

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 16th November 2021

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

VISITING DELEGATIONS FROM PARLIAMENT OF ZIMBABWE
AND NATIONAL ASSEMBLY OF THE GAMBIA

Hon. Speaker: Hon. Members, I wish to introduce to you two delegations from the Parliament of Zimbabwe and the National Assembly of The Gambia seated at the Speaker's Row. They are in the country on benchmarking visits. The delegation from the Parliament of Zimbabwe comprises five Members of Parliament and two members of staff. They are as follows:

1. The Hon. Siphon Mokone, MP - Chairperson;
2. The Hon. Denford Masiya, MP;
3. The Hon. Albert Nguluvhe, MP;
4. The Hon. Josiah Sithole, MP;
5. The Hon. Shakespear Hamauswa, MP;
6. Ms. Maria Hlasera - Committee Clerk; and,
7. Ms. Betty Mundwenyu - Committee Researcher.

The delegation is drawn from the membership of the Portfolio Committee on Information, Media and Broadcasting in their Parliament. It is in the country to learn and share experiences on legislation and operationalisation of community radio stations.

Hon. Members, the second delegation from The Gambia is comprised of five senior staff from the National Assembly as follows:

1. Mr. Momodou A. Sise - Clerk of the National Assembly;
2. Mr. Daniel Cardos - Deputy Clerk, Legislative Business;
3. Mrs. Isatou Kassama - Director, Research and Library;
4. Mr. Gibairu Janneh - Director, Communications; and
5. Mr. Alhagie Dumbuya - Director, Hansard.

Hon., Members, the delegation is in the country to learn the operations of the National Assembly of Kenya including the management of funds as an independent and autonomous institution, as well as the mechanisms Parliament has put in place for engaging the National Treasury, among other areas.

On my own behalf and that of the House, I wish to welcome the two delegations to the National Assembly and wish them fruitful engagements during their stay in the country.

Thank you.

(Applause)

Next Order!

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House today Tuesday, 16th November 2021:

Legal Notice No.222 relating to the Public Finance Management, the National Roads Toll Fund Regulations of 2021 and the explanatory memorandum from the National Treasury.

The Biannual Report for the period January to June 2021 from the Commission on Administrative Justice.

The Kenya Bankers Association Total Tracks Contribution Report for the year 2019 and 2020.

Statutory Six Months Preference and Reservation Report for the Public Procurement Regulatory Authority (PPRA).

The Report of the Auditor-General and financial statements of the Competition Authority of Kenya for the year ended 30th June 2021, and the certificate therein.

The Reports of the Auditor-General and financial statements in respect to the following institutions for the year ended 30th June 2020, and the certificates therein:

1. The Kenya National Commission for UNESCO.
2. The Co-operative University of Kenya.
3. Kenya Revenue Authority, revenue accountability statements.
4. Kenya Revenue Authority.

The Reports of the Auditor-General for the financial statements in respect to the following institutions for the year ended 30th June 2020, and the certificates therein:

1. Maseno University.
2. Ndia Technical and Vocational College.

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

- (i) Narok East.
- (ii) Marakwet East.
- (iii) Hamisi.
- (iv) Ugunja.
- (v) Ugenya.
- (vi) Sabatia.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order!

QUESTIONS AND STATEMENTS

Hon. Speaker: We do not have any request for Statement as per my list and the Order Paper. Therefore, we will go to the only segment on Ordinary Questions. The first Question is by the nominated Member, Hon. Dennitah Ghati.

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

ORDINARY QUESTIONS

Question No. 451/2021

STATUS OF CONSTRUCTION OF NGURUNA
GENDER BASED VIOLENCE AND WOMEN CENTRE

Hon. (Ms.) Dennitah Ghati (Nominated, ODM): Hon. Speaker, I beg to ask the Cabinet Secretary for Public Service, Gender, Senior Citizens Affairs and Special Programmes the following Question:

- (i) Could the Cabinet Secretary explain the status of construction of the Nguruna Gender Based Violence and Women Centre in Nyabasi East Ward, Kuria East Constituency, Migori County?
- (ii) Could the Cabinet Secretary provide a breakdown of the total cost of construction of the said Centre, names of contractor(s), and how much has been paid to the contractor to date?
- (iii) When is the Centre expected to be completed?

Hon. Speaker: Very well. That Question will be replied to before the Departmental Committee on Labour and Social Welfare. The next Question is by the Member for Marsabit County, Hon. Safia Sheikh.

Question No. 459/2021

ACCESS TO QUALITY EDUCATION BY CHILDREN FROM
PASTORALIST COMMUNITIES IN ASAL AREAS

Hon. (Ms.) Safia Sheikh (Marsabit CWR, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Education the following Question:

- (i) What steps is the Ministry taking to ensure that children from pastoralist communities in Arid and Semi-Arid Land (ASAL) areas get equal access to education similar to the quality available in the rest of the country?
- (ii) What is the Ministry doing to ensure that school dropout rates in ASAL areas are minimised and that the girls in those areas are shielded from discriminative learning opportunities that stem from cultural biases that hinder their right to education?

Hon. Speaker: That Question will be replied to before the Departmental Committee on Education and Research. The third Question is by the Member for Rongo, Hon. Paul Abuor.

Question No. 464/2021

STATUS OF EMPLOYMENT OF CASUAL WORKERS AT RONGO UNIVERSITY

Hon. Paul Abuor (Rongo, ODM): Hon. Speaker, I beg to ask the Cabinet Secretary for Education the following Question:

- (i) Could the Cabinet Secretary explain why casual workers at Rongo University are yet to be confirmed in appointment despite having worked in the institution for over

five years, and further state the timelines within which they shall be confirmed in appointment?

- (ii) Could the Cabinet Secretary provide a detailed list of all permanent employees of Rongo University and their sub-counties of origin and further state the proportion of the local community engaged at the University?

Hon. Speaker: Very well. The Question will be replied to before the Departmental Committee on Education and Research. The next Question is by the Member for Lamu County, Hon. (Capt.) (Rtd.) Ruweida Obo.

Question No. 474/2021

IMPROVEMENT OF MOBILE TELEPHONY NETWORK
SIGNAL AND COVERAGE IN LAMU COUNTY

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Hon. Speaker, I am not retired.

Hon. Speaker: Okay. Then, maybe they wanted to say that you are tired.

(Laughter)

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): I am not tired. Whenever I want to fly, I will just renew my license.

Hon. Speaker: Therefore, you are neither retired nor tired.

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Yes, Hon. Speaker.

Hon. Speaker: Very well. You are a very active pilot.

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Hon. Speaker, I am an active pilot and representing my people and thank you for giving me this opportunity.

Hon. Speaker, I beg to ask the Cabinet Secretary for Information, Communication and Technology, Innovation and Youth Affairs the following Question:

- (i) Could the Cabinet Secretary explain measures that the Ministry has put in place to improve mobile telephony network and coverage at Siu, Kizingitini and Shanga areas in Lamu County to aid in service delivery and communication for the residents and other mobile users in the said areas?
- (ii) Could the Cabinet Secretary further explain measures the Ministry has put in place to upgrade the existing network to 4G in Lamu County and further provide timelines for this upgrade?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Communication, Information and Innovation. The next Question is by the Member for Meru County, Hon. (Bishop) Kawira Mwangaza.

Question No. 475/2021

ACCESS TO EMPLOYMENT OPPORTUNITIES BY YOUTH IN MERU COUNTY

Hon. (Ms.) Kawira Mwangaza (Meru CWR, Independent): Hon. Speaker, I beg to ask the Cabinet Secretary for Public Service, Gender, Senior Citizen Affairs and Special Programmes the following Question:

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

- (i) Could the Cabinet Secretary state the measures the Ministry is putting in place to ensure that the youth in Meru County access employment opportunities and are economically empowered?
- (ii) Could the Cabinet Secretary explain the measures that have been put in place by the Ministry to ensure seamless employment transitions in all government institutions to enable the youth to access and gain employment opportunities?

Hon. Speaker: That Question will be replied to before the Departmental Committee on Labour and Social Welfare. The next Question is by the Member for Ol Jorok, Hon. Michael Muchira.

Question No. 479/2021

DELAYED METERING OF PROJECTS BY REREC

Hon. Michael Muchira (Ol Jorok, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Energy the following Question:

- (i) Could the Cabinet Secretary explain the delay in metering of over twenty-five projects undertaken by the Rural Electrification and Renewable Energy Corporation (REREC) and Transformer Densification Programme in Ol Jorok Constituency?
- (ii) Within what timelines shall the projects be metered?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Energy. The next Question is by the Member for Bungoma County, Hon. Catherine Wambilianga.

Question No. 481/2021

STATUS OF INVESTIGATIONS INTO THE RAPE AND MURDER OF MS. EUNICE NANDAKO NASIMIYU

Hon. (Ms.) Catherine Wambilianga (Bungoma CWR, FORD - K): Hon. Speaker, I beg to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- (i) Could the Cabinet Secretary explain the status of investigations into the rape and murder of one Ms. Eunice Nandako Nasimiya of ID No. 23582058, who was found dead in a neighbour's house on 18th October 2021 at Matili Village, South Kulisiru/Malakisi Ward?
- (ii) How many suspects have been apprehended or questioned in connection with the rape and murder?
- (iii) Could the Cabinet Secretary explain the measures that have been put in place to address the spate of rapes and murders that have been on the rise in Bungoma County and, more particularly, in Malakisi/South Kulisiru and Lwandanyi Wards?

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 Kitui Rural, Hon. Mwalika Mboni.

