

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 6th April, 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: There is no quorum. Ring the Quorum Bell.

(The Quorum Bell was rung)

Hon. Members, we now have quorum. Let us commence transaction of business.

PETITIONS

ERECTION OF SPEED BUMPS ALONG MERU-NANYUKI ROAD

Hon. (Ms.) Kajuju: Hon. Speaker, I beg to present the following Petition.

I, the undersigned, on behalf of concerned residents of Buuri Sub-county, draw the attention of the House to the following:

THAT, the Meru-Nanyuki Road is a major road that not only traverses and connects various counties within the Eastern and Northern Kenya regions, but links Kenya to the neighbouring countries to the north;

THAT, among the areas the road traverses is the populous Mboroga-Kiborione section with homes and churches like Mboroga Methodist Church, Independent Church, Evangelical Church, Kiborione Methodist Church and schools such as Kiborione Primary School and Kibubuine Academy;

THAT, due to the high human traffic arising from concentration of human activities around the said region, there has been increased vulnerability of pedestrians to accidents caused by over-speeding drivers;

THAT, the same road has experienced numerous accidents, especially at the section between Mboroga and Kiborione, where many lives have been lost as a result of careless and over-speeding drivers;

THAT, multiple reports made to the relevant authorities to erect speed bumps on the road and traffic police to enforce compliance to speed limits so as to minimise accidents have not been acted upon;

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

Therefore, you humble Petitioners pray that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing:

- (1) Intervenes to ensure that speed bumps are expeditiously erected at the same sections of the road and any other affected sections along the Meru-Nanyuki Road;
- (2) Ensures that sufficient traffic police officers are deployed to the affected sections for effective enforcement and compliance to speed limits by rogue drivers; and,
- (3) Makes any other order and/or direction that it deems fit in mitigating the plight of the Petitioners.

Your Petitioners will forever pray.

Hon. Speaker: Hon. Members, I know that the Standing Orders allow for comments but, so as to save you from yourselves, I will dispense that right away because we have business that we must transact. I will require the presence of each and every one of you. I will refer the Petition to the relevant Committee.

Hon. Members, before we proceed, allow me to recognise the presence of students and pupils from the various institutions listed hereunder:

- (1) Sally Ann Secondary School from Bureti Constituency, Kericho County;
- (2) Lugumek Secondary School from Chepalungu Constituency, Bomet County;
- (3) Soi Secondary School from Keiyo South Constituency, ElgeyoMarakwet County;
- (4) Writers' Club Laini Saba from Kibra Constituency, Nairobi County;
- (5) Liyuni Primary School from Machakos Town Constituency, Machakos County; and,
- (6) Pineview Primary School from Eldama Ravine Constituency, Baringo County.

They are all welcome to observe the proceedings of the National Assembly this afternoon. Let us move on to the next Order.

Hon. Washiali: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Washiali, what is your point of order?

Hon. Washiali: Hon. Speaker, I had given a copy of my Petition to the Office of the Clerk on 20th March, 2017, and I expected---

Hon. Speaker: Hon. Washiali, you can present your Petition.

Hon. Washiali: Thank you, Hon. Speaker. I have it in raw form. I do not know whether I can go ahead.

Hon. Speaker: In raw form?

Hon. Washiali: Hon. Speaker, I had been advised by the Clerk that they needed to convert it into a suitable format.

Hon. Speaker: As long as you are also mindful because you are the one who will go out to chase for Members. Be brief. I have allowed that to happen because of your position in the leadership.

INVESTIGATION INTO DEATH OF TRACY SYLVIA NAMATSI

Hon. Washiali: Thank you, Hon. Speaker. This Petition is on behalf of Josephat O. Namatsi on the alleged negligence of his daughter, the late Tracy Sylvia Namatsi, a former student at Moi High School Kabarak, Nakuru.

