

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Wednesday, 24th November 2021**

The House met at 9.30 a.m.

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

PRAYERS

QUORUM

Hon. Deputy Speaker: Hon. Members, we do not have the required numbers. So, I order that the Bell be rung for 10 minutes.

(The Quorum Bell was rung)

Hon. Deputy Speaker: Hon. Members, since we are just short of a few more Members, I will ask that the Bell be rung for a further five minutes and then we will progress.

(Quorum Bell was rung)

Order Members! Take your seats. We will begin business.

PETITIONS

Hon. Deputy Speaker: Hon. Sossion. Hon. Members, I will encourage you not to leave the chamber, at least, for the next few minutes because we will need to transact some very serious business.

STATUS OF BOSTO DAM WATER PROJECT IN BOMET AND KERICHO COUNTIES

Hon. Wilson Sossion (Nominated, ODM): Thank you, Hon. Deputy Speaker. I rise to present a public Petition on the Status of Bosto Dam Water Project in Bomet and Kericho counties.

I, the undersigned, on behalf of concerned residents of Bomet and Kericho counties, draw the attention of the House to the following:

THAT, the proposed Bosto Dam Water Supply Project which was to be rolled out by the National Water Harvesting and Storage Authority (NWHSA) and supported by the Government of Kenya under Contract No.NWC/RT/005/2016-2017 and implemented through financing, design and build model to supply 705,857 people of Bomet Town, Sotik Town and rural areas in

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five constituencies namely Konoin, Bomet Central, Sotik, Chepalungu and parts of Bureti sub county in Kericho County, an area covering 1,050km², with clean drinking water, has stalled;

THAT, though the region has in the recent had past improved access to water for the population, most of the water supply systems in the two counties are small, old, and unsustainable;

THAT, the proposed project was designed and strategically positioned to supply water purely by gravity and hence was considered economical in construction, sustainable in operation and maintenance and would provide affordable safe water to communities downstream;

THAT, the dam was to be located along Kipsonoi River at the South Western Mau Forest where technical functionality for the project was considered highly feasible, sited at 19 kilometres from the forest edge and with good reservoir integrity for conserving water, and then gravitating to the treatment works located outside the forest where clean water would then be gravitated to the wider supply area downstream;

THAT, the main objective of the project was to supply portable water and replace pump fed water service schemes that are not sustainable due to high cost of electricity, and that the project would include a mini-hydropower generation plant;

THAT, the project components included a 40m rock-filled dam embankment with an embankment crest length of 300m, a reservoir storage capacity of 18.3mm³, water treatment plant with a capacity of 80,300m³ per day, 1.0mw hydropower substation, raw water main pipeline with a diameter of 900mm extending 19km, 210km transmission and distribution pipeline, 30 storage tanks with 29,050m³ total capacities with an estimated project construction cost of Kshs20 billion;

THAT, feasibility studies were undertaken and completed in March 2016 and NEMA License Environmental and Social Impact Assessment of the project was completed in July and a NEMA licence No.NEMA/EIA/PSL/5292 Issued;

THAT, a commercial contract agreement was signed on 3rd August 2017 and thereafter a supervision consultant agreement signed;

THAT, a buyer loan credit agreement was signed on 4th September 2018 and thereafter a notice to effectuation of loan was effected on 24th September 2019 where 85% EXIM Bank funding was effected;

THAT, 15% counterpart funding from the Government of Kenya is still pending while the insurance premiums were already paid to China Export and Credit Insurance Corporation and a performance and advance payment guarantee submitted by the contractor on 29th July 2019, but who is yet to be paid;

THAT, an operation plan agreement was drafted jointly by NWHSa and Bomet County Government, but the draft plan could not be implemented owing to a change of position by the Kenya Forest Service (KFS) which refused to approve the site after initially, and on record, approving it;

THAT, the Attorney-General issued an undertaking committing the Government of Kenya to the project;

THAT, the project is executed on the platform of financing, designing and constructing model with due procurement processes duly adhered to in line with the Public Procurement and Assets Disposal Act 2015 where the contract was eventually awarded to M/s China Geo-Engineering Corporation International Ltd (CGCINT) with the loan becoming effective from September 2019 with a plan to have it executed and completed in three (3) years;

THAT, the delayed payment of 15% counterpart funding equivalent to Kshs3.06 billion and the refusal by the Kenya Forest Service to approve access to the dam site No.1, which according to feasibility studies shows it is technically viable and has all necessary dam

functionalities, has exposed the Government of Kenya to default and straining relationship with our country's relations with the people's Republic of China;

THAT, efforts to address this matter with relevant authorities have borne no fruit;

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

THEREFORE, your humble petitioners PRAY that the National Assembly, through the Departmental Committee on Finance and National Planning:

- (i) investigates why the proposed Bosto Dam Water Supply Project executed by the National Water Harvesting and Storage Authority under Contract No.NWC/RT/005/2016-2017 and implemented through financing, design and build model to supply 705,857 people of Bomet Town, Sotik Town and rural areas in five constituencies namely Konoin, Bomet Central, Sotik, Chepalungu and parts of Bureti sub county in Kericho County, which area covers 1,050km², with clean drinking water has not been realised;
- (ii) investigates the circumstances under which the Government of Kenya committed to a contract on a platform of financing, designing and constructing model where the procurement process was duly completed and a contract awarded to M/s China Geo-Engineering Corporation International Ltd (CGCINT) with the loan becoming effective from September 2019 and a plan to have it executed and completed in three (3) years, which has since stopped; and,
- (iii) makes any other recommendation that it deems fit in the circumstances of the Petition.

And your petitioners will forever pray.

The petition is signed by me on behalf of the Petitioners.

Hon. Deputy Speaker: Very well. I do not see a lot of Members interested in making any additions to that. So, we will go to the next Order. The Petition will, of course, be committed to the relevant committee and it will be dealt with there.

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: On this particular one, we will start with the Questions segment.

ORDINARY QUESTIONS

Before we do that, I want to state the following: First, that Question No.491/2021 by Hon. Joseph Tonui, Member for Kuresoi South, will be deferred. Secondly, Question No.493/2021 by Hon. Captain Ruweida Obo will also be deferred to another day because she is attending Committee work in Mombasa. We will also not have Question No.495/2021 by Hon. Kabinga Wachira.

Lastly, the Question by the Member for Mwatate, Hon. Andrew Mwadime will also be deferred.

Question No.491/2021

STATUS OF CONSTRUCTION OF LELECHWET-CHERAM
BRIDGE IN KURESOI SOUTH

(Question deferred)

Question No.493/2021

WILDLIFE INVASION AT SHELAH IN LAMU

*(Question deferred)**Question No.495/2021*

IMPLEMENTATION OF THE LAST MILE CONNECTIVITY PROGRAMME IN MWEA

*(Question deferred)**Question No.408/2021*

DEMOLITION OF RESIDENTIAL HOUSES AT MAUNGU IN TAITA TAVETA

*(Question deferred)**Question No.395/2021*

FINANCIAL SUPPORT AND TRAINING FOR ARTISTES

Hon. Charles Njagua (Starehe, JP): Thank you, Hon. Deputy Speaker. I rise to ask Question No.395 of 2021 to the Cabinet Secretary for Sports, Culture and Arts.

- (i) Could the Cabinet Secretary consider establishing programmes under the Sports, Arts, and Social Development Fund to support creative and performing artistes to make regular contributions that would provide social protection for the artistes upon exit from active performances, and also include Government subsidies as part of such programmes?
- (ii) Could the Cabinet Secretary also facilitate training and capacity building programs for persons involved in creative and performing arts, to advise artistes on investments and wealth management?

I thank you.

Hon. Deputy Speaker: Very well. That Question will be replied to before the Departmental Committee on Sports, Culture and Tourism.

Let us have the Member for Tharaka Nithi, Hon. Beatrice Nkatha.

*Question No.462/2021*COMPENSATION TO PERSONS AFFECTED BY
CONSTRUCTION OF KIONYO-CHOGORIA ROAD

Hon. (Ms.) Beatrice Nyaga (Tharaka Nithi CWR, JP): Thank you, Hon. Deputy Speaker. I want to ask Question No.462 of 2021 directed to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development.

- (i) When will the National Land Commission pay the agreed compensation to persons who were relocated or affected in 2013 to pave way for the construction of the Kionyo-Chogoria loop Road in Chogoria Sub-location in Maara Sub County?
- (ii) When will Mr. Ileri M'Raria of Identification Number 2490811 be compensated for Plot No.Kabeche Market 19A, which was affected by the construction of the said project?
- (iii) Considering the inflation rate from the time the project affected persons who were expecting compensation, could the Cabinet Secretary consider enhancing the previous valuations to reflect the current value of the land?

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

Next is the Member for Njoro, Hon. Kathambi.

Question No.492/2021

STATUS OF SECURITY IN NJORO

Hon. (Ms.) Charity Chepkwony (Njoro, JP): Thank you, Hon. Deputy Speaker, for giving me this opportunity to ask Question No.492 of 2021 directed to the Cabinet Secretary for Interior and Coordination of National Government.

- (i) Could the Cabinet Secretary explain the status of investigations into the increased insecurity incidences in Njoro Constituency, if any?
- (ii) Could the Cabinet Secretary state the measures in place to curb insecurity experienced in the area in the months of August, September and October 2021, which led to loss of lives and property, human injuries and inflicted general fear in the society?
- (iii) Could the Cabinet Secretary consider demarcating locations and sub-locations in the insecurity prone areas of Njoro Constituency for efficient and quick coordination of security services?
- (iv) When will the Ministry facilitate security personnel in Mau Narok, Mauche and Nessit police stations in Njoro Constituency with vehicles and other equipment for purposes of rapid and timely responses, when they are called to respond to emergency situations?

Hon. Deputy Speaker, please allow me to comment on why I raised this Question. I have for a long time requested for vehicles for police officers in my constituency, but I have not received even one.

Hon. Deputy Speaker: I would have allowed you to. Members must strictly live to the Questions they have asked. Actually, you will be advised that you go and raise all those issues that you have at the committee sitting. This one will be replied to before the Departmental Committee on Administration and National Security.

Hon. Members, despite the fact that some of the issues like the one raised by Hon. Kathambi are really serious, since it has already been committed to a committee, you can only take all those details to that particular committee.

Let us have the last Question by Hon. (Eng.) Vincent Musyoka, Member for Mwala.

Question No.504/2021

UPGRADING OF KIVANDINI-MBUINI-MISELENI-TALA ROAD IN MWALA

Hon. Vincent Musau (Mwala, MCCP): Thank you, Hon. Deputy Speaker. I would like to ask Question No.504/2021 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works.

- (i) Could the Cabinet Secretary explain why Kivandini-Mbuini-Miseleni-Tala Road in Mwala Constituency is yet to be upgraded to bitumen standards despite the approval for its upgrade having been made in 2016?
- (ii) Could the Cabinet Secretary indicate the measures that the Ministry has put in place to upgrade to bitumen standards the inter-county Wamunyu-Kalawa Road, which is in a deplorable state?

Hon. Deputy Speaker: Very well. That one will be replied to before the Departmental Committee on Transport, Public Works and Housing.

(Hon. (Ms.) Safia Sheikh walked out of the chamber)

Order, Hon. Members! There is a Member going out. Please, come back because we will require your number for purposes of putting a Question. So, please, take your seat just for a few more minutes. I see the Member for Marsabit has just made a comment that she is already walking out. Please, just take your seat.

Next Order!

BILL

Second Reading

THE EMPLOYMENT (AMENDMENT) BILL

(Hon. Gideon Keter on 22.09.2021 – Morning Sitting)

(Debate concluded on 10.11.2021 – Morning Sitting)

(An. Hon. Member walked into the chamber)

I will wait for that Member to walk in and then put the Question. Take your seat.

(Question put and agreed to)

MOTION

CONSIDERATION OF REPORT OF COMMITTEE OF THE WHOLE HOUSE
ON THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Assisted Reproductive Technology Bill (National Assembly Bill No.34 of 2019) and seeks leave to sit again today.

Hon. Deputy Speaker: Just a minute Hon. Members. I want to consult on this particular one. Order, Members! Order!

(The Deputy Speaker consulted with the Clerks-at-the-Table)

(Question put and agreed to)

Next Order!

BILLS

First Readings

THE PENAL CODE (AMENDMENT) (NO.1) BILL

THE COPYRIGHT (AMENDMENT) BILL

THE PENAL CODE (AMENDMENT) (NO.2) BILL

THE NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND (AMENDMENT) BILL

THE WHISTLEBLOWER BILL

*(Orders for First Readings read - Read the
First Time and ordered to be referred to
the relevant Departmental Committees)*

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL

Hon. Chairman: Order, Members! We are now resuming the Committee of the whole House on the Assisted Reproductive Technology Bill (National Assembly Bill No.34 of 2019). Hon. Members, we will resume from the New Clause 28A.

New Clause 28A

Hon. Chairman: First of all, Mover to move the Second Reading of the new clause before we progress.