*Question No. 482/2021*COMPLETION OF STALLED ELECTRIFICATION
PROJECTS IN KITUI RURAL CONSTITUENCY

Hon. David Mboni (Kitui Rural, CCU): Hon. Speaker, I beg to ask the Cabinet Secretary for Energy the following Question:

- (i) Could the Cabinet Secretary state the measures that have been put in place to repair or replace faulty power transformers serving Nzeve, Kyamungi, Usenyo, Kanyangi and Mosa primary schools as well as Kilima, Kisayani, Kalulini, Kivuuni and Masoka markets?
- (ii) When shall the Ministry commission the electrification projects in Muvitha, Muvyani and Kamulu market centres and relocate the transformer meant to serve Muvitha borehole?
- (iii) Within which timelines shall the stalled electrification projects in Kitui Rural Constituency that have been surveyed and approved be duly budgeted for and completed?
- (iv) What is the updated status of the Last Mile Connectivity Programme in Kitui Rural Constituency?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Energy. The next Question is by the Member for Cherangany, Hon. Joshua Kutuny, who has written to me requesting that the Question be deferred on account of his inability to be in the House this afternoon. The request has been acceded to. Therefore, the Question is deferred.

(Question No. 483/2021)

PURCHASE OF MAIZE BY NCPB

(Question deferred)

So, next Order. Sorry, Hon. Members. I will interrupt that to allow the Member for Kamukunji, Hon. Hassan Yusuf, to raise an issue on a Point of Order.

POINTS OF ORDER

DELAYED RESPONSES TO REQUESTS AND QUESTIONS

Hon. Yusuf Hassan (Kamukunji, JP): Thank you, Hon. Speaker.

I am raising a question relating to a Statement that I requested from the Ministry of Interior and Coordination of National Government regarding the frequent fires in Gikomba. I requested that Statement on 21st October 2021. Since then there has been another fire in Gikomba and I am yet to get an answer from the Chair of the Departmental Committee dealing with national security.

The second one is a Question I raised regarding the disappearance of Hassan Dahir Osman, a constituent of mine, who disappeared three months ago. Again, I am yet to receive a response from the Committee on that Question.

Hon. Speaker: The Chair of the Committee, Hon. Mwathi, is in the House. I saw him walk in. Hon. Mwathi, what have you to say to this plaint?

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Speaker.

It is true that those were placed before us as a Committee. They have since been transmitted. I expect to engage the CS on Thursday, the day after tomorrow. I expect those requests to be responded to.

Hon. Speaker: Is it possible that you can invite Hon. Hassan to be present?

Hon. Peter Mwathi (Limuru, JP): Yes. I believe he has been invited by the secretariat. If not, I take this opportunity to invite him at 10.00 O'clock.

Hon. Speaker: Hon. Hassan, I believe it may be a lot easier if you could be available on Thursday. Very well.

Hon. David ole Sankok (Nominated, JP): Even my Question.

Hon. Speaker: There is nothing like that. You cannot just be shouting when you are seated in your place and claiming "even my Question". Nobody knows it. Which Question? Hon. Sankok, you intervene if you want to raise an issue.

(Laughter)

Hon. David ole Sankok (Nominated, JP): Hon. Speaker, I am very sorry for that. I did not know that Hon. Mwathi is here. But I had asked a Question on the *authecinity* of the land in Laikipia that the CS had claimed is owned by the Deputy President of the Republic of Kenya. I have been invited over this Question twice and I travelled all the way from Narok to Nairobi. It has been postponed twice and so, I plead, through your good leadership, that if I am invited, I should be invited on Thursday. It should not be postponed again because there are many killings in Laikipia. We need to sort out this issue once and for all.

Hon. Speaker: Did you understand the issue? He may not have said it correctly. I believe he wanted to say "the authenticity". He said something similar to ethnicity.

(Laughter)

I suspect Hon. Sankok intended to say "authenticity".

Hon. Peter Mwathi (Limuru, JP): I too suspect it is "authenticity", not "ethnicity".

(Laughter)

But, I know we have so many issues arising on Thursday. Actually, we are engaging from morning until around 1.00 O'clock. I invite the Member. Just in case there are any issues that made them not bring the response, because I have not seen it, then we can raise it. It is very important because the CS himself is coming. If you can come, come so that we can engage further.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. We are getting into Order No. 8. Hon. Mutinda Mule, what do you have to say?

Hon. Stephen Mule (Matungulu, WDM-K): Thank you, Hon. Speaker. On the same issue of Questions asked, we are getting a bit frustrated when we ask Questions and they are not responded to by the Ministry of Interior and Coordination of National Government.

Hon. Speaker, you know very well that I asked a Question on a boy in the name of Abubakar Muli who disappeared in Tala. You referred that Question to the Departmental Committee on Administration and National Security, chaired by Hon. Mwathi. I appeared before the Committee where the Chief Administrative Secretary (CAS) was. She promised to give an answer within a week. It is quite unbecoming of this Ministry. I have been going to that Committee since that day to see whether they have responded. There is no response. The family is waiting for an answer on their lost one. The family is waiting for justice. The family is extremely traumatised. They cannot understand how a Question put on the Floor of the House, on knowing about the disappearance of a young man just like the boys in Embu, is not responded to.

Hon. Speaker, I want to give a very clear stern warning to this Ministry that they must respond to this Committee. We cannot be harassing Hon. Mwathi who is our colleague to get answers when those answers are still sitting with the CS and the Ministry.

Hon. Speaker: Could you also make yourself available on Thursday? You have said that you have given them a warning and so, I am wondering whether they need to respond.

(Laughter)

They have said in some quarters that this language did not travel to this country by road, but you said that you have given them a warning. Now that you have given them a warning, do we need to discuss it any further?

Hon. Stephen Mule (Matungulu, WDM-K): Hon. Speaker, we are requesting your indulgence on the issue of the Ministry of Interior and Coordination of National Government.

Hon. Speaker: But you have given them a warning.

Hon. Stephen Mule (Matungulu, WDM-K): Even if I give them a warning, it does not give justice to parents of lost ones.

Hon. Speaker: Hon. Mule, why do you not appear before the Committee on Thursday?

Hon. Stephen Mule (Matungulu, WDM-K): Yes, Hon. Speaker.

Hon. Speaker: Hon. Mwathi has been magnanimous enough to tell the House that the CS himself will be present. You will tell them those things when you go there. You will tell him. It is not helping any situation if you say it now and you are going to say it on Thursday. Or you just want to get some *bonga* points?

Hon. Stephen Mule (Matungulu, WDM-K): Hon. Speaker, I have been elected to this House three times. So, I am not looking for *bonga* points. I am looking for the justice of the young man.

Hon. Speaker: Even then, you still needed the *bonga* points.

(Laughter)

Hon. Mule, I think the best thing is to go and raise the issue on Thursday when the CS will be present. You will then be able to debate it better.

Hon. Stephen Mule (Matungulu, WDM-K): Thank you, Hon. Speaker.

MOTION

ADOPTION OF REPORT ON IMPLEMENTATION STATUS ON AN INQUIRY INTO COMPLAINTS OF ENVIRONMENTAL POLLUTION BY LONDON DISTILLERS KENYA LIMITED

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

THAT, this House adopts the Report of the Select Committee on Implementation on its consideration of the Implementation Status of the Report of the Departmental Committee on Environment and Natural Resources on an inquiry into complaints of environmental pollution by London Distillers Kenya Limited, laid on the Table of the House on Thursday, September 30, 2021.

(Hon. Moitalel ole Kenta on 30.9.2021)

(Debate concluded on 11.11.2021)

Hon. Speaker: Hon. Members, debate on the Motion appearing as Order No. 8 in today's Order Paper was concluded. What remained is for the question to be put. I proceed to do so.

(Question put and agreed to)

(Hon. Samuel Atandi stood in the Gangway)

Hon. Speaker: Hon Atandi, can you be in the House? I saw you banging your colleague on his behind. That is not very healthy. Do not bang him on his behind.

(Laughter)

BILL

PROGRESS REPORTED

THE WAQF BILL

THAT, this House doth agree with the Report of the Committee of the whole House on its consideration of the Waqf Bill (National Assembly Bill No.73 of 2019) and seeks leave to sit again today.

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

THE WAQF BILL

*(Resumption of consideration interrupted
in Committee on 11.11.2021)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Order, Members. We are in the Committee of the whole House to consider the Waqf Bill (National Assembly Bill No.73 of 2019). The Bill had been considered up to Clause 4(1)(d). We shall commence from Clause 4 (1)(d).

Clause 4 (1)(d)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposed amendment by Hon. Millie, who I do not seem to see today. For the second time, let us have Hon. Millie. That proposed amendment stands dropped.

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

(Clause 4(1)(d) agreed to)

Clause 4(1)(e)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposed amendment by the same Hon. Millie. For the second time, let us have Hon. Millie Odhiambo. That proposed amendment stands dropped.

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

(Clause 4(1)(e) agreed to)

Clause 4(1)(f)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposed amendment by the same Hon. Millie. Let us have Hon. Millie Odhiambo. That proposed amendment stands dropped.

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

(Clause 4(1)(f) agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, I direct that all the proposed amendments by Hon. Millie to Clause 4 stand dropped. I direct that we move to the amendments that had been proposed by the Committee.

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): We will move to the proposals made by the Committee. We had to start with the proposals by Hon. Millie because she was proposing to delete the proposals by the Committee. That is why we had to start with her proposals. We shall now move to the proposals by the Committee with regard to Clause 4.

Hon Members, let me re-engineer the sitting arrangement just for a minute or two, so that we can work efficiently.

(The Clerks-at-the Table reorganised their sitting arrangement)

Clause 4

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, we are now ready to proceed with the Committee of the whole House. There were proposals for amendment to Clause 4 by Hon. Duale. We shall proceed to the proposals by Hon. Duale. Hon. Duale does not seem to be in the House. So, I direct that...

Hon. Member: *(Spoke off-record)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Is he here? Hon. Duale is not in the House. This is a House of hon. Members. If a Member is not in the House, he is not in the House. So, those amendments by Hon. Duale stand dropped.

