

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 24th April 2018

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

Hon. Deputy Speaker: Hon. Members, I have three communications to make. The first communication relates to the Chamber's Biometric System.

REPLACEMENT OF CHAMBER BIOMETRIC SYSTEM

Hon. Members, as you are aware, at the commencement of the 12th Parliament, all Members went through a registration process in the biometric system for purposes of recording Chamber attendance. This was in keeping with the provisions of Article 103(b) of the Constitution whose implementation requires an accurate record of Chamber attendance to be maintained. This system is now replaced with a new, more efficient and modern biometric system. Therefore, Members are required to register afresh. Upon registration, Members will be issued with a new Chamber log card to be used to make interventions to speak, vote in divisions, and also raise points of order.

The Clerk of the National Assembly has already commenced the registration process of Members. It is expected that the exercise will continue until the end of the first part of the current Second Session; that is, the end of the long recess, which will be on Monday, 4th June 2018. In the meantime, a window has been provided to enable Members to use either of the two systems that is, the current system and the new system which will be running concurrently. In addition, Members will also be in a position to use manual register to record their Chamber attendance. However, at the end of the registration exercise, the use of the old system as well as the manual register will cease.

Hon. Members, in the past, Members have been required to pay Kshs2,000 for the replacement of lost Chamber log cards. However, for the new cards, Members will now be required to pay Kshs5,000 for replacement of such cards through a request in writing to the Clerk of the National Assembly.

Hon. Members, the registration exercise is being conducted at the entrance of the Chamber during working hours when the House is not sitting. It will be conducted until the close of business on Monday, 4th June 2018.

I thank you.

I am assuming that Members who are still standing there want to make it into the Chamber and to register, as I have just stated.

What is it, Leader of the Majority Party?

Hon. A.B. Duale: Hon. Deputy Speaker, there is nothing out of order when the Speaker makes a communication. Let me go on record. It is very unfair for Members to be charged Kshs5,000. The Parliamentary Service Commission (PSC) has a huge budget of over Kshs26 billion. If you allow us, before the charging of Kshs5,000 commences, the leadership of both sides of the House will want to consult and see whether Members can comply with that directive. We are not disobeying. We need to consult about the Kshs5,000 and come back to the Clerk's Office on the direction he has given.

Hon. Deputy Speaker: The communication has been made. You can continue consulting. There is no harm in any consultation whatsoever. As it is now, that is the position. I am not going to open up this matter for debate.

What is it Member for Kanduyi?

Hon. Wamunyinyi: Thank you, Hon. Deputy Speaker. I agree with the Leader of the Majority Party. We cannot attempt to challenge the Speaker's communication, and there is nothing out of order. We are saying that it will be very unfair to charge Members Kshs5,000. The PSC has a budget to facilitate the working of Parliament and Members coming to the Chamber for the purpose of legislation.

There is no point charging Members of Parliament Kshs5,000. Therefore, I join the Leader of the Majority Party in appealing for consideration of reversal of that.

Hon. Deputy Speaker: Actually, there is a very easy way of resolving this matter – just do not lose your card. You are only going to be charged if you lose your card. If you do not lose it, you will not be charged. It is nothing that you need to go out of your way canvassing about. All you need to do is not to lose your card. I really hope the Leader of the Majority Party and the rest of the leadership will be discussing with their Members on how to safely keep their cards.

Hon. Angwenyi: *(Off-record)*

Hon. Deputy Speaker: Hon. Member, the former commissioner who is now the Deputy Leader of the Majority Party, I do not think we need to go into the details of asking Members. I have just said that the easiest way out is for Members simply not to lose their cards. If you lose your card, you will pay for it. That is the end of that.

(Several Members walked in the aisle)

Order, Hon. Members. Order, Leader of the Minority Party! Now, this is the second Communication. Let me go to the next one, I beg your pardon.

Pursuant to Standing Order No. 225, I wish to convey to the House that my office is in receipt of a Petition signed by one Peter... Excuse me, Hon. Members.

Hon. Angwenyi: *(Off record)*

Hon. Deputy Speaker: If you continue that way, Deputy Leader of the Majority Party, you will probably be one of the oldest Members in this House to be asked to leave the House. Anyway, I do not think I am going in that direction.

WORKSHOP FOR MEMBERS' PERSONAL ASSISTANTS

Hon. Members, over the past few years, the Parliament of Kenya has endeavoured to provide a favourable working environment for Members of Parliament, including availing the most professional teams of staff. Coupled with this, Members are allowed to engage other support staff including Personal Assistants, drivers and secretaries. However, it has been observed that some of those support staff contracted by Members, especially the newly employed, are not conversant with the operations of the key departments of the National Assembly and basic parliamentary processes relevant to their day-to-day duties.

With this consideration in mind, and in line with the training and capacity building objective of the Parliamentary Service Commission, the National Assembly has organized a two-day induction workshop for PAs of all Members of Parliament as well as research officers attached to offices of commissioners and parliamentary leadership. The training workshop, whose theme is “*Becoming an Effective Parliamentary Assistant and Researcher*”, will take place from 8th to 11th May 2018 at a venue to be confirmed later. The workshop will involve training of the first batch of 200 participants on 8th and 9th followed by the second batch of 200 participants on 10th and 11th May, 2018.

The key objective of the workshop is to offer an opportunity for your PAs to be apprised of the workings of the National Assembly, including their day to day interactions with various directorates, and to further professionalize their services. Workshops shall accord them the valuable opportunity of enhancing their parliamentary knowledge and expertise, and shall include essential topics such as overview of the legislative services of the National Assembly, understanding the expectations and roles of a legislator, office regulations, accessing information and research services, protocol and etiquette in Parliament, facilitating a Member’s Committee roles, among others. All Members are, therefore, strongly encouraged to send their respective PAs to this important training.

In order to facilitate the effective planning of the training programme, all Members are requested to formally nominate the specific PAs to attend the workshop by filling the nomination form available at the main reception by close of business on Thursday, 3rd May 2018.

Your timely co-operation in this regard shall be greatly appreciated.

I thank you.

(Several Members walked in the aisle)

Members who are coming in, kindly, do so quickly because I still have another Communication. What is it the Member for Kisumu West Constituency?

Hon. Aluoch: Hon. Deputy Speaker, still on Order No. 2 which is the first Communication from the Chair, there is something out of order. For the Hon. Deputy Speaker to say that Members lose their cards, that is un-parliamentary. It is the cards that get misplaced. They do not get lost.

(Laughter)

I support the Leader of the Majority Party and my friend the Member for Kanduyi that we have public participation by Members of the House on those charges.

Thank you.

Hon. Deputy Speaker: Did you say Members do not lose their cards and that they only misplace them? I really have no problem with that, Hon. Member for Kisumu West.

Hon. Aluoch: Yes. I did not say they misplace the cards. I said “cards get misplaced”.

Hon. Deputy Speaker: Oh, yes! They somehow get misplaced! Well, then, I will order Members to try as much as possible not to allow their cards to get misplaced.

(Several Members walked in the aisle)

Order, Hon. Members! Please get seated so that you do not have to freeze when I rise.

DEMISE OF THE LATE HON. GRACE KIPCHOIM

Hon. Members, as you are aware, on the morning of Friday, 20th April 2018, with great grief and sorrow, we received the sad news of the demise of the Member for Baringo South, the late Hon. Grace Kipchoim, who passed on while undergoing treatment at the Nairobi Hospital.

The late Hon. Kipchoim was born on 3rd January 1962. She attended Solian Primary School. Thereafter, she proceeded to Kapropita Girls High School for her Kenya Certificate of Education between 1984 and 1987, and Lugulu Girls High School for the Kenya Advanced Certificate of Education between 1988 and 1989. Thereafter, she studied as a Certified Public Accountant between 1999 and 2003.

Before joining the National Assembly in 2013, the late Kipchoim worked in various capacities among other institutions, the Nakuru Medical Training College, Homa Bay Medical Training College and Kabarnet Medical Training College. She served as a board member of various schools in Baringo South Constituency.

