

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

Wednesday, 11th May 2022

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Ring the Quorum Bell. Order Members! What is happening Member for Lari and Member for Kiambu County? You are discussing county affairs.

(The Quorum Bell was rung)

We can now commence.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

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

Memorandum on the accession to the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property from the Ministry of Foreign Affairs;

Annual Performance Report of the Ministry of Defence for the FY 2020/2021; and,
Report of the Auditor-General for the National Government Ministries, Departments and Agencies for the year 2020/2021.

Thank you, Hon. Speaker.

Hon. Speaker: Chairperson of Departmental Committee on Lands.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Lands on its consideration of the following Petitions:

- (i) Public Petition No.004 of 2021 by Hon. Michael Kingi on behalf of Magarini Community Land Owners regarding irregular extension of Galana Ranch boundaries;
- (ii) Public Petition No.007 of 2022 by residents of Riverbank Housing Welfare Group regarding land allocation and issuance of title deeds in respect of L.R.No.11150 in Embakasi Sub-County, Nairobi County;

- (iii) Public Petition No.080 of 2021 by residents of Haraka Settlement Scheme in Yatta and Masinga Constituencies regarding forceful evictions of squatters from the scheme; and,
- (iv) Public Petition No.068 of 2021 by Victor Mwanganda Gogo on behalf of the residents of Kwa Kadzengo Village in Mtepeni Ward, Kilifi County, regarding urgent resolution of the Kwa Kadzengo land dispute.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

ORDINARY QUESTIONS

Hon. Speaker: On Ordinary Questions, I call upon the Member for Kikuyu Constituency.

Question No.115/2022

TRANSFER OF POLICE OFFICERS IN KIKUYU SUB-COUNTY

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I rise to ask Question No.115/2022. It emanates from a Petition that had been brought to the National Assembly by a number of my constituents but, upon advice by the Clerk's Office, it could not qualify as a Petition. It was, therefore, re-drafted in the form of a Question, which I now ask on behalf of the petitioners. I direct this Question to the Cabinet Secretary for Interior and Coordination of National Government. I would like the Cabinet Secretary to address the following issues:

- (i) The criteria used in transferring police officers serving in Kikuyu Sub-county and indicate whether the said transfers are carried out in accordance with the set procedures and regulations of the National Police Service Commission.
- (ii) The measures that the Ministry has put in place to ensure that transfer of police officers and other security personnel are effected in a clear and justifiable manner.
- (iii) Steps being taken to address the simmering disquiet and tension between lower cadre police officers and their seniors in the sub-county, which is negatively affecting the state of security, performance and morale of lower cadre officers in the sub-county thus exposing the area residents to increased insecurity especially during this electioneering period.
- (iv) The measures that the Ministry is taking to ensure that officers in the sub-county work under conducive working environments and improved interpersonal relations between the various cadres of officers working in the sub-county.

Thank you, Hon. Speaker.

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

The next Question is by the Member for Ikolomani, Hon. Bernard Shinali, who has written to request that the Question be asked on his behalf by the Member for Malava, Hon. Malulu Injendi.

Question No.116/2022

REPATRIATION OF MS. CATHERINE SHIBAFU KHIRACHILI FROM SAUDI ARABIA

Hon. Moses Injendi (Malava, JP): Thank you, Hon Speaker. I rise to put Question No.116/2022 on behalf of Hon. Benard Shinali to the Cabinet Secretary for Foreign Affairs:

- (i) Could the Cabinet provide the steps the Ministry is taking to facilitate the safe return to Kenya of one Ms. Catherine Shibafu Khirachili, holder of Passport No. AK0940977, who is allegedly under torture and inhuman treatment in Saudi Arabia?
- (ii) Could the Cabinet Secretary also provide the status of all reported cases involving torture and inhuman treatment of Kenyans working in the Middle East countries, particularly in Saudi Arabia, indicating the data and details of those rescued so far and those who have lost their lives?
- (iii) Could the Cabinet Secretary further provide the measures that the Government has put in place to ensure the safety of Kenyans living and working in Middle East countries, particularly in Saudi Arabia?

Thank you, Hon. Speaker.

Hon. Speaker: That Question will be replied to before the Departmental Committee on Defence and Foreign Relations.

The next Question will be by the Member for Mumias East, Hon. Benjamin Washiali.

STALLED ROAD PROJECT IN MUMIAS EAST SUB-COUNTY

Hon. Benjamin Washiali (Mumias East JP): Thank you, Hon. Speaker. I rise to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works the following Question:

- (i) Could the Cabinet Secretary explain the circumstances under which the contractor for the *Ibokolo-Shianda-Malaha-Nambacha Road (C784)* in Mumias East Sub County abandoned the construction of the road since June, 2021, which has been worsened by the rainy season leaving it unmotorable?
- (ii) What measures has the Ministry put in place to ensure that the said road is made passable during the rainy season considering its importance in boosting transport network and improving the economy of the region?
- (iii) Could the Cabinet Secretary state the measures the Ministry has put in place to ensure that the construction of the said road resumes as soon as possible and that the project is completed, and state the revised completion timeline?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental on Transport, Infrastructure, Housing, Urban Development and Public Works.

We now move to the next segment. It is a request for Statements by Hon. Duale.

REQUEST FOR STATEMENTAPPOINTMENT OF THE CHAIRPERSON OF THE ASSUMPTION
TO THE OFFICE OF THE PRESIDENT COMMITTEE

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44 (2)(c), I rise to request for a Statement from the Chairperson of the Justice and Legal Affairs Committee regarding the appointment of the Chairperson of the Assumption to the Office of the President Committee.

Hon. Speaker, Article 141 of the Constitution provides for the swearing-in of a President-elect. In this regard, the President-elect for this year's general election shall be sworn-in on the first Tuesday following the 14th day after the declaration of the presidential election results, if no petition will be filed; or the 7th day following the date which the Court renders a decision in accordance with the provisions of the Assumption of the Office of the President Act No. 21 of 2012.

Hon. Speaker, the Assumption of the Office of the President Act No.21 of 2012, which provides for the procedure and ceremony for the assumption of Office of the President-elect also establishes and constitutes the Assumption of the Office of the President Committee. The Committee is mandated under the provisions of Section 6 to facilitate the handing-over process by an outgoing President to the President-elect, the provision of security detail and security briefings including intelligence, to the President-elect, among other key functions. It is, however, worth noting that Section 5 of the Act, which defines the composition of the Committee, provides that the Chairperson of the Committee shall be the Secretary to the Cabinet and shall consist of 19 other members, including Principal Secretaries drawn from various Ministries, the Chief of Kenya Defence Forces, the Inspector General of the National Police Service, the two Clerks of Parliament and the Chief Registrar of the Judiciary, among other members.

Hon. Speaker, as it is presently, there is no person holding the Office of the Secretary to the Cabinet in terms of Article 154 of the Constitution. The Assumption of the Office of the President Act No.21 of 2012 clearly stipulates that the leadership of the Committee is to be headed by the Secretary to the Cabinet.

Hon. Speaker, as you are aware, a person nominated to the position of the Secretary to the Cabinet must be approved by this House in accordance with Article 154 of the Constitution. The House is set to proceed to *sine die* in less than four weeks. If this is not done, Hon. Speaker, the assumption process for the next President-elect in this year's general election may be jeopardised and it will be a critical violation of the Constitution by the current Government and President.

Hon. Speaker, it is on this account that I seek for a Statement from the Chairperson of the Departmental Committee on Justice and Legal Affairs. In the Statement, the Chairperson should explain the steps being taken to ensure that the leadership of the Committee on the assumption of the presidency is put in place before the House goes into recess *sine die*. Failure to have this done, Hon. Speaker, I wish to request you as the Leader of the Legislature that you give consent for this House to legislate, as a matter of urgency and priority, with a view to addressing the possibility of a *lacuna* in the leadership of the said Committee, and further request for your consent to have it expedited and considered as fast as possible.

This is a serious matter. It is a time of transition. Since this House rejected the current Cabinet Secretary in the Ministry of Energy, Amb. Monica Juma, who was presented for the position of Secretary to the Cabinet, no other name has been brought. Within the reading of Article 154, this is a violation. This is impunity and for this country to have a smooth transition of power from one President to another in this year's general election, which is anchored on a peaceful, transparent, fair and free elections, I really would like you, Hon. Speaker, as a matter of urgency to give direction that this segment is brought perhaps tomorrow or Tuesday. If that does not happen, you allow us to publish a Bill that will give room to state that in the absence of that person, somebody else within the committee can act. The Committee on Assumption of President-elect

cannot work in this year's transition with the absence of the Chair, who is the Secretary to the Cabinet.

I rest my case, Hon. Speaker.

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

Hon. Speaker: What is out of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I have keenly listened to the request for Statement by Hon. Aden Duale. It is directed to the Chair of Justice and Legal Affairs Committee (JLAC), Hon. Muturi Kigano, who unfortunately has little energy to transact business of the House. The issue that Hon. Duale has raised is quite weighty. I beseech you, under Standing Order No. 1, that we occasion an amendment to the particular statute to ensure that there is a transition mechanism where if we do not have a chair of that Committee in the absence of the Secretary to the Cabinet, that someone else is able to Chair that Committee.

You know some of the things that were said in the Kriegler Commission Report in relation to changes to electoral matters very close to the elections. We have just considered some amendments to the Elections Act. However, there are other things that are related to the matter that Hon. Duale is raising. Last week, you saw that we had about 46 independent presidential candidates. It is within the right of every Kenyan who is qualified to run for the Office of President. However, we will have challenges if we fail to address this matter, considering that we are dealing with a very desperate outgoing regime. I have no fear of contradiction in saying that we are looking at a lurking danger. If any of the presidential candidates that will be cleared by the Independent Electoral and Boundaries Commission (IEBC) – either sponsored by a political party or contesting as an independent candidate – by bad luck loses his life, we will see a postponement of the election and you know how emotive elections are in this country. It is imperative that as early as now, either the Assumption to the Office of the President Committee or the relevant Committee of this House engages the IEBC especially on the security measures that are being put in place to ensure that each of the presidential candidates, especially the 46 independent presidential candidates and their running mates, is secured. I have no fear stating before this House that we are dealing with an extremely desperate regime that has no intention of leaving power. With the imminent collapse of the Azimio Coalition – I am not a prophet but I foresee – I pray that none of those presidential candidates and their running mates lose their lives to occasion a postponement of the elections.

Hon. (Dr.) Eseli Simiyu (Tongaren, FORD-K): On a point of order, Hon. Speaker.

Hon. Kimani Ichung'wah (Kikuyu, JP): I beg Hon. Speaker that you do rule under Standing Order No. 1, that this matter be handled as an amendment to the statutes as we also consider how we will ensure security and protection of all the presidential candidates.

Thank you.

Hon. Speaker: Hon. Simiyu Eseli.

Hon. (Dr.) Eseli Simiyu (Tongaren, FORD-K): Hon. Speaker, I was going to rise on a point of order but you let him spew all the verbiage unchallenged or even stopped by yourself.

(Loud consultations)

Hon. Speaker, while we understand that you belong to his wing, we expect you to actually assist the minds of these gentlemen.

Hon. Speaker: No, Hon. Members. Hon. Eseli is at liberty to also spew his bit.

So, proceed.

Hon. (Dr.) Eseli Simiyu (Tongaren, FORD-K): Hon. Speaker, we expect that you could actually be able to rein in some of the verbiage that is being used by especially one Hon. Kimani Ichung'wah because if he is talking of a collapse of Azimio, then I think he seems to know something we do not know, and he should tell us what it is. How many others have you bought? How many are you intending to buy and at what cost? I would dare say at the risk of being reprimanded by yourself; that, the quality of debate in this House depends on the Speaker. I beg you to rise to the occasion. Do not allow people to spew that kind of thing here.

Thank you.

Hon. Speaker: Yeah. Please, just measure what is coming from the area between your two ears. The Speaker has no capacity of knowing what is in between. The Statement is directed to the JLAC. Neither the Chair nor the Vice-Chair is in the Chamber. Let it be channelled through the Office of the Leader of Majority Party. In fact, the matter is one that should have gone to the Leader of the Majority Party given that you are suggesting we change the way we make laws. I doubt we can. We cannot change the process. We can only fast-track it. How can changes to an existing legislation happen? The procedure is already there. I think what Hon. Duale has raised is a legitimate concern. It will be handled by the Leader of Majority Party.

We can go to the next Order. Hon. Pkosing, what is your point of order?

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker. It was a point of order on Hon. Ichung'wah's sentiments. Allow me to say that we are leaders as well as human beings with emotions. Hon. Ichung'wah has raised something and by extension, so has his side of the political divide. They are all the time casting aspersions on the security and lives of the 46 independent presidential candidates. I want it to be record. Kenyans must know what they know about the 46 independent candidates. Are they planning something against them? Maybe they are, Hon. Speaker. The security agencies need to get in touch and quickly investigate Hon. Ichung'wah's side. They may be planning something against the 46 independent presidential candidates. When that happens – God forbid – they will blame Azimio and the Government. This must get the attention of the security apparatus of the country. There is something going on that we need to be aware of as a country.