(Proposed amendments by Hon. Aden Duale dropped)

I direct that we move to the next one on the same by Hon. Abdullswamad, Member for Mvita. Hon. Abdullswamad is not in the House. The amendments by Hon. Abdullswamad stand dropped.

(Proposed amendments by Hon. Abdullswamad Nassir dropped)

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): What is out of order, Hon. Wamalwa?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. I rise on a point of order to request your direction. I have looked at the proposed amendments by the respective Members and they are for purposes of value addition. Now that they are absent...

(Hon. Aden Duale walked into the Chamber.)

Oh! He has come. I have looked at Duale's amendments. I just wanted to know whether they were informed or they gave a reason. The amendments could be on the Order Paper, but they do not know at what time they are to move them. What time was the Order Paper issued? I have just got it now. If it was done, that is okay. I stand guided.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. Let us make progress.

Clause 4

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Duale, your proposals had already been dropped, unfortunately. We had directed that your proposal be dropped. But to be fair, now that you are here and we had not moved to the next clause, I will allow you to move your amendment.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Temporary Deputy Chairman and the senior member of the Speaker's Panel. I beg to move:

THAT, Clause 4(1) of the Bill be amended in paragraph (b) by deleting the word "practices" and substituting therefor the word "law".

It is a small amendment. Instead of practice, which refers to anything, we substitute with the word law, because we are dealing with both legislative law and Islamic law, on which waqf is based. I beg to move.

(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 4 as amended agreed to)

(Clause 5 agreed to)

Clause 6

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is an amendment by the Chair, Hon. Muturi Kigano.

Hon. Clement Kigano (Kiambaa, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 6 of the Bill be amended –

(a) in the opening paragraph –

(i) by deleting the word "Attorney-General" and substituting therefor the words "Public Trustee";

(ii) by deleting the word "President" and substituting therefor the word "Attorney-General";

(b) by deleting paragraph (b);

(c) by deleting paragraph (c);

(d) in paragraph (e)-

(i) by deleting the word "four" and substituting therefor the word "six";

(ii) by inserting the following new sub-paragraphs immediately after sub-paragraph (iv)—

(v) finance and investment;

(vi) architecture;

(vii) administration.

These amendments were proposed by the Public Trustee. As the norm now, the Attorney-General replaces the Cabinet Secretary to become the appointing authority like any other Cabinet Secretary.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): I see interest from Hon. Shabbir, Member for Kisumu East.

Hon. Shakeel Shabbir (Kisumu East, Independent): Hon. Temporary Deputy Chairman, I have interest but not in this particular clause.

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, just to provide comfort, I support the amendment by the Chair.

Firstly, the Attorney-General, by law, is in charge of trustees. That is why we are including him as a member of the Waqf Commission.

Secondly, just like a Cabinet Secretary appoints members of boards, it is the Attorney-General who will take the lead in appointing the Trustee. That is something that we did not see in the original Bill. People who made their submissions agreed with the Committee, so I support it.

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

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. This amendment is simplistic and it is purely for purposes of the normal practice. It is trying to harmonise practices, so I support it.

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

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

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

(Clause 6 as amended agreed to)

Clause 7

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

Hon. Clement Kigano (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 7 of the Bill be amended —

(a) in sub-clause (1) by deleting the word “President” and substituting therefor the word “Attorney-General”;

(b) in sub-clause (2) —

- (i) by deleting the word “President” and substituting therefor the word “Attorney-General” appearing in the opening paragraph;
- (ii) by inserting the words “knowledgeable in sharia law” immediately after the word “leaders” appearing in the opening paragraph;
- (iii) by inserting the following new paragraphs immediately after paragraph (a)—
 - (ab) a person having a conflict of interest whether directly in person or indirectly as a family member or a beneficiary or lessee of a Waqf shall not be appointed as a member of the selection panel;
 - (ac) no state officer or public officer shall be appointed as a member of the selection panel.
- (c) in sub-clause (3) (d) by deleting the word “President” and substituting therefor the word “Attorney-General”;
- (d) in sub-clause (4) by deleting the word “President” and substituting therefor the word “Attorney-General”;
- (e) by inserting the following new sub-clause immediately after sub-clause (5)—
 - (5A) The expenses and liabilities of the selection panel shall be borne by the Government;
- (f) in sub-clause (6) by deleting the word “three” wherever it appears and substituting therefor the word “five”; and
- (g) in sub-clause (7) (c) by deleting the word “President” and substituting therefor the word “Attorney-General”.

These proposals came from the Public Trustee. We are just replacing the President and Cabinet Secretary with the Attorney-General. They are small amendments that do not change the weight of the subject matter. The submissions were reinforced by the existing Waqf Commission.

(Question of the amendment proposed)

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

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

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

(Clause 7 as amended agreed to)

Clause 8

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

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

Hon. Clement Kigano (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 8 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (g)–

(ga) develop and facilitate adequate continuous training programmes to enhance the standard and effectiveness of trustees;

(gb) formulate, implement and oversee programmes to raise awareness on Waqf matters;

The amendment enhances functions of the Commission to include training of trustees and creating awareness on the existence and functions of the Waqf.

(Question of the amendment proposed)

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

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I thought Clause 8 was one of the Clauses that the Speaker ruled on in the matter of Hajj?

(Loud consultations)

Just relax. No! The Committee was amending Clause 8 by inserting new paragraphs immediately after paragraph (h). If you go to h(d), there was g(a) after paragraph (g). There is g(a)(b)(c).

I am very sorry. I have the old Order Paper. However, I have to be very particular to make sure that I am safe.

The Temporary Deputy Chairman (Hon. Christopher Omulele): No, you are absolutely right, but what was dropped was by the Hon. Abdullswamad. So, let us make progress.

(Loud consultations)

Hon. Members, let us finish that business.

(Clause 8 as amended agreed to)

Clause 9

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, you have a proposal.

Hon. Clement Kigano (Kangema, JP): Yes, and I hope Hon. Duale will not be overenthusiastic as usual. I beg to move:

THAT, Clause 9 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) -

“(4A) The members of the Commission shall serve on a part-time basis”.

This is another formal small amendment that the Commissioners serve on a part time basis. This is a submission by the existing Waqf Commission itself. This will clarify that Members shall serve on a part time basis.

(Question of the amendment proposed)

Chair, Hon. Duale being interested in this is a good thing. I think the House should be a little more enthusiastic in the matters that we deal with it here. So, we cannot blame Hon. Duale for being enthusiastic. We encourage him to be even be more so. I see interests from Hon. Rasso Ali, Member for Saku.

Hon. Ali Rasso (Saku, JP): Thank you very much, Hon. Temporary Deputy Chairman. The Chair of the Departmental Committee on Justice and Legal Affairs said this is a small amendment but it is bigger than that.

The idea of having part time Commissioners is going to save on this Trust. At the same time, we want work to be a voluntary philanthropic thing. So, it is a good amendment.

Thank you.

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

Hon. Aden Duale (Garissa Township, JP): Chair, the whole concept of work is religiosity. It is not a place to look for employment. It is a place that you serve and get paid in the year after. I agree with the Chair.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Noor Sofia, Member for Ijara.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you, Hon. Temporary Deputy Chairman.

I agree that the whole concept is voluntary. It is something you give expecting that you will get a reward in the year after. It is voluntary and we appreciate the amendments on that.

Thank you.

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

(Clause 9 as amended agreed to)

(Clause 10 agreed to)

Clause 11

(Question of the amendment proposed)

Hon. Clement Kigano (Kangema, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, Clause 11 of the Bill be amended-

(a) in sub-clause (2)(d) by inserting the words “or a reputable private institution” at the end of the paragraph;

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

“(4) The Director-General shall be the Secretary to the Commission”.

This is just inserting the words “the Director-General shall be drawn from reputable private institution” at the end of the paragraph by inserting a new sub-clause immediately thereafter, “The Director-General shall be the Secretary to the Commission”. This proposal emanated from Jamia Mosque.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chris Wamalwa.
Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. I support and ordinarily, the Director-Generals are normally secretaries to the Commission. So, it is just to harmonise with the practice.
I support.

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

(Clause 11 as amended agreed to)

(Clauses 12, 13 and 14 agreed to)

Clause 15

(Loud consultations)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are three proposals: Hon Millie, Hon. Abdullswamad and the Chair of the Departmental Committee on JLAC. Proposals by Hon. Millie and Hon. Abdullswamad stands dropped. The one by the Chair can be prosecuted. Proceed.

(Proposed amendments by Hon. Millie and Hon. Abdullswamad dropped)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hold on Chair, Hon. Duale, have the Floor.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I want your guidance. There were about two amendments which I was doing further amendments to Hon. Millie's amendments.

(Laughter)

I have never seen this and now that she is not around you need to guide me. What then happens when say her amendments have been dropped and I am supposed to do a further amendment to what you are dropping?

(Loud consultations)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Duale that is the misfortune without casting aspersions; and as a figure of speaking, is what happens to the rats in the ship. When the ship sinks, the rats too sink with it. So, your further amendment have got no ship to ride in, it therefore, sinks with the ship. Therefore, we will proceed. Do not worry.

Hon. Chair, proceed.

Hon. Clement Kigano (Kangema, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, Clause 15 of the Bill be amended

(a) in sub-clause (1) (b) (ii) by inserting the words "or a beneficiary or any person who has an interest in the *Waqf*" immediately after the word "trustees";

(b) in sub-clause (3) by inserting the words “a beneficiary or any person who has an interest in the *Waqf* immediately after the words “trustees of a *Waqf*”.

This proposal emanated from the public trustee and we accepted as the Committee.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): I see interest from Hon. Ahmed Shabbir, Member for Kisumu East.