The late Hon. Grace Kipchoim was a vibrant Member of the august House who served actively and diligently in the 11th Parliament. Her contributions and participation were highly commendable, particularly, her contributions on various legislations which were insightful and enriching. She was one of the only 16 women Members of Parliament of the National Assembly who were elected out of the 290 constituencies in the last Parliament. She was an active Member of the Departmental Committee on Transport, Public Works and Housing, and the then Joint Committee on National Cohesion and Equal Opportunity.

Though unwell, she was re-elected overwhelmingly into the 12th Parliament. She became one of the only 23 women Members elected from the 290 constituencies, reaffirming the faith and trust the people of Baringo South had in her leadership. The late Hon. Kipchoim was a fighter and an inspiration to many of us.

The late Hon. Grace Kipchoim with her own self-made spirit, spoke with exceptional articulation. Without doubt, she was a firm leader who never shied away from defending the rights of her constituents and the people of Kenya in general and, in particular, on matters of land, security, and the disadvantaged members of the society, gender, youth and persons living with disabilities. Many of us who interacted and worked with her will acknowledge that she was a resolute, humble, gentle, pleasant and amicable personality and we will all miss her.

Her passing on marks a dark moment not only for her family, the 12th Parliament, residents of Baringo South Constituency, but for the country at large. Kenya has lost a candid legislator, devoted public servant, hardworking leader and true daughter of Kenya who endeavored to give everything for what she believed in with great courage, tenacity and humility. Indeed, she has left a track record in the management of the National Government Constituencies Development Fund (NG-CDF), where her constituency was highly rated.

The late Grace Kipchoim is survived by four children. On behalf of the Parliamentary Service Commission, Members of the National Assembly and indeed, on my own behalf, I wish to convey our sincere condolences to her family, relatives, friends, and the people of Baringo South for this great loss.

In honour of the selfless service rendered to the nation and society by our departed colleague, I request that we all stand and observe a minute of silence.

(Hon. Members observed a minute of silence)

May her soul rest in eternal peace. Hon. Members, it is only fair that I give opportunity to a few Members to speak to this particular statement. I will start with the Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Deputy Speaker. On my own behalf and on behalf of my constituency and the country at large, I send my condolences to the family, friends and constituents of our colleague, the late Hon. Grace Kipchoim, at this difficult time. Hon. Grace has joined the list of our colleagues who have passed on when they are active in office. In the 12th Parliament, the almighty God started by taking our leader and our colleague Hon. Francis Nyenze. Barely a few months later, Grace has joined the Lord.

Many new Members may not be aware but Hon. Grace Kipchoim fought a very tough battle after being diagnosed with cancer about five years ago. She has spent a greater part of the 11th Parliament and even this Parliament in hospital. I want to thank the people of Baringo South who elected her in 2013. I had the opportunity to campaign for her despite many security challenges in that constituency. They elected her despite being a lady under the URP party then. In 2017, they elected her when she was still in hospital and I sincerely want to thank the people of Baringo South because they did not look at Grace as a woman, and in 2017 they still valued her contribution in terms of development to her constituency. I will do consultations with my colleague the Leader of the Minority Party and we might ask our colleagues to make some contributions as has been the tradition when one of us leaves us. If you see some requests we will make to the Clerk... Since the substantive Speaker is away, under your leadership Hon. Deputy Speaker, arrange for the Members of Parliament to go and visit the family in their home in Nairobi. Once the burial date is confirmed, then all of us can give our colleague a befitting send off.

With those many remarks, I would like to send my condolence to the family, friends, constituents and the people of Baringo County following their loss.

Hon. Deputy Speaker: Thank you very much Leader of the Majority Party and thanks for being very brief so that we can have as many Members as possible contributing to this. Before I come to the person that I am informed is the chair of the funeral preparation committee, let me give this opportunity to the Leader of the Minority Party. Let us all be brief so that as many Members as possible can speak. I know many of you interacted with the late Hon. Kipchoim a great deal.

Hon. Ng'ongo: Thank you, Hon. Deputy Speaker. I also want to join you and the Leader of the Majority Party in condoling with the family, friends and relatives of our sister and friend, the late Hon. Grace Kipchoim who passed on last week. It was a great shock to all of us and this House has interacted a lot with Grace, but I know the people of Baringo South are more aggrieved than us. Many of us will agree with me that this lady was such a social character. I also wanted to add that when it came to fighting for her constituents, she knew no boundary in

terms of political groupings. I remember one time in the last Parliament she told me that she wanted to meet my party leader when there was a lot of insecurity in her constituency. She was so passionate about fighting Female Genital Mutilation (FGM) and insecurity in her constituency and Baringo County in general.

I also want to congratulate the people of Baringo South for electing this great woman but, more importantly, the kind of trust they had in her by voting for her even when she was bedridden. Many of us will agree with me that campaigning is not easy when you cannot be physically present in the campaign field. As the Leader of the Minority Party, I just want to assure the Leader of Majority that I support the initiative, and I ask the Members of Parliament in both sides to agree with us to jointly write a letter with the Leader of Majority for some small financial support to the family and also to help in defraying some expenses that will go in to having our sister have a decent burial.

I just want to end there by saying I condole with the family.

Hon. Deputy Speaker: Thank you. The rest of the Members will be speaking for two minutes only at the maximum. Let us start with the Member for Baringo North. I am informed you are the chair of the funeral committee; you might be having some information.

Hon. Cheptumo: Thank you, Hon. Deputy Speaker. Let me also join my colleagues in sending my condolences to the family, friends and relatives of the departed colleague. It is indeed a big loss to the great people of Baringo South and of course her family. It is indeed a big loss to the great people of Baringo South, her family, Baringo County and indeed, this country. We have lost a very hardworking committed leader and we want to join the rest of the Members to wish the family God's peace at this very trying moment. The late Hon. Grace Kipchoim served in the 11th Parliament and the 12th Parliament. Baringo South Constituency neighbours my constituency and we have a common challenge of insecurity. For the time she served as the Member of Parliament for Baringo South, we have been able to work very closely with her in dealing with that challenge of insecurity. She was a very brave leader and she stood firm. Given the situation in that constituency, it would have been very difficult for one to imagine a woman... When I talk of a woman, I am not demeaning leaders of that gender, but because of the challenge that we were facing in that region, she stood firm, she was elected, and re-elected again in 2017, when she was in hospital.

It confirms how committed she was to her constituency and to her people. Because you have directed we take a very short moment, I want to inform Members of this House that, indeed, I am the chair of the committee planning for the burial, which I can now confirm will be on 5th May 2018. I would like to agree with our Leader of the Majority Party and Hon. Mbadi that, at this very trying moment for the family, we all come together in making contributions so that we can support the family.

Finally, we will be having a session on 2nd May at Tin Tin Restaurant, of course for members of the public to also come together and support this challenge. I would also like to take this chance to appeal to our colleagues and friends who will have time to also be there so that we can support the family in prayer and in contributions towards that particular situation.

Thank you, Hon. Deputy Speaker. I want to say *pole*.

Hon. Deputy Speaker: The other Members who will be speaking will be brief. Let me give an opportunity to the neighbour of Hon. Kipchoim and then I can open it to the diaspora. Let us have Hon. Kandie, Member for Baringo Central.

Hon. Kandie: Thank you, Hon. Deputy Speaker, for giving me this chance. On behalf of my family and friends, colleagues and all the people of Baringo Central, I want to send my

deepest condolences to Grace Kipchoim's family and the people of Baringo South at this difficult time. The country mourns and celebrates the extraordinary life of that remarkable woman who devoted her life to helping humanity, protecting what she called "our common home and future of this country". Her loss will be felt particularly by her constituents for whom she worked hard and represented in the National Assembly. The memory of her brilliant leadership and sacrifice will, however, remain a source of encouragement to all her friends, constituents and fellow Kenyans. Our thoughts are with the family and we are praying to God to give them strength and courage. May her soul rest in eternal peace.

