by inserting the following definition to the proposed Clause 2. “Tea block” means a block set out in the Second Schedule, where tea is grown. Is that okay?

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

Hon. Silas Tiren (Moiben, JP): Thank you. Assist me there. This machine is not working here. It is on page 1205. The justification is that the amendment seeks to delete Clause 2 and substitute it with a new clause. The amendment provides for new definitions arising out of the proposed amendments.

THAT, the Bill be amended by deleting Clause 2 and substituting therefor the following new clause—

- Interpretation. 2. In this Act—
- “auction” means a physical or electronic system where potential buyers place competitive bids for tea;
 - “auction organizer” means a person, company or firm established for the purpose of organizing tea auctions in Kenya;
 - “blending” means the art of mixing of teas of different types and grades to affect the flavour and characteristics of the tea for the purposes of packing and sale;
 - “Board” means the Tea Board of Kenya established under section 3;
 - “broker” means a person or company or firm established for the purpose of negotiating the purchase or sale of tea between tea growers or tea factories and buyers for a fee;
 - “buyer” means a person, company or a firm engaged in acquiring made tea for sale in the local or export market, including export of imported tea;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

“commercial green leaf transporter” means a person, a firm or a corporate body contracted by a tea factory to provide green leaf transport services from the farm or leaf collection center to the tea factory at a fee;

“commercial tea nursery” means a person or firm who maintains not less than five hundred tea seedlings or tea planting material for sale;

“county government” has the meaning assigned to it under Article 176 of the Constitution;

“crops inspector” means a person appointed as an inspector in accordance with section 24Y of the Act;

“export” means to take tea or cause tea to be taken out of the Kenya customs territory or out of an Export Processing Zone;

“exporter” means a person, a firm, or a corporate body engaged in the business of blending, packaging and exporting of tea in bulk or in value added form;

“Foundation” means the Tea Research Foundation established under section 24ZE;”

“Fund” means the Tea Fund established under section 24ZD;

“grower” means any person who is cultivating tea in an area;

“green leaf agreement” means an agreement between a tea grower and a tea factory relating to the delivery of green leaf;

“import” means to bring tea into or cause to be brought into the Kenya customs territory or into an Export Processing Zone;

“importer” means a person, a firm, or a corporate body engaged in the business of importing tea into Kenya;

“large scale tea grower” means a person cultivating tea in a parcel of land above fifty acres;

“levy” means the levy imposed by the Cabinet Secretary on tea exports and imports in accordance with section 24ZC;

“licensee” means a person who holds a manufacturing licence issued under the Act;

“made tea” means the derivative from tea leaf through a manufacturing process;

“management agent” means any person that is appointed by a tea factory through a specific management contract or agreement to perform or offer professional services other than company secretary services;

“manufacture” means the mechanical or chemical processing and conversion of green tea leaf into made tea or other tea products and includes the packaging, labelling, distribution of tea and tea products for sale;

“manufacturing licence” means a licence issued under section 24;

“medium scale tea grower” means a person cultivating tea in a parcel of land of between ten and fifty acres;

“person” includes a firm, a company, an association, cooperative society or a corporate body;

“small scale tea grower” means a grower cultivating tea in a parcel of land of less than ten acres;

“specialty teas” means premium teas manufactured whole leaf, semi-aerated or non-aerated and includes green, purple, white, oolong and orthodox but does not include black curl tear and cut teas;

“tea” means the plant botanically known as *camelliasinensis* and includes its seed, tea plants and the leaf, whether on the plant or detached therefrom, and in the latter case, whether green tea or manufactured tea;

“tea dealer” includes a warehouse operator, buyer, exporter, importer, broker, packer, manufacturer, management agent, and auction organizer;

“tea factory” means a factory that processes and manufactures tea leaf into made tea;

“tea grower” means a person who grows tea or cultivates tea in Kenya;

“tea packer” any person who blends, brands and packs tea into packets or containers holding not more than ten kilograms of tea intended for sale locally or for export;

“value addition” means improvements on made tea through packaging, blending, flavoring, tea extracts, tea aroma and branding;

“warehouse” means a premise used for the storage of made tea and specialty tea by a warehouse operator;

“warehouse operator” means a company registered in Kenya which is in the business of storing tea;

“tea block” means a block set out in the Second Schedule, where tea is grown.

(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 2 as amended agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Congratulations, Hon. Members. You are done with the Tea Bill.

(Applause)

Mover?

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Tea Bill (Senate Bill No. 36 of 2018) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Temporary Deputy Speaker (Hon. Christopher Omulele): We will start with the Statute Law (Miscellaneous Amendments) Bill.

Hon. Patrick Mariru (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020), and approved the same with amendments.

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

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

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

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

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, for good reason, I will not do what the Leader of the Majority Party is asking me to do. I direct that the next step will be undertaken the next time this matter will be set down for consideration by the House.

(Putting of the Question deferred)

The next one is the Tea Bill.

PROGRESS REPORTED

THE TEA BILL

Hon. Patrick Mariru (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Tea Bill (Senate Bill No.36 of 2018), and approved the same with amendments.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Mover, kindly have the Floor.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP) Seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, there is a proposal to recommit. This must happen now. Chair, kindly have the Floor.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Speaker, I beg to move the Motion for agreement with the Report of the Committee of the whole House that it be amended by inserting the words “subject to re-committal” of New Clause 32A. I request the Vice-Chair to second the Motion.

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, for good reasons, I will not move to the next step.

(Putting of the Question deferred)

I want to congratulate all the Members who have taken their time to stay the course. This is why our electors went out there and stayed overnight to put us here so that we can do it for this country. It is a great day. You have stood out for your country and the people who elected you. Congratulations. I want to wish you a goodnight and a safe passage to your houses.

Thank you.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 10.44 p.m., this House stands adjourned until Thursday, 3rd December 2020 at 10.00 a.m.

The House rose at 10.44 p.m.