Hon. Shakeel Shabbir (Kisumu East, Independent): Thank you, Hon. Temporary Deputy Chairman. My only concern on that particular amendment is sub-clause (6) which states; “The Attorney-General may make regulations.” There was a suggestion to have it as: “The Attorney-General shall make regulations.”

I think this is what we call simple English. When it says “may” it might leave the Attorney-General with the...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Shabbir, which amendment are you speaking to? We are on Clause 15.

Hon. Shakeel Shabbir (Kisumu East, Independent): Clause 15(6).

The Temporary Deputy Chairman (Hon. Christopher Omulele): I think you are looking at the Bill itself.

Hon. Shakeel Shabbir (Kisumu East, Independent): I am looking at the Bill itself.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes. There is a proposed Amendment by the Chairman and his proposals are in regard to (b) and (c).

Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Chairman. First, we are dealing with the amendment by the Chairman in sub-clause (1) (b) (ii) and sub-clause (3). I support the Chair’s amendment because it provides that in the event that a beneficiary or anyone else has an interest in that particular *Waqf*, he or she can ask for an inquiry. There are people who will mess up this noble idea. Therefore, the Chairman has a very good amendment that the beneficiary or anyone else who has an interest in that particular *Waqf* can raise and ask for an inquiry to be conducted on the operation of the *Waqf*.

Hon. Shakeel, the Chairman is not amending Clause 6 that you are looking at in the Bill. No one is amending that. If you had an issue, you should have come with an amendment. However, it is good he has raised it.

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

(Clause 15 as amended agreed to)

Clause 16

The Temporary Deputy Chairman (Hon. Christopher Omulele): There was a proposal by Hon. Millie Odhiambo which stands dropped. There is another amendment by the Chairman. Hon. Chairman, you can proceed with yours. The amendment by Hon. Millie Odhiambo stands dropped.

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

Hon. Clement Kigano (Kangema, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, Clause 16 of the Bill be amended in sub-clause (2) by deleting the words “twenty thousand” and substituting therefor the words “two million”.

Hon. Temporary Deputy Chairman, this emanated from public trustee and the justification is that the assets of a *Waqf* in Kenya is approximately Kshs9 billion. Therefore, a penalty of Kshs20,000 for not producing documents by a trustee is very low and not commensurate to this. Therefore, there is need to enhance this penalty to Kshs2 million.

(Question of the amendment proposed)

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I support this amendment because you know we need men and women of integrity. At Kshs20,000, busy bodies can come and squander this money and take off. Therefore, they must see that if you do not keep the right books and documentation, the fine will be Kshs2 million. This is a very good amendment and I support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Rasso, Member for Saku.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Temporary Deputy Chairman. I think this is a safeguard and also a deterrent because this is money that can easily be stolen. However, once we put the threshold that high enough, then it puts in place measures that these funds are safeguarded. Thank you, Hon. Temporary Deputy Chairman.

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

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

(Clause 16 as amended agreed to)

Clause 17

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is an amendment by the Chairman.

Hon. Clement Kigano (Kangema, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, Clause 17 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “sell”;
- (b) by inserting the following new sub-clause immediately after sub-clause (1)
 - “(1A) A person who intends to sell immovable *Waqf* property shall make an application to the Environment and Land Court and the Environment and Land Court may allow the application or issue any other order it deems appropriate”.
- (c) in sub-clause (2) by deleting the words “subsection (1)” and substituting therefor the words “this section”.

This emanated from public trustee and the justification is that the disposal of removable property in *Waqf* is a serious issue and should not be left to the discretion of the commission itself. Therefore, the Environment Court is a check to ensure that the sale is appropriate and that it is a clean exercise.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): The first interest is by Hon. Sankok.

Hon. David Ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, I think the Chairman has explained very well that we need to protect these assets of *Waqf*. This is to ensure that we do not just have the commission selling the way they wish. At times, the commissioners can decide among themselves to sell and divide the money. We are just putting checks and balances to ensure that these assets are protected.

Thank you, Hon. Temporary Deputy Chairman.

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Mbogo Menza, Member for Kisauni.

Hon. Mbogo Ali (Kisauni, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I support the proposed amendment by the Chairman. We have been told that the worth of the assets at *Waqf* is around Kshs9 billion. Therefore, whatever is being proposed will act as a safeguard to ensure that there is another level that can cross-check before a disposal is done.

I support.

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

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

(Clause 17 as amended agreed to)

(Clauses 18, 19, and 20 agreed to)

Clause 21

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposal by the Chairman and Hon. Millie. The Chairman's amendment will be prosecuted.

Hon. Clement Kigano (Kangema, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, Clause 21 of the Bill be deleted.

The justification is that a *Waqf* is an endowment of property or cash by *Waqf* in his or her lifetime. Unclaimed asserts of deceased persons held by public trustee which should be universally applicable in national laws. No preference treatment should arise on unclaimed property of

Muslims. This is in light of the fact that the deceased did not express his or her desire to donate their property for charitable purposes during their lifetime.

I thank you.

(Question of the amendment proposed)

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

(Clause 21 deleted)

(Clause 22 agreed to)

Clause 23

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): What is out of order Hon. Duale?

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Chairman, Hon. Millie is calling me: She is stuck in jam and wants us to prosecute business slowly.

Hon. Deputy Chairman, you know I am a ranking Member and there is nothing I can do. However, I want to go on record that, at least, I have made the request to you.

(Loud consultations)

As a decent leader, I just want to go on record though contrary to the Standing Orders.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Duale you know you are out of order.

(Laughter)

There is an amendment by the Chairman for Clause 23.

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

THAT, Clause 23 of the Bill be amended by deleting the proviso.

The justification is that this limit does not enhance any economic value.

(Question of the amendment proposed)

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

(Clause 23 as amended agreed to)

(Clauses 24, 25 and 26 agreed to)

Clause 27

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie had a proposal and it stands dropped

(Proposed amendment by Hon. Millie dropped)

(Clause 27 agreed to)

(Clause 28 agreed to)

Clause 29

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposal by Hon. Millie who is not in the House and it stands dropped.

(Proposed amendment by Hon. Millie dropped)

(Clause 29 agreed to)

(Clause 30 and 31 agreed to)

New Clause 5(A)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, there is a proposal for a New Clause 5 (A) by the Hon. Abdullswamad Nassir.

Hon. Duale, I will give you a chance to speak.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Chairman, I am holding brief for Hon. Abdullswamad. He hereby goes on record that he has dropped that amendment.

The Deputy Temporary Chairman (Hon. Christopher Omulele): Very well, so it is dropped.

(Proposed amendment by Hon. Abdullswamad dropped)

New Clause 12 (A)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposal for a New Clause 12 (A), but the Hon. Millie Odhiambo is not in the House. So, it is dropped.

(Proposed amendment by Hon. Millie dropped)

New Clause 12 (B)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposal for a New Clause 12 (B) by Hon. Millie Odhiambo who unfortunately is not in the House today. She is usually a very active Member and there must be good reason for her absence. However, the rules tie us and therefore it stands dropped.

(Proposed amendment by Hon. Millie dropped)

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

Hon. Shakeel Shabbir (Kisumu East, Independent): Nothing out of order. May I seek your advice please on Clause No. 27 which you just said it is passed? In this Order paper, I see that the Bill be amended by inserting the following new clauses... Are you coming to that?

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes. That is ahead of us and we are coming to that.

New Clause 12 (C)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposal to have a New Clause 12 (B) by the Hon. Millie Odhiambo which suffers the same fate.

(Proposed amendment by Hon. Millie dropped)

There is one by Hon. Duale which we shall prosecute.

Hon. Duale you have the Floor.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Chairman, I beg to move; THAT, the Bill be amended by inserting the following new clause in Part III immediately after clause 12 —

Removal
of a trustee.

12C. (1) A trustee shall be removed from office only by a court on grounds of —

- (a) misappropriation of a Waqf's property;
- (b) allowing the Waqf property to fall into disrepair when the trustee has funds to maintain the property;
- (c) knowingly or intentionally causing damage or loss to Waqf property;
- (d) breach of trust in relation to the Waqf property; or
- (e) any other sufficient reason permitted by Islamic law.

(2) Despite subsection (1), a trustee may be removed from office by the Waqf, if the right to remove the trustee is reserved in the Waqf deed.

Be moved for a Second Reading. The only new thing I am introducing there is clause (e) and (2)

I beg to move.

*(Question, that the new clause 12 (c) be
Read a Second Time, proposed)*

*(Question, that the new clause (12 (c)
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 27 (A)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposal by the Chairman. Proceed.

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

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 27 –

Right to access information.

27A. (1) A beneficiary of a Waqf shall, at all reasonable times, be entitled to information about the Waqf including the inspection of accounts and shall upon payment of the prescribed fees be supplied with copies of any deeds or documents thereof.

(2) The information under subsection (1) does not include correspondence and any other confidential information.

Disputes resolution.

27B. Any matter or dispute relating to a Waqf shall in the first instance be referred to a Kadhi's court.

Exemption from taxation or penalties

27C. Despite the provisions of any other written law, the income of the Commission shall not be subjected to income tax or any other tax or penalty.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chairman, I advise that you prosecute them one after the other starting with (A) then the rest. So just deal with (A) first.

New Clause 27A

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

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 27 –

Right to access information.

27A. (1) A beneficiary of a *waqf* shall, at all reasonable times, be entitled to information about the *waqf* including the inspection of accounts and shall upon payment of the prescribed fees be supplied with copies of any deeds or documents thereof.

(2) The information under subsection (1) does not include correspondence and any other confidential information.

The reason for this amendment is to reinforce the right to information as provided for in the Constitution.

(Question of the New Clause proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): I see interest from Hon. Sankok. Hon. Millie you have just walked in. Take your seat, you will have an opportunity to say something.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, myself together with others in this Chamber, support because information is power. So, put the question.