I want to add that I am also part of the Committee with Hon. Cheptumo and, so, we are all together. We are planning for what our chairman has given to this House. Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Let us have the Member for Turkana West, Hon. Epuyo.

Hon. Nanok: Thank you, Hon. Deputy Speaker, for giving me this chance. Right away, on behalf of the people of Turkana West, myself and family, I wish to express my sincere condolences to my departed colleague, Hon. Grace Kipchoim—a very jovial, friendly lady who was very passionate about the representation of her people.

I happen to have worked with Grace during the time when we were trying to create peace between the four counties of Turkana, Samburu, Baringo and West Pokot in 2015 and 2016, and the fruits of that collaboration can be seen. I remember Grace to have been a very vocal and articulate representative of her people. So, we really want to pray to the Lord to take care of her family now that they are left, together with the people of Baringo South whom she represented very well in this House.

With those few remarks, I send my condolences.

Hon. Deputy Speaker: Let us have Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Deputy Speaker. Let me join my colleagues in conveying my condolences on my own behalf, on behalf of my family and on behalf of the good people of Kitui Central, to the people of Baringo for the loss of the Member. I know Grace because we served with her in the 11th Parliament. One of the things I noted about Grace is that despite her being sick towards the end of the 11th Parliament, she was always in this House, trying her best to serve Kenyans as well as serving her people. To me, that was a clear demonstration of how strong Hon. Grace was.

I want to join the people of Baringo in sharing this big loss of the Member. I do believe that the trust the people of Baringo had in Hon. Grace was also a demonstration that she was actually a good person, and a person who was very committed to serving her people. My prayer to God is that another leader, after burying Hon. Grace, will be able to fit into her shoes in serving her people with commitment.

With those remarks, I say *pole sana*. May her soul rest in eternal peace. Thank you.

Hon. Deputy Speaker: I have actually disenfranchised female Members of this House. For the very good reason that this was a lady Member of Parliament who worked very hard to make her way here, I am going to give an opportunity to two ladies in a row. Let us start with Hon. Dida Jaldesa. Members, I know how interested you are in speaking to this particular condolence issue, so I am going to give you an opportunity as much as possible.

Hon. (Ms.) Jaldesa: Thank you, Hon. Deputy Speaker. On my behalf and on behalf of the people of Isiolo County, I would like to join my colleagues in mourning our sister, our role model, Mheshimiwa Grace. I wish to pray to Almighty God to rest her soul in eternal peace.

I have not had the pleasure to have interacted with *Mheshimiwa* during her time in this Parliament. However, from the very positive attributes I hear from colleagues who were with her, she was, indeed, a woman of integrity, a woman who understood her role, a woman who was kind and a woman who really had the interest of her people at heart. On that length, I want to take this opportunity to thank the good people of Baringo South for having faith in her and having elected her when she was sick in a hospital bed. It is not easy to be a woman vying in a single constituency. Therefore, when the people of Baringo South elected her when she was sick, that means that her leadership was felt wider and around.

I had the pleasure to visit her home. I saw she left a very young family. I am, therefore, making a very passionate appeal to the Government to ensure that her children are supported, especially the young daughter who is in school to finish her education.

Some of us have an experience where we lost our spouses when they were Members of Parliament and the promises that we were given by the Government that we would be supported have never materialized. So, I just appeal that her family will be catered for. I, therefore, pray for her soul to rest in peace. Amen.

Hon. Deputy Speaker: Very well. Many women Members of Parliament have not expressed interest. So, that puts me in an awkward position because I am seeing Hon. Obo Mohamed and that is almost about it. I have not seen anybody, including Hon. Janet Ongeru. I can see she is busy waving but the card is not reflected here. Did you misplace your card, Hon. Ongeru so that we can charge you Kshs5,000 immediately?

Hon. (Ms.) Obo: Ahsante sana, Mheshimiwa Naibu Spika. Ningependa kutoa rambirambi zangu. Watu wa Lamu kuelekea Baringo, Mungu amweke mahali pema peponi Mhe. Grace. Tunamwomba Mungu. Ameonyesha mfano bora na huu ugonjwa wa saratani, inafaa tuushughulikie zaidi. Saratani ipo kwa kweli na inauwa watu wengi Kenya. Kwa hivyo, ni wakati wetu sisi kama Wabunge kuhakikisha kama ni Mswada au Hoja tupitishie ili watu watibiwe vizuri and kushughulikiwa vizuri. Mheshimiwa amekuwa mfano mwema kwetu. Tumesikia habari zake hata sisi tunamheshimu na Mungu aiweke roho yake mahali pema peponi. Ahsante.

Hon. Deputy Speaker: Very well. Before I come to other two sets of ladies, let us have Hon. Waititu of Juja.

Hon. Waititu: Ahsante sana, Mheshimiwa Naibu Spika. Hii ni kadi yangu mpya lakini haijaanza kufanya kazi.

Nimesema nitaongea Kiswahili leo kwa sababu ya yale mambo niko nayo. Mheshimiwa tulifanya kazi naye hapa Bunge iliyopita katika shughuli za kamati. Nawapa pole watu wake na familia yake yote na Mwenyezi Mungu amuweke mahali pema peponi. Tunapongea haya maneneo, watu wanajua nimekuwa nikiongea sana kuhusu haya mambo ya *cancer*. Mimi mwenyewe...

Hon. Deputy Speaker: Proceed in Kiswahili. It is called saratani.

Hon. Waititu: Mimi nimepatwa na saratani na nikasema niko nayo hata kabla ya kwenda kutibiwa. Sababu yangu kwenda kupimwa ni kwa sababu dada yangu mkubwa aliyekuwa anaishi Muchatha, Banana, alikuwa na saratani na alipozidiwa na ugonjwa alikuja kuishi kwangu Juja. Wakati alipimwa na akapatikana na saratani, baada ya hapo, alikufa kwa sababu saratani ilikuwa imefika *Stage 4*. Alikufa na akapumzika.

Wa pili, alikuwa ni mama yangu ambaye sasa tunaishi naye. Wakati alipimwa, mimi nilikuwa nafanya kampeni. Mama pia alipatikana na saratani. Lakini kwa bahati ya Mwenyezi Mungu, ilikuwa ni *Stage 2*. Tulimpeleka Aga Khan miezi minane na akapona. Wakati

nimemaliza kufanya kampeni, nilisema inaweza kuwa familia ina haya mambo ya saratani. Wakati nilienda kupimwa hospitali ya Aga Khan, nilipatikana nayo ikiwa *Stage 2*. Kwa bahati, nilikuwa nimefanyia familia ya Kenyatta kazi kwa miaka mingi, miaka 30 kama meneja wao wa kahawa. Nikapelekwa India mbio mbio. Nilipofika pale, ndipo tukajua kwamba saratani si vile tunafikiria hapa nchini. Huko India, kuna mashine mbili tu ambazo zinapima saratani. Zile mashine zingine 15 ziko Marekani. Wakati unapimwa hivyo virusi vingi vya mwili, unaambiwa saratani yako inaweza kuwa ya aina ya virusi maelfu na maelfu ya milioni.

Sasa niliulizwa: “Kwa sababu ulichukuliwa picha, hiyo bloki iko wapi?” Tulingojea wiki moja ndio ifike kule. Bila hiyo, singetibiwa kwa sababu haingewezekana. Ndio tuliona baadhi ya watu 9,000 waliokuwa huko, 5,000 walikuwa wanalala huko nje. Tumewafanyia mchango na wameenda huko kutibiwa lakini hamna kinachoendelea kwa sababu hawana hata pesa ya kukomboa pahali pa malazi, ijapokuwa hapa tumefanya mchango. Watu 4,000 ndio walikuwa na mahali pa kulala. Kwa hivyo, tunauliza Serikali kwa sababu tunajua tutasaidiana...

Hon. Deputy Speaker: Please Hon. Waititu, I have given you a lot of time because I know you are a survivor. Please, so that other Members can also speak...