I, the undersigned, on behalf of the concerned parents and residents of Mumias East Constituency Kakamega County, draw the attention of the House to the following:

THAT, the late Tracy Sylvia Namatsi of Admission No.8658, was a Form Three student at Moi High School Kabarak, Nakuru;

THAT, the late Tracy Sylvia Namatsi fell sick while in school and died on 14th January 2017;

THAT, the deceased severally sought treatment at the school's sanatorium during the 11-day period that she was sick. The sanatorium misdiagnosed the late student's illness and put her on antibiotics instead of anti-malaria drugs;

THAT, as the girl's health deteriorated, the school failed to allow the deceased to seek treatment at a better equipped hospital despite the fact that the deceased had a medical cover with AON and always carried her smart card with her;

THAT, when the girl's health became worse, she took herself to the Kabarak University Medical Centre on Friday 13th January, 2017. She was attended to by undisclosed medics and was purportedly diagnosed with a bacterial infection. She was given antibiotics and then purportedly put under observation for about four hours before being released to go back to school;

THAT, on Saturday, 14th January 2017, the deceased woke up very weak such that she could not even clothe herself and had to be assisted. She reported to the matron known as Gladys who was on duty on the night of Friday 13th January, 2017 that she was feeling unwell and had vomited the entire night, but there was no effort from the school to ensure that she got proper medical attention;

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

We are petitioning Parliament to look into the death of Tracy Namatsi because---

Hon. Speaker: Say the prayers.

Hon. A.B. Duale: State the prayers sought.

Hon. Washiali: Leader of the Majority Party, you need to be---

Hon. Speaker, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Education, Research and Technology:

- (1) Investigates the circumstances that led to the unfortunate death of Tracy Sylvia Namatsi;
- (2) Ascertain the exact place where Tracy Sylvia Namatsi died; whether it was at the school sanatorium or Dr. Evans Sunrise Hospital;
- (3) Reprimand Moi High School Kabarak for the negligence that resulted into the untimely death of Tracy Sylvia Namatsi through a highly treatable disease while she was under the school's custody; and,
- (4) Ensure that the Petitioner's plight is addressed.

Your Petitioners will forever pray

Hon. Speaker: Do I see Hon. Cheboi? Do you want to contribute to this?

Hon. Cheboi: Hon. Speaker, I have to comment on this Petition because a few very serious Members of this House including Hon. Omulele, Hon. Farah and I, are *alumni* of that prestigious school. Obviously, that is an extremely unfortunate situation. I have been lucky to study there. My two sons have also gone through the same school, and it is an extremely diligent school in terms of performance.

(Hon. Kajuju consulted loudly)

Hon. Speaker, protect me from Kajuju and her team.

When I was there, it was one of the few schools which had a well equipped sanatorium. I know it exists up to now. Further, there is a university there which is also equipped with a very good health facility. That is why I am saying that, that is an extremely unfortunate situation.

As the Committee studies this, part of the reason why there was probably a misdiagnosis - if that was the case - is because I know most of Nakuru, Nairobi and other areas are declared malaria-free. As the Petition is brought before the Committee, we should look specifically whether those particular areas--- I come from Nakuru County which was declared malaria-free. I say that because I have a resident tutor who is actually a malaria expert. Nakuru and Nairobi are malaria-free.

As I finalise, it is an extremely unfortunate situation and we say sorry to the family.

Hon. Speaker: Let the Petition be committed to the Departmental Committee on Education, Research and Technology to consider it and bring a report to the House.

Next Order.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, we have also gone to school. Hon. Cheboi cannot purport to defend Kabarak High School. The Committee must investigate and bring to book all the people who played a role in---

Hon. Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 6th April 2017:

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2016, and the certificates therein:

- a) Revenue Statement of the National Treasury.
- b) Treasury Main Clearance Account Fund.
- c) Development Revenue of the National Treasury.
- d) National Oil Corporation of Kenya Limited.
- e) Office of the Director of Public Prosecutions.
- f) State Officers and Public Officers' Motor Car Loan Scheme Fund.
- g) Rural Enterprise Fund.
- h) The Agri and Co-operative Training and Consultancy Services Limited.

Hon. Speaker, I beg to lay the Reports, Bills and Resolutions that were adopted by the Assembly at the 5th Meeting of the 5th Session of the 3rd East African Legislative Assembly (EALA).

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Katoo ole Metito.

Hon. Katoo: Hon. Speaker, I beg to lay the following Paper on the Table of the House today Thursday, 6th April 2017:

The Report of the Joint Parliamentary Select Committee to Review the Procedure and Rules for Election of Members to the East African Legislative Assembly (EALA).

Hon. Speaker: The Chairperson of the Departmental Committee on Transport, Public Works and Housing.