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

(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 27B

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

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 27 –

Disputes
resolution. **27B.** Any matter or dispute relating to a *waqf* shall in the first instance be referred to a Kadhi's court.

The justification for New Clause 27 B is, *waqfs* are made under Islamic law and the Kadhi's courts should be the first point of reference concerning any dispute. If the Kadhi's courts are unable to resolve the same, the disputes can be cascaded to other courts or tribunals within the Kenyan laws.

(Question of the New Clause proposed)

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

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): The Leader of the Majority Party, we usually go on very well without your presence. You always come here with a very bad attitude.

(Loud consultations)

Hon. Temporary Deputy Chairman, kindly listen to me.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Sankok resume your seat. Hon. Millie, proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): First of all, I want to apologise for coming in late. I lost my uncle, Mr. Absalom Obilo Opiyo who comes immediately after my father. I have just come in. I just want to say that I am disappointed. Hon. Duale knows how we normally operate. If you know that there are Members who have moved amendments and you cannot see them in the House, out of courtesy, just ask. There is no reason for the House to rush to sit, so that you can pass without me. There is no big deal whether the issues are passed or not. They are merely strengthening the Bill. Some of them are issues that later, somebody could challenge as

unconstitutional. Having said that, perchance, any of my amendments may be pending, I withdraw all of them and I do not wish to do any recommitals.

I thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well Hon. Millie. Just for your information, Hon. Duale informed this House that you had spoken to him. Hon. Millie, you know the rules of the House. As much as we sympathise with the loss of your uncle whom you must have loved very much, this House could not stand waiting. Hon. Millie, what you have done is quite in order.

Thank you, we shall proceed.

What is out of order, Hon. Sankok?

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, Hon. Millie Odhiambo must withdraw. She said we normally do well in the absence of the Leader of the Majority Party. It is not true. She must withdraw, apologise and expunge that statement from *The Hansard* because it is not true.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Sankok, there is nothing out of order about that because from time to time, there will be Members who are not in the House and the House goes on. The House has proceeded without Hon. Millie today. Sometimes it proceeds without the Leader of the Majority Party being here. So, Members from time to time will miss for good reasons like the good reason Hon. Millie has given, that kept her away from the House today. That does not mean that the House will not proceed with its business. So, Hon. Millie was not out order to say that sometimes the Leader of the Majority Party is not in his place. She is correct. So, we shall proceed.

(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 27 C

Hon. Clement Kigano (Kangema, JP): Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 27 –

Exemption from
taxation or
penalties

27C. Despite the provisions of any other written law, the income of the Commission shall not be subjected to income tax or any other tax or penalty.

The justification thereof is: *waqf* is charitable in nature and the employees of the *waqf* commission are not exempt from taxation. It is only the *waqf* which is charitable in nature like any other charity.

(Hon. Jimmy Angwenyi consulted loudly)

I am being disrupting by the Deputy Leader of the Majority Party. Normally, I do not like to disrespect these ranking Members but I was doing some consultation with the Leader of the Majority Party.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Senior, just proceed, do not worry about Hon. Angwenyi.

Hon. Clement Kigano (Kangema, JP): That is the justification. I will repeat because I was disrupted. *Waqf* is charitable in nature so it is being exempt from income tax but the employees of the *waqf* Commission will be subjected to taxation.

(Question of the New Clause proposed)

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

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Temporary Deputy Chair. I support that very noble amendment. There could be a rise when we are told that *waqf* is about Kshs9 billion.

With this Bill becoming the law of the land, it could rise to even Ksh20 billion. So, the taxman might just look at this and say, "We can collect a few shillings from here." By enacting this law, it becomes a safeguard so this charity is not destroyed through taxation.

Thank you, Hon. Temporary Deputy Chairman.

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I support the Chairman. I think what he has done is just based on all charitable institutions in our country regardless of their origin and status. So, the income of the *waqf* is not subjected to taxation but the employees and workers of the Commission pay their taxes just like other ordinary Kenyans. I support and thank the Chairman.

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

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, I support the Chairman. It is very important to safeguard this charitable institution. In the past, we have seen even the taxman - and I hear he is now snooping into our Facebook and social media accounts - has been taxing wheelchairs donated to persons with disabilities. So, they should know that some donors are not ready to pay taxes on donations. This is a very important amendment and the House should support. Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Majimbo Kalasinga, Member for Kabuchai.

Hon. Majimbo Kalasinga (Kabuchai, FORD-K): Thank you, Hon. Temporary Deputy Chairman. I also seriously agree with this because sometimes we tax some of these charitable organisations which intend to raise a class upward and balance those who cannot manage to earn a living. So, I support this.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Shabbir, Member for Kisumu East.

Hon. Shakeel Shabbir (Kisumu East, Independent): Thank you, Hon. Temporary Deputy Chairman. I want to advise that taxation in respect to trusts is different from taxation of further re-investment accounts. According to the Tax Act, and I am a professional in this matter, trust beneficiaries must pay tax on income rather than donations received and the principal amount. So, this particular amendment is flying in the face of taxation tenets. Not only will it be disputed but the taxman will demand tax on the income of the trust which does not relate to its maintenance or principal amount. So, this particular amendment is out of place and should not be approved because it goes against the face of Kenya Revenue Authority (KRA) and the whole tenets of taxation.

By passing this particular clause, you cannot amend the whole Taxation Act. To do this, you need to go to the Taxation Act in respect to this amendment and trust. This is because all trusts whether it is *Waqf* Trust or any other, must pay income tax on interest earned and not maintenance of the principal amount. So, in as much as I would like it not to be taxed, all other trusts are being taxed in this manner. This particular amendment will be contrary to this and will not be effective and I suggest we drop it.

(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)

Clause 2

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposed amendment by Hon. Duale.

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

THAT, Clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical sequence—

“*zakat*” means payment made annually under Islamic law on certain kinds of property and used for charitable and religious purposes as a second pillar of Islam.

Hon. Temporary Deputy Chairman, I am only trying to define “*zakat*” or arms giving as a pillar of Islam in accordance with Islam. Through your permission, I want to do a further amendment because there was a typographical error. It is not the second pillar because the first pillar is declaration of faith, the second pillar is prayer and the third pillar is *zakat*...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Duale, I think there was a typing mistake. So, you may move it in an amended form.

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

THAT, Clause 2 of the Bill be further amended by inserting the

following new definition in its proper alphabetical sequence—

“*zakat*” means payment made annually under Islamic law on certain kinds of property and used for charitable and religious purposes as a third pillar of Islam.

The whole concept is just to give the definition of one of the pillars of Islam, which is the *zakat*, by saying it is for religious purposes and the third pillar of Islam. I have amended from the second to third pillar of Islam.

(Question of the amendment proposed)

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

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. Again, I apologise since under the circumstances I came without my card. I think, just out of courtesy, he would have said this is my amendment he adopted. Otherwise, I support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. Hon. Rasso. Hon. Duale, do you want to go before Hon. Rasso? Okay, proceed.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, out of decency and courtesy, we discussed a lot of amendments by Hon. Millie. This was her amendment and, in fact, mine was just the further amendment. Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. That is good. Hon. Rasso.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Temporary Deputy Chairman, I also wish to add my word that Hon. Millie really contributed to this Bill. This amendment is very important because among that which can be paid into this charity is *zakat*. Actually, this was missing in the Bill and was a serious omission. I beg to support.

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

(Clause 2 as amended agreed to)

(Title agreed to)

Clause 1

Hon. Temporary Deputy Chairman (Hon. Christopher Omulele): There is no amendment to this.

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, we have completed that. I now call the Mover to move reporting.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee does report to the House its consideration of the Waqf Bill (National Assembly Bill No.73 of 2019) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Duale, you will assist the Chairperson in reporting.

REPORT

THE WAQF BILL

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Waqf Bill (National Assembly Bill No.73 of 2019) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have the Mover.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report.

I also request Hon. Millie Odhiambo to second the Motion for Agreement with the Report of the Committee of the whole House.

Hon. (Ms.) Odhiambo-Mabona: *(Spoke off-record)*

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Leader of the Majority Party, Hon. Millie is not in the mood to assist you today.

Hon. Amos Kimunya (Kipipiri, JP): We appreciate the circumstances she is going through. I, therefore, wish to ask Hon. Duale to second.

Hon. Aden Duale (Garissa Township, JP): I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, I direct that the next necessary steps in regard to this particular business be undertaken when the matter will again be set down on the Order Paper for consideration by the House.

(Putting of the Question deferred)

I direct that we move to the next Order on the Order Paper.

BILL

Second Reading

THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (AMENDMENT) BILL

(Hon. Jeremiah Kioni on 9.11.2021)

(Resumption of Debate interrupted on 9.11.2021)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, debate on this business was interrupted on Tuesday, 9th November 2021. We had contributions from 11 Members, namely, Hon. Kioni, Hon. Kaluma, Hon. Ong'era, Hon. Sankok, Hon. Obara, Hon. Waweru Kiarie, Hon. Adagala, Hon. Shakeel, Hon. Cecily Mbarire, Hon. Aseka, Hon. Fatuma Gedi and Hon. Nyikal, who had a balance of three minutes. I see him in the House. He may proceed to use up his three minutes.

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

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Millie, what is out of order? Hon. Nyikal, just hold on.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I had indicated to you earlier, but I seek the indulgence of the House. I would like to speak to this Bill, but I do not have a card. I would like to request you to be kind and consider that because I will not appear on your screen. Thank you.

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

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. The last time I rose, I did not support the Bill. On the issue of this Commission, there was a lot of work done by the Cabinet. Hon. Kimunya headed the team that worked to split the Human Rights Commission into three commissions, namely, the National Gender and Equality Commission, the Kenya National Commission on Human Rights and the Office of the Ombudsman. At the time, it was felt that that would bring gender issues to the fore.