Hon. Waititu: Ya mwisho ni kueleza wananchi wa Kenya na wale tuko nao hapa Bunge kuwa nilirudi juzi. Nikikueleza kuna wengine wamenikuta hapa Bunge, 34, na wameniambia niwaonyesha mahali nilikuwa na vile wataenda. Mambo ya saratani isifichwe ndio watu wajue saratani inaweza kutibiwa namna gani. Lakini saratani isipelekwe mashinani kwa kaunti kwa sababu watu wanakufa kila siku juu ya saratani.

Hon. Deputy Speaker: Okay. You are saying cancer treatment should not be devolved.

Hon. Waititu: Hata juzi, nimemwambia President ya kwamba zile mashine alikuwa amenunua kupeleka kwa kaunti na zikakataliwa, zipelekwe kwa lazima.

Hon. Deputy Speaker: Thank you very much. I thought yours was a very good contribution and that is why I gave you some time. Let me give Hon. (Ms.) Onger

Hon. (Ms.) Onger: Thank you, Hon. Deputy Speaker, for giving me this opportunity to mourn my departed sister. On behalf of the people of Kisii County, who I represent, I want to express my sincere condolences to the family of the late Grace and I pray that God gives them fortitude during this trying time.

Our departed sister was a great woman in this country. During the 11th Parliament, Grace fought for the rights of the vulnerable, particularly in the crusade against anti-female genital mutilation. I happened to be a member with her in that caucus. As we know, Grace was very passionate especially in fighting for the rights of women and children who are the most affected during times of armed conflicts. She often used to fight for her constituents in Baringo South. We pray for the family and ask our Members of Parliament to turn out in large numbers so that we can escort our sister and give her a dignified funeral.

Thank you.

Hon. Deputy Speaker: I realize I have also not given women Members of Constituencies. Let me give Hon. Nyenze.

Hon. (Ms.) Nyenze: Hon. Deputy Speaker, thank you for giving me this opportunity. I did not have the opportunity to meet Hon. Grace but, I have stood because I lost my dear husband in December due to cancer. They had the same type of cancer; colon cancer. I condole with the family, having gone through that when my husband was sick for some time. It is not a very easy journey. So I am here to say *pole* on my own behalf and on behalf of the people of Kitui West. I am here to say *pole* to the family and also to the people of Baringo South Constituency.

I also take this opportunity to remember that last week, there was a Motion which was meant to declare cancer a national disaster. As the 12th Parliament, we should get into the books of this country's history as the Parliament that made sure that this materializes so that we save our people. If Members of Parliament who have a very good medical cover are dying from cancer, what about the ordinary people who even having the disease diagnosed is a problem? Let us support the Motion and go further to see what we can do to bring the treatment to our country. Most cancer patients go to other countries for treatment.

Thank you.

Hon. Deputy Speaker: Thank you very much. I will be giving the rest of the Members 30 seconds each. We will start with the Member for Gilgil. The problem is not even what you do not have, but where you are seated. I am giving you just 30 seconds.

What is it? I thought you had finished, Hon. Nyenze.

Hon. (Ms.) Nyenze: Hon. Deputy Speaker, you have cut me short. I just wanted to say one word. This reminds us that we are here for a very short time. Let us do our best to improve the lives of the people in our constituencies.

Thank you.

Hon. Deputy Speaker: The rest of the Members have 30 seconds each. Just give condolences.

Hon. (Ms.) Wanjira: Ahsante sana, Mhe. Naibu Spika. Pia mimi natoa rambirambi zangu kwa niaba yangu binafsi na kwa niaba ya watu wa Gilgil na kusema pole sana kwa familia na marafiki wa mwenda zake, Mhe. Grace Kipchoim. Nilifanya kazi naye kwenye Bunge la 11 nikiwa Seneti naye akiwa hapa kama waliochaguliwa kwenye Maeneo Bunge. Walikuwa kina mama 16 peke yake. Ule uchungu ambao Mhe. Grace Kipchoim amepitia umekuwa wakati mgumu sana na kama sio bima nzuri na Mungu kumpa rehema, nafikiri haingekuwa rahisi. Kwa sasa, tunasema pole sana kwa familia na Mungu airehemu roho yake.

Hon. Deputy Speaker: Hon. Sankok, you have one minute. Let us keep time now. We cannot all speak. We will have other opportunities. We will have the fundraising, the funeral and other fora.

Hon. ole Sankok: Thank you, Hon. Deputy Speaker. On my behalf, on behalf of six million persons with disabilities in this country and on behalf of the people of Narok, I send my sincere condolences to the family of Hon. Grace together with the people of Baringo South. It is really a great loss. As colleagues of the late Hon. Grace, we really feel for them. We send our condolences.

Hon. Deputy Speaker: Thank you. Next is the Deputy Leader of the Majority Party, Hon. Jimmy, by virtue of being one of the oldest Members of this House.

Hon. Angwenyi: Thank you, Hon. Deputy Speaker. Mine is just to pass my condolences and the condolences of my people to the family and the people of Baringo South. Hon. Grace was a role model. Actually, I used to take my community to emulate the people of Baringo South so that they can elect women to Parliament from single constituencies and not the women representatives. The people of Baringo South and her family loved her, but it looks like God loved her more. May she rest in eternal peace?

Hon. Deputy Speaker: Lastly, let us have the Greek speaking Hon. "CNN". Please, it either has to be in English or Kiswahili. There is no Greek here.

Hon. Nguna: Thank you, Hon. Deputy Speaker, for giving me this opportunity, although you have said I am not supposed to speak in Greek.

I take this opportunity to convey my message of condolences on my behalf and on behalf of the people of Mwingi West to the family of Hon. Grace, the people of Baringo South and the entire leadership of the Rift Valley region. I have not met Hon. Grace but I was looking forward to meeting her because she was supposed to be in my Departmental Committee on Sports, Culture and Tourism. May her soul rest in eternal peace. Amen.

Hon. Deputy Speaker: Let me see if I can give one last opportunity. There is a lady here, Hon. Mwanyanje Mbeyu.

Hon. (Ms.) Mwanyanje: Ahsante sana, Mhe. Naibu Spika. Kwa niaba yangu na kwa niaba ya watu wa Kilifi, naomba kutoa rambirambi zangu kwa familia na watu wa Baringo Kusini kwa kifo cha Mbunge wao, marehemu Grace. Mungu aiweke roho yake pahali pema peponi.

Ahsante.

Hon. Deputy Speaker: You know I would have given the Chair of the Women Caucus from single constituencies, but she is actually busy walking up and down. That makes it difficult for me to recognize her. However, I give her a chance because I notice that this is the Chair.

Hon. (Ms.) Wahome: *Asante, Mhe. Naibu Spika.* I take this opportunity to send my condolences, those of my family and the entire 23 women members of single constituencies as their Chair. We are now 23. Hon. Grace was one of us. Of course, we were 24 with the new entrant. We are also asking that if you do not see us around, know that we are heading to her house to condole with the family. Burial will be on 5th May. I am aware of that because I am a member of the burial committee. We are really at a loss. I am being advised that it has been announced. I urge Hon. Members to support the family.

Hon. Deputy Speaker: Thank you. Hon. Members, we really cannot all speak. I can see everybody is putting one finger salute up, which I believe they are saying: "Just one word." However, I can see it is not going to be one word. Let me give a chance to four Members and it will be strictly 30 seconds for each of them. It will be timed. I will start with Hon. Seroney to my left. You have 30 seconds only.

Hon. Seroney: Thank you, Hon. Deputy Speaker. Hon. Grace Kipchoim actually comes from my home county. I knew her before she entered Parliament. She was a dynamic leader. I send my condolences and those of my family and the party that I represent in this House. May God rest her soul in eternal peace?