Hon. Speaker: Hon. Members, let me just draw your attention to the fact that what we currently have are aspirants. Even when you sleep, you aspire to do some few things. Those 46 are aspirants. Let us wait until everybody presents their documents before the Commission. I am sure that thereafter, it will be well established that they are supposed to enjoy state security. Right now, they are just aspiring. For some, it could be in their dreams. We cannot start dealing with some who are just dreamers. For the time being, let us wait for them to satisfy the requirements. After that, I am sure the state security machinery will obviously address the issue of their security.

Let us have Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker. I heard a bit of what Hon. Duale raised as I was coming in. It is about the Chairman of the Committee on the Assumption of Office of the next President. That is legitimate but what has subsequently been said by Hon. Ichung'wah has brought issues. You can guide on this but I do not think it is fair that someone can stand in this House, in full glare of the whole nation, and say or imply that he has reason to believe that there are some people in this country whose lives are in danger just by the fact that they are aspiring to some position. You may have to get this out of him but it behooves him that if he has information, it should be laid before the House. It is a serious security matter. This is the kind of thing where one would be expected to withdraw that statement or substantiate

why he would call the whole State to look at certain 46 people claiming that their lives are in danger.

Hon. Speaker: Aspirants.

Hon. (Dr.) James Nyikal (Seme, ODM): Yes, aspirants. You claim that their lives are in danger. There are very many aspirants. Why pick the 46? That is raising temperatures unnecessarily. It borders on being disorderly. Standing Order No.107 can apply on this particular one. It is all in your hands, Hon. Speaker. Guide us so that when people are off the track, you let them know, as you sometimes do. That is not the point that was raised by Hon. Duale.

Thank you, Hon. Speaker.

Hon. Speaker: I have said that whether they are 47 or 50, they are still aspirants. So, it is out of order for Hon. Ichung'wah to require that they be provided with security. They will only be given state security commensurate with the status of presidential candidates. They are just aspiring and those aspirations could even die before tomorrow. It will be very difficult. It is out of order for Hon. Ichung'wah to demand security for people who are aspiring. We just leave it at that.

Let us proceed to the next Order.

BILLS

Second Reading

THE MILITARY VETERANS BILL

(Hon. Amos Kimunya on 10.5.2022)

(Debate concluded on 10.5.2022)

Hon. Members, debate on this Bill was concluded yesterday. What remained was for the Question to be put, which I hereby do.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

Hon. Aden Duale: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order?

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, let us confirm whether we have a quorum of 50 Members. I am addressing the Speaker. We do not want to pass laws without sufficient quorum. It is better that as we go to the next Order, we are at least sure that we are 50 in attendance.

(Loud consultations)

No, it is the Speaker and the staff of Parliament to count.

Hon. Speaker: Very well. Next Order.

QUORUM

Now that Members are still walking out, can we find out how many we are? Members of the 12th Parliament, there is something...There were elections in 2017 and we still transacted business with a full House. Can you find out how many we are? Ring the Quorum Bell.

(The Quorum Bell was rung)

When the Quorum Bell is ringing, you do not go out. Serjeant-at-Arms do we have sufficient numbers? Very well. We have the numbers and we will go back to Order No.8.

Second Reading

THE MILITARY VETERANS BILL

(Hon. Amos Kimunya on 10.5.2022)

(Debate concluded on 10.5.2022)

Order, Hon. Memusi! Hon. Members, how is it that you forget the Standing Orders so quickly? Also, there is a Member who is on his phone.

Hon. Members, Order No.8 is the Military Veterans Bill. I want to put the Question afresh.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

Next Order!

Second Reading

THE PERSONS WITH DISABILITIES BILL

(Hon. Amos Kimunya on 10.5.2022)

(Debate concluded on 10.5.2022)

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

Hon. Speaker: Next Order!

First Readings

THE NATIONAL RATING BILL

THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

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

Hon. Speaker: Well, at this point, Hon. Members, I wish to re-arrange business appearing on the Order Paper, so that before we move to the Committee of the whole House, we allow the Chairperson of the Committee on Implementation to move the business appearing as Order No.14. So, kindly read out Order No.14.

MOTIONADOPTION OF REPORT ON IRREGULAR RENEWAL
OF LAND LEASES BY DEL MONTE KENYA LIMITED

Hon. Speaker: I am informed that Hon. Kimaru is the one moving? Proceed, Hon. Member for Mathioya.

Hon. Peter Kimaru (Mathioya, JP): Thank you, Hon. Speaker. I beg to move the following Motion:

THAT, this House adopts the Report of the Select Committee on Implementation on its consideration of the Implementation Status of the Report of the Departmental Committee on Lands on a Petition on irregular renewal of leases of land by Del Monte Kenya Limited, laid on the Table of the House on Wednesday, 22nd December 2021.

Hon. Speaker, I would like to mention at this stage that the finding of our Committee was that to date, nothing has happened in terms of implementation.

Hon. Speaker: Are you moving the House to adopt your Report?

Hon. Peter Kimaru (Mathioya, JP): Yes, and I ask Hon. Kabinga to second.

Hon Speaker: No! What are you saying?

Hon. Peter Kimaru (Mathioya, JP): That is what I wanted to say a bit on the Motion.

Hon. Speaker: You beg to move that this House adopts the Report *blah blah blah* then you explain.

Hon. Peter Kimaru (Mathioya, JP): Yes, Hon. Speaker. I was explaining that we found that the implementation status as had been requested by the findings of the Departmental Committee on Lands have, to date, not been undertaken by the relevant agencies, namely, the Ministry of Lands and Physical Planning, and, the National Lands Commission. Nothing has been done.

As a Committee on Implementation, our main purpose is to look at what the House adopts and passes and whether its resolutions are carried out. To our amazement, nothing has been done

by the Ministry of Lands and Physical Planning, and other agencies like the National Lands Commission.

We, therefore, want to bring the matter to the House to adopt our Report. We need to see what further actions can be taken. It looks like some agencies are keen on their continued refusal to carry out what this House has resolved. The matter is that what had been resolved by the Departmental Committee on Lands has not been implemented.

Hon. Speaker: What have you then recommended?

Hon. Peter Kimaru (Mathioya, JP): Our recommendation is that if they do not take action from the adoption of this Report...

Hon. Speaker: Is it documented? You can read to the House so that Members would know because they will vote on it. They cannot vote on things they have not recommended.

Hon. Peter Kimaru (Mathioya, JP): Hon. Speaker, I do not have the Report with me here, but I was just moving that we adopt it.

Hon. Speaker: How? What are you moving on? You mean you do not know what your Committee recommended?

Hon. Peter Kimaru (Mathioya, JP): Hon. Speaker, just give me a minute.

(Hon. Peter Kimaru flipped through his Report)

Hon. Speaker, I can read the recommendations of the Committee on Implementation:

The lease for LR No.12158, which resulted from the amalgamation of LR No.10741, LR No.10862, LR No.11146, LR No.11312 and LR No.2953, should be reverted to the Government of Kenya and be declared public land. Further, the land should be allocated to the Kandara Residents Association for their settlement.

The Ministry of Lands and Physical Planning in consultations with the National Land Commission should allocate the land excised from Del Monte Kenya Limited to the Kandara Residents Association, and the county governments of Murang'a and Kiambu in the ratio of 70 to 30 respectively as per the National Land Commission's *Gazette Notice* No.1995 of 2019.

Hon. Speaker: Why are you leaving the very important parts that I can see? All of it says within some specified period of time. I do not know if I am reading the same Report as you. You have not talked about allocation of land within 60 days of the adoption of this Report, failure to which the Committee shall enforce appropriate sanctions pursuant to Standing Order No.209 of the National Assembly Standing Orders.

Hon. Peter Kimaru (Mathioya, JP): I do not think I have the page you have just read, but I now have the right page.

Hon. Speaker: I do not think Hon. Kimaru knows what he is doing.

Hon. Peter Kimaru (Mathioya, JP): Hon. Speaker, the recommendation is that the House approves that the Select Committee on Implementation initiates the process of removal of the Cabinet Secretary for Lands and Physical Planning from office for failure to implement the House resolution "that the Ministry of Lands and Physical Planning in consultation with National Land Commission and the Nairobi County does complete the titling process for LR No.5875/2 within 180 days of tabling the Report", pursuant to Article 152(6) of the Kenyan Constitution and Standing Order No.66 of the National Assembly Standing Orders.

The other recommendation was that the Inspector-General of Police should ensure that the Directorate of Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions

relating to LR. No.5875/2 and submit a report to the National Assembly within 60 days of the adoption of this Report.

Thank you, Hon. Speaker. I beg to move and request Hon. Kabinga Wathayu to second.

Hon. Speaker: Yes. You beg to move and ask the Member for Mwea to second. He is bewildered! Hon. Wachira.

(Loud consultations)

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

Hon. (Dr.) James Nyikal (Seme, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Let me propose the Question and then I will take the point of order from Hon. Nyikal.

(Question proposed)

Hon. Nyikal, what is your point of order?

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Speaker, I beg to seek your guidance. This is a very important Report that has been laid before us. The Report indicates that there is some large piece of land whose lease expired and there was an instruction that the lease should revert. There was a Petition to that effect.

The recommendations are so serious that if they are implemented, we will actually sanction or even start the process of removing the Cabinet Secretary. Hon. Speaker, we seek your guidance. Given the information that has been given to us, the moving of the Motion itself, with due respect to the Member, will not guide us to make such drastic decisions. It does appear to me that this is a kind of Report that would have been given more time. Maybe some Members have read it, but quite often, we depend on the details that are given by the Mover and the Secunder to actually get the gist of the matter.

Hon. Speaker I, therefore, seek your guidance. Would it be proper that we move on with this process? I know the Secunder. I know his capability and when he just says: 'I second' I am sure he was not really prepared. We are giving a very important Report a very superficial consideration.

Hon. Speaker, that is what I seek your guidance on.

Hon. Speaker: I agree with Hon. (Dr.) Nyikal. Hon. Nyamai, do you want to say something on this?

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you very much, Hon. Speaker for indulging me. First of all, this matter is quite emotive because it concerns a huge piece of land. It is a matter that we should handle very carefully as a Departmental Committee on Lands. When a committee completes a report, we are always very happy to see implementation, but I am aware that this one quite contradicts that position.

I am seeking guidance, Hon. Speaker. When you listen to Hon. Kimaru, the Mover... I do not want to say he was unsure, but he seems a bit unprepared. When I also assessed Hon. Kabinga Wathayu, who is a forthright person, he did not want to embarrass our colleague. I would like to ask that you step down this matter so that we have more Members of the Departmental Committee on Lands and Members of the Committee to look at this Report holistically. It is a matter that concerns foreign affairs of this country. It also concerns land and trade. It is a matter that needs to be handled very carefully. It even goes further, I think, a bit political, to call for sanctions and removal of a Cabinet Secretary.

With all due respect, I would like to request the Mover and the Seconder and also seek your guidance, as you have done before, that you drop this subject, so that we can handle it when we have looked at the matter properly so that we can make proper decisions.

Thank you so much, Hon. Speaker.

Hon. Speaker: Very well. I think the Motion, as drawn, is also not correct. I have the Report of the Committee on Implementation. If you carefully look at what is addressed in Recommendations 71 and 72, it does not deal with this Motion. This Motion relates to Del Monte Kenya Limited, but Recommendations 71 and 72 are dealing with some different LR No; some land shown as LR. No.5875/2 which is in Nairobi County.

We have not heard the Mover mention anything about it. I think the Motion as drafted does not capture this too. The recommendations relate to two different petitions. The Report of the Committee on Implementation is on two petitions; one is on the Petition relating to Del Monte, and the other one is the Report on the Departmental Committee on Lands on the Petition by former workers of the late Mayor Jacob Samuels, regarding the invasion and eviction of the workers from their land in Roysambu Constituency.

The Mover has not touched or said anything about this, yet the recommendations relate to it. I, therefore, agree with Hon. (Dr.) Nyikal and Hon. (Dr.) Rachel Nyamai that the Motion as moved here does not capture the Report properly or in full. Therefore, in circumstances like this one, it is only fair that I take it out from the Order Paper and the Motion be drafted correctly to capture the two petitions. If the Report is about two petitions, then the Motion must be correctly drafted to include the two reports. This Motion deals with two reports, but the Motion deals with only one report. Therefore, I order and direct that it be taken out of the Order Paper for today and it be drafted appropriately and be moved. Please, get moving notes. As a Chair of a Committee, you need to explain to the House the stages and steps you have taken, so that the House understands why you have moved to make certain recommendations. If you just go to recommendations and we just vote, we will not do justice to the Report.