Many people tend to think that when we talk about gender, we are talking about women. However, currently, there are many issues that affect men that have to do with gender. If you look at the boy-child, there is a problem we need to arrest. If we look at femicide and the number of men that kill women, that is a gender issue, but related to men.

Further, in my view, after devolution, the gender agenda lost momentum. At the time, we had another commission linked to the Ministry which had gender officers all the way up to the ground. So, it was very easy to mobilise women to raise gender issues. After devolution, gender issues are now under the Ministry of Devolution and Planning. There are no officers who deal directly with gender issues at the sub-county level. If you go to the sub-county and constituency levels and want to deal with gender issues, particularly those dealing with women, you will find that not much is being done. Therefore, killing the Commission, which is what the Bill intends to do, would draw back on the gains made with regard to gender issues. If there is a feeling that it has not worked well and has not achieved much, let us restructure it and give it strength to do what it is supposed to.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Moi Kipruto, Member for Rongai.

Hon. Kipruto Moi (Rongai, KANU): Thank you, Hon. Temporary Deputy Speaker, for giving me the chance to contribute to this important Bill.

The core mandate of the Kenya National Commission on Human Rights is to promote and protect human rights in Kenya. It was enshrined in the Human Rights Act of 2002. It commenced

operations on 29th July 2003. In 2010, the 2002 Act was repealed and the new one was constituted under Article 59 of the Constitution of Kenya, 2010.

The Bill proposes to merge the Kenya National Commission on Human Rights and the National Gender and Equality Commission to form the Kenya National Human Rights and Equality Commission as established by Article 59 of the Constitution. In 2011, Parliament established three commissions, namely, the Kenya National Commission on Human Rights, the National Gender and Equality Commission and the Commission on Administrative Justice.

One reason advanced by the proponents of the Bill is that merging the two units will reduce Government expenditure thereby saving taxpayers' money, so that they run only one unit.

Another reason given by the proponents of the Bill is that broadly speaking, gender issues fall within the sphere of human rights. That means that the differences in the functions of the Kenya National Commission on Human Rights and the National Gender and Equality Commission are very negligible. So, merging the two commissions will avoid duplication of roles. The opponents claim that the two commissions play very distinct roles. That the ten years that caused it to collapse was too soon for them to be able to judge whether it had been effective.

Also, the opponents of this Bill claim that human rights in Kenya have not reduced sufficiently to scale down the resources. They also claim that gender-based violence has increased by 30 per cent. Thousands of new teenage pregnancies, especially during the COVID-19 period, have been reported all over the country. They also cite constitutional considerations whereby Article 59 empowers Parliament to restructure the Kenya National Commission on Human Rights Commission (KNCHR). They believe that the Article does not give Parliament the power to wind-up commissions. They believe that the only thing that can be done is through a referendum. They believe that since these two commissions are a creation of the Constitution, they cannot be just be amended by Parliament but only through a referendum.

Finally, Hon. Temporary Deputy Speaker, having considered both of these views, I believe that merging these two units will cause a lot of efficiencies and I believe that this is the way we could deliver services to the Kenyan people. For that, I support this, Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Abdi Yusuf, the Member for Kamukunji.

Hon. Yusuf Hassan (Kamukunji, JP): Thank you Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this debate on the overview of the Kenya National Commission on Human Rights (Amendment) Bill (National Assembly No. 1 of 2020). The Bill is intended to amend the Kenya National Commission on Human Rights Act No. 14 of 2011. This Bill is sponsored by a committee that I am a Member of and therefore, I stand here to support it.

The advantages have been mentioned. The point that this Bill intends to make amendments to the effect of merging the Kenya National Commission on Human Rights and the National Gender and Equality Commission, so as to have a commission as perceived by Article 59 of the 2010 Constitution. Article 59 (1) of the Constitution establishes the Kenya National Human Rights and Equality Commission. The Bill therefore, if passed into law, intends that the functions of both the Kenya National Commission on Human Rights and the National Gender and Equality Commission be merged and performed by one body to be named the Kenya National Human Rights and Equality Commission. The rationale for the merger is stated to be guided by Article 59 (4) of the Constitution, empowering Parliament to enact legislation to give full effect to the provisions of Article 59 and legislation restructuring the Commission into two or more separate commissions.

The merger is also informed by the intention to streamline effectiveness of the two institutions and cut costs for the taxpayer's used in operation of the two institutions. Therefore, we will be running one institution rather than two. In 2011, Parliament restructured the Kenya National Human Rights and Equality Commission into three commissions. The functions of the National Gender and Equality Commission are stated to fall within the sphere of human rights. Clause 2 of the Bill seeks to replace the definition of the word 'commission' to mean the Kenya National Human Rights and Equality Commissions established under Section 3. Clause 3 seeks to amend Section 3 of the principal Act by doing away with the Kenya National Commission on Human Rights and establishing the Kenya National Human Rights and Equality Commission. Clause 4 of the Bill intends to amend Section 8 of the principal Act addressing the functions of the Commission to the effect of making the newly merged commission empowered to perform functions currently undertaken under the ambit of the National Gender and Equality Commission.

There are several concerns that have been raised about the Bill. I would like to emphasise on the fact that the Bill has several advantages that we need to take into consideration. For example, Article 59 of the Constitution provides for the establishment of the Kenya National Human Rights and Equality Commission, whose functions are to protect and promote respect for human rights, as well as, to promote gender equality and equity facilitating gender mainstreaming in national development. Merging the two institutions, as envisaged by the Bill, is within the purview of the Constitution and Parliament through the National Assembly, which will be exercising its legislative powers set out in Article 59 (4) of the Constitution to restructure the Commission. So, I concur with the observations that the gender and equality issues fall under the sphere of human rights and merging the institutions will bring about efficiency in addressing human rights concerns and redressing violations.

A concern that should be raised in this case is addressing the timelines by which the merger of the two institutions should be concluded. We also need an interpretation of Article 59 (4) of the Constitution on whether Parliament is equally empowered to merge commissions or it is only empowered to split the Kenya National Human Rights Commission into separate commissions.

Therefore, Hon. Temporary Deputy Speaker, I support the Bill.

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

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you Hon. Temporary Deputy Speaker for giving me this opportunity. At the outset, I oppose this Bill. The reason I oppose is that I can proudly say that I was one of the founders of the Constitution and the thinking of the framers of this Constitution was to ensure that we mainstream certain rights including women and men's rights. That is why we need a gender commission. Even though Article 59 of the Constitution provides for a commission that can be split into three commissions, it was deemed necessary to have a gender commission specifically because if you do not do that, you end up having a small gender desk or gender initiatives by the Government that do not go to the root of the challenges that we face in the country relating to gender.

On issues of gender, we can say that they affect every single aspect of our lives. Before I joined Parliament, I was doing a lot of work with the Government in different ministries as a consultant on mainstreaming gender, human rights and children's rights in government policies and other issues. If you see the thinking and (*inaudible*) on our socialisation and psyche, unless you have a gender commission that is specifically dedicated to looking at issues on women rights – even though gender includes both men and women- we end up sacrificing the issues of women and gender.

During this COVID-19 period, we had a claw back on a lot of women rights. We saw cases of female genital mutilation on the rise; we saw cases of sexual violence and violence against women on the rise. Many of us may forget but as recent as a few months ago we buried an international athlete because of domestic violence. When we want to take away a gender commission that is dedicated to looking at issues like that, it means we are taking the country many years back. Personally, I would be very strongly opposed to the removal of this Commission. When you lump up gender with other issues, it would get the least attention. I sit in the Budget and Appropriations Committee and so many times, we try to push the envelope for this Commission, but we do not get support. A lot of times, even our own colleagues in the Budget and Appropriations Committee do not support budgeting for gender. Now, you can imagine a situation where you already have a commission, but you still have a challenge putting money in the commission. What happens when you do not have a dedicated commission? This would mean that issues of gender will completely disappear.

With those very few remarks, I oppose very strongly.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. (Prof.) Oduol Adhiambo.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker. Indeed, as we look at how we want to ensure that we can make a difference when we discuss issues of gender, it is clear that to a large extent, those issues are due to lack of proper ways of engagement and recognition. As we talk about gender, it is not that it is an area that people do not realise that it needs to be addressed, but it is just the institutional mechanisms that tend not to be as prepared or as engaged with those that are charged with the responsibility of oversight.

Indeed, it is true, as Hon. Millie and a number of Members have indicated, that in our practice to date, as we check even at commissions and bodies that have been singly or specifically seen to address issues of gender, the perception including budgetary and many other necessary support frameworks have not been appropriately addressed. Therefore, we need to make deliberate effort and be sure that we are not just making statements, but also providing the necessary resource backup and infrastructure to oppose.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Obo Mohamed, Member for Lamu.

An. Hon. Member: She is not in.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Wetangula Wanyonyi, Member for Westlands.

Hon. Tim Wanyonyi (Westlands, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance also to speak to this. From the onset, I want to oppose this amendment. If the founding of Universal Declaration of Human Rights (UDHR) in 1948 addressed all human rights issues, we should never have come up with other human rights agencies. We have human rights dealing with people with disabilities (PWDs), women, and children, because the other one was inadequate and was not addressing all those issues.

It is a misplaced priority to say that we merge these two commissions into one and that they will address the issues affecting human rights. I believe these two commissions have done very well. The gains the National Gender and Equality Commission has made are quite significant, and we must not wish it away. We must support the National Gender and Equality Commission to remain separate from the Kenya National Commission on Human Rights and perform the roles

assigned to them through legislation. This is a defeatist approach which I believe should not go through. Let us maintain the two commissions.

The National Gender and Equality Commission has done very well, especially on the issues dealing with disabilities. They have addressed issues of disabilities much more than the Kenya National Commission on Human Rights. So, I believe this will be done very well if we maintain these commissions separately.