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

THAT, the Bill be amended by inserting the following new clauses immediately after clause 28 —

Right to assisted reproductive technology.

28A. (1) Every person has the right to access the highest standard and quality of attainable and cost-effective assisted technology reproductive technology services.

(2) Assisted reproductive technology services shall be provided by qualified experts licensed by the Directorate.

(3) An assisted reproductive technology expert shall, before providing Assisted reproductive technology service—

(a) provide information necessary to assist in the making of an informed decision to all parties concerned, and in particular, information concerning-

(i) the various assisted reproductive technology methods available;

(ii) chances of success for various assisted reproductive technology methods;

(iii) advantages, disadvantages and risks of the various assisted reproductive technology methods; and

(iv) the cost of treatment for different assisted reproductive technology methods.

(b) advise the parties on the need for professional counselling and have them undergo the same on the implications of the various methods; and

(c) ensure promotion and preservation of the health, safety and dignity of the parties seeking assisted reproductive technology services.

Hon. Chairman: Why are you moving it in that manner?

Hon. (Dr.) James Nyikal (Seme, ODM): Should I say as per the Order Paper?

Hon. Chairman: That would be better. You should say, as per the Order Paper and then proceed to give us the justification. What is it, Hon. Millie-Odhiambo?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, I request that he moves like we did last time for us to do faster.

Hon. Chairman: What did you say?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I agree with what you are saying. I request that for us to move faster, he should move like we did last week. Could we also get hard copies? Otherwise, he may have to read to bring us to speed. If we have the Order Papers, they will help us.

Hon. Chairman: You are requesting the hard copies for who? Are they for the Mover and yourself or the rest of the Members? You are aware we are trying to reduce on this especially with the new situation.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, it is very difficult to move during the Committee of the whole House without a hard copy.

Hon. Chairman: Well, let us proceed quickly. For the Members with hard copies, that is fine. Those without will have to get justification from the Mover. Proceed Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Chairman, I beg to move that New Clause 28A be now read a Second Time.

The justification for this and others that will follow is that, in life, the sex issue is not always clear. There are some people who are born and their sex is not clearly determined. They can be intersex or some may have both male and female organs. As is defined, these people will be excluded whichever side of sex they choose to be, if they want to have assisted reproductive technology.

Hon. Chairman: Hon. (Dr.) Nyikal, if we move that way, we will take a lot of time. I want brief explanations.

Hon. (Dr.) James Nyikal (Seme, ODM): I will be very brief and move faster.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Chairman: Hon. Millie Odhiambo and Hon. Dawood, be brief so that we can make progress.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Chairman. This is a progressive amendment because it provides the highest attainable standard of assisted reproductive healthcare. It also seeks to ensure that it is easily accessible in the rural areas. For the sake of many people who sometimes do not understand what intersex is, this is a person born with two organs, both male and female. It is not what Kenyans are sometimes eternally scared of. We must take care of their needs in assisted reproductive healthcare.

Hon. Chairman, I support.

Hon. Chairman: Hon. Dawood.

Hon. Rahim Dawood (North Imenti, JP): Thank you, Hon. Chairman. I support as well with some caution. We should be very careful when doing this reproductive technology where one is unable to choose the sex of the child or by doing genetic modelling. That will make us to create monsters.

Hon. Chairman, I support.

(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 28B

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

THAT, the Bill be amended by inserting the following new clause immediately after New Clause 28A(c):

Right to assisted
reproductive technology

by inter-sex persons 28B. The national and county governments shall put in place

measures to ensure that all intersex persons have access to assisted reproductive technology services.

As we had indicated earlier, the whole of this section was not in the Bill. The intersex persons were excluded. This part seeks to include them so that county governments can give them the same services that are given to other people.

Thank you, Hon. Chairman.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 28C

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

THAT, the Bill be amended by inserting the following new clause immediately after new Clause 28B:

Consent to assisted
reproductive technology

service 28C. (1) An assisted reproductive technology expert shall obtain

prior informed and written consent from the parties before providing any assisted reproductive technology service under the Act or any other written law.

(2) The consent referred to in subsection (1) shall make express provisions on what should be done with the gametes in case of—

(a) the death of any of the parties seeking assisted reproductive

technology services; and,

(b) incapacity of any of the parties seeking assisted reproductive technology services.

(3) The assisted reproductive technology clinics and assisted reproductive technology banks shall not cryo preserve any human embryos and or gamete without specific instructions and consent in writing from all the parties seeking assisted reproductive technology in respect of what should be done with the gametes or embryos in case of death or incapacity of any of the parties.

(4) The consent of any of the parties obtained under this section may be withdrawn at any time prior to the process of implanting the embryos or the gametes in the woman's uterus.

Again, it is for the same reason. Having brought that group in, the issue of consent must be the same as for all other persons. That is the import of the new Clause.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 28D

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Chairman, I beg to move: THAT, the Bill be amended by inserting the following new clause immediately after new Clause 28C:

Duties of assisted reproductive technology

expert

28D. 1) Assisted reproductive technology expert shall ensure—

(a) confidentiality is maintained throughout the entire process of provision of assisted reproductive technology services;

(b) the donor has been screened for all diseases and conditions that may endanger the health of the parents, the surrogate or the child; and,

(c) all parties are aware and understand the rights of the child born through the assisted reproductive technology process.

(2) An assisted reproductive technology expert shall, before receiving gamete or embryo donation, collect the following information from the donor—

- (a) a passport size photo;
- (b) physical characteristics;
- (c) ethnic origin;
- (d) family history;
- (e) medical history;
- (f) interests and hobbies; and,
- (g) professional qualifications and skills.

(3) The information obtained under subsection (2) shall be held by the licensed facility, and shall not be disclosed in any way that may identify the receiver and donor.

Again, once we have introduced the intersex persons, they must also be provided for confidentiality and rules of secrecy that all other persons require when they get health services.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 32A

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 32 —

Termination of
surrogacy
agreement.

32A. (1) A surrogacy agreement may be terminated where—

- (a) automatically, following the termination of pregnancy in accordance with this Act or any other written law;

(b) before the implantation of a fertilised embryo in the surrogate mother's womb;
or,

(c) where a dispute arises between commissioning parents, before the fertilised embryo is implanted in the surrogate mother.

(2) Parties shall not terminate the agreement after the transfer of the embryo or embryos into the womb of the surrogate mother.

This one also deals with surrogacy where a woman can undertake to carry a baby for another woman who is unable to do so. Therefore, there is need for regulation so that the lady who agrees to surrogate knows the law and the fact that there are no changes after the baby is born. That is the import of the new clause.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Chairman: Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Chairman. I wish to support this new clause. This is a matter that has gone to the High Court and it was litigated upon. The Court requested that Parliament passes a law to help in cases where there are disputes in surrogacy. So, the Committee has brought very clear amendments guiding how surrogacy is done and requiring agreements. It is very clear about what happens to the child so that the child is not left in limbo.

Thank you. I support.

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

(The new clause was read a Second Time)

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

New Clause 32B

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

THAT, the Bill be amended by inserting the following new clause immediately after new Clause 32A (2):

Obligations
under surrogacy
agreement.

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- 32B. (1) The commissioning parent or parents, under the surrogacy agreement shall be the legal parent or parents of the child and not discriminate against the child.
- (2) In the event of multiple pregnancies arising out of a surrogacy agreement, all the children born out of the pregnancy shall be the children of the commissioning parent or commissioning parents and the rights and obligations for all parties shall vest as if the pregnancy had borne only one child.
- (3) Where a child is born out of a surrogacy arrangement—
- (a) the commissioning parent or commissioning parents shall be listed as the parents both in the birth notification and in the birth certificate; and,
- (b) the child shall acquire the citizenship of the commissioning parent or commissioning parents under Article 14(1) of the Constitution of Kenya.
- (4) Notwithstanding the provisions of section 32(5), the surrogate mother may claim from the commissioning parent or commissioning parents—
- (a) compensation directly relating to the process of in-vitro fertilisation, pregnancy, ante-natal, birth, post-natal care and post-delivery complications;
- (b) loss of earnings by the surrogate mother as a result of the surrogacy; and,
- (c) insurance to cover the surrogate mother for any acts that may lead to death or disability of the surrogate mother as a result of the surrogacy.
- (5) The surrogate mother shall—
- (a) not terminate the pregnancy except under the provisions of the law;
- (b) hand over the child to the commissioning parent or commissioning parents immediately upon the birth of child;
- (c) have no rights or obligation regarding the child;
- (d) not contact the child, whether directly or by use of proxy, unless provided for in the agreement.
- (6) A child born as a result of a surrogacy agreement shall not be considered a dependant of the surrogate under the Law of Succession Act.
- (7) A person shall not accept consideration for arranging for the services of a surrogate mother, make such an arrangement for consideration or advertise the arranging of such service.

Again, the issue here is about surrogacy. There are parents who commission surrogacy and after the baby is born... In cases where there is a multiple pregnancy, the law will apply to all the babies that come under the agreement. That is what this new clause provides for. It is to protect parents in commissioning situations and to protect the babies that are born out of the commissioning.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 32C

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

THAT, the Bill be amended by inserting the following new clause immediately after new Clause 32B (7):

Prohibition of
sex selection.

32C. A person shall not do any act, at any stage of an assisted reproductive process, to determine the sex of the child to be born through the process of assisted reproductive technology.

This is also about surrogacy. In commissioning surrogacy, the sex of the baby is important. People may be tempted to say that, that is not the sex of the baby they wanted and, therefore, seek to terminate it. This amendment seeks to protect the babies so that once you have entered into an agreement; you get what you asked for.

Thank you, Hon. Chairman.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 32D

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

THAT, the Bill be amended by inserting the following new clause immediately after new Clause 32C:

Restriction on
sale of human
gametes, zygotes
and embryos
prohibition of
commercial
artificial
reproductive
technology.

32D. (1) A person shall not knowingly provide, prescribe or administer anything that shall ensure or increase the probability that an embryo shall be of a particular sex, or that shall identify the sex of an invitro embryo, except to diagnose, prevent or treat a sex-linked disorder or disease.

(2) A person shall not sell, transfer or use of gametes, zygotes and embryos, or any part thereof or information related thereto, directly or indirectly, to any party within and outside Kenya.

This is an issue about commissioning of surrogacy. Issues may arise where people want to manipulate the gametes at the early stages to determine the sex of a child. That should not be allowed. Also, where you have zygotes or early embryos that are not used, they may want to sell them. That is prohibited so that the commissioning is confined to just the particular embryo that is involved.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Chairman: Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, I wish to support that because it prohibits sex-selection. It also prohibits what Hon. Dawood was worried about that people can try to create a pure human race. That is outlawed.

Hon. Chaiman: Hon. Dawood.

Hon. Rahim Dawood (North Imenti, JP) Thank you, Hon. Chairman. I agree with Hon. Millie. I support this one. It is what I was talking about. We do not want designer babies in this country.

Thank you, Hon. Chairman.

(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)

Schedule

Hon. Chairman: There is a proposed amendment by way of deletion. Who is the Mover? There are two proposals for deletion. One is by the Committee, hopefully, by Hon. (Dr.) Nyikal. The other one is by Hon. Shamalla. If the one by the Committee is carried, it obviously means that there is nothing for Hon. Shamalla to do because it would have been deleted anyway. Are you ready with that amendment, Hon. (Dr.) Nyikal?

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

THAT, the Bill be amended by deleting the Schedule.

The purpose of that deletion is that since the Authority no longer exists, we do not need the Schedule. That is the meaning, Hon. Chairman.

(Question of the amendment proposed)

Hon. Chairman: The first person I will give an opportunity to is obviously Hon. Shamalla because, if this amendment is carried, you will probably not say anything to it. It is better that you go on record for something.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): That is true, Hon. Chairman. If, indeed, the Authority has been deleted and the Schedule refers to “the Authority”, it cannot continue to be in the Bill as it is.

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

(Schedule deleted)

Clause 2

Hon. Chairman: Hon. Members, to make tidy progress, there are various parts with different amendments. Some parts are on amendments to various definitions and other parts are on new definitions. There are proposals by the Chairperson of the Committee and Hon. Shamalla.

We will start with part (a). We will deal with each individual amendment. Let us start with part (a) on the definition of the word “Authority”. There is a proposed amendment by the Committee.