Hon. Deputy Speaker: Hon. Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Deputy Speaker. I have known Hon. Grace Kipchoim for the last 15 years and it would have been unfair for me not to send a message of condolence. I lived with her in Baringo as a neighbour. She was working at the Kenya Medical Training College (KMTC) as an accountant. I know her and her family. She has been a hardworking lady. The people of Baringo South are really going to miss her, especially in championing issues of insecurity. May the Lord rest her soul in eternal peace?

Hon. Deputy Speaker: Hon. Wario.

Hon. Guyo: Ahsante, Mhe. Naibu Spika. Nachukua fursa hii kutuma rambirambi zangu kwa jamaa na marafiki wa Mhe. Grace. Nilifanya kazi naye katika kamati ya uchukuzi. Najua ni kiongozi anayepaswa kuigwa. Kifo kitakwenda na kila mmoja wetu. Tenda wema kabla hujakufa.

Ahsante.

Hon. Deputy Speaker: Hon. Mizighi Mnene.

Hon. (Ms.) Mizighi: Ahsante, Mhe. Naibu Spika. Kwa niaba yangu na kwa niaba ya wananchi wa Taita Taveta, nachukua fursa hii kutuma rambirambi kwa jamaa na marafiki wa Mhe. Grace. Nilipata fursa ya kumjua kidogo tu. Siku yetu ya kuapishwa hapa Bungeni, nilikuwa nimeketi karibu naye na tuka...

Hon. Deputy Speaker: Member for Bomet.

Hon. (Ms.) Korir: Mhe. Naibu Spika, kwa niaba yangu na kwa niaba ya watu wa Bomet na Bonde la Ufa kwa jumla, ningependa kumuomboleza Mhe. Kipchoim na wenzangu. Nawashukuru watu wa Baringo kwa kumchagua hata wakati alikuwa hajaelekea pale kufanya siasa zake.

Hon. Deputy Speaker: Thank you very much. Members will have other opportunities to condole with the family.

I wish to recognise - seated in the Speaker's Gallery - a delegation comprising of parliamentary staff from the Parliament of Zambia, who have been in the country since 22nd April, 2018, on a benchmarking visit to our Parliament and are attached to the Directorate of Finance and Accounting. Let us all welcome them to observe the proceedings of the National Assembly and wish them well.

I also wish to recognise again in the Speaker's Gallery the best performing students from Kiunga, Lamu East Constituency in Lamu County.

Lastly, let me also recognise in the Speaker's Gallery, members of Timau West Parish Men's Fellowship from Buuri Constituency in Meru County. That constituency is represented in the National Assembly by none other than, Hon. Rindikiri. The name is difficult. I will give him an opportunity later.

Let us proceed, Hon. Members.

PETITIONS

AMENDMENT TO KENYA SCHOOL OF LAW ACT, 2012

Hon. Deputy Speaker: Hon. Members, pursuant to Standing Order No.225(2)(b), I wish to convey to the House that my office is in receipt of a Petition signed by one Mr. Peter Githaiga Munyeki, a resident of Kajiado County. The Petitioner prays that the National Assembly exercises its legislative authority under Articles 95(2) and 256 (1) of the Constitution, by introducing and passing a Bill to amend the Second Schedule of the Kenya School of Law Act, 2012.

The Petitioner contends that the Kenya School of Law Act, No.26 of 2012 fails to recognise the plight of progressive students of law by denying them a right to admission to the Kenya School of Law to train as advocates. He cites that the Kenya School of Law Act only admits students who have achieved a grade of B (plain) in English or Swahili, in addition to having acquired a mean grade of C+ in the Kenya Certificate of Secondary Education (KCSE). The Petitioner contends that the requirement is an impediment to the students who have acquired a Bachelors of Law Degree (LLB) but who, nonetheless, scored a lower grade in KCSE, in addition to attaining a diploma in law. He also alleges that the move is contrary to the Legal Education Act, 2012 which regulates the legal education in Kenya and provides for progressive learning of law.

The Petitioner, therefore, prays that the National Assembly amends the Second Schedule of the Kenya School of Law Act, 2012 on admission requirement to the Advocates Training

Programme (ATP), to provide for admission and training as advocates at the Kenya School of Law for progressive students who have attained an LLB degree.

This Petition, therefore, stands committed to the Departmental Committee on Education and Research for consideration. The Committee is requested to undertake to hear the Petitioner, consider the Petition and report its findings to the Petitioner and the House in accordance with Standing Order No.227 (2). The Committee is also at liberty to introduce a Bill to the House proposing amendments to the Kenya School of Law Act, 2012 as proposed by the Petitioner.

Let us move to the next Order. I am told there is also another petition. Let us have Hon. Obo.

DEMOLITION OF BUILDINGS ALONG MTANDAWANDA-KIZINGITINI ROAD

Hon. (Ms.) Obo: Thank you, Hon. Deputy Speaker. This is a public Petition on alleged impending demolition of buildings along Mtandawanda-Kizingitini Road.

I, the undersigned, on behalf of the residents of Pate Island, draw the attention of the House to the following:

THAT, the Government, through the Kenya Rural Roads Authority (KeRRA), has commenced the construction of Mtandawanda-Kizingitini Road in Pate Island, Lamu County;

THAT, since the commencement of the road construction project, some structures have been earmarked for demolition to pave way for the construction of the said road;

THAT, contrary to the Government policy where residents and, in particular, property owners are required to be issued with notice to remove the property along the proposed site, the residents have not received such a notice;

THAT, it is alleged that the road is supposed to transverse through private property. However, those private land owners have neither been informed nor compensated;

THAT, the impending demolition will result in huge losses of livelihoods;

THAT, efforts to resolve this matter with the relevant Government agencies have been futile;

THAT, the matter presented in the Petition is not pending before any tribunal, court of law or independent body.

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

(i) Investigates and inquires into the matter with a view to cause the Government to compensate private land owners holding legitimate ownership documents and who are likely to be affected; and,

(ii) Makes any other further orders or directions that are deemed fit in the circumstances of the Petitioners.

Your Petitioners will ever pray.

Hon. Deputy Speaker: Let us move to the next Order.

PAPERS LAID

Hon. Angwenyi: Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

The Reports of the Auditor-General on Financial Statements in respect of the following institutions for the year ended 30th June 2017, and the certificates therein:

1. The Judicial Service Commission;
2. State Department of Maritime and Shipping Affairs;
3. Pharmacy and Poisons Board;
4. Petroleum Development Levy Fund – Holding Account;
5. Accounts from the National Treasury;
6. Equalisation Fund;
7. Rivatex East Africa Limited;
8. National Council for Law Reporting;
9. Kenya Maritime Authority;
10. Ministry of Lands and Physical Planning; and
11. Coast Waters Services Board.

Hon. Deputy Speaker: Let us have the Chairperson of the Committee on Members' Services and Facilities, Hon. Machogu.

Hon. Ombaki: Hon. Deputy Speaker, I beg to lay the following Report on the Table of the House:

The First Report of the Committee on Members' Services and Facilities on a benchmarking visit to the Parliament of the United Kingdom and Northern Ireland Assembly on March 12th to 16th 2018.

Hon. Deputy Speaker: Chairperson, Departmental Committee on Administration and National Security. What is it Leader of the Majority Party?

Hon. A.B. Duale: Hon. Deputy Speaker, the Report that the Chair of the Committee on Members' Services and Facilities has tabled is very important. I ask you to tell the Table Office to produce more copies, so that we see can how much of the issues that we wanted to discuss in a *Kamukunji* have been resolved, and then we can look at what has not been discussed. It is very important. I hope that they have discussed the issue of insurance policy. I want you to ask the Table Office to produce more copies of the Report, so that Members can read them and then consult the leadership of the House.

Hon. Deputy Speaker: It is so ordered. Did you read the second Report? You did not read it.

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

Hon. Deputy Speaker: We are still laying the Papers. Do you want to lay the second Report? Look at (ii).

Hon. Ombaki: Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House, today, Tuesday, 24th April 2018:

Second Report of the Committee on Members' Services and Facilities.