Hon. Kamanda: Hon. Speaker, I beg to lay the following Papers on the Table of this House today Thursday, 6th April 2017:

Reports of the Departmental Committee on Transport, Public Works and Housing on Petitions by:

- a) Residents of Busia County regarding decongestion of Busia and Malaba Towns.
- b) Residents of Kakamega County regarding delayed rehabilitation of Kakamega Airstrip.
- c) Residents of South Imenti Constituency on delayed completion of Nkubu-Mikumbune Road.
- d) Residents of Kathiani Constituency on non-completion of the Mumbuni-Kathiani Road.

e) Residents of Nyeri Town Constituency on the use of asbestos as roofing materials.

Hon. Speaker: Next Order.

NOTICE OF MOTION

ADOPTION OF REPORT ON APPROVAL OF EALA ELECTIONS RULES

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

THAT, this House adopts the Report of the Joint Parliamentary Select Committee to Review the Procedure and Rules for Election of Members to the East African Legislative Assembly (EALA).

Hon. Speaker: Next Order.

PROCEDURAL MOTION

ADDITIONAL SITTING OF THE HOUSE

Hon. Speaker: The Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order No.30(3)(b), this House resolves to hold another Sitting today, Thursday, 6th April 2017, for not more than three hours to commence fifteen (15) minutes following the adjournment of the current Sitting.

This is occasioned by the need to consider the Report of the Joint Parliamentary Select Committee on EALA regarding the EALA election regulations. As we said earlier, the Report has just been tabled by Hon. Katoo ole Metito. He has given notice of Motion and the five year term of the 3rd EALA comes to an end on 4th June, 2017.

On 1st March 2017, this House resolved to establish a Joint Select Committee consisting of seven Members from each of the Houses. The Joint Select Committee was to review the procedure and rules of election of members.

(Hon. (Ms.) Shebesh and Hon. (Ms.) Kajuju consulted loudly)

Hon. Speaker, talk to the Member for Nairobi and her counterpart from Meru. There are facilities where they can discuss women, *miraa*, one third gender rule and Gikomba issues. We did good work yesterday and they can be briefed. That is for another day.

This Committee was to review the rules of the election of members to EALA that are contained in the treaty for the establishment of the East African Community. The same Committee, which Hon. Katoo is a member was to propose appropriate procedure and rules for elections of persons to represent the Republic of Kenya at EALA and within 14 days, submit a report to Parliament - which they have done today. And, again, suggest timelines for the purpose of notification of the nomination of the candidate and, of course, the election itself.

Finally, they were to consider the nominees, oversee the election process and report to the House within the timelines stipulated in the elections rules.

In this regard, the Joint Select Committee has tabled its Report this afternoon for this House to debate.

As Members are aware, and without anticipating debate, this House is scheduled to proceed on a long recess today. It is a very long and important recess that will decide the fate of some of our colleagues. As a good Muslim, I pray that they be the winners in the party primaries. So, we will hold an additional Sitting today.

Hon. Mwanyoha is smiling. I am sure he is part of the people who are going to face the party nominations. He was not lucky to get a direct nomination. You know it depends on how much you have in your pocket. From experience, because we are colleagues, I know that he and I are people of little means. We cannot raise the fee but the people will stand with us. We have tabled the Report and also given a notice of Motion. So, we cannot discuss that Report in the same Sitting where we have given a notice of Motion. We expect Members to read the Report and then we give notice of Motion.

Also, scheduled for consideration during the Sitting is the Report of the Departmental Committee on Finance, Planning and Trade on the Petition of the removal the Auditor-General. We will be discussing the progress report. It is a very straight procedural matter. I move and ask Hon. Katoo ole Metito, who is a member of the Committee, to second.

Hon. Speaker: Hon. Katoo ole Metito.

Hon. Katoo: Thank you, Hon. Speaker. In seconding this Motion, I do not have much to add to what the Mover has said. From today to 4th June, 2017 which is the deadline of the passage of the nominees, we have exactly 60 days. About half of those days, we will be in recess. This House is proceeding for recess today. It will be good for this House to pass the Report, adopt it and proceed for the recess. The administrative office of this Parliament will be left with the work of advertising those positions. Kenyans will then apply. The rest of the procedure is about confirming and approving through election by the two Houses of Parliament. This will be done once we come back from recess. So, we have a very short time to do that.

I beg to second and ask my colleagues to be a little bit patient until we finish this agenda.