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

THAT, Clause 2 of the Bill be amended—

(a) by deleting the definition of “Authority”;

(b) by deleting the definition of “assisted reproductive technology” and substituting therefor the following new definition—

“assisted reproductive technology” means fertilisation in a laboratory dish of processed sperm with processed eggs which have been obtained from an

- ovary, whether or not the process of fertilisation is completed in the laboratory dish;”
- (c) by deleting the definition of “couple” and substituting therefor the following new definition—
- “couple” means a male and female who are in an association notwithstanding whether such association may be recognized as a marriage under any law in Kenya;”
- (d) by deleting the definition of “Director”;
- (e) by deleting the definition of “father” and substituting therefor the following new definition—
- “father” means a man who in the case of a child who is being carried by a woman as a result of placing in the woman an embryo or sperm and eggs or the artificial insemination of the woman—
- (a) the man donated his sperms for the process of assisted reproduction, and at the time of placing in the woman the embryo or the sperm and eggs or artificial insemination of the woman-
- (i) the woman was party to a marriage with the man; or,
- (ii) the woman was not party to a marriage with the man but has subsequently contracted a marriage with the man; or,
- (iii) the man and the woman have never contracted a marriage, but the man has in agreement with the woman, written a parental agreement acquiring parental rights of a father, or,
- (b) the man did not donate his sperms for the process of assisted reproduction, and at the time of placing in the woman the embryo or the sperm and eggs or artificial insemination of the woman-
- (i) the man was party to a marriage with the woman; or,
- (ii) the man has, in agreement with the woman, written a parental agreement acquiring parental rights of a father;”
- (f) by deleting the definition of “gamete” and substituting therefor the following new definition—
- “gametes” means a mature sperm or egg capable of fusing with a gamete of the opposite sex to produce the fertilised egg;
- (g) by deleting the definition of “primitive” and substituting therefor the following new definition—
- “primitive streak” means an embryo that develops in the early stages of human reproduction, that is to be taken to have appeared in any embryo not later than the end of the period of fourteen days beginning with the day when the gametes are mixed, not counting any time during which the embryo is stored and the presence of which signifies the creation of a unique human being;
- (h) in the definition of “procreation” by deleting the words “a facilitated process” and substituting therefor the words “an assisted reproduction technology process”;
- (i) in the definition of “surrogate mother” by inserting the word “for” immediately after the word “term”;

(j) in the definition of “treatment service” by deleting the words “women to carry children” and substituting therefor the words “a pregnant woman”; and,

(k) by inserting the following new definitions in the proper alphabetical sequence—
“assisted reproductive technology expert” means an obstetrician or gynaecologist that has sub-specialised in reproductive endocrinology and fertility medicine;

“assisted reproductive technology services” includes the diagnostic and screening, endoscopic surgery, intra-uterine insemination, in-vitro fertilisation, intracytoplasmic sperm injection, cryo-preservation, pre-implantation genetic screening, pre-implantation genetic diagnosis, onco-fertility, gamete and embryo donation, or surrogacy provided to infertile and sub-fertile man or woman;

“commissioning parents” means a man and woman, whether a couple or parties to a marriage, who enter into a surrogacy arrangement seeking assistance in procreation through the help of a surrogate mother or donor;

“cryo-preservation” means the assisted reproductive technology process of cooling and storing gametes, or embryos at very low temperatures to preserve their viability includes also embryo, egg or sperm freezing;

“diagnosis” means the process of testing and screening to ascertain the proper functioning of the reproductive systems and its processes at the beginning of the assisted reproductive technology process;

“Directorate” means the Assisted Reproductive Technology Directorate established under section 4;

“donation” for purposes of this Act, means a process in Assisted Reproductive Technology, of voluntarily giving gametes or embryos for purposes of procreation;

“embryologist” means a specialist who deals with gametes and assists in the process of fertilisation in the laboratory;

“embryology” means a branch of biology that deals with gametes and development of embryos;

“endoscopic surgery” means a surgery in assisted reproductive technology involving techniques that limit the size of incisions performed with one or more small incisions instead of large incisions, and passing a telescope with a video camera through the incision into the body cavity;

“infertile or sub-fertile client” means a man and woman whether a couple or parties to a marriage who are not able to procreate naturally;

“infertility” means the inability to conceive after one year of unprotected coitus or other proven medical condition preventing a couple from conception;

“intracytoplasmic sperm injection” means an assisted reproductive technology process of whereby a single healthy sperm is injected directly into the cytoplasm of a female egg outside the body;

“in-vitro fertilisation” means an assisted reproductive technology process where an egg is fertilised by a sperm in a test-tube or elsewhere outside the body;

“oocyte” means naturally ovulating oocyte in the female genetic tract;

“pre-implantation genetic diagnosis” means a process in assisted reproductive technology which involves assessment of the embryo for pre-existing hereditary diseases and eliminating the same before the transfer of the embryo to a woman’s womb;

“pre-implantation screening” means a process in assisted reproductive technology to determine the number of chromosomes in a developing embryo in specific cases;

“surrogacy” means a term in assisted reproductive technology, of a woman carrying and giving birth to a baby for a commissioning parent or couple.

In part (a), we are deleting the definition of the word “Authority” simply because it does not exist anymore. We have deleted it.

Part (b) cleans up the definition of the term “assisted reproductive technology” to mean fertilisation in a laboratory dish of processed sperm with processed eggs which have been obtained from an ovary, whether or not the process of fertilisation is completed in the laboratory dish. This means that it can be started in a dish in the laboratory, but there is transfer into the womb. That definition covers all that.

In part (c), we are deleting the definition of the word “couple” ...

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

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

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Chairman. If the Committee moves in that direction, will it not be confusing? I know that there are different amendments. Hon. Shamalla has proposed an amendment to the word “couple”, and so has the Committee. So, if he moves the amendments to all the parts together, it might be confusing. Perhaps, as you had stated, Hon. Chairman, it might be better if we dispose of the amendments part by part.

Hon. Chairman: What is your suggestion?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Chairman, my suggestion is that we move in the way you had stated. We start with (a) and dispose of it and then we move to the next part and dispose of it.

Hon. Chairman: That is actually how we are progressing unless...

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): No. He has moved to parts (b) and (c).

Hon. Chairman: I do not know why the *daktari* is in a hurry. We need to do this operation meticulously. We can deal with the amendments part by part. That will be better and tidier.

Hon. (Dr.) James Nyikal (Seme, ODM): Precisely anatomically. That is what you mean.

Hon. Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended—

(a) by deleting the definition of “Authority”.

This is because the Authority has actually been removed from the Bill.

(Question of the amendment proposed)

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

Hon. Chairman: We now go to the next one on “assisted reproductive technology” in (b).

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

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): *(Spoke off-record)*

Hon. Chairman: What is it, Hon. Jennifer Shamalla?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Chairman, I am just seeking a clarification from you. I also had a proposed amendment to the definition of the word “couple”. Does that mean that my proposed amendment has fallen?

Hon. Chairman: Does it have the same effect?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Yes, it has the same effect.

Hon. Chairman: You will have your say on the amendment to the definition of the word “couple”. We have not reached there. We are now on the definition of the term “assisted reproductive technology”. The next one will be the definition of the word “couple”.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Chairman.

Hon. Chairman: We are okay.

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

THAT, Clause 2 of the Bill be amended—

(b) by deleting the definition of “assisted reproductive technology” and substituting therefor the following new definition—

“assisted reproductive technology” means fertilisation in a laboratory dish of processed sperm with processed eggs which have been obtained from an ovary, whether or not the process of fertilisation is completed in the laboratory dish.”

The import is that this process may start outside the womb and then be transferred into the womb for the final product. However, even the process outside the womb must be controlled in the same way as if it has been implanted into the womb. Any efforts starting earlier must also be similarly regulated. That is the import of that definition.

(Question of the amendment proposed)

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

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

Hon. Chairman: Let us go to the next one on the definition of the word “couple”. Unfortunately for you, Hon. Shamalla, again, the Chairperson of the Committee has an amendment which, if approved, takes care of your interests. So, let us start with the Chair of the Committee, but I will allow you to say something to it. Hon. Nyikal.

Clause 2(c)

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Chair, I beg to move:

THAT, Clause 2 of the Bill be amended—

(c) by deleting the definition of “couple” and substituting therefor the following new definition— “couple” means a male and female who are in an association

notwithstanding whether such association may be recognized as a marriage under any law in Kenya.

This is extremely important. What it says is that a “couple” means a male and a female who are in an association, notwithstanding whether such association may be recognized as a marriage under any law in Kenya. What that means is that a male and a female can desire to be assisted in reproductive matters, whether they are married or not married as by Kenyan laws. That is what it is.

(Question of the amendment proposed)

Hon. Chairman: Hon. Shamalla, do you have something on it?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Yes, Chair. I wish to first state how I so wish that the Departmental Committee on Health had invited Hon. Zuleikha Hassan and myself to their Committee. It is because our amendments had been filed up to three or four months ago. It would have saved the Committee and the House a lot of time if we would have synchronized these amendments. They were tabled several months ago.

With those few remarks, I support.

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

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

Hon. Chairman: Let us go to definition of “director”.

Clause 2(d)

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

That, Clause 2(d) of the Bill be amended—

(a) by deleting the definition of “Director”.

It is because, as we had earlier said, the structure has changed. The position does not exist. So, we do not need to define it.

(Question of the amendment proposed)

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

Let us go to the definition of “donor”. We have proposed amendments from Zuleikha. Let us have Hon. Shamalla for Hon. Zuleikha.

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

[The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu) took the Chair]

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairlady, is the proposed amendment there so that I can move it? It is on Page 1521. I do not see it. Is it Page 2423?

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

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Shamalla is on the Floor and we have a point of order by Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, as a matter of order, if you notice, Hon. Zuleikha's amendment is seeking to amend the definition of "donor" and also the definition of "father" in the same clause. The Committee also has a proposed amendment on "father". The amendment by the Committee takes precedence. In the circumstances, let us deal with Hon. Zuleikha's amendment of "donor" separately. Then, when it comes to "father" we will deal with the one of Hon. Nyikal separately because the one of the Committee takes precedence in terms of procedure.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Millie Odhiambo, what you are suggesting is exactly what we are doing. So, I think your comment is a concern of the House and it is very well. Yes, Hon. Shamalla.

Clause 2(a)

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

That, Clause 2 of the Bill be amended—

(a) in the definition of the word "donor" by deleting the words 'and the person need not be the spouse of the person she or he is donating the gametes to'.

Okay. We are just moving Clause 2(a).

Hon. Temporary Deputy Chairlady, I am seeking clarification from you. I do not think I have seen on the Order Paper a notice from the Committee to move. Or, is it the one we have just addressed?

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Shamalla, allow me to propose the question first.

(Question of the amendment proposed)

I open the Floor. Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady.

I wish to oppose that amendment. The reason I am opposing that amendment is that assisted reproduction is supposed to assist where; either the man or the woman is not biologically able to produce. In our cultural practices—even amongst the Luos, Kisiis and others—where a man was not able to sire a child, the brothers would help. So, we are doing it through technology without your brother sleeping with your wife but donating the sperm. But it is not right when you say the person must be the husband. He may have a problem and cannot produce sperms. How does he then donate sperms which he does not have? It beats the very purpose of assisted reproduction.

So, on this definition, I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me have Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): I also oppose this. Basically, what we are saying is that when there is infertility in a couple, the infertility can arise from the inability of the female either to ovulate or conceive. We are assisting them. Infertility can also arise from the male when probably their sperms are not healthy enough or they are not produced at all. If we insist on this, then the couples who will require that assistance, particularly for the man, will not be helped. It actually will be discriminatory because you have on the one hand accepted surrogacy which helps the woman when she cannot, but now we are denying that help when it comes to the man who cannot produce.

I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): So, Hon. Members, allow me put the question to Clause 2(a).

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

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Before I put the global question, because we have other clauses, let us move to the definition of “eggs” and “embryo”. Next definition.

Clause 2(c)

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

That, Clause 2 of the Bill be amended by—

(c) deleting the definition of “eggs” and substituting therefor the following new definition—

“egg” means a live human ovum;”

(d) deleting the definition of “embryo” and substituting therefor the following new definition—

“embryo” means a live pre-born person or child from fertilisation or conception until transfer into the adoptive or surrogate mother;”

Hon. Millie Odhiambo’s definition in the main Bill defines an egg as a live human egg, but does not include the process of fertilisation. In the statement of the problem, there is nothing like an egg in the process of fertilisation; it is a new human being. As we know, in Article 26(2) of our Constitution that we uphold, life begins at conception and a fertilisation of a sperm and an egg has united. The unification is what we know as conception, whether it is In-vitro Fertilisation (IVF) or normal conception. In my proposed amendment, an egg means a live human ovum.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Chairlady. In fact, there is no difference. The ovum is unfertilised. So, normally, it will be called an egg or an ovum. They are the same. What the hon. Member is referring to comes next to embryo. When you

go to the embryo, there is a difference. But an egg and ovum to me are the same. So, whichever way that amendment goes, it will be okay for me.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Nyikal, are you supporting or you are not supporting the proposed amendment by Hon. Jennifer Shamalla?

Hon. (Dr.) James Nyikal (Seme, ODM): The ovum sounds more technical. I prefer it that way. It will be clearer.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): So, are you supporting?

Hon. (Dr.) James Nyikal (Seme, ODM): Yes, I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Let us have Hon. Osoro, Member for South Mugirango. Is he in the House?

(An Hon. Member spoke off-record)

Let us have the Member for North Imenti, Hon. Dawood.

Hon. Rahim Dawood (North Imenti, JP): Thank you, Hon. Temporary Deputy Chairlady. We need more clarification on this from the Vice-Chair of the Departmental Committee on Health. He says it is the same, but the definition of eggs in the Bill means live human eggs and it does not include eggs in the process of fertilisation. So, can he tell us more on that? When it is a live human, as hon. Shamalla has proposed, does that not include eggs in fertilisation?