Hon. Deputy Speaker: Let us proceed to the Chairperson, Departmental Committee on Administration and National Security. Hon. Koinange proceed.

Hon. Koinange: Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House, today, Tuesday, 24th April 2018:

The Report of the Departmental Committee on Administration and National Security on the Kenya Coast Guard Service Bill, 2017. Thank you.

Hon. Deputy Speaker: Next Order.

NOTICE OF MOTION

Let us start with Hon. Michael Muchira. Is he absent?

Hon. Members: Yes.

Hon. Deputy Speaker: Let us proceed to Hon. Machogu.

IMPROVEMENT OF MEMBERS SERVICES AND FACILITIES

Hon. Ombaki: Hon. Deputy Speaker, I beg to give notice of the following Motion: THAT, this House adopts the Report of the Committee on Members' Services and Facilities on improvement of services and facilities, laid on the Table of this House on Tuesday, 24th April 2018.

STATEMENT

Hon. Deputy Speaker: Do we have any statement, Hon. Kimunya? It was not slotted to be discussed today. It will come tomorrow in the morning. Consult the leadership of the House and then we can slot it for the next sitting.

(CONSIDERATION OF THE BILL IN COMMITTEE OF THE WHOLE HOUSE)

THE IRRIGATION BILL

What remained was to put the Question. This was the Committee of the whole House on the consideration of the Irrigation Bill, National Assembly Bill No. 46 of 2017.

(Question put and agreed to)

Mover of the Bill.

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the Irrigation Bill, National Assembly Bill No. 46 of 2017 be now read the Third Time. I request the Chair of the Departmental Committee on Agriculture and Livestock to second.

Hon. Ali Adan: Hon. Deputy Speaker, I second.

(Question proposed)

(Question put and agreed to)

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

(CONSIDERATION OF THE BILL IN COMMITTEE OF THE WHOLE HOUSE)

THE ENERGY BILL

Hon. Deputy Speaker: Hon. Members, before I put the Question, it is good for Members to understand what we are doing in this specific Motion. We went up to Clause 95. The Question that I will put is for the House to agree with the Committee because they reported progress. That is the position that we are taking. Immediately after I put the Question, we will go back to the Committee of the whole House.

(Question put and agreed to)

BILL

First Reading

THE GOVERNMENT CONTRACTS BILL

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

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE ENERGY BILL

*(Resumption of consideration
interrupted in Committee on 19.4.2018)*

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, we are now in the Committee of the whole House to consider the Energy Bill. You recall that we dealt with Clause 95. We shall proceed from Clause 96.

Clause 96

Hon. Gikaria: Hon. Temporary Deputy Chairman, before I move to Clause 96, I want to make a communication for Members to understand what we will do from Clause 96 to 121. From Clause 96 all the way to Clause 121, it is a clean-up from the Energy Bill to Petroleum (Exploration, Development and Production). So, the justification will not be too much.

Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 96.

(Question of the amendment proposed)

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

(Clause 96 deleted)

Clause 97

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman.
Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 97.

(Question of the amendment proposed)

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

(Clause 97 deleted)

Clause 98

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman.
Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 98.

(Question of the amendment proposed)

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

(Clause 98 deleted)

Clause 99

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman.
Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 99.

(Question of the amendment proposed)

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

(Clause 99 deleted)

Clause 100

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman.
Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 100.

(Question of the amendment proposed)

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

(Clause 100 deleted)

Clause 101

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman.
Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 101.

(Question of the amendment proposed)

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

(Clause 101 deleted)

Clause 102

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman.
Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 102.

(Question of the amendment proposed)

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

(Clause 102 deleted)

Clause 103

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman.
Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 103.

(Question of the amendment proposed)

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

(Clause 103 deleted)

Clause 104

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

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

THAT, the Bill be amended by deleting Clause 104.

(Question of the amendment proposed)

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

(Clause 104 deleted)

Clause 105

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

THAT, the Bill be amended by deleting Clause 105.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see interest from a Member. Do you have a card? You do. Have you pressed the intervention button?

Hon. (Ms.) Korir: Thank you very much, Hon. Temporary Deputy Chairman. I request that because all the amendments that have been proposed by the Chair of the Committee are deleting a number of clauses, we lump all of them together as one.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Member, we cannot do that for the simple reason that these different clauses provide for different things and there could be a Member who could resist the deletion. So, we have to move one after the other. That is the procedure we must adopt. We would have loved to move with speed, but this is a law making process. Sometimes it is slow. We have to take it the way it is. We shall proceed then.

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

(Clause 105 deleted)

Clause 106

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

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

THAT, the Bill be amended by deleting Clause 106.

(Question of the amendment proposed)

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

(Clause 106 deleted)

Clause 107

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

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

THAT, the Bill be amended by deleting Clause 107.

(Question of the amendment proposed)

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

(Clause 107 deleted)

Clause 108

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

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

THAT, the Bill be amended by deleting Clause 108.

(Question of the amendment proposed)

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

(Clause 108 deleted)

Clause 109

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

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

THAT, the Bill be amended by deleting Clause 109.

(Question of the amendment proposed)

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

(Clause 109 deleted)

Clause 110

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

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

THAT, the Bill be amended by deleting Clause 110.

(Question of the amendment proposed)

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

(Clause 110 deleted)

Clause 111

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

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

THAT, the Bill be amended by deleting Clause 111.

(Question of the amendment proposed)

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

(Clause 111 deleted)

Clause 112

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

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

THAT, the Bill be amended by deleting Clause 112.

(Question of the amendment proposed)

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

(Clause 112 deleted)

Clause 113

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

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

THAT, the Bill be amended by deleting Clause 113.

(Question of the amendment proposed)

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

(Clause 113 deleted)

Clause 114

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

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

THAT, the Bill be amended by deleting Clause 114.

(Question of the amendment proposed)

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

(Clause 114 deleted)

Clause 115

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

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

THAT, the Bill be amended by deleting Clause 115.

(Question of the amendment proposed)

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

(Clause 115 deleted)

Clause 116

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

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

THAT, the Bill be amended by deleting Clause 116.

(Question of the amendment proposed)

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

(Clause 116 deleted)

Clause 117

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

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

THAT, the Bill be amended by deleting Clause 117.

(Question of the amendment proposed)

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

(Clause 117 deleted)

Clause 118

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

THAT, the Bill be amended by deleting Clause 118.

(Question of the amendment proposed)

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

(Clause 118 deleted)

Clause 119

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

THAT, the Bill be amended by deleting Clause 119.

(Question of the amendment proposed)

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

(Clause 119 deleted)

Clause 120

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

THAT, the Bill be amended by deleting Clause 120.

(Question of the amendment proposed)

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

(Clause 120 deleted)

Clause 121

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, the Bill be amended by deleting Clause 121.

(Question of the amendment proposed)

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

(Clause 121 deleted)

Clause 122

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 122 of the Bill be amended by deleting the word “Commission”
wherever it appears and substituting therefor the word “Authority”.

In the Bill, the title used is “Energy Regulatory Commission”. This has always brought a lot of questions as to whether it is the same as the constitutional commissions. So, we are giving it a proper name. It is not a commission but an authority. Again, from Clause 122 to Clause 148, it is just the same amendment of deleting “Commission” and replacing it with “Authority.”

(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 122 as amended agreed to)

Clause 123

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 123 of the Bill be amended by deleting the word “Commission”
wherever it appears and substituting therefor the word “Authority”.

(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 123 as amended agreed to)

Clause 124

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 124 of the Bill be amended by deleting the word “Commission”
wherever it appears and substituting therefor the word “Authority”.

(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 124 as amended agreed to)

Clause 125

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 125 of the Bill be amended by deleting the word “Commission”
wherever it appears and substituting therefor the word “Authority”.

(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 125 as amended agreed to)

Clause 126

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 126 of the Bill be amended by deleting the word “Commission”
wherever it appears and substituting therefor the word “Authority”.