Hon. Speaker: Order, Members! There is some explanation that has been made by both the Mover and the Seconder as to why this Procedural Motion has been proposed. If Members do not listen, they will walk out and we may be forced to recall you for a Special Sitting just to come and pass this Motion on the adoption of rules for elections for Members to represent the country in the East African Legislative Assembly (EALA). I hope every Member has listened to what has been said by both the Mover and the Seconder. In the meantime, let me propose the Question.

(Question proposed)

(Question put and agreed)

Hon. Speaker: Hon. Members, in keeping with the rules of the House, when a Member has not made an entry, he or she is deemed to be out of order. Those of you who are in possession of a Supplementary Order Paper, whose production has been necessitated by that Procedural Motion, may notice that there is business appearing as another Procedural Motion, which I direct be removed from the Order Paper. I have discussed with the Chairman of the Committee. It is not to be considered by the House. So, we move to the next Order, which is Order No. 10.

(Order No. 9 (Procedural Motion) dropped)

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF A BILL

Hon. Speaker: The Chairperson of the Departmental Committee on Finance, Planning and Trade. In his place, who is moving this? The Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, because the Chairperson of the Departmental Committee on Finance, Planning and Trade and the Vice-Chairman are away, I beg to move the following Procedural Motion:

THAT, pursuant to the provisions of Standing Order 120, this House resolves to reduce the publication period of the Insurance (Amendment) Bill (National Assembly Bill No. 17 of 2017) from fourteen days to one day.

This Bill came from the National Treasury together with the Finance Bill. When the Cabinet Secretary (CS) came to read the Budget, he brought to the House the Finance Bill and the Insurance Bill. They are both related to the Budget that was read by the CS last week. We felt it is prudent that we reduce the publication period so that the House can do the First Reading, and then refer the Bill to the Departmental Committee on Finance, Planning and Trade to deliberate on it and conduct public participation during the month of April when we will be away on recess. When we come back we will deal with the Insurance (Amendment) Bill.

I ask Hon. Washiali to second this Procedural Motion.

Hon. Washiali: Hon. Speaker. I second.

(Loud consultations)

Hon. Speaker: Hon. Members, I appreciate that there is a lot of anxiety given that the party primaries are about to commence.

(Question proposed)

(Question put and agreed)

Next Order!

REPORTS AND THIRD READINGS

THE APPROPRIATION BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Appropriation Bill (National Assembly Bill No. 15 of 2017)

Hon. Speaker: Order, Hon. Members! Debate on this Motion was concluded yesterday. What remains is for me to put the Question. In keeping with the Constitution and the House rules, I have ascertained that the House has quorum. I, therefore, proceed to put the Question.

(Question put and agreed to)

Let us have the Mover.

Hon. Musyimi: Hon. Speaker, I beg to move that the Appropriation Bill (National Assembly Bill No. 15 of 2017 be now read a Third Time. I also wish to request the Hon. Member for Garissa Township to second.

Hon. A. B. Duale: I second.

Hon. Speaker: Order, Hon. Members! Let us just conclude this business.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: I put the Question again having confirmed that the House has quorum.

(Question put and agreed to)

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

Hon. Speaker: Hon. Members, I request that, please, let us finish these Questions. You are having difficulties sitting in the Chamber now.

Next Order!

THE EQUALISATION FUND APPROPRIATION BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Equalisation Fund Appropriation Bill (National Assembly Bill No. 12 of 2017).

Hon. Speaker: Hon. Members, again, you concluded debate on this. What remains is for me to put the Question. This is with regard to the Equalisation Fund Appropriation Bill, which is different from the Bill that we have just voted on.

(Question put and agreed to)

Let us have the Mover.

Hon. Musyimi: Hon. Speaker, I beg to move that the Equalisation Fund Appropriation Bill (National Assembly Bill No. 12 of 2017) be now read a Third Time. I beg to request the Hon. Member for Garissa Township to second.

Hon. A.B. Duale: I second.

*(Hon. (Ms.) Kiptui shook hands with
Hon. Abongotum while standing)*

Hon. Speaker: Do not shake hands. You come from Baringo County. You can shake hands even in the village. Hon. Members, you appreciate that we have a danger of not being able to transact business.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: I put the Question having confirmed that the House has quorum.