I hold the view that we must rethink and we should not write off the benefits and the gains these two groups have made. I have listened to the contribution by Hon. Millie Odhiambo, and whatever she has said is quite true. I represent an urban constituency and there is so much gender-based violence exhibited in informal settlements. This cannot be addressed by one agency. It needs a multi-agency to address such issues that are affecting women, children and PWDs in such settlements. I believe this commission should be maintained and it should not be dissolved.

I oppose.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Majimbo Kalasinga, Member for Kabuchai.

Hon. Majimbo Kalasinga (Kabuchai, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this time to contribute to this very important Bill.

From the onset, I stand to oppose the Kenya National Commission on Human Rights (Amendment) Bill (National Assembly Bill No.1 of 2020). I oppose with serious reasons. First, you cannot pretend to want to build a house by knocking off its pillars. The strength of the house is how many pillars you increase every day. We could not have reached the gains that we have attained in Kenya without the National Gender and Equality Commission, yet want to bring it down to amalgamate it.

The rise in the reported cases of gender-based violence in this country cannot even allow us to think of only having two. In fact, we should borrow a leaf from the way we amalgamated the Agriculture and Food Authority (AFA), where we killed the Kenya Sugar Authority and others as we formed the AFA. We got so many problems and as I speak, the Sugar Board has found itself coming out of it. If we want to amalgamate, we are heading to where we headed with AFA.

Secondly, you cannot reduce the issues of gender to a desk in a ministry, because it is going to be under the Ministry in charge of Devolution. It will just be a simple desk with neither personnel nor links and roots to the ground. Every morning, we come across gender-based violence issues as leaders on the ground. You cannot address more than 10 issues and miss a matter on gender-based violence from them.

I oppose and urge that we find ways of how we can increase and even have a further section that deals with gender-based violence in schools and colleges involving children. This will bring up the pillars that will strengthen human rights, but not by trying to knock off a very important department. I agree with most Members that this Bill should be opposed in totality.

In fact, as we look at the gender issue, you find that many cases that reach the areas of getting solutions like police stations and others are negotiated. They are told to go and negotiate. If it is an issue of family abuse, they are told to go and talk to their partners. Some of the people are told to go and negotiate, and some of the cases do not even get reported. The National Gender and Equality Commission should be strengthened and given more powers through the budget, to solve gender issues in Kenya.

Hon. Temporary Deputy Speaker, I oppose.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Oduor Ombaka, Member for Siaya.

Hon. (Dr.) Christine Ombaka (Siaya CWR, ODM): Thank you, Hon. Temporary Deputy Speaker, for this opportunity. I would like to oppose this because gender issues are not small matters that can be thrown into a corner and become a desk issue. It is a whole ministry thing. So, when a commission is set for it, let it be a commission that deals with gender issues most effectively. Gender issues are not minor issues. It can neither be merged with another, nor can it be made a small department within another commission. We are missing the boat. We cannot merge this. We have successfully managed gender-based issues. Up to now, we have done our best, but we still have a lot of weaknesses. Therefore, if you bring it into another commission, you merge and collapse it with others into one, it will disappear. We will not see the results of what we have done, nor see what we are going to do in future.

I object to the merger of the two commissions simply because issues will not be addressed effectively as we have done in the past. So, like everybody else or most people and contributors in this House, I oppose vehemently.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Mule Mutinda, Member for Matungulu.

Hon. Stephen Mule (Matungulu, WDM-K): Thank you, Hon. Temporary Deputy Speaker.

From the outset, it is very clear that the drafter of this Bill never understood why these commissions were created. We formed the Human Rights Caucus in the last Parliament with my colleagues, Hon. Neto and the late Ken Okoth – may God rest his soul in peace - squarely to make sure that we strengthen the work of the Commission; the National Gender and Equality Commission, and give them separate powers.

It is unfortunate that we are today looking at NGENC as an issue of women. Today, you and I have been talking about the boy child. In another two to three decades to come, the gender that will be suffering will be the boy child. So, we must have a commission which will take care of their needs when that time comes. The notion of merging things is a bit worrying in this country. When the Government merged the United Republican Party (URP) and The National Alliance (TNA), they collapsed all political parties to form the Jubilee Party. You are merging to form a monster which cannot sustain itself. It is high time we protect commissions and strengthen them to do the job they are supposed to do for Kenyans. When you look at the ideology, it beats the purpose of why the commission was formed. It is unfortunate at this hour, that we want to kill the gains of the NGENC.

Without wasting time, I wish you could be putting the Question so that we can kill this thing once and for all and allow the commissions to do the best job they can. These commissions are not for this time. They are commissions which will prefer and move this country forward for generations and generations to come.

So, I oppose in totality. We will mobilise Members in this House to oppose the Bill so that we can find better ways of strengthening these commissions.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Muchira Mwangi, Member for Ol Jorok.

Hon. Michael Muchira (Ol Jorok, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Kenya National Commission on Human Rights (Amendment) Bill.

From my understanding, the aim of this amendment Bill is to form one strong commission that will have its presence felt all over the country. As it is, we have commissions whose presence

is felt only here in Nairobi. If you come to my rural area and ask people about the NGEC, nobody knows about it. In fact, if I was to be asked, we would merge all the three commissions, namely, the NGEC, the Commission on Administrative Justice (CAJ) - which is the Office of the Judiciary Ombudsman - and the Kenya National Commission on Human Rights (KNCHR) to form one commission, and then strengthen it so that we can have offices in all the 47 counties.

Right now as a country, we are facing the problem of ballooning wage bill. We need to think of ways of reducing the wage bill and the cost of operations so that we are left with enough money to do development. The commissions that we have are doing duplication. There is duplication of duties where we have two or three commissions doing the same job.

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

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Millie Odhiambo, the Temporary Deputy Speaker has been very kind to you today. You do not have your card and you have spoken. Let him speak. We will have an opportunity to make a decision.

Hon. Michael Muchira (Ol Jorok, JP): Thank you, Hon. Temporary Deputy Speaker. As I was saying, we have commissions with duplication of duties where we have one commission doing this, and another commission doing the same thing. The merger of the two commissions will therefore create effectiveness. I do not know whether some commissions do not have work. We have some commissioners hopping from one political rally to another, yet they are commissioners. This leaves us with a perception that the commissions are very idle.

(Applause)

Why would we have a commissioner hopping from one political rally to another while we are expecting them to be delivering on their duties?

With those few remarks, I support the Bill. If I was to be asked, we would even amend the Bill and include the CAJ.

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

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

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Speaker, is the Member in order to infer improper motives on commissioners of the NGEC, saying that they are moving around playing politics when we even know other people in ministries are going around? We have CSs that are going around playing politics. Why do we not then abolish the ministries? Why is it that when it comes to gender issues is when you see people moving around? That is absolute bias. It is for the same reason that we need the NGEC, so that we do not have such archaic thoughts.

(Loud consultations)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Millie, clearly, there is nothing out of order.

Hon. Obo Mohamed, Member for Lamu.

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Asante, Mhe. Naibu Spika wa Muda.

Napinga kabisa. Haki za akina mama au za wanawake zitakaliwa iwapo hizi tume zitachanganywa. Kuna tume nyingi Kenya, kwa nini iwe ni Tume ya Taifa ya Jinsia na Usawa

yaunganishwa? Naona hivi ni vita baridi dhidi ya wanawake. Kwa saa hii, tunaweza kusema ni wanawake kwa sababu sisi ndio tunakaliwa zaidi hapa Kenya.

(Hon. Stephen Mule spoke off the record)

Tafadhali, Mhe. Naibu Spika wa Muda, naomba ulinzi.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Member for Matungulu, you will allow the Member for Lamu to speak. Hon. Member for Lamu, feel appropriately protected in this House. Proceed. You have every right to speak in this place.

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Mhe. Naibu Spika wa Muda, tunakumbuka vizuri kuwa si zamani ambapo Rais wetu mpendwa, Mhe. Uhuru Kenyatta, alichukua ahadi kwamba atapiga vita ukatili dhidi ya jinsia. Kwa sababu hiyo, tunafaa kuipa tume hii nguvu ili iweze kupigana vita hivyo.

Tunafaa kutafuta mbinu ambazo zitaipatia tume hii nguvu ili ipigane vita hivi vita. Kwa mfano, kila kituo cha polisi chafaa kiwe na dawati la kijinsia. Ukitembea, utapata kuwa bado sehemu zingine hazina polisi mwanamke au hilo deski halina nguvu. Ukifika na kuuliza kwa nini mambo yako hivyo, utaona hawako au hakuna mtu wa kuwa hapo.

Mbinu nyingine za kuongeza nguvu kwa hizi tume ndio zisiwe tu tume pale, ni kuhakikisha kuwa ziko na pesa na uwezo wa kufanya kazi yao. Pia, tume inafaa kuhakikisha kuwa ikiajiri maaskari, wanawake wawe wengi. Tume inaweza kuwa pale, lakini haina uwezo wa kufanya haya mambo. Kwa mfano, ukichagua wanawake wengi wapelekwe kama kule kaunti ya Lamu ambapo maaskari wanawake ni kama 10 peke yake, ilhali wengine wote ni wanaume. Wale watu wa kupambana na madawa ya kulevya huambiwa na wanawake wasiwakague na kumbe wameficha madawa ya kulevya mwilini. Kwa hivyo, tume inafaa kupewa nguvu ndio wapatie wale maafisa nguvu ya kupigana na vita hivi vya dhuluma za kijinsia.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Obo, just hold on. Hon. Sankok, what is out of order?

Hon. David ole Sankok (Nominated, JP): I rise under Standing Orders on relevance. I think the National Gender and Equality Commission is not involved in hiring and firing of women and ladies in the police service. Let us confine ourselves to the issue at hand.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok, that is not your problem. That is the Speaker's problem, and the Member for Lamu is quite in order to sue for more women to be employed. It is quite in order for her to speak to that.