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Before I get back to the Vice-Chair, let me hear from Hon. Odhiambo Akoth, Member for Suba North.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I am not overly opposed to the amendment by Hon. Shamalla. I am just wondering. I did not get the justification of the proposed amendment on the embryo and she has not referred us to the Order Paper. So, I am not sure what we are amending in relation to the embryo. If she can kindly, through your guidance, indicate to us what the amendment on the embryo is.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The Member for Lugari, Hon. Angatia Savula.

Hon. Ayub Angatia (Lugari, ANC): Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendment by Hon. Shamalla. Actually, you fertilise a live egg in the ovaries. That is what she means. We do not need further clarification.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Savula, Hon. Millie has a right to get the justification. For that matter, let me give the Floor to the proposer of the amendment. Hon. Shamalla, please can you clarify to Members the import of the proposed amendments on the definition of eggs and embryo.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): We are on the proposed amendment on eggs. Then there will be a proposed amendment on embryo that I will move. First, we can deal with the eggs.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Millie, please go on record that you are satisfied on the same.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, if we are dealing with the one on eggs; that is okay. I would request Hon. Shamalla to refer us to the page. We will move faster.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Shamalla, what is the page?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): It is page 1501 of the Order Paper and page 1502.

(An Hon. Member spoke off-record)

Sorry?

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Which page? It is important we have it on record. Is it 1522? In my record it is 1522 but you must also go on record.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): It is 1522.

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

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

Clause 2(e)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have the proposed amendment by Hon. Zuleikha Hassan. Before her, I will give the Floor to the Chairperson and if his amendments will be carried, then the proposed amendment by Hon. Zuleikha will automatically be dropped.

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

THAT, clause 2 of the Bill be amended—

(e) by deleting the definition of “father” and substituting therefor the following new definition—

“father” means a man who in the case of a child who is being carried by a woman as a result of placing in the woman an embryo or sperm and eggs or the artificial insemination of the woman—

(a) the man donated his sperms for the process of assisted reproduction and, at the time of placing in the woman the embryo or the sperm and eggs or artificial insemination of the woman-

(i) the woman was party to a marriage with the man; or,

(ii) the woman was not party to a marriage with the man but has subsequently contracted a marriage with the man; or,

(iii) the man and the woman have never contracted a marriage, but the man has in agreement with the woman, written a parental agreement acquiring parental rights of a father, or,

(b) the man did not donate his sperms for the process of assisted reproduction and, at the time of placing in the woman the embryo or the sperm and eggs or artificial insemination of the woman-

(i) the man was party to a marriage with the woman; or,

(ii) the man has in agreement with the woman, written a parental agreement acquiring parental rights of a father;”

What this means, as we earlier said, is that there can be a donor, but the donor may not be a father. However, we are now making it clear that the one will be a father when at the time he donated the sperm, he was not married to the spouse but later on the spouse decided to be married to him. That will give him the definition of a father. Basically, that is what it means. You can donate a sperm at a time you are not married. At that time, you are not a father. However, if later on you get married, you will be the father. That is the import.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The Member for North Imenti, do you have an interest on this proposed amendment?

Hon. Rahim Dawood (North Imenti, JP): Thank you, Hon. Temporary Deputy Chairlady. I want a further clarification. We have just passed that the donor does not necessarily have to be the spouse. So, if the donor is somebody else besides the spouse, does that donor become the father when there is already a father who is legally married to the spouse? That needs clarification.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. I am aware that that proposal was negated. However, let us hear the voice of the Chairman on this. Clarify in one sentence.

Hon. (Dr.) James Nyikal (Seme, ODM): That is exactly what is being contemplated. If at the time of receiving the sperm they were not married and afterwards they choose to get married, then that person acquires the title of father. What we had passed earlier was the case of a man being assisted by a donor, and he would not claim fatherhood because he was merely assisting. In a case where a single lady decides to get a donor and afterwards they decide to live together, then the donor acquires, rightfully, the title of a father.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Let me hear Hon. Sankok David, with that explanation from the Chair in mind.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairlady, I really respect Dr. Nyikal, but I do not see the reason why we need to define this. Must we continuously murder the Queen's English? There is the biological father, father and heavenly Father. Why do we have to say that it is the father who donated a sperm and got married to the lady instead of leaving it the way it is? If one is a sperm donor, he remains to be the biological father, whether he will be married to the lady or not.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Let me hear from the Member for Nyando. You have misplaced your card. Give him the mic.

Hon. Jared Okelo (Nyando, ODM): I thank you, Hon. Temporary Deputy Chairlady. Of course there is the biological father, who in this case is the donor but there is also the legal father. The import of this amendment is to put more strength on the legal standing of the father, even in the African context. And that is why when making laws we must recognise our traditions, cultures and the way we live.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Point taken.

Hon. Millie, have the last word then I put the question.

Hon. (Ms.) Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I want to agree with Hon. Jared that this amendment recognises the legal father, which is both biblical and cultural. Biblically, even if you took over your brother's lineage, the children are still yours and not your brother's. There is a legal connotation to it. But there are people who donate their sperms without knowing who they donate to; they cannot be the legal

fathers. So, we are clarifying who a legal father is. There must be some sort of arrangement. Either he was married to the woman and they agreed to assisted reproduction; or he was a sperm donor but who marries the woman after donating. There must be very clear conditions under which one acquires legal fatherhood. There is a difference between biological and legal fatherhood in assisted reproduction, and I support the amendment.

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

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

Clause 2

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): There is an amendment by the Chairperson. Please move your amendment.

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

THAT, clause 2 of the Bill be amended by deleting the definition of “gamete” and substituting therefor the following new definition—

“gametes” means a mature sperm or egg capable of fusing with a gamete of the opposite sex to produce the fertilised egg.

This basically clarifies that we are talking of a mature sperm or egg capable of fusing with a gamete of the opposite sex to produce a fertilised egg. It is critical. You cannot do anything else. This amendment makes the Bill clearer and succinct.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Did you say a mature sperm?

Hon. (Dr.) James Nyikal (Seme, ODM): Yes, there are immature ones. Sperms develop in the testes and if they come out early, then you cannot really use them. So, the sperm must be a mature one.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Hon. Shamalla Jennifer.

Hon. (Ms.) Jennifer Shamalla (Nominated, JP): Again I seek a clarification, Hon. Temporary Deputy Chairlady. We are now on the amendment to ‘gametes’. Does that mean we have left the definition of ‘embryo’ out? I had a proposed amendment to it.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): It was passed.

Hon. (Ms.) Jennifer Shamalla (Nominated, JP): Okay, sorry. It went along with definition on ‘eggs’?

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Yes. It was passed but thank you for your concern.

Hon. Millie Odhiambo.

Hon. (Ms.) Millie Odhiambo-Mabona (Suba North, ODM): I want to seek guidance from the Chairperson. I can see that there is a proposed amendment by Hon. Shamalla. I was very good in social sciences and not the biological sciences. Maybe they can clarify to us the import of the

amendments. Hon. Shamalla seeks to introduce ‘eggs’ to the definition of ‘gametes’. If it be the case that biologically it is correct, then the Chairperson can consider adopting that definition and dropping his. They can look at it and see if it will strengthen the Bill. The proposal by the Departmental Committee on Health only refers to sperms, but the one by Hon. Shamalla refers to eggs. I guess there must be gender equality even in eggs and sperms.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Hon. Millie, thank you for being very observant. In fact, it is true that the two amendments are not the same. Hon. Shamalla, you can convince the Chairperson to either drop the Committee’s proposed amendment or adopt your proposed amendment. As a matter of procedure, if the Chairperson’s amendment is carried, then your amendment will be dropped.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Shamalla’s amendment is on which page?

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): It is on page 1522 and put into account the observation by Hon. Millie Odhiambo. You propose deletion of the definition of ‘gametes’ and substituting thereof with the definition that ‘gametes’ means a mature sperm or egg capable of fusing with a gamete of the opposite sex to produce the fertilised egg; while Hon. Shamalla proposes deletion of the definition and substituting therefor with the definition that ‘gametes’ means a mature sperm from a man or a mature egg from a woman capable of fusing with a gamete of the opposite sex to produce an embryo. They are more or less the same.

Hon. (Dr.) James Nyikal (Seme, ODM): The difference is actually simple. In the Committee’s amendment, we assume that a sperm is from a man and an egg is from a woman. Hon. Shamalla insists that that must be stated. And she is using the word ‘embryo’ to mean ‘fertilised egg’, which is more or less the same thing. I prefer Hon. Shamalla’s definition. It is clearer. In law, you do not want to leave room so that somebody may come with a sperm whose species of origin we do not know. You will guide me on how to make that change.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): So, Chairperson, are you withdrawing your proposed amendment?

Hon. (Dr.) James Nyikal (Seme, ODM): Yes, I withdraw it in favour of Hon. Shamalla’s.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, it is on record that Hon. Nyikal, on behalf of the Departmental Committee on Health, has dropped his definition on the gametes.

(Proposed amendment by Hon. (Dr.) James Nyikal dropped)

We now go to Hon. Shamalla to kindly propose her amendments. Proceed, Hon. Shamalla, now that the Chairperson has dropped his amendment.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, deleting the definition of “gametes” and substituting therefor the following new definition—

“gamete” means a mature sperm from a man or a mature egg from a woman capable of fusing with a gamete of the opposite sex to produce an embryo;”.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): What is your import on that?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): It is because it is very clear that we are taking an egg from a biological female and mature sperms from a biological male, and these clearly identify sexes of a male and a female.

In a fertilized egg or gamete in the process of fertilization, the egg is fertilized into a unique new human being form, and is neither a sperm nor an egg but actually human life.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well.

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

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

(Clause 2(e) as amended agreed to)

Clause 2(f)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 2(f) be amended by:

Deleting the definition of “parties to a marriage” and substituting therefor the following new definition—

“parties to a marriage” means a man and a woman married to each other;”.

I state this and I know that it has been stated in marriages that are recognized under the laws of Kenya. But international marriages outside the jurisdiction of Kenya are also recognized in the laws of Kenya. However, we have some jurisdictions that have marriages between same sex, which we do not recognize in this country. So, to bring clarity, the proposed amendment means to further clarify and refine that marriage within Kenya means a marriage between biological man and woman.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Nominee 001, Hon. David ole Sankok.

Hon. David ole Sankok (Nominated, JP): Of the many amendments that have been carried, this one is the best. This is so that we be specific that in Kenya, we do not recognize marriages between people of the same gender. I think we should be very clear on this one, and let us all support it.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): You support. Let me hear me hear from Hon. Rahim Dawood, Member for North Imenti.

Hon. Rahim Dawood (North Imenti, JP): Hon. Chairlady, I agree with Hon. Shamalla because it says “husband and wife”. This is because there are people of the same sex who are called husband and wife. However, this is specific and good.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Point taken. Let me hear from the Member for Kitui South, Hon. Nyamai, before I put the question.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Temporary Deputy Chairlady. I would also like to support this amendment by Hon. Shamalla. It clarifies that that is

the situation; and that is what exist in other laws; that, a marriage in Kenya is between a man and a woman.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Point taken.

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

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

(Clause 2(f) as amended agreed to)

Next definition.

Clause 2(g)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have a proposed amendment by Hon. Nyikal on behalf of the Departmental Committee on Health.

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

THAT, by deleting the definition of “primitive” and substituting therefor the following new definition—

“Primitive streak” means an embryo that develops in the early stages of human reproduction, that is to be taken to have appeared in any embryo not later than the end of the period of fourteen days beginning with the day when the gametes are mixed, not counting any time during which the embryo is stored and the presence of which signifies the creation of a unique human being;

This is the actual earliest part of a growth of an embryo, and it has to be clearly defined because in assisted technology, there may be danger of people trying to manipulate this at certain stages so that if this is clearly defined, then that is protective.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Sankok. Just a comment on this.

Hon. David ole Sankok (Nominated, JP): Yes, this one is purely a medical term; and I think it is very important so that we can protect the human race, because laboratories and science can sometimes bring things that may not be desirable to us. You know what laboratories can do. It can develop a super human who will erase the human race. So, I think it is good that we clearly define it.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. George Kariuki, Member for Ndia. Just a comment on this.

Hon. George Kariuki (Ndia, JP): Thank you, Hon. Temporary Deputy Chairlady, I am not a medic, but I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Jennifer, you have an amendment on this. You can speak at that capacity.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairlady, I am imploring on Hon. Nyikal, on behalf of the Departmental Committee on Health, to drop this definition in its entirety. I state this because there is so much debate about this word “primitive streak”. If we start with the belief, and again upheld in our Constitution, life begins at the conception. Then, when and where does the primitive streak begin? Who are we? More so, because there is continuous research on this issue, parliamentary debates, religion and science and all the research on human embryos. The word “primitive” is really...