(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 126 as amended agreed to)

(Clause 127 agreed to)

Clause 128

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

THAT, Clause 128 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(Question of the amendment proposed)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, we have left the ones he was deleting. We are now dealing with substantive clauses. I wanted my Chair to go on record to give reasons why he is amending the clause. When he says “I do it as per the Order Paper” and sits down, he is not being fair to the process.

The Temporary Deputy Chairman (Hon. Omulele): You are quite in order, Leader of the Majority Party but when he started this part of the amendment, he explained why the amendment is being done. It is the same amendment throughout. He is in order.

Hon. A.B. Duale: That is okay.

*(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 128 as amended agreed to)

Clause 129

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

THAT, Clause 129 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 129 as amended agreed to)

Clause 130

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 130 of the Bill be amended by deleting the word “Commission”
wherever it appears and substituting therefor the word “Authority”.

(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 130 as amended agreed to)

Clause 131

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 131 of the Bill be amended by deleting the word “Commission”
wherever it appears and substituting therefor the word “Authority”.

(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 131 as amended agreed to)

Clause 132

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 132 of the Bill be amended by deleting the word “Commission”
wherever it appears and substituting therefor the word “Authority”.

(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 132 as amended agreed to)

Clause 133

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

THAT, Clause 133 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 133 as amended agreed to)

Clause 134

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

THAT, Clause 134 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 134 as amended agreed to)

Clause 135

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 135 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 135 as amended agreed to)

Clause 136

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 136 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 136 as amended agreed to)

Clause 137

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 137 of the Bill be amended by deleting the word “Commission” and substituting therefor the word “Authority”.

(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 137 as amended agreed to)

Clause 138

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

THAT, Clause 138 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 138 as amended agreed to)

Clause 139

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

THAT, Clause 139 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 139 as amended agreed to)

Clause 140

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

THAT, Clause 140 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 140 as amended agreed to)

(Clause 141 agreed to)

Clause 142

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

THAT, Clause 142 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 142 as amended agreed to)

(Clause 143 agreed to)

Clause 144

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

THAT, Clause 144 of the Bill be amended by deleting the word “Commission” appearing in the opening paragraph and substituting therefor the word “Authority”.

(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 144 as amended agreed to)

Clause 145

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

THAT, Clause 145 of the Bill be amended by deleting the word “Commission” and substituting therefor the word “Authority”.

(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 145 as amended agreed to)

(Clause 146 agreed to)

Clause 147

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

THAT, Clause 147 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 147 as amended agreed to)

Clause 148

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

THAT, Clause 148 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 148 as amended agreed to)

Clause 149

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

THAT, Clause 149 of the Bill be amended—

- (a) in sub-clause (1) by inserting a new paragraph immediately after paragraph (e) —
“(ea) that the contractual rights, privileges, liabilities and obligations accrued to an existing licensee or any other person are not materially adversely affected;”
- (b) by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

Clause 149 talks about factors to be considered in an application. That will be looked into by the Authority. We are adding to it factors which are going to be considered. We are making an additional factor to be considered when an application is being made.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see interest by the Hon. Kajwang’.

Hon. Kajwang’: I would like to have a better clarification from the Chairman when we talk about rights and privileges that are not materially adversely affected. What is ‘materially adversely affected’? Can we have a law which is clear so that one may say that those liabilities or privileges should not be taken away from somebody, rather than these variable terms ‘materially adversely affected’? What does it mean in legislation? If a court of law were to decide whether my liabilities or my rights have been violated, what does it mean to be “materially adversely affected?” Would this be clearer from the Chair?

The Temporary Deputy Chairman (Hon. Omulele): This is fair inquiry. I will give you an opportunity to have a say on this.

Hon. Gikaria: What Hon. T.J. Kajwang’ is saying is true. Hon. Temporary Deputy Chairman, Clause 141 talks to the Authority. I am using the authority because we made an amendment and it is not a commission now. It says “shall in granting or rejecting an application for licence”. We are opening this licence to so many other players...(*Off record*). We are introducing more licensees into this field. Assuming you want to move the Kenya Power and Lighting Company (KPLC) and a person has just applied to company “x”, who is a licensee, the person you are moving to needs to be considered in terms of the infrastructure they have already in place. As you are moving from person “x” to the other, these are some of the aspects that need to be considered, so that by the time we allow you to move, you will carry the burden that was there before to the new licensee. So, if you come and find that I had put some transmission line and you want to use the line without taking...

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman, if I could assist you, the way you are amending it, you are adding a sub clause which will be part of the considerations. When you read it at Clause 149, it will read like this; “the commission shall, in granting or rejecting an application for a license, take into consideration that the contractual rights privileges, liabilities and obligations accrued to an existing licensee or any other person are not materially, adversely affected.” That is what we are dealing with.

Hon. Gikaria: We are bringing in a new clause.

The Temporary Deputy Chairman (Hon. Omulele): In my understanding and I think the question Hon. T.J. Kajwang’ is asking is, in protecting the rights of the existing licensee as you license others, you are saying that there are rights, liabilities and obligations that should not be materially adversely affected. Those are the words he is contending, if I got his inquiry right. Is that not so, Hon. Kajwang.

Hon. Kajwang’: Yes, it is.

The Temporary Deputy Chairman (Hon. Omulele): So that is the remit of his inquiry. You can ask your Committee Members to assist. I know you have been on your feet. Let us have Hon. Kajwang’, then we shall come back to you, Hon. Chair.

Hon. Kajwang’: So that my inquiry is very clear, would the Chair of the Committee consider a further amendment to remove the word “not materially”. Those two words are imperatives that give a description which is not definite in terms of contractual rights and liabilities. Hon. Temporary Deputy Chairman, you have correctly put it within the context. So, these words, “materially adversely affected”, would mean that they could be affected but not materially. This is the problem I am having with this legislation. If you could leave it and say any other person are not affected, so that we do not have those descriptive words talking about materially, adversely affected, it would be better. After all, the word ‘adversely’ means affected anyway. Would you consider leaving the words, ‘materially adversely’ so that this amendment would read ‘any other person is not affected’?

The Temporary Deputy Chairman (Hon. Omulele): What Hon. Kajwang’ is trying to do is to help the people who will be applying this law from splitting hairs in court as it were. When you say ‘materially adversely affected’, you are creating a scope within which we will ask whether it is material or not material. It will be subject to all these kinds of interpretations. He is suggesting that it will be safer without the word ‘materially’ in there. Hon. Pukose wants to assist you, Hon. Chairman, before you finally have your say.

Hon. (Dr.) Pukose: Thank you, Hon. Temporary Deputy Chairman. When you say, ‘materially adversely affected’, you know you are having a new licensee who is going to come and you are giving the Authority the power to determine how much KPLC has, for instance, invested. It is going to affect it because if you are going to take away new clients or take away the clients who KPLC had in their stock, it means they are going to be affected materially. It also means that whatever KPLC had invested in terms of even poles and all that to be able to provide power, will be affected yet they incurred liabilities and they have already invested in that. So, that is going to affect whatever they had in their stock. So, it is the Authority to determine how much is “materially” affected.

The Temporary Deputy Chairman (Hon. Omulele): Your contribution is fine, but what Hon. T.J. Kajwang’ was saying is: When you say, ‘materially adversely’, you are opening yourself up to many interpretations of those two words. What is material and to what extent? So, you will be opening yourself up to all these interpretations. He is basically trying to help you to clean up the language of this script so that it is neater. It is a proposal.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Chairman. I used to be a student of commercial law when I was doing finance and the word ‘material’ is very insignificant in commercial law. You could be affected but not materially significantly. This is an Authority that is going to determine what we are talking about, “materially adversely affected”, if it is not of too much significance then you can leave it. It is the Authority that is going to determine the extent of that. If you are aggrieved, you have an opportunity to go to the tribunal.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman, I hear you. For us to make progress, I will leave it to the House to make a decision. We have a long way to go and I see the Chair is comfortable with the words as they are. I will therefore leave it to the House to make a determination.

Hon. ole Sankok: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Omulele): What is out of order, Hon. Sankok? You want to explain further?