We take it out of the Order Paper and we can have it put on the Order Paper next week.
Hon. Wachira Kabinga.

Hon. Jospat Kabinga (Mwea, JP): Thank you, Hon. Speaker for the guidance. When I was asked to second, there is a report that I had seen, but I noticed that there are two reports. I, therefore, would wish to withdraw the seconding because of those discrepancies.

Thank you, Hon. Speaker.

Hon. Speaker: It is good that it is taken out and be treated as if it was never moved. Let the Motion be drafted properly to capture the two reports because the Committee on Implementation has apparently dealt with the reports on the two petitions, but the way the Motion is drafted, it only deals with one Report. Perhaps, that could be the reason it gave the Mover difficulties.

Let us move to the next Order.

(Motion deferred)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya)
took the Chair]*

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Members, we are now in the Committee of the whole House and we are considering the National Disaster Risk Management Bill (National Assembly Bill No.28 of 2021). Let us get started.

THE NATIONAL DISASTER RISK MANAGEMENT BILL

(Clauses 3 and 4 agreed to)

Clause 5

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have the Chairperson, Hon. Mwathi.

Hon. Peter Mwathi (Limuru, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 5 of the Bill be amended by inserting a new paragraph immediately after paragraph (b)—

“(ba) the Cabinet Secretary in the Ministry for the time being responsible for matters relating to internal security.”

I do not have the Order Paper. So, I am struggling.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Somebody should help the Chairperson so that you can give us a brief explanation.

Hon. Peter Mwathi (Limuru, JP): The justification for that is that in the proposed composition of the Intergovernmental Council for Disaster Management, the Cabinet Secretary for the time being responsible for matters relating to internal security is a key person and requires to be a member. The proposed amendment seeks to include the Cabinet Secretary.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Hon. Temporary Deputy Chairlady, the experience in the country so far with national disaster management and the structure which we have means that we really need this amendment, so that it is specific who is responsible. For example, if it is something to do with water, it will be the responsibility of the Ministry of Water instead of being taken around in circles not knowing who is responsible. For now, it will squarely rest with a specific ministry. The Principal Secretary in charge of that particular ministry will be responsible and all of us will know where to coordinate from.

Thank you, Hon. Temporary Deputy Chairlady.

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

(Clause 5 as amended agreed to)

(Clauses 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 agreed to)

Clause 18

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have the Chairperson.

Hon. Peter Mwathi (Limuru, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 18 of the Bill be amended in sub-clause (1) by deleting paragraph (f) and substituting therefor the following new paragraph—

“(f) in collaboration with relevant bodies, co-ordinate the evacuation of people in disaster prone areas.”

You realise that the board is required to act or take action together with other relevant bodies. That power has not been given to the board and the purpose of this amendment is, therefore, to give the board power to liaise with other bodies in evacuations.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Chairlady. I support this amendment. By their nature, disasters are multi-sectoral. Many institutions get involved and are necessary. Therefore, coordination is extremely important and that is what this amendment does.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Hon. Temporary Deputy Chairlady, when making this law, one of the things that we especially thought of was the county governments. Even if you have many other bodies coming to assist, you need a body with structures. For example, most county governments now have fire engines.

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 18 as amended agreed to)

(Clauses 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55 agreed to)

(Schedule agreed to)

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I now call upon the Mover to move reporting.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House in its consideration of the National Disaster Risk Management Bill (National Assembly Bill No.28 of 2021) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

THE CHILDREN BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Members, we will move on to consider the Children Bill (National Assembly Bill No.38 of 2021). Hon. Millie, do you want to say something.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes, Hon. Temporary Deputy Chairlady. I just want to request your indulgence for one or two minutes, so that I can check the amendments I have and also request for a hard copy of the Order Paper because I have several amendments which I do not want to miss.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): So, you need a copy of the Order Paper?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Charles has donated his and is requesting for another one. Also, to enable us, because the Committee and I have several amendments, I am requesting that as we move them, we be given the page numbers so that we can move quickly. We are hoping to finish this either today or tomorrow.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): That is okay. There is no harm in doing so. Let us move on. We were in clauses 3 and 4.

*(The Temporary Deputy Chairlady consulted
with the Clerk-at-the-Table)*

Hon. Millie, your amendments start from Page 803.

(Clauses 3 and 4 agreed to)

Although the Chair has not officially recorded, maybe because she is struggling with the new clauses, but they will be dealt with separately later on. So, let us proceed.

Clause 5

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The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): I call upon the Chair to move his amendments.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 5 of the Bill be amended in sub clause (1) by inserting the word “protection” immediately after the word “wellbeing”.

The justification is that protection of children goes along with rights of children to survive and development. Protection is one of the key pillars of children’s rights as enshrined in the United Nations High Commissioner for Refugees (UNHCR), and the African Charter, and Kenya is a party to both. So, I propose that we make this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. Having experience of the previous Children Act and a lot of litigation generated by children’s law, in Clause 5, we are inserting the word “protection” after “wellbeing” and we know children’s rights are supreme. Ordinarily, the court’s interpretation is that they go with the best interests of the child. I think this amendment reinforces this, it is good and will help.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I wish to support this amendment. If the Chair of the Committee is keen, I will be bringing some amendments in relation to this because children’s rights are clustered in four categories summarised as protection, participation, survival and development. If we amend this, then we do not have to go into specific rights. So, I support what the Chair has done.

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

(Clause 5 as amended agreed to)

Clause 6

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Chair.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 6 of the Bill be amended —

(a) in sub-clause (2) by deleting the words “his or her”; and,

(b) by inserting the following new sub clause immediately after sub clause (2)—

“(2A) The Principal Registrar shall take measures to ensure correct documentation and registration of intersex children at birth.

The Committee has two amendments in this clause. The first one is an inclusion of intersex children which has been a big subject in our Committee. The second one is a new sub-clause that will give the Registrar powers to amend the birth notifications and birth certificate forms to cater for intersex children, and support the Government in collection of real time data on intersex children from birth.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Millie.

Hon. (Ms.) Millie Odhiambo (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I wish to support that amendment, and thank the Chair of the Committee for bringing it. I have several other amendments in relation to intersex children because the Government has recognised that we have intersex children. They are children who at times have unclear genitals, sometimes they have two genitals, and sometimes, it is not very clear. This is just for clarity, because I have noticed that people do not understand what intersex really means.

So, I thank the Chair for taking care of that.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Hon. Temporary Deputy Chairlady, this intersex issue has even become part of litigations so far, and many children have suffered. The matter, in fact, is coming up in constituencies when children are reporting to Form One. That is the time this situation is being realised, and they do not even know which school to attend - whether to a boys' school or a girls' school. Children are growing knowing that they are boys, only to turn out to be girls. Also, Hon. Temporary Deputy Chairlady, this is being corrected medically. So, as we advance in making the law, we would in future still improve to make sure this area is fully covered under the human rights of children.

Thank you, Hon. Temporary Deputy Chairlady.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. (Dr.) Nyikal,

Hon. (Dr.) James Nyikal (Seme, ODM): I support the two. The intersex issue is a big one. For a long time, however, it has been treated as a medical problem while the social implication is not taken care of, that even if you go to their documents, people would not know whether they are male or female. Many times, they miss in the early stages of life; after birth, and when we start to realise that, it will go a long way in supporting these children.

(Question of the amendment proposed)

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

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

(Clause 6 as amended agreed to)

Hon. Chair and Members, we need to have your voices in the *Hansard*. So, do not whisper. You need to say your "Ayes" and "Noes" clearly. Nevertheless, the "Ayes" have it.

Clause 7

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Chair.

Hon. Josephat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, Clause 7 of the Bill be amended in sub clause (3) by deleting the words "his or her" and substituting therefor the word "their."

Again, this is related to the intersex children, and even as we go through this discussion, I want to bring to the attention of the House that our Committee took time to really understand the challenges that our children who are referred to as “intersex” go through.

We had a chance of talking to about four of them and we realised that they go through tremendous torture in their lives. It is high time we started recognising them, and more so, in our Bills. It is also my hope that people would differentiate between intersex and those other things that we do not entertain in this country because they are completely different.

I, therefore, bring in the amendment in Clause 7 of deleting the words “his or her” and substituting them with “their” because the intersex children may not be referred to as “his or her” but “their.”

Thank you, Hon. Temporary Deputy Chairlady, I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms). Soipan Tuya): Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Chairlady.

Once again, I support this. To me, it is a great recognition. These children have suffered particularly where they were missed at birth, and raised on the wrong sex.

I, therefore, support this.

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

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

(Clause 7 as amended agreed to)

(Clause 8 agreed to)

Clause 9

The Temporary Deputy Chairlady (Hon. (Ms). Soipan Tuya): I Call upon Hon. Millie to move her amendment.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I wish to propose my amendment, but with a further amendment, and I will give you the written version. When I was bringing my amendment, I noticed that the amendment I sent to the Legal Department has not been captured as I sent. They captured Part (b), but not Part (1). If you take note of my proposed amendment, we refer to differential treatment in the Bill.

The Temporary Deputy Chairlady (Hon. (Ms). Soipan Tuya): What is the text of the amendment, Hon. Millie?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): The text of the amendment, at the end of Page 806, says that the Bill be amended in Clause 9 by:

(a) re-numbering the existing provision as sub-section (1); and

(b) inserting the following new sub-section immediately after subsection (1)

(2) No differential treatment shall limit any rights of the child under this Act or under the Constitution.

However, they have left out the one which I want to add, which is that,

Notwithstanding Sections 7 and 8, differential treatment of a child, which is intended to protect the best interest of a child, shall not be deemed to be discrimination against the child.

The Temporary Deputy Chairlady (Hon. (Ms). Soipan Tuya): So, that is an extension of (b)(2) or what?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): That should be (2). There is also (3). They forgot (1) which I am going to give you the wording for. The wording is:

“Notwithstanding Sections 7 and 8, differential treatment of a child, which is intended to protect the best interest of a child, shall not be deemed to be discrimination against the child.”

The one they have made provision for is that:

“No differential treatment shall limit any rights of the child under this Act or under the Constitution.”

I can explain, Hon. Temporary Deputy Chairlady. If you would notice, we refer to the issue of differential treatment in the Bill. If you read legal...

The Temporary Deputy Chairlady (Hon. (Ms). Soipan Tuya): Hon. Millie, you have given me something which I do not have here, at all. I would wish that you submit it.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes, I am going to. I am going to submit it in writing because it was erroneously... I actually have my original document which I forwarded to the Legal Department. But also, by the Standing Orders, as you notice, I am allowed to bring it as a further amendment. I, therefore, bring it forth, but I am going to write and then forward to you.

The Temporary Deputy Chairlady (Hon. (Ms). Soipan Tuya): Before you go ahead to move it, just bring it forward for approval and processing, and then you can go ahead.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes, I can do that. I do not know whether I can borrow a paper.

(Hon. Amos Kimunya stood in his place)

The Temporary Deputy Chairlady (Hon. (Ms). Soipan Tuya): You can come forward, Hon. Millie, so that we can process it. Leader of Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairlady. I am following the amendment by Hon. Millie. What she is proposing as (b) is already in the Bill. Clause 9 of the Bill says:

“Notwithstanding Sections 7 and 8, differential treatment of a child which is intended to protect the best interest of the child shall not be deemed to be discrimination against the child.”

Basically, what she is saying becomes section one. What she is adding is:

“No differential treatment shall limit any rights of the child under this Act or under the Constitution.”

That is already in the Bill. So, we will be adding to the Bill what is already in the Bill.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Thank you, Hon. Leader of the Majority Party.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I want to thank the Leader of the Majority Party for pointing that out. If it is already there, maybe that is why the legal drafters put it. If then it is there, I beg to move:

THAT, the Bill be amended in Clause 9 by –

(a) re-numbering the existing provision as subsection (1); and

- (b) inserting the following new subsection immediately after subsection (1)-
(2) No differential treatment shall limit any rights of the child under this Act or under the Constitution.

The reason is that differential treatment should not limit the rights of a child whatsoever. Differential treatment is more like affirmative action.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairlady, I support. This is an important amendment and the Bill took care of it. Many times when we talk of differential treatment, it may look like the child will be discriminated against. What happens if a child is recognised with a specific disability or issue that he may have and it is responded to in a manner like giving a child an affirmative action? For example, if a child has a problem of vision, a teacher can bring that child from the back of a classroom to the front. That is positive. It is taking into consideration what the child needs and, therefore, treating the child differently. That is the principle and it has been taken care of. I support.

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

(Clause 9 as amended agreed to)

Clause 10

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

THAT, Clause 10 of the Bill be amended—

(a) in sub clause (3) by deleting the word “Director” and substituting therefor the word “Secretary”; and

(b) in sub clause (7) by deleting the word “Director” and substituting therefor the word “Secretary”.