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me hear from the Chairperson, and then I go ahead to put the question because you still have your proposed amendments.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairlady, what we mean with this is that you have to clearly distinguish between what is going on in the womb, and what is going on in the test-tube. However, in this case, they are talking of when they are stored. That is what this thing needs to define. This is because it may not immediately be necessary now, but in the future. What we fear most is an attempt to manipulate the embryo at any stage of development, and that is why we think this is important.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): With that, the Chairperson is still insisting that we are okay with his amendments. Members, remember that we take a vote through a Yes or No.

*(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)*

So, with the Moving and having the Chairperson’s amendment being carried, Hon. Jennifer’s proposed amendment will automatically fall.

(Proposed amendment by Hon. Jennifer Shamalla dropped)

(Clause 2(g) as amended agreed to)

Next.

Clause 2(h)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have a proposed amendment by Hon. Nyikal on behalf of the Chairperson of the Departmental Committee on Health.

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

THAT, in the definition of “procreation” by deleting the words “a facilitated process” and substituting therefor the words “an assisted reproduction technology process”.

The import of this is that we are making it clear by removing terms that are not very specific as facilitated and substituting the words “assisted reproduction technology process”. This is so that when you put the word “facilitated”, then you cannot protect it with this Act.

(Question of the amendment proposed)

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

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

(Clause 2(h) as amended agreed to)

Clause 2(i)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have a proposed amendment by the Chairperson.

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

THAT, clause 2 of the Bill be amended—

(i) in the definition of “surrogate mother” by inserting the word “for” immediately after the word “term”;

Hon. Temporary Deputy Chairlady, this is basically language. We have to take your time and be quite clear. These things have great implications. This is a matter of English. There was just an omission of the word “for”. If you look at the Bill to term, then another woman under surrogacy, without the word “for”, then that whole definition has no meaning.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Even after your proposed amendment, we still have an amendment by Hon. Shamalla. In the event that your amendment is carried, then Hon. Jennifer Shamalla’s will fall automatically.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Yes, Hon. Shamalla Jennifer.

Hon. (Ms.) Jennifer Shamalla (Nominated, JP): Hon. Temporary Deputy Chairlady, I just wish to state that in as much as I support Hon. Nyikal and the Chairlady of the Departmental Committee on Health, I wish this proposed amendment had been enhanced. My proposed

amendment was to state that surrogate mother means a woman who has consented to carry a pregnancy to full term.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Are you proposing your amendment or supporting?

Hon. (Ms.) Jennifer Shamalla (Nominated, JP): No, I am not proposing. I wish that it could have been enhanced. I am not here to shine. We are here to make legislation for the people of Kenya and for all of us. I really wish and would have appreciated if it could have been a more encompassing definition of the word “surrogate mother”.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): You are on record. I have Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I think the concerns by Hon. Shamalla have actually been taken into account by other amendments that we have already passed. So, even if it is not carried, I think she has been a very strong soldier for the Church here, and the issues that are of concern to the Church have been carried.

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

(Clause 2(i) as amended agreed to)

Clause 2(j)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Nyikal, you have a proposed amendment for the Committee on definition of “treatment service”.

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

THAT, clause 2 of the Bill be amended—

(j) in the definition of “treatment service” by deleting the words “women to carry children” and substituting therefor the words “a pregnant woman”; and

Hon. Temporary Deputy Chairlady, this is basically replacing what would be just lay language and make it more technical; and saying pregnant women than just saying to carry children. To carry children does not necessarily mean pregnant in everyday word use. So, it is just to be specific in this one.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Millie Odhiambo, you have a comment on this.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I just wanted to ask the Departmental Committee on Health to reconsider the amendment because if you say ‘treatment services to help pregnant women,’ how is treatment service helping the women who are not pregnant trying to get pregnant? This is because this is assisted reproductive technology. It is about assisting people to get pregnant. So, if we are treating the ones who are pregnant, who is assisting the ones who are not pregnant? Who is treating the ones who are not pregnant? This is about people who are not pregnant. So when you include the word “pregnant”, you are actually going against the very purpose of the Bill. So I just ask the

Chairperson to reconsider or recast the amendment so that it takes care of the pregnant and the ones who are struggling to get pregnant.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairlady, I must be flexible here and say she has a point. That means we may need a further amendment. The word would be “to assist women to get pregnant and carry it to term.”

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chairperson, it is a further amendment, and so you must be very clear on it. The current amendment which you are proposing on the definition of “treatment service” is by deleting the words “women to carry children” and substituting therefor the words “a pregnant woman”. Which is the further amendment that you are making in consideration to Hon. Millie Odhiambo’s concern?

Hon. (Dr.) James Nyikal (Seme, ODM): I think here we have to recast, because what we are doing is we are actually assisting women to get pregnant and also to carry those pregnancies to term. It is something I think we may need to recast as she is saying because as it is now...

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Millie Odhiambo, can you consult the Chairperson in a minute. Just consult in a minute and then you let us understand. This is a law-making House. We do not want to make laws that will not be fruitful to Kenyans. As they consult, let me hear from Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): I think the Chairperson was correct. I do not think we really need to recast this one or to rethink about it because it is replacing the words “women to carry children” and substituting with the words “a pregnant woman”. Literally, whatever they meant by carrying a child was actually pregnancy. In other definitions, there are also those who are being assisted to get pregnant in the process but in this, the woman carrying a child was actually meant to mean a pregnant woman. I do not think it will diffuse the meaning of assisting women to get pregnant. I think we do not have to reconsider this one. Hon. Millie, understand it is just a replacement of “women to carry children” with “a pregnant woman” because you cannot carry your child on the back but we are talking of those who carry their children in the womb and not in the head. I know you have carried on the head, but we are talking of those who have carried using their womb, and when they are carrying using their womb then it is pregnancy.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Sankok, you are right. You cannot carry a child from your back. Thank God you are not a woman.

Let me hear from Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. Actually, I want to tell Hon. Sankok, on authority, that women who do assisted reproduction cannot carry in the stomach. Somebody else will carry for them. Like me, if I decided to have a child, I will carry it in the heart and not in my womb. I might also carry on my head.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me hear from the Member for Ndia.

Hon. George Kariuki (Ndia, JP): Thank you, Hon. Temporary Deputy Chairlady. I agree with the Chairperson that we go by the amendment to “a pregnant woman”.

As my colleague Hon. Sankok says, ‘a woman carrying a child’, is a bit vague and it can be misinterpreted. So, let us go by ‘a pregnant woman.’ That is what we know, it is very clear.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Member for Ndia.

Hon. Nyikal, do you agree that ‘a woman carrying a child’ should be substituted with ‘a pregnant woman?’

Hon. (Dr.) James Nyikal (Seme, ODM): No, Hon. Temporary Deputy Chairlady. Let me explain. We need time. What we are doing is to help women who cannot get babies, get babies through assisted technology. That is basically what we are doing. If you then say to assist a pregnant woman, you have actually excluded them, you have not helped. That is exactly what they wanted. You are just going to assist them when they are already pregnant. So, what I would like us to do is to say that the purpose of assisting women is to help them get pregnant and to carry the pregnancies to term. It means now that you assist them to get pregnant, you assist them during the pregnancy until it goes to term and the baby is born.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): So, are you proposing a further amendment to your proposed amendment on treatment services?

Hon. (Dr.) James Nyikal (Seme, ODM): Yes.

Hon. Temporary Deputy Chairlady, I beg to move; -

THAT, Clause 2 be further amended by-

Deleting the words, “carrying children” and adding the words “to get pregnant and to carry the pregnancies to term” after women. Also, since we have used the plural of women, we must have the word ‘pregnancies’ to term.

(Question of a further amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we are dealing with a further amendment, the Chairperson has proposed a further amendment. Member for Kitui South, do you want to comment on the further amendment?

Hon. (Ms.) Rachel Nyamai (Kitui South, JP): Yes. Thank you, Hon. Temporary Deputy Chairlady. The further amendment of carrying to term is extremely important, because the purpose is procreation. It is not only about pregnancy, but about carrying the pregnancy to term.

So, I support Hon. Nyikal.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Member for North Imenti.

Hon. Rahim Dawood (North Imenti, JP): It is okay.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Nduati, Member for Gatanga, I can see you have a request to speak to this.

Hon. Joseph Nduati (Gatanga, JP): I will speak to the next amendment.

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

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

(Clause 2(j) as amended agreed to)

Clause 2(k)

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

THAT, Clause 2 (k) of the Bill be amended—
by inserting the following new definitions in the proper alphabetical sequence—

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“assisted reproductive technology expert” means an obstetrician or gynaecologist that has sub-specialized in reproductive endocrinology and fertility medicine;

“assisted reproductive technology services” includes the diagnostic and screening, endoscopic surgery, intra-uterine insemination, in-vitro fertilization, intracytoplasmic sperm injection, cryo-preservation, pre-implantation genetic screening, pre-implantation genetic diagnosis, onco-fertility, gamete and embryo donation, or surrogacy provided to infertile and sub-fertile man or woman;

“commissioning parents” means a man and woman whether a couple or parties to a marriage who enter into a surrogacy arrangement seeking assistance in procreation through the help of a surrogate mother or donor;

“cyro-preservation” means the assisted reproductive technology process of cooling and storing gametes, or embryos at very low temperatures to preserve their viability includes also embryo, egg or sperm freezing;

“diagnosis” means the process of testing and screening to ascertain the proper functioning of the reproductive systems and its processes at the beginning of the assisted reproductive technology process;

“Directorate” means the Assisted Reproductive Technology Directorate established under section 4;

“donation” for purposes of this Act, means a process in Assisted Reproductive Technology, of voluntarily giving gametes or embryos for purposes of procreation;

“embryologist” means a specialist who deals with gametes and assists in the process of fertilization in the laboratory;

“embryology” means a branch of biology that deals with gametes and development of embryos;

“endoscopic surgery” means a surgery in assisted reproductive technology involving techniques that limit the size of incisions performed with one or more small incisions instead of large incisions, and passing a telescope with a video camera through the incision into the body cavity;

“infertile or sub-fertile client” means a man and woman whether a couple or parties to a marriage who are not able to procreate naturally;

“infertility” means the inability to conceive after one year of unprotected

“intracytoplasmic sperm injection” means an assisted reproductive technology process of whereby a single healthy sperm is injected directly into the cytoplasm of a female egg outside the body;

“in-vitro fertilization” means an assisted reproductive technology process where an egg is fertilized by a sperm in a test-tube or elsewhere outside the body;

“oocyte” means naturally ovulating oocyte in the female genetic tract;

“pre-implantation genetic diagnosis” means a process in assisted reproductive technology which involves assessment of the embryo for pre-existing hereditary diseases and eliminating the same before the transfer of the embryo to a woman’s womb;

“pre-implantation screening” means a process in assisted reproductive technology to determine the number of chromosomes in a developing embryo in specific cases;

“surrogacy” means a term in assisted reproductive technology, of a woman carrying and giving birth to a baby for a commissioning parent or couple;

coitus or other proven medical condition preventing a couple from conception;

What these parts mean is, these are definitions in this area that make it specific. For everything that is being done, there is a clear definition in law so that should there be doubt, then the people who are going to practise in this area are guided. Failure to do this in this complicated area will mean that people will come with their own areas of doing things, which they are doing now because there is no law. That is the import of this amendment.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, thank you. I do support the amendments and thank the Committee for the excellent proposals, which are very technical. My experience, even in moving this Bill, is from not giving birth, but the experience is in the technical expertise. So, I bring the natural experience of not giving birth and the technical experience of health. I think it actually adds value to the Bill, and I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Dawood.

Hon. Rahim Dawood (Imenti North, JP): I support.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I see no interest by Members to contribute on this one.

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

Clause 2 (i)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I call upon the mover to move the proposed amendment. Hon. Shamalla, you have a proposed amendment on insertion of new definition of adoptive father, adoptive mother, biological father, biological mother and the Ministry. Has she left?

Hon. Jennifer Shamalla not being in the House or maybe consulting at this point, I order that her proposed amendment be dropped. This is the assumption we are taking.

(Proposed amendment by Hon. (Ms.) Jennifer Shamalla dropped)

(Clause 2 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we have no proposed amendment to the Title.

(Title agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we have no proposed amendment to clause 1.

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we are through with the Committee of the whole House on the Assisted Reproductive Technology Bill (National Assembly Bill No.34 of 2019). I call upon the Mover to move reporting.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I beg to move that the Committee do report to the House its consideration of the Assisted Reproductive Technology Bill (National Assembly Bill No.34 of 2019) and its approval thereof with amendments.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well.

(Question put and agreed to)

Hon. Members, in the interest of time, we will proceed with consideration of the next Bill as per the Order Paper. That is the Alcoholic Drinks Control (Amendment) Bill (National Assembly Bill No.70 of 2019) by Hon. Silvanus Osoro.

THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, get ready to move to the other Bill as we change our... There is a point of order.

(Hon. David ole Sankok spoke off record)

Hon. Sankok 001, are you speaking on behalf of Hon. Osoro? You cannot represent him in the House. He will speak for himself. Also, you cannot be the Speaker or the Chairperson. We have an intervention. I know you always watch other Members.