(Question put and agreed to)

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

THE ELECTIONS-RELATED REGULATIONS

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Draft Elections-related Regulations and:

- (a) adopts the Reports of the Committee on Delegated Legislation on its consideration of the Elections-related Regulations, laid on the Table of the House on Wednesday, March 29, 2017; and
- (b) pursuant to provisions of sections 44(6) and 109(3) of the Elections Act, 2011, approves the following Elections-related Regulations:
 - (i) The Draft Elections (Technology) Regulations, 2017 (as amended);
 - (ii) The Draft Elections (Registration of Voters) (Amendment) Regulations, 2017;
 - (iii) The Draft Elections (Voter Education) Regulations, 2017;
 - (iv) The Draft Elections (General) (Amendment) Regulations, 2017; and,
 - (v) The Draft Elections (Party Primaries and Party Lists) Regulations, 2017

Hon. Speaker: Hon. Members, again, the House did consider this Report of the Committee on Delegated Legislation. What remains if for me to put the Question, which I hereby do.

(Question put and agreed to)

Next Order!

BILLS

First Reading

THE INSURANCE (AMENDMENT) BILL

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

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PREVENTION OF TORTURE BILL

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, we are now in the Committee of the whole House to consider the Prevention of Torture Bill (National Assembly Bill No. 47 of 2016).

(Clause 3 agreed to)

Clause 4

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

THAT, Clause 4 of the Bill be amended in paragraph (a) by deleting the words “him or her” appearing in paragraph (i), (ii) and (iii) and substituting therefor the words “that person.”

This amendment is just meant to clean the language. However, I want to drop it.

(Proposed amendment by Hon. Okoth dropped)

(Clause 4 agreed to)

(Clauses 5, 6, 7, 8, 9, 10, 11 and 12 agreed to)

Clause 13

Hon. Okoth: I want to drop that amendment too.

(Proposed amendment by Hon. Okoth dropped)

(Clause 13 agreed to)

(Clause 14 agreed to)

Clause 15

Hon. Okoth: I am happy to drop the amendment to Clause 15

(Proposed amendment by Hon. Okoth dropped)

(Clause 15 agreed to)

Clause 16

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

THAT, Clause 16 of the Bill be amended in sub-clause (1) by inserting the following new paragraph immediately after paragraph (c)—

“(d) a person who is under protection by the Witness Protection Agency established under section 3A of the witness Protection Act.”

This amendment provides for instances where victims who are already under the Witnesses Protection Act are given the same guarantee and protection as vulnerable witnesses. So, it just helps to improve the category of people protected.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Very well. I see interest from Hon. Timothy Wanyonyi.

Hon. Wetangula: Hon. Temporary Deputy Chairman, I support the amendment.

*(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

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

THAT, that Clause 19 of the Bill be deleted.

This amendment will help us to avoid duplication of roles between the Commission, the Victim Protection Board and the Cabinet Secretary. If we just delete it, it will be a good thing. The amendment I am proposing will leave the rest of the functions that are in the Bill clearly under the Victims Protection Act which already exists and the Commission.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Very well. Do I see the interest from the Leader of the Majority Party?

Hon. A.B. Duale: The proposed amendment by Hon. Okoth, which I support, is trying to delete the entire clause and the reason is to avoid the roles of many organisations in terms of duplication. There is the Victims Protection Board. Section 31 of the Victims Protection Act creates the Victims Protection Board and Section 32 provides for the functions of the Board. The Board provides support and assistance to victims, which will now include torture. It is more of a clean-up. I support.

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

(Clause 19 deleted)

Clause 20

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

THAT, Clause 20 of the Bill be amended by deleting sub-clause 3.

We want to delete sub-clause 3 because it restricts care and services to Government facilities by a gazette notice, but we know, where necessary, on the full range of services, we might have to resort to private facilities. It is too restrictive as written. If we just delete it, it gives the Government agencies flexibility for the victims to get the care they need at any facility in Kenya, as necessary.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see interest from Hon. Timothy Wanyonyi.

Hon. Wetangula: Hon. Temporary Deputy Chairman, the proposal to delete this part makes sense because it is not going to serve any purpose when it remains there. I support.

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

(Clause 20 as amended agreed to)

Clause 21

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

THAT, Clause 21 of the Bill be amended in sub-clause (1) by deleting the words “intentionally or recklessly” appearing immediately after the words “detainee shall not.”