This is a simple amendment. We are replacing the term “Director” with “Secretary” to align it with the current position in the Office of the Directorate of Children Services. It is now headed by a secretary and not a director. This is an amendment that will frequently occur in this Committee of the whole House stage.

(Question of the amendment proposed)

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

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

(Clause 10 as amended agreed to)

Clause 11

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): We have two amendments. We will start with the Chairperson's amendment.

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

THAT, Clause 11 of the Bill be amended—

(a) in subclause (1) by deleting the words “support him or her” and substituting therefor the words “maintain the child”;

(b) in subclause (4) by—

(i) deleting the word “and” appearing immediately after the word “poverty” and substituting therefor the words “disability or” in paragraph (c);

(ii) deleting the words “caregiver or providers, religious, political, economic or any other personal goals” in paragraph (g) and substituting therefor the words “religious, political, economic or any other personal goals of the caregiver”;

(c) in sub clause (6)-

(i) by deleting the word “Director” and substituting therefor the word “Secretary” appearing in paragraph (a);

(d) in sub clause (7) by deleting the word “State” and substituting therefor the words “Cabinet Secretary responsible for matters relating to finance.”

Most of these amendments are to tidy up and correct grammatical errors. We have one that is replacing the term “Director” with “Secretary.” The last one mandates the Cabinet Secretary in charge of Finance to make regulations establishing the Children Welfare Fund, under the Public Finance Management 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)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have the next amendment on Clause 11 by Hon. Nyenze. You have the microphone or it is not yours? Use the next one.

(Hon. (Ms.) Edith Nyenze moved to the next seat)

Hon. (Ms.) Edith Nyenze (Kitui West, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. I had proposed amendments to sub-clause (1) by inserting the words “with severe disability or” immediately after the word “every child” and in sub-clause (7) by inserting the words “including a child with severe disability” immediately after the words “welfare of the child” but

after discussing with the Chairperson of the Departmental Committee on Labour and Social Welfare, I am stepping all of them down.

(Proposed amendments by Hon. (Ms.) Edith Nyenze dropped)

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I call upon Hon. Millie to move her amendment.

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

THAT, Clause 13 of the Bill be amended-

(a) in subsection (1) by deleting the words “In addition to the right to basic education guaranteed under section 12,”;

(b) in subsection (2) by inserting the words “the government and” immediately after the words “responsibility of”;

(c) in subsection (3) by inserting the words “in estates and villages” immediately after the words “specific areas”.

Hon. Temporary Deputy Chairlady, if you may notice, the Bill says: “In addition to the right to basic education guaranteed under section 12...” then, it talks about the right to leisure as if it hangs on the right to education. We have children who may not have the ability to enjoy the right to education but they still have a right to leisure and play. It is important that we have that right as a stand-alone.

Secondly, that right is not just the responsibility of parents; it is a responsibility of the Government and parents. Playing spaces should be deliberately created in our estates and villages. Nowadays, we do development without regard to the fact that children have a right to play. If you go to my constituency, locally, people know that if you go to places like Pap-Kogweno, Pap-Kanyang’ore and others, those are playgrounds for children. However, when counties come in, they take those playgrounds and make them other things. So, we must provide in our villages and estates facilities for children to play. When our children do not play they become deviant and come up with all manner of strange activities.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): You should still be able to access the microphone.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Chairlady. The Committee agrees with Hon. Millie’s amendments in (b) and (c), but we really do not see the reason why we should amend subsection (1) to remove the words “in addition to the right basic

education guaranteed under Section 12”. Hon. Millie, it does no harm to have those words included in subsection (1) unless there is probably something that you really want us to know.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, maybe I can explain to him that when you say “in addition to” you are making the other rights subservient to that one. Why is it “in addition to”? It is just a right on its own. Why are we making it subject to another one?

So that we move forward, I can let it pass, but in future, I want you to know that when you say “in addition to the right to education”, you make other rights subject to it. What if that right to education is not there? Do you want to tell us that our children will not play? There are many children who are not school-going, but they still have a right to play. So, it is not attached to the right to education. We need our children to go to school, but the ones who do not go to school must also play for them to develop sufficiently. We are creating children who are very deviant because we do not let them be children. Let children be themselves and play.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie, you seem to have agreed with the Chairperson.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): It is okay. I will let it pass, but I just wanted to make him understand where I was coming from.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): So, are you dropping your amendment?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I am withdrawing the first one, but the other two stay.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Okay.

(Proposed amendment to Clause 13(1) by Hon. (Ms.) Odhiambo-Mabona withdrawn)

Let us have Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Chairlady. Now that they have agreed on that, I will let that pass. I would have thought that each right should be given its own strength.

I also want to support the issue of space. It has been assumed, particularly even in building codes, that this is something that applies only in urban areas. Building codes will insist that when schools are being built, space is left. That is not being followed. It has been assumed that it is followed in the rural areas, but as people are developing in the rural areas, you will find that all spaces are now under cultivation. It is the right time to make it known that in every place, whether urban or rural, the right of the child to play is protected by providing space.

I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Yes, Hon. Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairlady. I am trying to reconcile myself to the import of the amendment to subsection (2). Clause 13(2) of the Bill states: “It shall be the responsibility of every parent or guardian to permit and facilitate the enjoyment of his or her child of the right to leisure and play at any public recreational facility.” This Bill is basically bringing in the responsibility of the parent or guardian. Hon. Millie is adding the Government. The child does not belong to the Government. This is obligating the parent or guardian. I fail to see where the Government is coming in on this matter and why it should be obligated or conjoined to the parent or guardian.

I agree in terms of providing spaces, but not in terms of the Government permitting the child to go and play because it is the parent who is responsible. The import of this amendment was to ensure that the parent or guardian has that responsibility and obligation, not the Government.

Between Hon. Millie and the Committee, we stand to be guided, so that we do not end up over-legislating in terms of bringing the Government into the home and giving it the responsibility of the parent.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Yes, Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. Our children play in school. There is no parent who goes to school and takes their children to the field. We find schools that make children stay in classrooms from morning to evening. The moment you give that responsibility to the school, it is the Government. It is a responsibility of the Government within schools and the responsibility of the parents at home. That is why it is a responsibility of both the Government and the parents. If we only give it to the parent, it means that schools will make our kids study.

In fact, it is only that we are in a hurry. I wanted to say that children should go to school at 9.00 a.m. We are making kids operate as though they are the ones to create another heaven and earth. Let children be children. We also started school at 9.00 a.m. and we turned out okay. We are turning our kids into robots.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): The import of this amendment is that schools will now be obligated to ensure that there is time set aside for playing in the curriculum. That is the import I saw and it is why I thought that it is a good suggestion.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I will proceed to put the Question as Hon. Millie has made it clear.

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

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairlady, I thought we agreed with Hon. Millie that she is dropping the amendment to subsection (1).

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): The Chairperson, Hon. Kabinga, we already withdrew the amendment in part (a), which is your concern. I will proceed to put the global Question on the amendments in (b) and (c).

(Clause 13 as amended agreed to)

(Clause 14 agreed to)

Clause 15

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have the Chairperson of the Departmental Committee on Labour and Social Welfare.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairlady. I beg to move: THAT, Clause 15 of the Bill be amended in sub-clause (4)—

(a) by inserting the words “age appropriate” immediately after the words “access to” in paragraph (a);

(b) by deleting the words “his or her” in paragraph (b) and substituting therefor the word “their” and;

(c) by inserting the words “age appropriate” immediately after the words “access to” in paragraph (e).

There are three amendments. Two relate to age appropriateness of the information that goes to our children. As I indicated before in the other one, we are replacing the words “his” or “her” with the word “their” to include the intersex category. The appropriateness of information is to ensure that the information that goes to our children is appropriate for their ages, so that we do not just pass or seek information from children that may be inappropriate for their age.

(Question of the amendment proposed)

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

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

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

(Clause 15 as amended agreed to)

Clause 16

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie. You have so many amendments that you seem to be losing count.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, it is not just that. I am trying to keep up with the amendments by the Committee as well.

I beg to move:

THAT, Clause 16 of the Bill be amended in subsection (3) by deleting the words “five hundred” and substituting therefor the words “five million shillings”.

The Bill provides for a penalty of Ksh500,000 on a person who uses the state of orphaned children. I am speaking from the experience I had of the cases we dealt with when I was at the Cradle. I can give the example of a case that involved a lawyer. The parents died and left property worth millions of shillings. The lawyer squandered the property. The Bill proposes that we fine such a person Ksh500,000. I think that is too lenient. It should be enhanced to Ksh5 million. The fine provided for encourages people to misuse the property of orphaned children. You will sell property worth Ksh20 million and then you are fined Ksh500,000. The fine should be prohibitive.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairlady, the reason I support the amendment is because it deals with property. If it was about any other thing, we would leave the fine the way it is. But property has value. You may find that what a child is deprived of may be of a high value. If you leave the fine at Ksh500,000, people will be encouraged to squander children's inheritance. One may sell property worth Ksh30 million only to be fined Ksh500,000. If we enhance it, the matter will be left to the discretion of a court to issue a fine as per the value of the property that has been lost.

Thank you, Hon. Temporary Deputy Chairlady. 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)

(Clause 16 as amended agreed to)

Clause 17

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): There are two proposed amendments, one by the Chairman of the Departmental Committee on Labour and Social Welfare and the other by Hon. Millie.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I apologise. We were supposed to have harmonised our amendments. Unfortunately, during the recess we were not able to find ample time. The reason I am raising this point of order is that if the amendment by the Chairman passes, then mine dies. That is my understanding, because the amendments relate to the same matter and vice versa. Because the Chairman has priority, naturally his amendment will be considered first.

I want to bring to the attention of the Chairman the fact that they are proposing a standard for children different from the standard in the Employment Act and which is lower. Section 56 of the Employment Act provides for prohibition of employment of children between 13 and 16 years of age. No person shall employ a child who has not attained the age of 13 years, whether gainfully or otherwise in any undertaking. A child of between 13 and 16 years of age may be employed to perform light work which is not likely to be harmful. I am just wondering if the Chairman is aware of the Employment Act and whether it is in our best interest to have concurrent mandates for two Cabinet Secretaries. Sometimes that means nobody does the work. The Chairman could inform us as he moves his amendment.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have the Chairman go first, taking into consideration what Hon. Millie has said.

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

THAT, Clause 17 of the Bill be amended—

(a) by deleting sub clause (4) and substituting therefor the following new sub clause—

(4) The Cabinet Secretary responsible for matters relating to labour shall, within one year of the commencement of this Act, in consultation with the Cabinet Secretaries responsible for matters relating to children affairs and education, make regulations prescribing the terms and conditions of work and the kind of work that may be engaged in by children in the following age categories—

(a) children who have attained the age of thirteen but have not attained the age of sixteen years; and

(b) children who have attained the age of sixteen but have not attained the age of eighteen years provided that the regulations shall take account of the best interest of the child.

I am quite conversant with the Employment Act. The Committee observed that since the enactment of the Employment Act, there have not been regulations on child labour. The International Labour Organisation Convention stipulates that children may engage in light work. In light of the convention and in the absence of regulations to guide child labour, the Committee proposed that the Cabinet Secretary should come up with regulations within one year. The term used in the Bill is ‘may’ which we seek to amend to read ‘shall’ so that we can have regulations to guide child labour. That is the proposed amendment to clause 17.

Thank you.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Now, Hon. Millie, the option you are left with if you are still interested is to move paragraph (a) of your amendment.

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

THAT, the Clause 17 of the Bill be amended –

(a) in subsection (3) by inserting the word “begging” immediately after the word “including”;

This is because if there is one area where children are exploited it is in begging. As soon as you walk out you will find children begging all over. Even though we are using the word ‘including’, when there is prevalence in abuse it is good to mention the specific abuse.

I beg to move, Hon. Temporary Deputy Chairlady.

(Question of the amendment proposed)

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

(Clause 17 as amended agreed to)

Heading

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): A minute Hon. Millie. This is a distinct part of the Bill and so, I will propose the Question.

Let us have Hon. Millie.

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

THAT, the Bill be amended by deleting the heading “Duties and responsibilities of a child” appearing immediately after clause 17.

I am proposing that amendment because when look at the content of the Bill, that part has nothing to do with duties and responsibilities which come much later and so it must have been a typo. I do not seem to have the clause but the Chair can help us by reading what is immediately after that. It has nothing to do with duties and responsibilities. The duties and responsibilities come much later.

I thank you Hon. Temporary Deputy Chairlady.

(Question of the amendment proposed)

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

(Heading deleted)

(Clause 18 agreed to)

Clause 19

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): We have two proposed amendments by the Chairman and Hon. (Ms.) Nyenze.