Proceed, Hon. Onyiego Osoro, Member for "South Muringaro".

Hon. Silvanus Onyiego (South Mugirango, KNC): Hon. Temporary Deputy Chairlady, it is South Mugirango.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Yes, representative of the people of South Mugirango, do you have a point of order?

Hon. Silvanus Onyiego (South Mugirango, KNC): Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): On the Alcoholic Drinks Control (Amendment) Bill (National Assembly Bill No.70 of 2019), in respect of which we are in the Committee of the whole House?

Hon. Silvanus Onyiego (South Mugirango, KNC): Exactly.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Yes, let me hear from you.

Hon. Silvanus Onyiego (South Mugirango, KNC): I seek to withdraw the Alcoholic Drinks Control (Amendment) Bill, 2019 under Standing Order No.140.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Standing Order No.140, which I will purpose to read to the House. Hon. Silvanus Osoro wishes to withdraw the Bill under Standing Order No.141.

Hon. Silvanus Onyiego (South Mugirango, KNC): No, it is under Standing Order No.140.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, for the sake of the public and the *Hansard*, Standing Order No.140 is on withdrawal of Bills, and it partly states as follows: -

“(1) Either before the commencement of the business or on the Order of the Day for any stage of the Bill being read, the Member in charge of a Bill may, without notice, claim to withdraw a Bill.”

So, on this matter, I give leeway to the Member. What are your reasons for withdrawal?

Hon. Silvanus Onyiego (South Mugirango, KNC): Hon. Temporary Deputy Chairlady, I need to seek further clarification and consult with other sources. Of course, I will revert back under Standing Order No.118 later on. For now, I want to consult further. I feel it wise to withdraw. Even the Departmental Committee on Administration and National Security had proposed deletion of all my proposals. So, I seek to consultation further.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. At least you are on record. Having listened to the Member for South Mugirango, as the Chairlady I am satisfied with the withdrawal, which is subject to Standing Order No.140. The Member has withdrawn his proposed amendments to the Alcoholic Drinks Control (Amendment) Bill (National Assembly Bill No.70 of 2019) and is on record.

(Hon. Odhiambo-Mabona spoke off record)

You want to convince him to reconsider, he has already withdrawn. I do not need more clarification. Let me hear from Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I just wanted to know because we are in the Committee of the whole House. Now that he has withdrawn his amendments, does his Bill die or what happens to it?

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): It has been withdrawn.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Then we just need your direction on whether his Bill dies or what will happen to it.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The Bill has been withdrawn, including all his proposed amendments, as he has already indicated. If he wants, he will do it in a different version. As for now, Hon. Silvanus Osoro has indicated to the House on record that he has withdrawn all his proposed amendments to the Alcoholic Drinks Control (Amendment) Bill. Therefore, the Bill remains as it is without the proposed amendments as they are withdrawn.

Let me hear from Hon. Silvanus Osoro.

Hon. Silvanus Onyiego (South Mugirango, KNC): Hon. Temporary Deputy Chairlady, we are in a learning process. I consulted with my senior colleagues who have been in the House for some time, and I wish to reconsider the amendments. I do not know whether I will have room for such so that we proceed.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Member, just express yourself again. That is a very important point.

Hon. Silvanus Onyiego (South Mugirango, KNC): I had said that upon further consultations with my seniors in the House, I feel I should reconsider my withdrawal so that we proceed with the Bill.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Osoro, maybe you can do that in the future. As much as it is provided for in Standing Order No.140 on withdrawal of

Bills, I wish you had done that before it appeared on the Order Paper. However, let me use my discretion to allow you to do more consultations.

We now move to the third item of the Committee of the whole House. Yes, Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairlady, we came here very early to deal with the Alcoholic Drinks Control (Amendment) Bill by Hon. Silvanus Osoro. It is very disappointing that it is being withdrawn, knowing what is happening in our country. We have a problem of alcoholism. We should also be told whether he is only withdrawing the Bill from the Committee of the whole House. That would mean only the amendments are affected, but the Bill remains in its original form. Is he trying to kill the whole Bill? If that is the import by my good friend, Hon. Osoro, I plead with him that we continue with this Bill.

Hon. Temporary Deputy Chairlady, I plead with you because you have already said that we are moving to the third business in the Committee of the whole House. Some of us came very early. We should continue with this Bill because it was just a temporary hiccup and interruption. We should go on with this Bill because it will save us from the issues we are facing even in our schools. This Bill is very important. Do not be lured by whatever the Departmental Committee on Administration and National Security says. We need to make good laws for this country for the benefit of our citizens, especially the lower cadre of the hustlers. You are one of them and we really need to come out strongly on this one.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): ... *(Off-record)*

Hon. David ole Sankok (Nominated, JP): Hon. Wanga, I am not talking to you. I know you will be a governor and you would want to govern non-alcoholics. I am sure of that. You will be a governor and we have agreed on that one. You know that even hustlers are voting for you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Sankok, you are so irrelevant many a time. Can you stick to what you were saying?

Hon. David ole Sankok (Nominated, JP): Let me stick to what I was saying. I withdraw my statement.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Just be relevant. Let us not...

Hon. David ole Sankok (Nominated, JP): I have withdrawn my statement. Hon. Wanga, I am sorry for that.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): If Hon. Wanga becomes a governor, it will be fine. She is fit to be one. Always be relevant.

Hon. David ole Sankok (Nominated, JP): Did you want me to withdraw the statement that Hon. Wanga will be a governor? Anyway, let us move on.

(Laughter)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order, Members. Hon. Sankok, you like catching the eye of the Chair. Hon. Wanga, I have no issue with you, but the matter before the House is very serious. It is important for us to be relevant all the time so that we can put our laws together. Relevance is very important in the House.

Hon. Members, let me hear from Hon. Wanga before I make my determination on the same. I had already stated that the Member has withdrawn his statement.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairlady. I just wanted to support Hon. Osoro's position on retraction and getting his Bill back on track. I did not understand what he was doing. The Bill is his. What exactly is he

withdrawing at this point in time? Maybe, we should just proceed with the Bill. I have not seen the Committee amendments yet. We should proceed with the consideration of the Bill.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Wanga, those are the proposed amendments to the Alcoholic Drinks Control (Amendment) Bill (National Assembly Bill No.70 of 2019) by Hon. Silvanus Osoro. As far as I am concerned, he seems not to be decided on the way forward. Again, as a matter of fact, he should have withdrawn it by writing to the Speaker or the House Business Committee (HBC) on time for it to be withdrawn from the Order Paper.

I order that Hon. Silvanus Osoro reconsiders and writes to the Speaker or the Clerk of the National Assembly on the withdrawal, as the procedure provides. I base that on Standing Order No.140 (3), which states that a Bill that has been withdrawn may be subject to Standing Order No.114 and be republished and introduced again. Hon. Osoro, I am sure you are listening.

As far as I am concerned, because of the statement made by the Member and the reasons he has given, consideration of the Alcoholic Drinks Control (Amendment) Bill (National Assembly Bill No.70 of 2019) by the Committee of the whole House is deferred.

(Consideration of the Alcoholic Drinks Control (Amendment) Bill deferred)

Hon. Members, let us move to the third business of the Committee of the whole House, which is the Kenya Deposits Insurance (Amendment) Bill (National Assembly Bill No.43 of 2020) by Hon. Rahim Dawood.

THE KENYA DEPOSITS INSURANCE (AMENDMENT) BILL

Clause 2

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Proceed, Hon. Gladys Wanga, CBS, MP; the next governor.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairlady, thank you for the prayers.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): That is not part of the Bill.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairlady, I beg to move: -

THAT, Clause 2 of the Bill be amended –

(a) in paragraph (a) by deleting the words “one million” and substituting therefor the words “five hundred thousand”;

(b) by deleting paragraph (b); and,

(c) by deleting paragraph (c).

Hon. Temporary Deputy Chairlady, I have a variation to the amendment after consulting with Hon. Dawood. On (a), the Committee had decided to delete the Clause because the amount was too high. I have consulted with Hon. Dawood and we agreed that we keep the amount at Kshs500, 000, which is the current amount you can be reimbursed in case of collapse of a bank. I would like to keep part (a) of the amendment but drop parts (b) and (c).

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Wanga, are you moving the amendment in an amended form?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): So, it is a further amendment?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): I am making a further amendment, which seeks to drop parts (b) and (c) of my amendment. Part (b) of my amendment seeks to delete paragraph (b) of the Bill, which speaks to the timelines within which you should be reimbursed or given back your money or compensated.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): What about paragraph (c)?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Speaker, Paragraph (c) speaks to penalties in the event that you are not reimbursed within that timeline. Instead of deleting them, we have agreed with Hon. Dawood to retain the two sub-clauses. So, we remain with only part (a) of the amendment.

(Parts (b) and (c) of Hon. Gladys Wanga's proposed amendment to Clause 2 withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): So, you are moving part (a) of the amendment. We retain part (a) of the proposed amendment to Clause 2. Parts (b) and (c) of the proposed amendment have been dropped, following consultations between Hon. Gladys Wanga and Hon. Dawood.

(Question of the amendment proposed)

I open the Floor. Hon. Dawood.

Hon. Rahim Dawood (North Imenti, JP): I thank the Chair of the Departmental Committee on Finance and National Planning, Hon. Wanga. We have consulted on reducing the amount of Kshs1 million to Ksh500,000. It was very difficult but we had to do it because of the way things are in the country regarding the National Treasury and other people. I am also glad that the Chair has withdrawn parts (b) and (c) of her amendment in favour of my proposed amendment.

I support and implore my colleagues to support as well.

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

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

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we are through with the consideration of the Kenya Deposits Insurance (Amendment) Bill (National Assembly Bill No.43 of 2020). I call upon the Mover to move reporting on the same.

Hon. Rahim Dawood (North Imenti, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee do report to the House its consideration of the Kenya Deposits Insurance (Amendment) Bill (National Assembly Bill No.43 of 2020) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

CONSIDERATION OF REPORTS AND THIRD READINGS

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, we have the Reports of the Committee of the whole House. We will start with the Assisted Reproductive Technology Bill (National Assembly Bill No.34 of 2019).

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. ole Sankok, please, report the consideration of the Committee of the whole House on this Bill.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Assisted Reproductive Technology Bill (National Assembly Bill No.34 of 2019) and approved the same with amendments

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

I request Hon. Nyikal to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. (Dr.) James Nyikal (Seme, ODM): I second.

(Question proposed)

Hon. Members, I defer putting of the Question on the Assisted Reproductive Technology Bill (National Assembly Bill No.34 of 2019).

(Putting of the Question deferred)

THE KENYA DEPOSITS INSURANCE (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Sankok, please, report to the House the Committee's consideration of the Kenya Deposits Insurance (Amendment) Bill (National Assembly Bill No.43 of 2020).

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Kenya Deposits Insurance (Amendment) Bill (National Assembly Bill No.43 of 2020) up to Clause..., and approved the same with amendments and seek leave to sit again.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Hon. Sankok. This is a House of record. You must read the correct report.

Hon. David ole Sankok (Nominated, JP): I am sorry, Hon. Temporary Deputy Speaker. I beg to report that a Committee of the whole House has considered the Kenya Deposits Insurance (Amendment) Bill (National Assembly Bill No.43 of 2020) and approved the same with amendments

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you. I call upon the Mover of the Bill, Hon. Dawood, to move agreement with the Report.

Hon. Rahim Dawood (North Imenti, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move that the House do agree with the Committee in the said Report and request Hon. (Gov.) Nangabo to second the Motion for agreement with the Committee on the same.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): We have no governor in this House. Of course, she is your proposed governor. Governors are for the counties but if she is going to become a governor, I do not want to say I support.

Proceed, Hon. Member.

Hon. (Ms.) Janet Nangabo (Trans Nzoia CWR, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to second and state that, indeed, I will be the next Governor of Trans Nzoia County.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You seem to have convinced Hon. Dawood. I do not know whether "Governor" is your new name or it is your baptismal name because governors are not in this House. However, I am sure you are heading there.

(Question proposed)

Hon. Members: Put the Question!

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Again, I defer the putting of the Question on the Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No.43 of 2020).

(Putting of the Question deferred)

Next Order!

BILL

Second Reading

THE PENSIONS (AMENDMENT) BILL

(Hon. Didmus Barasa on 10.11.2021 - Morning Sitting)

(Resumption of Debate interrupted on 10.11.2021 – Morning Sitting)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, this is a resumption of debate which was interrupted on Wednesday, 10th November 2021, in the Morning Sitting. We have a balance of one hour and 35 minutes. This was from Hon. Didmus Barasa. We were on the Second Reading. So, I give the first chance to Hon. David Sankok, if he had not spoken to it.

Hon. Members, allow me also to consult because as far as our Standing Orders are concerned, Members should not speak twice to a Bill. The request list is having Hon. David ole Sankok but he has already spoken to this debate. So, you will not speak to it again.