This amendment gives us space to have the people in charge of citizens and suspects in any case to do their work properly without negligence.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): The Leader of the Majority Party, do you want to say something to this?

Hon. A.B. Duale: No.

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

(Clause 21 as amended agreed to)

Clause 22

Hon. Okoth: I request to drop that amendment

(Proposed amendment by Hon. Okoth dropped)

(Clause 22 agreed to)

(Clause 23 agreed to)

Clause 24

The Temporary Deputy Chairman (Hon. Omulele): Hon. Ken Okoth.

Hon. Okoth: I would like to withdraw that amendment, Hon. Temporary Deputy Chairman.

(Proposed amendment by Hon. Okoth withdrawn)

(Clause 24 agreed to)

(Clause 25 agreed to)

The Temporary Deputy Chairman (Hon. Omulele): Members, your Ayes and Noes should be a little bit more pronounced.

Clause 26

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

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

THAT, the Bill be amended by deleting clause 26 and substituting therefor the following new clause—

“26. (1) The Commission shall submit an annual report to the National Assembly and may, at any time submit special reports to the Cabinet Secretary on any matter relating to its functions.

(2) The annual report submitted by the Commission under sub-section (1) shall include an overall assessment of Government’s performance with regard to prevention of torture and cruel, inhumane and degrading treatment during the period under review by the Commission.

(3) The Cabinet Secretary shall every year be required to report to the National Assembly, steps which the government has taken in implementing the recommendations made by the Commission.”

This is an important amendment that goes to the substance of the Bill and our structure of Government and the oversight role.

The proposal I have made will allow us to have an annual report to Parliament and it also provides clear functions of the Commission. It also reduces the risk that the CS has in his own hands to adjust the Schedule. If you look at the Schedule in this Bill, it is a special one because it

defines the acts of torture according to the Convention against Torture and the highest international standards. Then, in the definition section, Clause 2, we have torture defined and it says: "Refer to the Schedule." So, it gives the CS the power to adjust the Schedule. We are giving him or her power to adjust the definition of "torture". That would sort of kill the Bill. That is what I propose to amend and to allow regular reporting to Parliament, yearly, to see if the problem is going down or up, and what measures need to be taken to ensure that we reduce cases of torture in our country.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

I can see interest from Hon. Tim Wanyonyi, the Member for Westlands.

Hon. Wetangula: Hon. Temporary Deputy Chairman, I support this amendment that is removing those powers from the CS. The CS is a Government officer. The greatest violation of human rights and torture is propagated by the State. So, I believe by giving it to the institution of Parliament, it can provide better oversight than just giving the powers to a single individual. I support. The Leader of the Majority Party, do you have something to say 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 26 as amended agreed to)

(Clauses 27, 28 and 29 agreed to)

Clause 30

The Temporary Deputy Chairman (Hon. Omulele): Hon. Ken Okoth.

Hon. Okoth: Thank you. This is an interesting, technical one. The Chair can guide us because the Leader of the Majority Party also has an amendment that he wants to bring in. If I delete, his amendment falls, but the substance of his proposal---

I have studied the amendment by the Leader of the Majority Party. It will improve something to do with--- Please allow us one minute to caucus with the Leader of the Majority Party.

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

(Hon. Okoth consulted with Hon. A.B. Duale)

Proceed, Hon. Ken Okoth.

Hon. Okoth: Hon. Temporary Deputy Chairman, the substance of my amendment to Clause 30 is because what is in the Bill proposes to remove--- I think we need to recommit Clause 29 for the Leader of the Majority Party to---

The Temporary Deputy Chairman (Hon. Omulele): Correct. You can do it later.

Hon. Okoth: Thank you, Hon. Temporary Deputy Chairman, for your consideration.

The Temporary Deputy Chairman (Hon. Omulele): Let the Leader of the Majority Party have ago at New Clause 29A now.

New Clause 29A

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by inserting following the new Clause immediately after Clause 29—

Amendment of 29A. The Environmental Management and Co-ordination Act, section 129 of 1999 is amended in section 129 by deleting sub-section (4) and No 8 of 1999. substituting therefor the following new sub-section-

(4) Upon any appeal to the Tribunal under this section, the Tribunal may if, satisfied-

upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;

upon application by any party, review any orders made under paragraph(a).