Let us have the Chairman have ago at it.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Chairlady, we have two amendments here in Clause 19. The other one is a New Clause. I beg to move:

THAT, Clause 19 of the Bill be amended in sub clause (1) by deleting the words “or at a reduced cost”

The Committee felt that medical treatment, special care and training for children with disabilities should be free just like basic education.

(Question of the amendment proposed)

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

(Clause 19 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya: We now have Hon. (Ms.) Edith Nyenze to move her bit

Hon. (Ms.) Edith Nyenze (Kitui West, WDM-K): Thank you Hon. Deputy Chairlady, I beg to move:

THAT, Clause 19 of the Bill be amended by inserting the following new sub clause immediately after sub-clause (2)—

(3) A child with severe disability shall have the right to receive social assistance and to be accorded specialized medical treatment, special care, special education and training free of charge by the State where possible or at a reduced cost.

(4) The State shall establish such institutions or facilities including child care facilities, health facilities and educational institutions as may be necessary to ensure the progressive realization of the right under this section.

The justification is that the proposed amendments seek to recognise children with severe disabilities as a special group and grant them access to specialised medical treatment and special education free of charge. They should also receive social assistance through their parents or guardians.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya: Let us have the Chairman.

Hon. Josphat Kabinga (Mwea, JP): On the first one, we proposed to delete the words “at reduced cost” which I thought the Committee’s version is more improved than hers because we want medical facilities and the care of children with disabilities to be free just like basic education and not at a reduced cost. So, I would prevail on my colleague to take this version that we have and drop her version on that particular sub-clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. (Ms.) Nyenze, I believe you have heard what the Chairman has said. You will have to agree with him and reconfigure your wording or what do you have to say?

Hon. (Ms.) Edith Nyenze (Kitui West, WDM-K): I agree with his wording.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairlady, even before Hon. Nyenze agrees or otherwise, I see in the amendment the difference between what Hon. Nyenze is proposing and what is in the Bill. Her version is specific on children with severe disabilities. However, within the Bill we already have children with disabilities, regardless of the severity of the disability. We have just agreed that they should be provided the same at no cost. So, what value then do we add by replicating the same for severe disability? Any child with any disability severe or not is already covered. So, we are duplicating the provision and perhaps it will not add any value. I believe that that is already covered when we say; “a child with disability shall...” and what the Committee has now proposed by removing the issue of reduced cost. So, every child is covered regardless of the severity of the disability as long as it is a disability and hence we might want to consider whether we can just delete that and move to Section 4 which is on the establishment of the institution. I do not know whether I am clear.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairlady, I agree with the Hon. Leader of the Majority Party. This is because, if you introduce “severe”, the other problem it causes is the definition of the word “severe”. So, we will now have two types of children; one with disability and another with severe disability and you have to define each. So, I support that we leave it out.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Maybe as I give Hon. Kabinga opportunity, Hon. (Ms.) Nyenze should be thinking as to whether she would want to drop No. 3 and carry on with No. 4. Let us have Hon. Kabinga.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Chairlady. In our discussion with Hon. Nyenze, we had actually agreed that she was going to drop number three on the basis that even this terminology of “severe disability” is not something you can easily define. So, we discussed and agreed that we can go by disability so that all children with disability will then benefit from the free medical services. I think Hon. Nyenze probably did not mark that one for dropping because we had agreed that she drops it.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Nyenze.

Hon. (Ms.) Edith Nyenze (Kitui West, WDM-K): I drop my amendment. I provided that the children with disability are taken care of. I agree with the Chair. I drop my amendment to Clause 3. Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I think there is a bit of a drafting error. It should actually be reading 19(a) and (b) and not (3) and (4). So, Hon. Nyenze, you have agreed to drop sub-clause (a). Hon. Nyenze, you had agreed to drop sub-clause (3) and now instead of sub-clause (3) and (4), you have dropped sub-clause (3) and we have sub-clause (4) to be dealt with.

*(Proposed amendment to Clause 19 (3) by
Hon. (Ms.) Edith Nyenze dropped)*

I will go on to put the Question with regard to sub-clause (3).

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

(Clause 19 as amended agreed to)

Clause 20

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I call upon Hon. Millie to move her amendment.

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

THAT, Clause 20 of the Bill be amended by deleting subsection (1) and substituting therefor the following subsection-

- (1) No person shall subject a child to –
 - (a) psychological abuse; or
 - (b) child abuse.

Hon. Temporary Deputy Chairlady, if you notice, it says “No person shall subject a child to psychological abuse including...” and then “any other Act amounting to child abuse as

specified....” I was just saying for it to be neat and concise, we just say “Nobody shall subject a child to psychological abuse and to child abuse.” Already, child abuse is very clearly defined. When you say child abuse, we know what it means and I am also proposing a comprehensive definition of psychological abuse which if it passes, then it is sufficient. So we do not need to go through all these long stories because they may actually even be limiting. If you look at my definition of psychological abuse, what is put here is limiting. Then if you look at child abuse even as defined in the Act, what is defined as child abuse is more comprehensive. So I would just suggest that we put “no person shall subject a child to psychological abuse or child abuse”. Simple! Then for the rest, we go to the definition of what psychological abuse or child abuse is.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): I support that amendment. When you use the word “including”, you are demeaning the other one. The main one is the one you start with. I think if you put it like this, then it is clear that one is as important as the other. Therefore. I support that.

*(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 20 as amended agreed to)

Clause 21

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Here we have two amendments, one by the Chair and one by Hon. Millie. We will start with the Chair’s.

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

THAT, the Bill be amended in sub clause (1) by-

(a) inserting the following new paragraph immediately after paragraph (e) –

“(f) intersex genital mutilation; or”

(b) deleting the last paragraph and substituting therefor the following new paragraph –

“(g) any other cultural or religious rite, custom or practice that is likely to negatively affect the child’s life, health, social wellbeing, dignity, physical, emotional or psychological development”.

Hon. Temporary Deputy Chairlady, here it is about the intersex. Most of us are familiar with Female Genital Mutilation (FGM) and are probably unfamiliar with Intersex Genital Mutilation (IGM) whereby intersex children are also subjected to a very traumatising activity of trying to correct what may have been a natural occurrence by mutilating one of the genitals. Therefore, we are including it as part of children who require care.

I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, let me indicate that in principle, I agree with the Chair but I wanted to persuade him to adopt my wording for the following reason: During this process, I have actually had the privilege, through this Bill and the Reproductive Healthcare Bill, to meet a lot of...

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie, why do you not want to wait until it is your turn?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, because I am contributing towards this.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Okay.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): In contributing to this, I am actually persuading him because in principle we are moving the same amendment. We are all concerned about taking care of intersex children but I just wanted to indicate that one of the things that came out very clearly from the intersex community is that there are a number of them who think using the word “intersex genital mutilation” is actually very negative because they said it actually equates it to FGM and circumcision which is cultural and this is not cultural. This is actually done to try and correct their gender. One of the other things that we were also advised by the doctors that we met was that now we also have... I know it is a new thing that we are still grappling with as a country but we were advised that we have specialists, geneticists that may at an early age be able to tell and therefore actually perform surgery early so that you may not necessarily wait for somebody to be an adult to choose their sex. I just wanted the Chair to see. If mine makes more sense, then he can drop his and we adopt mine. Otherwise in principle, we are actually saying the same thing.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Kabinga.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Chairlady. I think Hon. Millie has brought in a dimension that probably we had not looked at on the IGM which is not a cultural thing but probably a criminal activity. Therefore, I would not have any problem in going by her wording.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Chair, do you know FGM and IGM are criminal?

Hon. Josphat Kabinga (Mwea, JP): In those days, one was seen as...

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Even if it is cultural or not, it is criminal.

Hon. Josphat Kabinga (Mwea, JP): IGM is also criminal. I agree with you, Hon. Temporary Deputy Chairlady. From the definition which has been given by Hon. Millie on the view of the intersex children or people, the use of IGM demeans the activity. I have just seen what she is about to propose. On this amendment, I am amenable. I agree with her proposed amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let me give an opportunity to the Member for Bomet Central. I can see your name here. You normally sit somewhere there. So, I cannot see you. I was looking for you.

Hon. Josphat Kabinga (Mwea, JP): We are both here.

Hon. Ronald Tonui (Bomet Central, JP): Thank you. I moved to be closer to my Chairman. What Hon. Millie is proposing is good. It enriches what Hon. Chairman is proposing. We need to take her amendment, so that we enrich this Bill. It is positive. I support it.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairlady, Hon. Millie's amendment brings in another issue. I saw this IGM. The other thing that often occurs is medical correction. Sometimes, there is an effort to correct the genitalia, so that it is in line with the genes. What is in your genes is not exactly the same as the genitalia. You may be male but what we see outside is female genitalia or the other way round. Sometimes, there is need for medical intervention. I do not know whether you can call it mutilation at that point. Hon. Millie has put the advice of a geneticist. This means that in the case of intersex, there will be medical consultation before anything is done. That makes it better.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairlady, I want to clarify something.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Yes, Hon. Chairman.

Hon. Josphat Kabinga (Mwea, JP): We are withdrawing Clause 21 (a) and maintaining Clause 21 (b), Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Okay. That is in order.

(Proposed amendment to Clause 21(a) withdrawn)

*(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)*

Let us have Hon. Millie.

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

Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 21 of the Bill be amended -

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (g)-

(h) except with the advice of a geneticist, organ change or removal in case of an intersex child.

(b) in subsection (2) by deleting the word "two" and substituting therefor the word "five" immediately before the word "hundred".

I was very honoured and privileged to meet some of the children. We have James whose name was Cynthia before she had an organ change. She was a head girl but she later turned out to be a man. Every time he goes to the bank to withdraw money, the police officers are called because of an error that was done when he was a child.

We also met Kwamboka and several others. If we have time in future, it will be very good for parliamentarians to meet intersex people. It is one of the most hidden and kept issue in the country, and yet our census says that they are over 700,000.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I invite any Member who wishes to contribute.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairlady, I want to believe that a geneticist is a medical profession.

(An Hon. Member informed Hon. Amos Kimunya off record)

Is it defined in the Bill?

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

I want to make sure that by the time we legislate this, we do not end up looking for who a geneticist is or we should amend it further to add a general medical advice. Hon. (Dr.) Nyikal can help us on this. We can write, “the advice of a medical practitioner”, so that we do not end up with a situation where we are looking for this geneticist who is not available to provide this advice. I want to be guided by Hon. Nyikal who is a medical profession.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I want to indicate that I might have more information than Hon. (Dr.) Nyikal here. When we met the intersex people, we were told that the doctors presume sometimes when they see the genitalia. When they see the genitalia of a female, they say that it is definitely a girl. If there is any other sign of a male one, they remove it. However, later, this person they have removed the male genitalia so that she becomes fully female, when she grows up, she becomes a male. We were advised by several doctors whom we met that we have a specialist.

If we do not want to define it, then I can amend it further by saying, “except with the advice of a medical specialist.” As an oversight, I did not define a geneticist. We can either define the word “geneticist” or say “except with the advice of a medical specialist.” Every medical professional cannot purport to deal with this. That is how we end up with a lot of accidents. As soon as a parent has a child whom she notices has two genitalia, she goes to a doctor who then decides to remove one. Based on many other genetics test, there are doctors who can tell what the child is likely to be in future. It is not every doctor who has that specialty. That is why I suggested that.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairlady, when I look at the definition of a geneticist, it is an expert in or student of heredity and the variation of inherited characteristics. I do not know whether we should go with a medical specialist. Within the regulations, we can define the medical specialist who is supposed to give that advice.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I can put it on record.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us hear Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairlady, I am sure that in Hon. Millie’s consultation, this word “geneticist” was brought by medical doctors. That

error of changing the genitalia in children that we are talking about happens before we do Deoxyribonucleic Acid (DNA) and chromosomes tests. A medical specialist like a surgeon will still need a geneticist, unless we now want to add “a medical geneticist.” There is no surgeon who can operate on these children right now, unless he has a consultation with a geneticist where the sex is determined as in the genes but not as seen. I was happy with the word “geneticist.”

Hon. Amos Kimunya (Kipipiri, JP): Medical geneticist.

Hon. (Dr.) James Nyikal (Seme, ODM): We can keep the word, “medical geneticist”. It will make the amendment more clear than it is.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie suggested that we should withdraw the word, “geneticist”. Hon. Millie, did you say that you want to withdraw the term, so that you do not have to define it. Does that work?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, what I would actually do for purposes of moving forward - Hon. Nyikal sided with “medical geneticist” so that it refers specifically to that... However, because we are not likely to finish today, I will make further consultations because we have specialists, just to be sure that I get the right terminology. In that case, let me do a further amendment so that it is “medical geneticist” because what they said is that there are people who can determine from your genetic makeup what you are likely to be in future, whether you have a leaning to female or male. If that is the specialist, we will call it “a medical geneticist”. Otherwise we will have all other doctors purporting to make sex changes which backfire in future.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie, just for clarity because we have gone back and forth, you now need to read out (g).