Can I have Hon. Millie Odhiambo? My record indicates that you have not spoken to this debate and you are on the requests list.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. This is a very straightforward Bill that seeks to make it easy for pensioners to get their money timely. Many people have died out of frustration after they have left jobs and since we know that there are very serious medical health issues, any facilitative process that enables pensioners to access their pensions fast and very easily is welcome.

I do support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You do support.

Let me have the Member for Trans Nzoia, Hon. Nangabo Janet.

Hon. (Ms.) Janet Nangabo (Trans Nzoia CWR, JP): Asante, Mhe. Naibu Spika wa Muda, kwa kunipa fursa hii kuzungumzia mambo ya wale watu ambao wamestaafu katika nafasi mbalimbali nchini. Ningependa kumshukuru Mhe. Didmus Barasa kwa kuleta Mswada huu katika Bunge hili ili wale watu ambao wamestaafu, mahali popote walipo, wapate nafuu.

Kuna watu wengi waliokuwa wakifanya kazi na wakastaafu, haswa walimu na wale waliokuwa wakifanya kazi katika Idara ya Posta na Reli. Hadi sasa, watu hao hawajalipwa pesa zao za kustaafu. Iwapo tutakuwa na marekebisho haya ya kuhakikisha kwamba wale wanaostaafu wanapata haki yao, itakuwa ni vyema kwa sababu wengi wanaumia sana na wengine wana watoto ambao hawaendi shuleni kwa sababu ya kukosa karo.

Katika sehemu za Trans Nzoia, kuna watu ambao wamestaafu na wanaumia. Wengi wao wanashindwa kupambana na changamoto na wanaamua kwenda kwenye vinywaji wakipoteza maisha yao.

Ningependa kuzungumzia Shirika la Telkom kwa sababu nilikuwa mfanyikazi kule. Wengi waliostaafu wamepoteza maisha yao kwa sababu ya maisha duni. Wengi wameamua kwenda kukaa penye kuna vinywaji na mwishowe wamepoteza maisha yao na watoto wao hawaendi shule. Inakuwa ni aibu sana kuona mtu aliyekuwa mwalimu mkuu wa shule ama mtu aliyefanya kazi katika Idara ya Telkom akiumia mno. Iwapo Mswada huu utapitishwa, utasaidia watu wengi kupata nafuu.

Ningependa pia kuzungumzia serikali za kaunti. Hapo awali, nilikuwa Mwakilishi Wadi. Wafanyakazi katika municipality na wale wa county councils wanaumia kwa sababu hawajapewa pesa zao za kustaafu. Huu Mswada utasaidia watu wengi sana ambao wanaumia. Vile vile, ninafikiria kuwa itakuwa ni jambo nzuri mno iwapo tutaweza kubuni maeneo ya kupeleka hizi fedha kwa watu wanaotoka sehemu hizo.

Nakushukuru, Mhe. Naibu Spika wa Muda na pia ningependa kumshukuru Mhe. Didmus Barasa.

Asante.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Next is the Member for Masinga Constituency, Hon. Mwalyo Mbithi.

Hon. Joshua Mwalyo (Masinga, WDM-K): Ahsante sana, Mhe. Naibu Spika wa Muda. Hata nami nitaongea kwa Kiswahili leo.

Hata mimi ningependa niongeze ya kwamba huu ni Mswada wa maana kabisa. Mtu akifanya kazi kwa muda mrefu, anatakikana apate kile chake na kweli afurahie siku zake za uzeeni. Utakuta kwamba ikiwa mtu alikuwa amezoea mshahara kila mwisho wa mwezi na sasa haupati, maisha yake hudhoofika na pia huwa na changamoto nyingi kwa sababu amefikisha miaka 60. Hiyo ndiyo ile miaka ambayo Biblia inasema ni ya magonjwa na udhaifu. Kwa hivyo, itakuwa ni kitu cha maana ikiwa mtu atapata pesa zake za uzeeni. Tukipitisha huu Mswada, utakuwa ni wa kusaidia sana sana wale watu ambao wanafanya kwa mashirika mbalimbali ambayo hukataa na pesa zao. Sana sana, watu ambao walifanya kwa *county councils* zile za zamani bado wanadai pesa zao. Hawazipati na zinapotelea hapa na pale. Niko na watu wengi kwa *constituency* yangu ambao mpaka sasa wanafuata hiyo pesa. Kwa hivyo, ingekuwa jambo la msaada kama tunaweza kupitisha Mswada huu.

Nimesupport jambo hili.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): *Sasa umesupport. Hicho ni Kiswahili kipi?*

(Laughter)

I know we passed in our Standing Orders that we can also speak in Kiswahili but, under the same Standing Orders, we do not use two languages at once. *Kwa hivyo, Mheshimiwa, ukiamua kuongea Kiswahili ni Kiswahili.*

Let me have the Member of Igembe South, Hon. Mwirigi Paul.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill.

Pension assists people who are aged, especially when they retire. When pension was set for somebody who has retired, it was so that somebody should benefit during their old age. That is because they have expenses to cater for. They have children to cater for. Also, there are abnormalities that follow aged people. That is why there is pension. There is need to give pension in good time. The Government takes a long time to give out pension to most people who retire. Somebody suffers, but the pension that person is supposed to receive does not come in good time. There is need to give pension in specific times after a person has retired.

Secondly, pension assists somebody to take care of his or her needs. When that person was employed, he or she was earning a large sum of money. They were getting a lot of money. Suddenly, you retire and you ought to have something so that your life can, at least, keep running. It is a good Bill. When enacted, most of our people will benefit.

Something else is that most of our people are suffering because the processes that somebody is supposed to follow until they qualify to get the pension are very long. It is good to look at that so that the processes which are put in place by the Government can be reduced so that somebody who retires can get his pension without being disturbed. Those people gave their services to this Government and even to the people of this country. There is no need to give someone stress when he or she is looking for their pension or undergoing the processes to qualify for the pension.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You beg to support. It is on record that you are the youngest Member of Parliament (MP). Member for North Imenti, Hon. Dawood Rahim.

Hon. Rahim Dawood (North Imenti, JP): Ahsante, Mhe. Naibu Spika wa Muda. Ningetaka kuunga Mswada huu wa Mheshimiwa Didmus Barasa mkono.

Kuna shida katika Kenya yetu kuhusu pesa za uzeeni. Wakati mtu anakatwa pesa zake ni harusi. Lakini wakati wa kulipwa ni matanga. Wakati tunapeana pesa za uzeeni ama *pension*, huwa tunakatwa kila wakati na kila mwezi. Wakati tunaenda kudai pesa hizo, unaweza kupata mtu ameenda kwa maofisi leo na kesho na hata miaka. Kuna wakati nilikuwa nimeleta Swali kwamba kulikuwa na mzee alikuwa anataka pesa zake. Alikuwa amekaa miaka kumi akija Nairobi kutafuta hizo pesa na hakuzipata. Kuna *insurance* zimefanywa na Wizara ya *Interior and Coordination of National Government* za polisi. Watu wamepoteza hata maisha. Utapata mtu amekuwa kwa Idara ya polisi na amekufa bila hizo pesa. Hata sasa, familia yake haijalipwa fidia. Hawapati pesa kabisa. Ni shida kwa sababu inasemekana wako kwa Pioneer Insurance huku wamefanya kazi katika Kenya Reinsurance Corporation Limited (Kenya Re). Ukiuliza kwa Idara ya Fidiana ya Polisi, wanasema kwamba wanangojea pesa itoke KenyaRe. Lazima tuone hili ni jukumu la kila kitengo cha Serikali kujua ni nani atalipwa fidia ama pesa za uzeeni.

Naunga huu Mswada mkono. Upitishwe kwa haraka ndio watu wapate pesa kwa haraka.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Let me have the Member from Lamu East, Hon. Ali Athman.

Hon. Ali Sharif (Lamu East, JP): Ahsante, Mhe. Naibu Spika wa Muda. Nami naungana na wenzangu kuchangia marekebisha haya huku nikimpongeza Mhe. Barasa kwa kuleta haya Bungeni.

Nataka kwanza tujiulize ikiwa haya tunayojadili hapa Bungeni leo ni ya sheria ambayo tayari iko katika nchi hii ama haiko. Ukweli ni kwamba hii ni sheria tayari ipo lakini imemlazimu Mhe. Barasa kuiregesha Bungeni kwa sababu ya marekebisha. Nataka tujiulize kwa nini imelazimu irudi Bungeni kwa sababu ya marekebisha. Hali halisi ni kwamba sheria hii inawagandamiza na kuwadhulumu Wakenya sana. Wengi wameenda mbele za haki bila kupata hizi haki zao.

Unapokuwa mfanyikazi na kila mwisho wa mwezi unakatiwa pesa unazowekewa ukiambiwa ni pesa ya uzeeni, la kushangaza ni kuwa unapozihitaji zile pesa hupati. Inawagharimu Wakenya wengi kwa sababu wakati zikifika, huwa tayari wamezitemia kwa gharama za kusafiri kutoka mashinani kuzifuata pesa mahali zilipo. Ukweli ni kwamba haya ni matatizo na hizi ni dhulma na sio sawa.

Hali hii imewafanya Wakenya kuwa wadhaifu na wanyonge sana. Mtu anapona picha hii kwa mwenzake wakati yeye ako kazini, anajihisi na yeye atakuwa kama yule. Leo niko kazini na ninachokipata ni gharama zangu na familia yangu. Hakuna kile ambacho naweka kama akiba. Lakini kwa thamana kubwa, watu wakubali kuwekewa hizi pesa kwa sababu wanajua zitawasaidia katika maisha ya uzeeni kwa kuendelea maisha yao. Hili limekuwa changamoto; haliwasaidii Wakenya. Na haya lazima tuyazungumzie kwa ukweli.

Kwa sababu hiyo, ningependa Bunge hili, katika kurekebisha Mswada huu, liseme kuwa ile siku mtu anapewa barua yake ya kustaafu, ndio siku hiyo pesa yake awekewe kwa akaunti yake kwa benki. Sio eti wanakupa barua yako ya kustaafu, unanenda nyumbani halafu unaanza kuitisha malipo yako za uzeeni baada ya miaka miwili au mitatu. Hivyo sio sawa. Serikali inajua wakati mtu anastaafu. Pesa zake zafaa kushughulikiwa mapema. Siku unapewa barua yako kwenda

nyumbani, wafaa kuambiwa pesa zako ziko benki uende ukachukue. Ndiyo ujue utazifanyia nini. Sioni sababu hata moja ya pesa hizi kukaa katika sehemu ambazo zipo kwa muda wote huo, kama miaka mitano au sita au saba, baada ya mtu kustaafu. Baada ya hizo siku zote, pesa hizo zinazalisha riba katika benki. Lakini mtu yule hapewi! Wanaochukua riba ni watu wenngine Serikalini. Ndiposa utapata matatizo makubwa katika idara hizi. Kuna masuala mengi. Wengi wanapatikana na makossa ya ulaghai na ufisadi katika idara hizi kwa sababu wamezuia haki za watu wakidhanja labda ni haki zao.

Kwa hivyo, la usawa katika kurekebisha haya matatizo ni ihakikishiwe Wakenya ya kwamba siku wanapostaafu ndio siku wanapewa haki zao. Hili ndilo litakuwa usawa wa marekebisho ambao tutafanya. Ikiwa sheria ipo lakini sheria yenyewe ni ya udhalilifu na usumbufu kwa Wakenya, haitakuwa na maana Bunge hili kufanya marekebisho kwa namna itakvyozunguzwa bila kupatikana suluhu ambayo itakuwa ni usaidizi na italeta nafuu kwa Wakenya.

Kwa hayo machache, Mhe. Naibu Spika wa Muda, naunga mkono merekebisho haya na kumpongeza Mhe. Didmus kwa kuyapendekeza.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): The Member for Likuyani, Hon. Kibunguchy Wamalwa. You have the Floor.

Hon. (Dr.) Wamalwa Kibunguchy (Likuyani, FORD-K): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this chance to, first of all, congratulate Hon. Didmus Barasa for coming up with this Bill. Secondly, just like the rest of Members who have contributed, this Bill is imperative, because we know that pension is a right. Pension is not a privilege that the Government or an employer gives to an employee. It is a right that an employee earns because it is a contributory scheme. I am very sure that all employers, be it the Government, know very well when XYZ is going to retire. So, I do not see the reason why pension cannot be worked out a little early, so that on the date of retirement, all logistics as far as pension is concerned are sorted out. Immediately one retires, he should just be transiting from one life to another—from a life of earning a salary to a life of earning pension. It should not be rocket science.

Two, we all know that, at the time of retirement, many people are confronted with the so-called lifestyle diseases. They are chronic diseases like high blood pressure, diabetes and cancer. Again, life becomes extremely expensive at that time unless you are on a regular income that can sustain you. As I congratulate the Mover of this Bill and support it, I would like to urge that we expedite its passage and make sure that it is operational as soon as possible.

Thank you very much for giving me this chance.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): Member for Nyatike, Hon. Odege Mboya. You have the Floor.