(5) Any status quo automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (4) shall lapse upon commencement of this Act unless the Tribunal, upon application by a party to the appeal, issues fresh orders maintaining the status quo in accordance with subsection (4)(a).

Basically, it is the current section of the Act to allow for the use of automatic conservatory orders of stay for any matter appealed to the tribunal with regard to environmental issues. This has the effect of delaying the implementation of either individual or Government projects.

I beg to move and request the Chair of the Departmental Committee to second.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Ken Okoth.

Hon. Okoth: I am happy to second that amendment. It helps us to improve the other law. 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. Omulele): Hon. Tim Wanyonyi, are you interested in this?

Hon. Wetangula: Hon. Temporary Deputy Chairman, I am looking at the Order Paper but I cannot see the amendment.

The Temporary Deputy Chairman (Hon. Omulele): It is what appears as new Clause 30A. We have just renumbered it as new Clause 29A.

Hon. Wetangula: Okay. I support the amendment.

*(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)*

Clause 30

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

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

THAT, the Bill be amended by deleting clause 30.

If we retain Clause 30 as it is in the Bill, it is a repeal or amendment of another law, the Children Act, which has very specific directions on how children should be treated. Children should not be deprived of liberty. They should not be subjected to cruel punishment and torture. This is also in the Constitution. So, we already have a very good Children Act. If we touch it, we are taking away something which is actually provided for in the Constitution and the Children Convention.

Therefore, we should not touch the Children Act. If we delete this, we will leave the Children Act intact. We will not have weakened it, and the prevention of torture law that we are making will still be strong.

Thank you.

(Question of the amendment proposed)

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

(Clause 30 deleted)

(Clauses 31 and 32 agreed to)

(Schedule agreed to)

(Clause 2 agreed to)

(Tittle agreed to)

Clause 1

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

THAT, Clause 1 of the Bill be amended by deleting the words “on such a date as the Cabinet Secretary may, by notice in the Gazette, appoint” appearing after the word “operation” and substituting therefor the words “upon publication in the Gazette.”

The import of this amendment is to align this clause with the constitutional provision. When we pass Bills and the President assents to them, they should not be delayed by a Cabinet Secretary. This is about the commencement date of the Act. As it has been written in this Bill, it gives the Cabinet Secretary the discretion to decide when to make this law active. As we saw in the Public Benefit Organisations Bill, that became a problematic issue. Therefore, we want to make a clean Bill so that once the President assents to it, the Cabinet Secretary can implement it upon its publication, in accordance with Article 116 of the Constitution.

(Question of the amendment proposed)

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

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

(Clause 1 as amended agreed to)

Hon A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Prevention of Torture Bill (National Assembly Bill No.47 of 2016) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Deputy Speaker (Dr.Laboso) in the Chair]

Hon. Omulele: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Prevention of Torture Bill, (National Assembly Bill No.47 of 2016), and approved the same with amendments.

Hon A.B Duale: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request the Member for Kibra, Hon. Ken Okoth, who has taken a lot of interest in this Bill, to second.

Hon. Okoth: Hon. Deputy Speaker, I beg to second and thank the Leader of the Majority Party for taking up this Bill, on behalf of the Government, and helping us to see it through all the stages. It is a Bill I have been interested in. As a first-time Member of Parliament, I have been trying to move this same Bill for a long time as a Private Member's Bill, but it did not get anywhere until the Leader of the Majority Party stepped in and helped to see it through. The people of Kenya will thank you for a long time because this is a Bill on human rights. Without your support, we would have been stuck in the process, and the Bill would have died. Thank you very much, Leader of the Majority Party and Members of the Human Rights Caucus who helped

me to think through the Bill. My thanks also go to the Committee on Justice and Legal Affairs, and the staff of the National Assembly who helped us to clean up the Bill.

With those remarks, I second.

(Question proposed)

Hon. Deputy Speaker: Hon. Members, we will put the Question when it will be appropriate to do so.

(Putting of the Question deferred)

Please, allow us to consult for a minute.

*(The Leader of the Majority Party
consulted the Deputy Speaker)*

ADJOURNMENT

Hon. Deputy Speaker: Order, Hon. Members! After consultations, I wish to ask Members to rise. We want to have a brief adjournment as had been directed earlier on by the Speaker for just 10 minutes and be back at 4.10 p.m.

The House rose at 3.57 p.m.