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, my proposal is that, “except with the advice of a medical geneticist, organ change or removal in case of an intersex child...”

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): So, you have moved it in an amended form?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, yes, I have moved it in an amended form. Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Chair.

Hon. Josphat Kabinga (Mwea, JP): We agree with that, Hon. Temporary Deputy Chairlady, but that will mean that we need to include the “medical geneticist” in the definition.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): You have time. We cannot finish this today. So, like Hon. Millie said, we need to do the necessary.

Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): This is a technical term. If we say, “a medical geneticist” there are even plant geneticists. So, if we use the term, “medical geneticist” in their consultation, it may come back with the same. If we start defining terms, we may find ourselves in a similar situation, when we say an engineer, we may want to define an engineer. But that is defined elsewhere. Let us leave it as “medical geneticist” and it will give it a good cover.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie and the Chair, note it and when we will come back to it after this Sitting, we need to be clear about it.

We can now proceed to put the Question. Did you move both parts of the amendment?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I only moved one part. The other one is just enhancing a sentence from “two hundred” to “five hundred”, because many people will violate the rights of a child and raise funds as we nowadays

do in *WhatsApp* groups. Within one hour we would have raised 200. So, you can easily violate the rights of a child and create a *WhatsApp* group. We need to provide punitive measures.

Thank you.

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

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

(Clause 21 as amended agreed to)

Clause 22

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie.

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

THAT, Clause 22 of the Bill be amended in subsection (2) by deleting the words “not exceeding” and substituting therefor the words “not less than” wherever they occur.

Again, this has to do with punitive measures. The way the sentences are worded, it makes it very lenient because when we state that it should not exceed, we are merely capping the maximum, but the minimum can be as small as one month since many children’s lives are destroyed by drugs. We should make it very stringent for people who want to access drugs to be dealt with very severely. Almost for all of us, it occurs either within the family or if not the immediate family, the wider family. Most of our children are messed up because of drugs. But the way we are putting the sentence, it is very lenient because when we say, “not exceeding” that is just a higher capping. You can actually jail someone for one month or even fine them Ksh5,000, but somebody’s life is already destroyed.

That is my proposed amendment.

(Question of the amendment proposed)

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

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

(Clause 22 as amended agreed to)

Clause 23

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie.

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

THAT, Clause 23 of the Bill be amended in subsection (2) by inserting the

following proviso-

“Provided that any such punishment shall be humane and preserve the child’s dignity, and be commensurate with the evolving capacity of the child.”

Here we are talking about punishment to children. We are saying that assignment of any task or infliction of punishment by way of penalty for any offence committed by a child under any law shall not be construed as a contravention of the right specified under subsection (1) which is basically that children should not be punished. It borrows a lot from the Convention against Torture.

But if we do not make a proviso, we will go through a lot of things I saw when I was representing children in the Cradle. A lot of children, especially the street ones will tell you that whenever they are in the justice system, the kind of punishments they would be given would be tied to ropes and hanged on rooftops and some of them would be stripped naked and beaten. So, I am suggesting that even when a child has done a mistake and is being punished under the justice system, the punishment must be humane, preserve the child’s dignity and be commensurate with the evolving capacity of the child.

Hon. Temporary Deputy Chairlady, I am sure you saw very recently one of the Members shared with me a video that was circulating of police officers interviewing an underage child who had been sexually abused and they showed us the face of that child. Those are the kind of things we are talking about here. Even if it was a child who had violated the law, we do not need to see its face. So, it should be humane and preserve the child’s dignity and be commensurate with the evolving capacity of the child so that a punishment given to a two-year old should not be the punishment given to a 17-year old.

Thank you.

(Question of the amendment proposed)

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

(Clause 23 as amended agreed to)

Clause 24

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): We have two proposed amendments by the Chair and Hon. Millie. Let us have the Chair have ago at it first.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairlady, as Hon. Millie has said, this amendment is similar to what she is proposing.

Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 24 of the Bill be amended in sub clause (3) by deleting the words “children with a disorder of sex development” and substituting therefor the words “intersex children”.

We are simply replacing the words, “children with disorder of sex development” with “intersex children” so that we can maintain the same terminology we have been using all through.

I beg to move.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie, your amendment falls. We shall proceed to put the global question.

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

(Clause 24 as amended agreed to)

Clause 25

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

THAT, Clause 25 of the Bill be amended by inserting the following new sub clause immediately after sub clause (2) —

“(3) The personal data concerning a child shall be processed only in accordance with the provisions of the Data Protection Act.”

This amendment seeks to protect data concerning children. Personal data shall not be processed unless consent is given by a parent or guardian. All rights and obligations relating to data protection pursuant to the Data Protection Act, 2019, shall apply. This is just to protect the data we collect from children, how we use it, and how we process it.

(Question of the amendment proposed)

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

(Clause 25 as amended agreed to)

Clause 26

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 26 of the Bill be amended—

(a) in the marginal note by deleting the word “picket”;

(b) in sub clause (1) by inserting the words “and unarmed, to” immediately after the word “peaceably”;

(c) in sub clause (2) by deleting the word “and reputation”;

(d) in sub clause (3) by deleting the words “his or her” and substituting therefor the word “their”;

(e) by deleting sub clause (4) and substituting therefor the following new sub clause—

“(4) The right guaranteed under subsection (3) shall be exercised—

- (a) in accordance with the national values and principles of governance prescribed in Article 10 (2) of the Constitution;
- (b) voluntarily by a child and without any undue influence, coercion, inducement or enticement by any person.

(f) by deleting the proposed sub clause (5).

This amendment is meant to clarify some issues related to this clause, including the “his” and “her”, and replacing it with an intersex, and also affirming that the Constitution requires the right to demonstrate to be exercised while unarmed and subject to rights of others. It is also to protect children from undue influence or coercion by adults and exploitation by ill-motivated parents when it comes to demonstrations and other rights that we are describing in this clause.

(Question of the amendment proposed)

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

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

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

(Clause 26 as amended agreed to)

Clause 27

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

THAT, Clause 27 of the Bill be amended by inserting the following new subsection immediately after subsection (3)-

(3a) Any court cost under this section shall be kept at a minimum.

What it seeks to do is ensure ease of filing for persons taking matters on behalf of children or in the best interest of a child so that costs are kept at a minimum.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Member for Bomet Central.

Hon. Ronald Tonui (Bomet Central, JP): It is quite vague when you talk of “minimum”. What is it based on? It appears too vague. Why do we not have an amount so that it can be understood? Will it be a minimum of Kshs1 million to one person? She says it shall be kept at a minimum. What is that minimum? I thought it is very vague. It needs clarification.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie, you need to clarify. Hon. Tonui feels like it is vague.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, there are varying costs in court. You cannot put a specific amount. When it says it be put at a

minimum, it means for whichever category. For instance, filing a suit on child support may be separate from filing a suit on a violation of the human rights of a child. There may be different costs which I cannot tabulate here. They are tabulated under different systems of law. If you put a general principle that they are kept at a minimum, they will look at the minimum in the categories of whatever law they do, and give that minimum.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I hope it is clear now, Hon. Tonui. I will go on to put the Question.

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

(Clause 27 as amended agreed to)

Clause 28

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): We have two amendments, by the Chair and another by Hon. Millie. We will have the Chair have ago at it first.

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

THAT, Clause 28 of the Bill be amended in the marginal note by deleting the word “rights” and substituting therefor the word “duties”.

We are doing an amendment to the marginal notes. Instead of rights and responsibilities of a child, we are replacing the rights with duties. This is to clarify the provision to be in line with the content of the section.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie, you can move yours.

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

THAT, Clause 28 of the Bill be amended –

(a) by inserting the word “any” immediately before the words “matter before court”;

(b) in paragraph (b) by inserting the words “provided that the child’s best interest shall remain paramount” immediately after the word “need”;

(c) by inserting the following paragraphs immediately after paragraph (e)-

(f) attend school unless prevented by factors beyond their ability;

(g) not discriminate against other children on account of ethnicity, race, disability, gender, social status or other grounds;

(h) protect the environment;

(i) not to abuse or harm other children;

(j) not to destroy any property.

There is just a correction in the first part. There is a word “any” that is missing. We are saying “in any matter before a court of law” so that it is grammatically correct. In the second part, in paragraph “b”, we want to make sure that the best interest of a child is taken into account even when we are giving children duties.

Finally, I seek to insert new sub paragraphs immediately after paragraph (e), to insert sub-paragraphs (f), (g), (h), (i) and (j).

If you notice, the duties we are giving to our children under the Bill are very utopian. One of the things that those of us who support children’s rights have been accused of is that we over-emphasise the rights of children against their duties and so our children grow up completely out of control. So I propose duties that are real and that relate to the day-to-day lives of children, including the duty to attend school, unless prevented by factors beyond their ability, and the duty not to discriminate against other children, which is very common.

We have seen children commit suicide because they are being mistreated. The other duties are the duty to protect the environment, the duty not to abuse or harm other children and the duty not to destroy property. What I am proposing will ensure that children begin to have real duties, not utopian ones like taking care of cohesion in East Africa. Those are things they will think about. At 10 years, a child does not know what East Africa is. They know about attending school and being responsible enough not to harm other children.

Thank you.

(Question of the amendment proposed)

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

(Clause 28 as amended agreed to)

Clause 29

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie.

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

THAT, Clause 29 of the Bill be amended in subsection (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) the duty to protect the child from neglect, abuse and discrimination;

There is reference to differential treatment but in a manner that does not mean differential treatment. How can you protect a child from differential treatment when it is a positive thing?

As Hon. Nyikal explained, if you have children with learning disabilities, you sit them in front of the class. That is differential treatment. There can be nothing wrong with that. The way the provision is worded makes it look like differential treatment is a bad thing. It is not. It is like affirmative action such as having 47 women representatives in the House. That is what I consider closest to differential treatment. I suggest that the provision stops at ‘and discrimination’.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Chairman.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairlady, Hon. Millie gave the example of good use of differential treatment, but there are many ways in which you can use differential treatment to abuse a child. This is why we included the provision. Overall, proposals in the Bill prohibit any differential treatment. The example of having a child sit in front of the class is good, but there are many discriminatory practices that could be attached to differential treatment. Therefore, I would plead with my colleague to withdraw this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Millie.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I want to let the Chairman know that I propose a definition of differential treatment. I was once before a three-judge bench on the issue of differential treatment in the case of RN versus the Attorney-General. The child was two years old. The bench found that differential treatment is not discriminatory. It is positive. It is about treating a child in a different manner that is beneficial to the child. How can treating a child in a manner that is beneficial to her or him be negative? We should not confuse differential treatment with discrimination. You can *Google* what differential treatment is. It is not discrimination.

If you look at decided cases, differential treatment is not discriminatory treatment. I encourage your legal team to look at the case of RN versus the Attorney-General. You can get it from the Cradle. I do not remember its citation. Based on the decision that the court made, we included Article 53(g) in the Constitution. It deals with the issue of non-discrimination. Let us not confuse discrimination and differential treatment. I propose a definition of differential treatment. I can see the Chairman is consulting.

With your permission, Hon. Temporary Deputy Chairlady, I can read my proposed amendment to define differential treatment.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Yes, you can read so that both of you are on the same page.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): I know it will come much later, but because it relates to this, let me read to the Chairman what I propose to be differential treatment:

“Differential treatment is preferential treatment accorded to a child who is vulnerable or who is in a precarious socio-economic situation and includes affirmative action measures to protect the child.”

So, it is actually positive. It is not negative. The way it is put in this clause means it is something negative. That is why I propose to exclude differential treatment, but leave discrimination.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): I think it is also called positive discrimination.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): Yes, but if you do not include the word ‘positive’ then it is wrong.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Chairman, are you okay?

Hon. Josphat Kabinga (Mwea, JP): We are still consulting, but given what Hon. Millie has described, of differential treatment being preferential treatment, I would propose that we take up her amendment. But this is not something we will finish today. We will continue looking at it. If we find that we need to bring a further amendment, we will. For now we can go by her proposal.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Yes, you have more time to consult.

(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 29 as amended agreed to)

Clause 30

The Temporary Deputy Chairlady (Hon. Soipan Tuya): Hon. Millie.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, you know people have to catch up on the just concluded party primaries. So, I am sorry I was distracted a little. I had to know whether my friend made it as a gubernatorial candidate.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): That is a good show of concern.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes Hon. Temporary Deputy Chairlady. Whether we are from opposing parties or not.

Hon. Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 30 and substituting therefor the following new clause.

Equal parental responsibility.

30. (1) Subject to the provisions of this Act, the parents of a child shall have parental responsibility over the child on an equal basis, and neither the father nor the mother of the child shall have a superior right or claim against the other in exercise of such parental responsibility whether or not the child is born within or outside wedlock.