Hon. Tom Odege (Nyatike, ODM): Thank you, Hon. Temporary Deputy Speaker. I support the amendments that have been proposed by Hon. Barasa, but I want to ask him to do more research on the current pension situation in the country. The most affected pensioners used to be public servants. Currently, there is a pension scheme for civil servants, which talks of a timeline of one month. If we introduce a timeline of three months, it is going to contradict the one-month timeline, which I think is more advantageous to workers. The major problem which we used to have was that public servants were the only workers in this country who were not under a contributory pension scheme. That is why there used to be delays in the payment of pension. I think the problem has been cured. I support the amendments because pension schemes in this country are being handled haphazardly. We need to harmonise them so that no single retiring person in this country should be disadvantaged because of the kind of scheme they enjoy. But I

would seriously recommend that the Mover consider the one-month timeline which is currently in practice, instead of the three-month timeline he is proposing.

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): The Member for Khwisero, Hon. Wangaya Asike.

Hon. Christopher Wangaya (Khwisero, ANC): I thank you, Hon. Temporary Deputy Speaker. I rise to also support this Bill by Hon. Barasa that seeks to ensure that pensioners are paid within 90 days after retirement. But I look at it from a different angle. It is important for employers to prepare pensioners in advance. It is the right of pensioners to get pension. But they should not only depend on pension to sustain their lives. Training on life outside work should be a priority of all employers. Employers should provide incentives, like investment options, within their institutions, to make sure that when employees retire, they have some income beyond pension. All said and done, I support this amendment.

Thank you.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): Member for Gatanga, Hon. Ngugi Nduati. You have the Floor.

Hon. Joseph Nduati (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me an opportunity to make my contribution. At the outset, I support the Bill. It is a great idea that will enable our people to get timely payment of their pension. This is something that has caused many Kenyans to suffer. Pension has been a challenge even to us Members of Parliament. Most of the times, teachers in rural areas are chasing us to Nairobi to come and find out what is happening to their pension, and it has been a challenge. We are talking about timely payment but, as we do so, we also need to come up with a clear way of how it should be done. When it comes to tax, I am seeing what the Government is doing especially to VAT where you as the purchaser and the supplier will be linked to KRA immediately you do your purchase or supply.

So, even as a pensioner, you should be able to know the amount of money you contribute monthly. That information should reach you monthly. As you get your salary or pension, you should be able to know because what has been happening is that when the pensioner goes to claim his pension, one of the challenges is the files. Those files keep moving from one office to the other with no clear record. I propose that, as we talk about timely payment, we need to automate the data we have. Currently, that data is not well kept and that is what has caused a lot of suffering to our people. Communication is key especially with the Pensions Department. They need to come up with a very clear way of how they will be communicating with our people. There is no need of a Kenyan travelling all the way from Kisumu or from Muranga just to come and find out where the file is.

The other thing is that, that money loses value over time. Instead of only dealing with a lump sum amount that will fade at the end of their employment, we need to find ways of how we can support our people. When you give them that money, most Kenyans buy *matatus*. After one year, they go back to suffering. So, even as people are about to retire from Government or county governments service, it is good to educate them on what they can do with the money.

One of the key things I would propose and which have not been happening is that pension funds have a lot of money. If we could develop houses instead of giving somebody cash when he retires, you match that house to the amount of money; maybe it would be more beneficial.

With those few remarks, it is a good Bill but the only thing lacking is to define time limits and how it will be done.

Thank you very much.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well, Member for Gatanga. Let me have the Member for Kiharu, Hon. Nyoro Ndindi.

Hon. Ndindi Nyoro (Kiharu, JP): Thank you very much, Hon. Temporary Deputy Speaker.

I rise to support. When you talk about pension, it is not a favour that is given to the retired personnel. It is a right. By definition, this is money that is set aside when the retired employee is active at work and, therefore, it is their money that has been set aside to be paid at a later day. Therefore, there is no reason for the benefits that are accrued to the retiree to be kept for too long.

I say so because even in our budget making process, pensions fall under the Consolidated Fund Services (CFS). Usually, these are funds that are not negotiable. These are like the debt repayment and the salaries and benefits of employees of the various commissions in the country.

Therefore, there is no single reason, strictly speaking, especially in terms of budget, that those benefits should be kept for too long because the essence of the pension is to be a mattress so that the livelihoods and the standard of life of the person who was previously working is not crudely disrupted. Therefore, the money that is kept aside that we call pension is supposed to come in handy in terms of bridging the gap to be able to make the retirees live a dignified life. It is important that we do not punish the people to get their own money because this is not money given by the Government or the employers. It is money that is strictly put aside by the employees in their active service.

Hon. Temporary Deputy Speaker, even as we amend the timeline, there is a big problem in terms of pensions and the saving culture in this country. If you compare our saving culture with other countries, including our peers like Uganda, I think we have a long way to go. If you compare the same to even more developed economies like even the US, people are able to live almost the same life they lived when they were working because they are able to save a significant amount of their income for the latter days. Having said that, the dependency rate in our country is very high. We have so few working to support so many. You have people within the age bracket of what we can call working class in terms of age who have no source of income and, therefore, there are so many people depending on a few that are working. I say so because even as we talk about pensions, we need to look at the numbers. Who are these people who actually benefit from pensions? They are very few in proportion to our population. That is why we even have societal problems. Majority are faced even by some of the leaders sitting in this House. You find many households that depend on just a few within the family to feed them and for their livelihood. So, even as we talk about pension, the critical area that we need to look at is on creating opportunities for as many people as possible to be active participants of the growth of our economy.

Our situation can be comparable nominally to economies that are now currently riding on technology. As we compare the same, our country is so much lagging behind because the dependency rate and the concentration of revenue and income in our country contrasts to the other economies because those are high growth economies where the concentration of income is not basically because people are unemployed, but because they are adopting technology so that capital is able to generate a lot of revenue. All I am trying to say without so much jargon is that for us to have a stable country and especially to look after the people who have retired and even those who were not able to have some source of income to save for their pension, is for us to expand the bracket so that we have as many people working. We lower the dependency rate so that we have as many people generating their own revenue for their own livelihoods.

I support this amendment from my friend, Hon. Barasa, and I actually think three months is too long. We should bring it closer home. Why wait for three months for the money that you

have saved? It is your money. It is your right and it should never be seen as a favour. With those many remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Bura, Hon. Ali Wario.

Hon. Ali Wario (Bura, JP): Ahsante Mhe. Naibu Spika wa Muda kwa kunipa fursa hii. Ningependa kumpongeza Mhe. Barasa kwa marekebisho aliyoleta katika Mswada huu. Huzuku ya uzee ni pesa ya uzee. Imefika mahali malipo haya yamekuwa kama dhuluma. Kuna siku nilimpeleka mjane katika Bima House. Tulizungushwa hadi mjane akaniuliza: “Hawa wanajua kuwa mme wangu amekufa akilinda hili taifa? Je wanajua?”

Mfanyikazi wa taifa ni mtu ana wajibu muhimu katika ujenzi wa taifa la Kenya. Mfanyikazi yule anaheshimika pindi ako hai. Anapokufa, ndiyo tunatuma salamu za rambirambi zetu. Hakuna ajuae wajane na mayatima. Haki ya yule aliyekufa si haki tena mpaka watu wa Bima watakapopenda. Sheria hii iliyorekebisha na Mhe. Barasa itawanasua wale wanyonge waliodhulumiwa. Malipo ya uzeeni imekuwa ni kama dhuluma katika nchi ya Kenya. Kwa kawaida, miezi sita kabla ya kustaafu kwake, mfanyikazi huwa anapewa habari kwamba anakwenda kustaafu. Kwa nini shughuli za kumlipa yule mfanyikazi zisianze wakati huo? Wengine wamengojea pesa za uzeeni hadi wakafa. Ningependa kwa ushahidi kamili nikwambie kinachoendelea kwa mambo ya bima si ufisadi! Ni wizi!

Nimesimama kuunga mkono Mswada huu na nitafurahi sana kuona Wakenya wakipewa haki yao kwa muda wa miezi mitatu.

Ahsante sana, Mhe. Naibu Spika wa Muda.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Member for Bomet Central Constituency.

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to also comment on this amendment Bill. I support this amendment. It is very encouraging that we are moving in the right direction to ensure that we take care of the interest of pensioners or those who are retiring. I want to commend Hon. Barasa for bringing this amendment Bill which will ensure that we take care of our people who are currently suffering. We must note that our people really suffer as they transition from employees of Government to pensioners. They have to wait for even two years for their pension. That is a trying period for them. It is tough to adjust from earning a salary to zero salary. Therefore, the period of transit from earning a salary to earning a pension should be very short. Some have taken about two years to be paid. They have been languishing in the villages. Those who were staying in Nairobi have been forced to go to the village because the life in the villages is slightly cheaper. It is frustrating and as legislators, we must do something to ensure that our people do not suffer during that period.

There should be clear assurance that the money is provided in the Budget. Otherwise, why does it take that long? Is it because of lack of money or because of corruption in the department that is handling this? I know someone who retired and within one month, they had their pension. Others retire and it takes them two years. Those who get their pension sooner either have friends in the Pensions Department or they part with something small. I, therefore, tend to think that the processing in that department is not convenient so that people can earn an income by frustrating others by forcing them to pay. There should be a real system in that department which can monitor when the pension claim was filed and how long it has stayed with a particular officer before it moves from that table. There should be some clear way of monitoring so that we can alleviate the suffering of those people. Otherwise, without such a system, it is going to be very tough.

We need to ensure fast-tracking of pensions payment is encouraged and effected in this country, so that our people do not suffer. Currently, we have the Public Service Superannuation Scheme which is a good thing, of course, for those who are below the age of 45 years and those who are above who are also part of the current pension scheme. So, definitely, they have some of their money in the previous pensions' scheme.

There should be clarity on how they will get their money. This is because the money they are aware of is under the Superannuation Fund. Yet, the money they have worked for in the last 20 years is under the Pensions Fund. They need to be assured they will get their money either through the previous pensions' scheme or the same amount will be transferred to the Superannuation Fund. So, they are guaranteed that after retiring, they will get all their money and will not be frustrated by the two different Funds - the current Pensions Fund and Superannuation Fund. I believe this will be highly frustrating especially for those who are over 45 years old going towards 50 and 60 years. They could have real issues. So, if these issues are clarified, our people will be assisted.

Also, I believe this Pension Fund should be used to encourage investments in this country. As a Member has already mentioned, we also need to grow the Superannuation Scheme so that we can even use the funds for massive development projects. As we can see what is happening along Mombasa Road, some nice infrastructure is coming up and we know it is financed through a loan from outside. If we grow that Superannuation Fund and it becomes huge, I am very sure we will be able to borrow from it and invest towards improving the infrastructure in this country.

Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to comment on this.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the Hon. Member for Kathiani, and then the Member for Gichugu.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to also comment on this issue of pensioners. Pensioners are retirees; mostly old people who have worked very hard all their lives to save some money for their old age.

Interestingly, retirement age is known at the time of employment. So, it is not a surprise to the employer that someone has reached retirement age. From the date you are employed, based on your age, you can calculate to know the time you will be retiring. So, the problem really must be corruption and I think this is what this Bill is trying to cure. Those are people who sit on retirees and pensioners files and refuse to pay them until they part with some little money. It is very unfortunate! They seek money from people who already do not have it because they are not gainfully employed. So, it is important we deal with this the way Hon. Barasa has proposed. We give a timeline within which people must be paid.

I am worried because, over the years, we have always had this problem in Kenya of people trying to get their money and it is delayed. Some of those old people, when they walk to those offices, they get annoyed and curse the officers. Maybe, that is the reason why corruption is such a big problem in this country? Maybe, we are a cursed nation by old people who have retired and have not been paid their money. Unfortunately, some die before they can lift the curses. So, it is important for us to sort this out as a country.

Also, it is important when people are retiring; they get a little training on how to manage their money. By the time they go out there and receive a little pension money, they can continue living a comfortable life for the remaining years. A case in point is a colonel from the United States (US) who retired. After retirement, he started a very good franchise that is all over the world - the

Kentucky Fried Chicken (KFC). So, as they leave, it is important for them to be trained on business and money management so that they can make something out of their lives.

I support, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the amendment sought by Hon. Barasa to amend the Pensions Act and include timelines for which the pension should be paid to the retirees.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Just a minute, Member for Gichugu.

Hon. Gichimu Githinji (Gichugu, JP): Yes, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): This is a House of records. Member for Gichugu, Hon. Gichimu Githinji.

Hon. Gichimu Githinji (Gichugu, JP): I am on my feet, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I wish to interrupt your debate on the Pensions (Amendment) Bill (National Assembly Bill No.26 of 2020). You will have a balance of nine minutes during the next sitting when debate on the Bill resumes. Get ready because you will have priority in speaking. Hon. Members, the Bill will have a balance of 50 minutes.

ADJOURNMENT

Hon. Members, the time being 1.01 p.m., this House stands adjourned until today, Wednesday, 24th November 2021 at 2.30 p.m.