Proceed, Member for Lamu.

Hon. (Ms.) Ruweida Obo (Lamu, JP): Asante, Mhe. Naibu Spika wa Muda. Itawezekana vipi wanawake wapate haki zao ikiwa wanaume ndio wengi katika *police service*? Tukiangalia mfano moja tu, Lamu iko na polisi wanawake 10 tu. Je, wanawake wetu watapata haki zao wapi? Kama Mheshimiwa Sankok hajaelewa hilo, nafikiri itabidi asikize kwa makini ndio aelewe.

Sina mengi zaidi lakini napinga Mswada huu. Asante.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kevin Wanyonyi, Member for Kwanza.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Temporary Deputy Speaker, thank you for the opportunity. I think this is a misplaced issue. We are a developing country and I am not very sure that we have fully developed to the extent that we can merge the two commissions. Let us give ourselves time. Let each commission grow. Let us see the gains made and then, at a

certain point, we can merge them. However, at the moment, if we merge the two, some of the gains that have been made will be distorted.

You and I know that we have a gender problem in the country. Where I come from, people still have the notion that women should not be heard, but are only there to be seen. That notion is still within the African communities. I still see it in my area where women and children are there only to be seen and not to be heard. Therefore, the moment you merge the two commissions, we are going to run into more problems.

We are not short of manpower. Somebody is talking about economic situation and the problems we have. That is not an issue today. We have no problem with human resources. To have the two commissions separate is the best thing. Whoever proposed this Bill should wait for 10 years or so, but at the moment, it is a misplaced issue. Therefore, I oppose the Bill. Merging will lead to more confusion. As somebody said, men will fight with women over rights. Where are we heading to? We will be more confused. We should shelve this Bill until further notice. I totally oppose it.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Cheruiyot Jesire, Member for Baringo.

Hon. (Ms.) Gladwell Cheruiyot (Baringo, KANU): Hon. Temporary Deputy Speaker, let me put on my mask first so that people cannot read what I intend to say.

Thank you for the opportunity given to me to contribute to this Bill. From the outset, I oppose it. I know that the originator of the Bill had intentions that are well known to them as a Committee, as to why they want to merge these commissions. However, the reason for which the NGECE was created while the human rights one was there, must have been strong.

Gender issues in this country, including the one we have been dealing with in this House on its membership, have never been resolved. The gender commission is so vital because it handles issues to do with a marginalised group in the society. Even in the very House we are speaking from, we know very well that we still have gender issues. Gender mainstreaming is still a real issue in this country. We had better give time to this Commission to try handling and solving the gender issues before we decide to merge it with the other commissions.

Some people say that we should merge them so we can save some money, which could be a good idea, but some people want to believe that a commission led by women could be favouring one gender, and there is some politics to the argument. The truth of the matter is that none of our homes does not have gender issues. Let us allow this Commission to continue its work. I do not think it requires a lot of finances that can lead this country into bankruptcy. It is the commission we, as women, have been running to, to correct anomalies and practices that disturb gender relations. As we go to elections, there are challenges that affect both genders, but more specifically women. So I oppose the merging.

Let the gender commission continue resolving the issues, though it might not finish the task as soon as we might think. Let us give them some time to work on the issues. Let those who have some fears understand that this Commission has nothing to do with finishing another gender. It is interested in bringing equality and dealing with issues that have let women down for a long time.

(Hon. David ole Sankok spoke off record)

Hon. Temporary Deputy Speaker, Hon. Sankok must be disciplined. I have equal privilege to discuss this matter.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Jesire, do not worry about Hon. Sankok. Just address the Speaker. Hon. Sankok, let the Member for Baringo speak, please. She has every right to this Floor.

Hon. (Ms.) Gladwell Cheruiyot (Baringo, KANU): Thank you, Hon. Temporary Deputy Speaker. Also remind him that he is my junior based on how he came to this House. Let me repeat that I oppose this Bill despite Hon. Sankok's distraction. I am glad that you protected me. Let us allow this Commission to go on with its work. At this moment, we need it more than before. As the female gender, we are glad to have it because we feel its fruits, change and protection. Let people not be cheated that it consumes much of the country's funds. It is helping this country to bring equality so that we cannot leave half or more of the human resource outside if we want to develop this country.

Thank you, Hon. Temporary Deputy Speaker. I beg to stop there, but strongly oppose the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, seeing that there is no further interest in it, I now call upon the Mover to reply.

Hon. Peter Kaluma (Homa Bay, ODM): Thank you, Hon. Temporary Deputy Speaker. On behalf of the Constitutional Implementation Oversight Committee, allow me to take this first chance to thank all Members who have contributed, both in support and in opposition. I have listened keenly, even the times I was away from the House, to the contributions by Members and they have all been gratifying.

We have groups within our society who, for the first time, the Constitution singled out in terms of specialised treatment on human rights matters. These are the children whom Hon. Millie has been very passionate about, and we thank her for it. These are the youth, persons with disabilities, older persons, minorities and marginalised groups, among other sections of the society.

For quite some time, the country has been lamenting about the number of commissions, duplicity and whether the nation is going to afford the expenses. When I was moving, I said that the power to split and establish other commissions was donated to Parliament by Article 59(4). I also alerted this House to the fact that the Kenya National Commission on Human Rights, as currently established, is not in full accord with the Constitution because it establishes the Kenya National Commission on Human Rights, and the Kenya National Human Rights and Equality Commission. We have taken out the name equality and that runs contrary to the commissions established in the Constitution. That is one thing that the Committee sought to remedy.

We have been concerned about the number of commissions. Let us be frank. The cost we are talking about - whether we call it National Gender and Equality Commission, Kenya National Commission on Human Rights and all these other commissions - if it can be avoided, we agree in principle that they be collapsed. There was glamour even at the level of the Executive that State parastatals be collapsed because the wage bill is too big.

We are now talking of the Gender and Equality Commission, which Parliament was right to establish. However, a short while before, the youth were claiming for their commission away from the Kenya National Commission on Human Rights and the Gender and Equality Commission. Even in the BBI, a youth commission was being established. I want to tell the Members that PWDs are claiming for their commission. If you do not consolidate these things into Article 59(1) commission, the single one established, there is no way you are going to stop Hon. Sankok and the special group in Kenya whom he represents in the House from claiming and getting a PWDs commission. Minorities and marginalised groups are claiming their commission. Before

you know it, in addition to the youth commission you were creating, children will also seek their commission.

I need to alert the Members that in the long run, you will be creating commissions for all the special groups in our society. There will be duplicity in the sense that the limit and remit of their mandate will be about the human right issues affecting those sections. Let us establish the Kenya National Commission on Human Rights and Equality Commission, as already established in the Constitution, then, we can have sections or departments directed and targeting these specialised groups, so that you will have a gender department with specialised bodies, PWDs, youth, marginalised groups and older persons and how they can be mainstreamed. You will also have the older persons' human rights issues department. You will then have an umbrella, which is the Kenya National Commission on Human Rights body being mandated to report to Parliament on a lean budget, instead of having all those commissions being clamored for, getting three to seven commissioners with secretariat below them. That is the wisdom of this Bill.

In the debate, there has been a question about what is going to happen to the National Gender and Equality Commission henceforth or if we were to pass the Bill. I request the Members to look at Bills before we debate them. We have an explicit transitory clause within the Bill in terms of how the commissioners, upon the merger, are going to integrate and represent the interests of both commissioners. We know there are contractual obligations of the State and the staff of the commissions are going to be treated. I assure the Members that what they are seeing in the Bill is not the totality of what the Committee will be transacting. During public participation, we got observations which we are putting together in addition to what is being said here. There are amendments which the Committee, if Members cared to look at the Report, are already proposing to improve on this. However, the main thing is that, let us streamline human rights issues under a single commission as Article 59(1) prescribes, then we have specific issues to the various segments of our society addressed.

The matter of gender still remains a sensitive matter. It saddens me when the idea of gender is misinterpreted to mean women. Gender is gender. Gender and Equality Commission serves the women as it serves men, and those gender issues become pertinent. Let gender find its location within the Kenya National Human Rights and Equality Commission, with focus instead of our being duplicitous.

In the current set up, when you are dealing with gender issues as a human right, do you call the Kenya National Commission on Human Rights or the National Gender and Equality Commission? These are the things we are trying to deal with in as much as we are reducing the wage bill on matters that can be done properly with one body mandated by the Constitution and properly integrated.

With those many remarks, I thank Members for their contributions. This is not a personal Bill. We have no personalised issue. We are providing a solution to the country in terms of how to mainstream these commissions and align them to the Constitution. Members, whatever decisions you make, you do so alive to what we set out in the memorandum of objects as our guiding motto and principle in terms of bringing this Bill.

Thank you, and I humbly reply.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. Members, I direct that the next steps on this business will be undertaken when the matter will be set down on the Order Paper for consideration next.

I direct that we move on to the next Order.

(Hon. Sankok stood in his place)

Hon. Sankok, what is out of order?

Hon. David ole Sankok (Nominated, JP): On a point of order. Hon. Temporary Deputy Speaker, I know we have quite some business to transact, but I do not think we are properly constituted. We do not have the requisite quorum, yet these are serious businesses that are coming up.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok, having stood in his place and raised the matter of quorum, it is clear that the House is not appropriately quorated. I order that the quorum bell be rang.

(The Quorum Bell was rung)

Hon. Members, I direct the Quorum Bell to stop ringing now. It has rung for ten minutes. As per our Standing Orders, we are unable to raise the requisite Quorum.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 5.21 p.m., this House stands adjourned until Wednesday, 17th November 2021 at 9.30 a.m.

The House rose at 5.21 p.m.