(2) Without prejudice to the generality of subsection

(1), two or more persons may have and exercise concurrent parental responsibility over the same child.

(3) The court may, in the best interest of the child, give orders that confer parental responsibility on only one parent.

The reason why I am bringing this is because it goes back to the same case I was referring to; which is RN vs the Attorney General. At the time we were bringing in this case, we were using the old Constitution and the Convention on the Rights of the Child and the African Charter. What we were told at that point was that our Constitution did not have certain categories of discrimination. Mercifully I sat as a founding member of the Constitution and we brought in very clearly non-discrimination of children born out of wedlock. That is why I am very keen about the definition of “differential” and “discrimination”.

Since I know where the Committee is coming from, I am sure it must have had a lot of discussions, especially from our different cultures. I am sure the Chairman also had the privilege to sit with us in one of the sessions where we were having experiences from different communities.

For instance amongst the Luhya, if children are born out of wedlock, they are called outgrowers and must eventually be returned to their fathers. The same happens amongst the Luos.

However, it is different in other communities. Amongst the Kikuyu children belong to the mother and yet under all the conventions and the Constitution what we check is the best interest of the child so that we do not subject the child to cultural standards. We provided very clearly under Article 53 of the Constitution that we shall not discriminate against children born out of wedlock. I was hoping that when we say we are amending the Children Act to conform to the Constitution, then this would have gone.

However, we are bringing the same provision. So, let us not provide a standard different from children born out of wedlock, except if you are bringing differential treatment like my good friends from one of the Kalenjin communities gave us an example of a differential treatment which is good culturally. It is such that when you are coming into a home with children, then you are asked if you accept and if you accept you are allowed to have them and you never change. There is no reverse, but they are children born out of wedlock. That is positive differential treatment.

However, you cannot provide a standard that is lower. That is why I am bringing this amendment that, subject to the provisions of this Act, the parents of a child shall have parental responsibility over the child on an equal basis. Neither the father nor the mother of the child shall have a superior right or claim against the other in exercise of such parental responsibility whether or not the child is born within or outside wedlock.

That is Article 53 of the Constitution. Should we provide a different standard, it will be a subject of litigation.

I thank you, Hon. Deputy Chairlady.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Let us have the Hon. Chairman.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Chairlady. Clause 30 as contained in the Bill has 11 sub-clauses. I am not sure which of the 11 sub-clauses Hon. Millie is challenging so that we can be specific. The three sub-clauses that she is introducing are unlikely to replace the intended purposes or objectives of this particular clause. So, can she be specific and tell us out of the 11 sub-clauses what she is challenging and on what basis?

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Millie?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I can explain the clauses that I am challenging. In sub-clause 31, it starts with “where a child is born out of wedlock...” Why are we starting with “where a child is born out of wedlock..?” That is against Article 53 of the Constitution. So, I am saying: “subject to the provisions of this Act,” because we will be proposing amendments to allow for differential treatment; this is so that we understand that there are certain circumstances where we may treat children a bit differently because of cultural sensitivity. I am adding at the end of that whether or not a child is born within or outside wedlock.

In sub clause 2, I am suggesting we delete all of it because it provides categories. Where a child is born out of wedlock and the other parent of the child subsequently gets married, we are providing a different standard for children whose parents were married to each other at the time

the child is born and children whose parents consequently get married. So, I am challenging sub-clause 6 as well. I am seeking to renumber 4 to 2 so that sub-clause will read “without prejudice to the generality of sub-section 1 not 3” because I am proposing to delete 3. I hope you are following me Hon. Chairman.

So, I am proposing an amendment to Clause 3(1), deletion of entire 2, deletion of entire 3 (a) and (b), then I am proposing to renumber 4 to become 2 and after doing that I am proposing the deletion of entire sub-clause 6 because what it is basically doing is provide categorised standards for children born out of wedlock, within wedlock, when parents are married, that is straightaway unconstitutional. So, I only mentioned sub-clause 1 of my proposed amendment, but there is 2 and 3.

In all these things, we would look at the best interest of the child and then without generality to one, two or more, persons may exercise concurrent parental responsibility over the same child taking into account that sometimes we may have peculiar circumstances because of our culture.

However, to start providing the same provisions under Section 24 of the Children Act is unconstitutional.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have Hon. Tonui.

Hon. Ronald Tonui (Bomet Central, JP): I do not seem to be very comfortable with this proposal, especially when you include this idea of children born outside wedlock. Remember when a child is born outside wedlock, there is a father somewhere who could still be taking care of that child. This amendment seems to intend to lock out that father. Otherwise, you will now be bringing in three parents. I tend to think that doing that will bring some confusion into that family.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Yes Hon. Millie. What is your point of order?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, what is out of order is that the Hon. Member is misreading. He is doing exactly the opposite of what I am saying. My amendment is seeking to do the opposite of what he is trying to say. There may be a father somewhere who may be interested in taking care of the child and we cannot stop the father from having access to the child. However, we are saying that we will have circumstances in my proposed sub-clause 3...

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie, why would you be talking about fathers? It can be both father and mother.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): It is both mother and father. Even recently the court made a decision which said that fathers can actually even.... Before that, the position in the court was that a child below nine years was automatically with the mother. The courts have reversed and they have now said even fathers can have children who are below nine years. However, in such a situation, we cannot exclude either the mother or the father from having access to the child. I am actually trying to look at the constitutional provision so that even as we are contributing, we are informed by the constitutional provision. Article 53(1)(e) of the Constitution says:

“Every child has the right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not.”

So when you start putting “when they were married to each other” or “they were not married to each other”, you are going directly against Article 53(1)(e). It is unconstitutional. So, I actually agree with Hon. Tonui that I am doing exactly what he is worried that I am not doing.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Let us have the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairlady, I basically see Hon. Millie's amendment as simplification of the provisions which were in the Bill. What the Bill had tried to do is to cater for all kinds of situations like people in wedlock, out of wedlock and people who are unmarried and eventually get married.

However, what Hon. Millie has done is collapse all that into one. So, we are basically talking about the same thing except the Bill is far much more detailed and providing for the different situations. If that amounts to an unconstitutional provision, then either way, I think we lose nothing by going through the amendment proposed by Hon. Millie.

Unless advised otherwise for simplicity, Hon. Millie's amendment is less confusing than what is in the Bill and basically we are talking about the same thing that the true parents will have equal responsibilities regardless of the circumstances. So then we do not need to define all those circumstances because the end result is equal responsibilities. I actually prefer the simplified version as proposed by Hon. Millie.

I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Tonui.

Hon. Ronald Tonui (Bomet Central, JP): Before that clarity from Hon. Millie, I was still trying to explain myself why I was supporting.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): You were on a point of order. Proceed.

Hon. Ronald Tonui (Bomet Central, JP): My issue was this: You know as a man you can marry a lady with a child. Once you marry, you are now two fathers of that child because there is another one there. Then you have your own biological children from this same lady and there is this child whom you are sharing with another father outside there. So the father who is outside there can send something to the child. It can be a cloth or something else. As he sends that, he does not send to the other children who are here. I think that is what you are calling differential. That is why I am thinking if we do not have clarity on that, it can confuse the family setup. It is better when we have that clarity in the Bill, the way it is broken down. If you simply say you have equal rights over this child, but where a child also acquires another father through marriage of the lady, that one is quite vague. There is some sort of confusion.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): (*Off record*)

Hon. Ronald Tonui (Bomet Central, JP): Okay. Let me read that Section 2 so that we do not bar something.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Kabinga.

Hon. Josphat Wachira (Mwea, JP): Hon. Temporary Deputy Chairlady, you know we are dealing with a very important issue that has been a problem to many Kenyans and children find themselves in problems especially on parental responsibilities.

Whereas Hon. Millie's short form of this particular clause as put by the Leader... She never mentioned how she is dealing with numbers 7, 8, 9, 10 and 11. She only went up to number 6 and in going through number 1 to 6, she is just summarising, as put by the Leader of the Majority Party. The Committee feels that this clause needs a lot of clarity as put by my friend, Hon. Tonui, here. We need not try to summarise this particular clause. We need to actually expand it as much as possible to make it understandable. The way it is drafted here is in line with the Constitution.

For example, if you look at Clause 1, the last sentence there talks about the fact that none of the parents will exercise superiority or be superior to the other. These are actually things that do

happen. We have many children who find themselves in such situations where the mother gets married, comes with a child and if the law does not provide for that particular child to be well treated, there could be some discrimination in this case by either of the parents.

Therefore, for us as a Committee we feel that we need not summarise this. We need to go into the expanded form because it has no harm and it takes care of situations that are real on the ground. The Committee feels that the proposal by Hon. Millie is not acceptable to the Committee on this particular clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Can I proceed to put the Question? Okay, be brief, Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, if you actually look at 7, 8 and 9 that he has asked me to clarify, what I am suggesting there is harmless. They do not touch on the issues that are of concern, but what they are actually saying on the areas of concern is not correct.

For instance, if you look at (3) it says “both the mother and the father shall have parental responsibility at the first instance”. It then changes in the second instance. That is discriminatory. This one I truly oppose and I urge the Chair that if you are really and truly minded in moving forward, then you need to re-look at Article 53 of the Constitution which I have read to him. It actually captures this.

If we go back to the issue of differential treatment and we deal with the definition of differential treatment, we cannot provide for all our cultures here because then I would actually ask the Committee to provide 43 cultures of how we are treating children under this part. Otherwise, I support my proposal and urge the Committee to adopt that which I have proposed.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I proceed to put the Question.

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

(Clause 30 agreed to)

Clause 31

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie.

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

THAT, Clause 31 of the Bill be amended in subsection (1) by deleting the words “agree and are entitled to have the right to parental responsibility for the wellbeing of the child.” and substituting therefor the words “, in the best interests of the child, designate and agree on clear individual responsibilities towards the child.”

The amendment suggests that it is up to parents to confer parental responsibility by this agreement which helps in designation of roles and reduction in conflict. The Bill says that the parents shall agree and are entitled to have the right to parental responsibility for the wellbeing of the child. Parental responsibility agreement does not confer rights and responsibilities. It merely designates clear roles. For instance, if you have dealt with matters like these before and you are signing a parental responsibility agreement, it clearly stipulates that as the father, I will pay school fees and as the mother, I will pay rent. This reduces conflicts. However, it does not give duties. This is given by the law. That is my proposed amendment.

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(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Can I go on to put the Question?

Hon. Members: Yes.

*(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 31 as amended agreed to)

(Clause 32 agreed to)

Clause 33

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Chairman.

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

THAT, Clause 33 of the Bill be amended in sub clause (3)(c) by deleting the word “Director” and substituting therefor the word “Secretary”.

As I have said, this is one of the amendments that I have said that are repetitive. We are simply deleting the word “Director” and replacing it with the word “Secretary” to align the nomenclature changes in the Directorate of Children Services which is now headed by the Secretary of Children Services.

(Question of the amendment proposed)

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

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

(Clause 33 as amended agreed to)

(Clause 34 agreed to)

(Hon. Temporary Deputy Chairlady consulted the Clerks-at-the Table)

Clause 35

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Members, before we proceed to Clause 35, I wish to bring to your attention a matter that has been brought before me

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with regard to Clause 35F. This is with regard to the constitutionality of some of the proposed amendments. There are certain parts that have been determined to be unconstitutional, particularly those proposed roles that are being assigned to the Child Welfare Society which is a private body. It is not anchored in any legislation. It is also not a State corporation. By its private nature, it is not under supervision by any Government agency. In this regard, the proposal to assign a private body public functions under the Constitution is unconstitutional.

In addition, there are also many other registered child welfare organisations. Therefore, singling out the Child Welfare Society is discriminatory and excludes the other bodies. It is also instructive to note that the Bill, if enacted as proposed, will lead to duplication of roles with those of the Secretary of Children Services. This is an office in the public service which already performs these functions.

There is another part of unconstitutional proposals. It is noted that the Committee of the whole House amendments propose to outline the functions of the Ministry, the Cabinet Secretary and Principal Secretary. Pursuant to Article 132(3)(b) of the Constitution, the President has authority to direct and co-ordinate the functions of Ministries and Government Departments. The House does not legislate the functions of Ministries and Government Departments. Therefore, if we proceed with these proposals, they will occasion a lot of confusion in the organisation of the Government by the President.

Hon. Members, with this regard, we have approved amendments by the Leader of the Majority Party which he will have to move. For purposes of the Chairman of the Departmental Committee on Labour and Social Welfare, the proposed amendments under Clause 35 A, B, C, D and E will be considered as new clauses apart from F, which is deemed unconstitutional. So, I hope that is clear.

An Hon. Member: It is not clear.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): It is not clear? I have tried to summarise so that I do not have to do it verbatim. Have you read Clause 35F? Have you read it, Hon. Members? That is the only way you will be able to understand.

*(Hon. (Ms.) Odhiambo-Mabona and
Hon. Josphat Kabinga spoke off record)*

Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Let me see if I can get it.

Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 35.

Clause 35 of the Bill is basically defining the functions of...

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Leader of the Majority Party, are you moving your amendment?

Hon. Amos Kimunya (Kipipiri, JP): Yes. I am also explaining.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): You should not, because I have not proposed. I thought you wanted to clarify to the Members.

Hon. Amos Kimunya (Kipipiri, JP): What I could do is just to...

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): We can have the Chair move the amendment.

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

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The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Yes, Hon. Millie?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I just want clarity through a point of order. You have made a ruling indicating that the proposed amendments by the Committee are unconstitutional.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): One particular one.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Which one? The one you are referring to by the Committee as F is 35(1)(f) that says: “the ministry responsible for matters relating to children shall, ensure affirmative action on matters relating to children”. It is on page 778.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I will refer you to page 783.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Page 783.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Yes, Page 783, 35 F.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): So, you are talking about a New Clause 35 F or E?

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): F.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): So, that is actually a new Clause 35F, which introduces the Child Welfare Society of Kenya (CWSK) and providing the functions.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Yes.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I have a few issues that I need you to clarify. Because you have said that it has been brought to your attention, with due respect, I do not know how it has been brought to your attention, but I am assuming that it is through... which is well. With due respect, I do not want to challenge your ruling, but it is for purposes of consistency and the future. I am just wondering, if we are making legislation and the concern is that we are bringing the CWSK into a Bill, and we are saying that it is unconstitutional because it is not known in law, does not bringing it into a Bill make it known in law? That is the challenge for me. I have not brought any amendment in relation to the CWSK.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): It is not established by any legislation.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes, but we are actually bringing legislation to establish it. So, I do not know how unconstitutional that is.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): No.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Secondly, Hon. Temporary Deputy Chairlady, I am just asking so that you may actually consider it. A lot of things are not in the law, but we establish them by legislating. So, we are actually legislating and we can persuade one another and say that we remove the CWSK from the Bill with good reasons; or say that we retain it, and we do so with good reasons. I know that the CWSK have done good work. I was in the adoption committee of the Society, but I presume that – I am not privy to what the Committee does – but the challenges the Committee is facing are the same ones we face in the Budget and Appropriations Committee. And that as it is right now, we are funding in billions a society we do not know its nature. It does exist by any substantive law. So, we should bring it into this Bill. If it were me, I would have suggested a different legal framework, but if the Committee suggests this, I do not think there is anything unconstitutional about it, but we need to ask or persuade one another on a different system to go.

My other concern is that, I have read Article 53 of the Constitution and raised an issue of constitutionality and you, as the Temporary Deputy Chairlady, have not declared whether what I

am raising is constitutional or not. Could I request that my raising of Article 53 of the Constitution in relation to the amendment that just passed be considered unconstitutional? You can look at Article 53 of the Constitution even without going to any previous decisions of the court. On the basis of Article 53 of the Constitution alone, what we passed is unconstitutional, or otherwise we will be accused of double standards as a House that I raise unconstitutionality and nothing is done, but another unconstitutionality is raised, and we pick up the issue.

Hon. Temporary Deputy Chairlady, with due respect, I am not really persuaded that what we are doing is right.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie, there is a clause that is spent that you are bringing back again, and I know you mentioned Article 53 of the Constitution. I do not think that your substantive amendment was based on unconstitutionality of that Clause.

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

Your substantive amendment was not on the unconstitutionality of the Clause. But I do not wish us to go back to what we have passed already. Let us focus on the Child Welfare Society of Kenya.

Before I even respond to you, Hon. Millie, let me have Hon. Kabinga. I believe, he agrees on the unconstitutionality of the provisions of Clause 35F.

Hon. Josphat Kabinga (Mwea, JP): First and foremost, let me say to Hon. Millie that all is not lost, because we can still consult and recommit Clause 30 of the Bill in the normal way of our discussion with you.

Hon. Temporary Deputy Chairlady, Hon. Millie mentioned or pointed out important issues about the CWSK. We know that there have been a lot of interests in children affairs in this country. We know that there has been a lot of infighting within the Ministry and outside.

Hon. Temporary Deputy Chairlady, what you have just read may be a letter which, with due respect, should have also been shared with the Committee so that the Committee can also be in the know of whoever is interested in that matter. I go by what Hon. Millie mentioned, that how it came to you, nobody knows; whoever initiated that letter, nobody knows, and what interest is there, nobody knows. This is something that requires further discussion, because this Committee has been doing a lot of research and discussions on this particular Society dating from the colonial times when it was created alongside the Red Cross in this country. The two societies existed during colonial times. We have carried them over. The current Act mentions the CWSK itself. We continue funding it, and the Society continues to participate in the budget process in this country, including the Medium Term Expenditure Framework (MTEF).

As a Committee, we have been having difficulties in knowing how to move on with the Society, other than by bringing it into law. This is what we are attempting; to bring it in law so that we can define its functions. What it is doing is not duplicating, in any way, what the ministry will be doing, or what who is supposed to be a regulator is doing. There is no duplication at all.

There is infighting. We need your guidance on this. We know that there have been many infights. We know we have prevented child trafficking in this country through the CWSK. We have prevented the selling of our children outside this country for the purposes of removing internal organs and selling them to needy people in foreign missions. These infights are there. If we are going to look at one letter, if it is unconstitutional to have the CWSK in the Act, then even the current Act has a problem. This is where we need guidance. How do we move on?

I know that the CWSK has proposed to have their Bill, which we welcome. The Committee welcomes that only that we do not have enough time to process it. That would have been the best way. But, in the absence of that substantive Bill, what do we rely on to know what to be overseeing, if we do not define the functions and then expect those functions to be prosecuted through the budget that we allocate to them? How else do we play oversight role? We need to have it. The way we were bringing it, after a lot of discussion, was to clarify the functions of the CS and the functions of the National Council for Children Services. That is another body. Then the CWSK, with all due respect, cannot be equated to children welfare homes. This is an organisation that covers the entire Kenya. This is an organisation that funds children who are in school. This is an organisation that looks at children who are in danger of hunger throughout Kenya. While the Kenya Red Cross Society concentrates on adults, the CWSK concentrates on children. How are we replacing it if we were to completely remove it from our systems?

I would go by what Hon. Millie said – that we either anchor it in law, or define how we are replacing it. If we are to anchor it in law, we need to know what its functions are. We need to be guided how else to know the functions it is supposed to undertake. This is why I am saying that it is after a lot of discussion that this Committee came up with the proposal to make it clear that there are three major arms of the country that look at children welfare. It is a sector with a lot of interest. I can confirm that the letter you are having or which came to the Speaker is one of the many interests that exist in this country. It is to ensure that we go back to the dark days when children used to get lost in Mathare Hospital in numbers. Children used to get lost in the Kenyatta National Hospital in numbers. We do not want to go back there. We need to come up with strong laws that prevent these kinds of things.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Chair, definitely there is a conflict. You do not agree with the issues raised in the letter and the technical advice given to the Speaker, although he approved it. Hon. Millie, because there are a lot of issues arising from this clause, we are going to have a new clause and an opportunity to raise all these issues when considering the new clause. The technical advisory to the Speaker was by the legal team, the technical team behind the Clerk's Office.

Hon. Leader of the Majority Party.

(Hon. (Ms.) Odhiambo-Mabona and Hon. Josphat Kabinga spoke off record)

Hon. Amos Kimunya (Kipipiri, JP): To be fair to the Chair, he has just communicated the advisory from the Speaker's Office. All amendments are approved by the Speaker. Whether it is private or Committee amendments, they go to the Speaker. I have a copy of that letter. It is in reviewing the amendments that the matter was flagged.

We appreciate the work that the CWSK is doing. I can see the logic of the Committee in trying to put those functions within the Children Act. Perhaps, the manner in which it has come is what is causing problems. If you look at all the others, there is established within the law a council. There is established this other body. What we are doing is moving in and saying that there is the CWSK, and these are going to be its functions. But we have not established it within the Children Act of 2003. In fact, it only comes in at "the National Adoption Society means the CWSK established by the Child Welfare Society Order of 2014".

What we could do, because we will not finish this matter today and it will be coming under new clauses, is to sit with the Committee and look at the best way of capturing the essence of what

the Committee wanted to do, but within a legal basis. If it is coming as a new clause, let there be a new clause to establish the CWSK to look at this Order of 2014, see what it was, and see how to capture it. We are repealing that Act. So, it will die when we repeal the Act of 2003. But, we can save everything if we do it properly by ensuring that the objectives the Committee wanted to achieve by bringing it here are brought in, but in a manner that will not face legal challenges.

On the advisory that has been given by the Legal Department of Parliament, we do not want it going to the Senate or to the courts, and then we are all messed up. I advise that we move on since these new clauses will come at the end. That will probably be tomorrow or even on Tuesday next week. Let us have some time to think through it and bring it properly, as a new clause, specifically for the CWSK and where it comes in; noting, for example, that Clause 64 of the Bill has those provisions. We are not there yet, but I can tell you that Clause 64 allows matters to do with adoption and that the CS shall, in consultation with council, establish child rescue centres for the temporary care of children, *bla, bla, bla*.

We could find a place where we place the CWSK and its functions within the Bill – not necessarily within the functions of the Children Services Department, which is where the contradiction is. We are defining the functions of children services, which are at the Secretary of Children Services, and creating a body there or elsewhere. So, let us look at it without rushing through it. I believe we will achieve the win-win that we want.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I was telling the Committee, I did not spend a lot of time on the amendments, I think the Chairman was worried at some point that I was going to touch on issues of the CWSK. I know it is contentious, and because of that, I deliberately avoided touching anything to do with the CWSK. Some of us are accused to be having issues. I actually forgot to tell you that my mother was a children officer in the CWSK a long time ago, and that I have also been an advisor to the adoption committee.

So I have a very special interest in the CWSK. It has contributed in part to who I am and it is one of the reasons I am interested in children's issues. But when we do things the wrong way, it is not right. When the Directorate of Legal Services notices that there is a problem, normally attention is raised by a Member. So this is a peculiar way of bringing up the issue. It may be procedural and I would be very happy to learn something about our procedures. It is always a learning process.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Millie, I do not think you are right that the Directorate of Legal Services has to go through a Member if they notice something is wrong.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): No, that is not what I said.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): The Speaker is given technical advice on a regular basis before approving proposed amendments.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I am not disputing that. I am not saying that the Directorate of Legal Services should go through a Member. What I am saying is what I have observed over the years. The attention of the Speaker is drawn to an issue about constitutionality. That is why I am saying that it is a learning process. I would be happy to learn where that provision is in the Standing Orders. I want to agree with the Leader of the Majority Party that some of these issues are pertinent. We do not have quorum and I think we need to sit down, discuss and agree. I do not think we need to rush. These are serious issues. We are committing billions of shillings. I support the CWSK. Let it not be bashed all the time. Let it have

a legal framework of standing. I do not know why my friend Irene and the others are running away from getting legal footing. Everybody has been attacking the CWSK, including having documentaries on all manner of things. Let this issue about money be a thing of history. Let us anchor it in law. Part of what we will do is to sit together and agree. I would suggest a different framework, but we need to sort out this issue once and for all.

Hon. Temporary Deputy Chairlady, there is no quorum.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Okay, Hon. Millie. You just made sure that we deferred this to another time, which is well in order. Before I order for the bell to be rung, it is good to note that the communication I just made stems from an advisory given to the Speaker. It is good for the record. Ordinary technical advisory is given to the Speaker in the course of his duty of approving amendments. We will have more time to discuss the issue when we reconvene in the Committee of the whole House.

I order the Quorum Bell to be rung.

Hon. Josphat Kabinga (Mwea, JP): The quorum issue was not raised in the right way.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Which is the right way, Hon. Kabinga?

Hon. Josphat Kabinga (Mwea, JP): There is a Standing Order that needed to be quoted. At the same time, Hon. Millie was contributing and in the process, made the observation.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): It is Standing Order No. 95, so you can quote it yourself.

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Chairlady, as she was contributing, I was also up. I wanted to support what she was saying.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): No, Hon. Kabinga. I have no choice but to order for the Quorum Bell to be rung for five minutes.

(The Quorum Bell was rung)

Order, Hon. Members. Clearly we are unable to raise quorum and we shall, therefore, proceed to report the fact to the House.

(The House resumed)

[The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya) in the Chair]

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): I will now call on the Chair to report back to the House. Let us have the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to report that pursuant to the provisions of Standing Order No. 35(2)(b) and upon the expiration of 10 minutes of ringing the Quorum Bell, quorum was not realised.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, with that, we shall proceed to adjourn.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, the time now being 6.45 p.m., this House stands adjourned until tomorrow, Thursday 12th May 2022, at 2.30 p.m.

The House rose at 6.45 p.m.