Hon. ole Sankok: Yes, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Omulele): We have spent quite a bit of time on this and I will give it to the House to make a determination whether you want to retain it the way it is or you want to throw it out. Then we can make progress. We have had explanations from both sides and I have tried to deal with it. It is for the House to deal with it now in a determined way by way of voting.

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

(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 149 as amended agreed to)

Clause 150

Hon. Gikaria: Hon. Temporary Deputy Chairman, first, let me thank Hon. Kajwang’. We have had a lot of monotony without engagement. First, he said nay. Now he has jogged our minds. It is good for us to break the monotony.

Hon. Chairman, I beg to move:

THAT, Clause 150 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

What we are moving from are the words, “Energy Regulatory Commission” to “Energy Regulatory Authority”. It is for the purpose that I had already explained. “Commission” is a very strong word that is in the Constitution. Everybody is asking: Is it the same? Do they have the rights and privileges of the constitutional commissions? From Clause 150 all the way to Clause 166, it is the same explanation.

Thank you, Hon. Chairman.

The Temporary Deputy Chairman (Hon. Omulele): I think the explanation satisfies the Chair.

(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 150 as amended agreed to)

Clause 151

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

THAT, Clause 151 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 151 as amended agreed to)

Clause 152

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

THAT, Clause 152 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 152 as amended agreed to)

Clause 153

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

THAT, Clause 153 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 153 as amended agreed to)

Clause 154

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

THAT, Clause 154 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 154 as amended agreed to)

Clause 155

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

THAT, Clause 155 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 155 as amended agreed to)

Clause 156

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

THAT, Clause 156 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 156 as amended agreed to)

Clause 157

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

THAT, Clause 157 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 157 as amended agreed to)

Clause 158

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

THAT, Clause 158 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 158 as amended agreed to)

Clause 159

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

THAT, Clause 159 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 159 as amended agreed to)

Clause 160

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

THAT, Clause 160 of the Bill be amended in sub-clause (3) by deleting the word “Commission” appearing in paragraph (a) and substituting therefor the word “Authority”.

(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 160 as amended agreed to)

Clause 161

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

THAT, Clause 161 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 161 as amended agreed to)

(Clauses 162 and 163 agreed to)

Clause 164

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

THAT, Clause 164 of the Bill be amended in sub-clause (1) by deleting the word “Commission” appearing in paragraph (d) and substituting therefor the word “Authority”.

(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 164 as amended agreed to)

Clause 165

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

THAT, Clause 165 of the Bill be amended by deleting the word “Commission” and substituting therefor the word “Authority”.

(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 165 as amended agreed to)

Clause 166

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

THAT, Clause 166 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 166 as amended agreed to)

Clause 167

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

THAT, Clause 167 of the Bill be amended by inserting a new sub-clause immediately after sub-clause (2) —

“(3) A distribution licence shall not be granted in respect of any location which is less than one quarter of a square kilometres:

Provided that this shall not apply in cases of islands in recognised rivers, lakes and in the exclusive economic zone”.

We do not want to give very small portions to licences. We have given a specific that it should not be less than quarter of a square kilometer, so that you do not allow many people in a very small area. My brother, the Vice-Chair, has visited Canada and they do oil exploration and production. Almost everywhere within a certain few kilometres, everyone is doing that, but that is different because their jurisdiction is very different from ours.

So, we are giving a specific area provided this shall not apply in cases of islands, in recognised rivers and lakes. That will not affect those kinds of areas. But in the mainland, the minimum is a quarter of a kilometre square.

The Temporary Deputy Chairman (Hon. Omulele): Very well, I see interest from Hon. Manje, Member for Kajiado North.

Hon. Manje: Hon. Temporary Deputy Chairman, I wanted to emphasise on the importance of that clause. It provides that the distribution of energy should be distinct in a particular area. Sometimes it gets affected by electromagnetic and so, it has to be a distinct area of distribution as opposed to retail. I support.

The Temporary Deputy Chairman (Hon. Omulele): Very well, I see interest from Hon. Kajwang’.

Hon. Kajwang’: Hon. Temporary Deputy Chairman, I appreciate this amendment and it is in order. But when professionals in energy are done with legislation, they should get lawyers to help them craft the law. That way, we get pieces of legislation which will live for a longer time.

Hon. Temporary Deputy Chairman, drawing from your knowledge in legislative drafting - knowing that you worked very arduously at the Attorney-General Chambers when the Chamber was the Chamber - we are running away from this provision that this legislation has provided, in our contemporary legislative-making. A good amendment such as this sub clause would have read thus:

“Except in cases of islands in recognised rivers, lakes and in the exclusive economic zone, a distribution licence shall not be granted...”So that you do not have this proviso because they make the law uncertain. You do not understand the meaning the legislator had when you want to read this sub clause. I know this is coming late, but I also do not know our policy on further amendments to an amendment by committee. I would persuade the Chair that the proper drafting of this clause would be to start this sentence:

“Except in cases of islands... a distribution licence shall not---”

That way, you will have very clear legislation, drawn from the lake shore, in clear English, in the Queens language.

The Temporary Deputy Chairman (Hon. Omulele): Very well-spoken Hon. Kajwang’. Let us have Hon. Makali Mulu

Hon. Mulu: I also support this amendment but rather than just look at the language, we also need to be careful so that we do not lock this. I do not know whether exception should only be on recognised rivers, lakes and economic zones. I am imagining there could be some other, so as we try to lock it, we need to be careful in such a way that we do not need to amend the law to allow a loss of possible potential beneficiaries from this.

Thank you and I support.

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

Hon. (Dr.) Oundo: Thank you, Hon. Temporary Deputy Chairman. As much as I support the amendments to the Bill, I am at a loss. Probably I have not clearly understood the rationale of having less than a quarter of a kilometre square. Probably the Chair of the Committee would be kind enough to explain further. Why not a kilometre? Why not two square kilometres? What is the scientific rationale of quarter of a kilometre square? Alternatively, I would request that they consider leaving the setting of the exact area to be covered to the Authority that is being established under this Act so that you give flexibility. Circumstances change over time. Being such restrictive in a nature means that when circumstances change in terms of population density either positive or negative, we will have to keep coming back to Parliament to make amendments.

Thank you.

The Temporary Deputy Chairman (Hon. Omulele): Very well, Hon. (Dr.) Pukose, did you have something to say or you have consulted with the Chair? Chair, are you going to speak for the Committee?

Hon. Gikaria: Hon. Temporary Deputy Chairman, I thank Hon. Kajwang'. I totally agree with him. I am not a lawyer and I learn a lot from people with specific qualifications and their specialty.

When he talks about when the Chamber was the Chamber, I am also told that there are some very young upcoming lawyers who are also thinking that they agree with what Hon. Kajwang' is saying, but their only worry is that they are telling me that when we use the Kajwang' language, it becomes very long and 'convigulated'. I do not know whether I got the word correctly.

The Temporary Deputy Chairman (Hon. Omulele): I am sure Chair the word the young lawyer who was advising you used must be "convoluted".

Hon. Gikaria: I was very poor in English. I totally agree, but I think that talks to the drafters. They need to learn from what Hon. Kajwang' has said, but they have heard. Also, the Legal Department has heard. I totally agree with Hon. Kajwang'. If this proviso is an outdated format, then we could just leave it at that and in future, we can... We have heard you. Given another opportunity in any of my committees, I will need to start thinking about that.

The Temporary Deputy Chairman (Hon. Omulele): That is the spirit with which we must work within this Committee. We must consult and agree where a good contribution is made. It could have been better the way Hon. Kajwang' is proposing but the way it is still it can be understood. We hope that in future we will have neater text to work with. Some of us, like Hon. Kajwang', will be blamed that he was in the House when language like this was being allowed to pass. Some young lawyer will go to court with the HANSARD and say that he did not rise to propose an amendment yet he was present in the House. It is good that his voice is on record. We will proceed.

I now give it to the House to make a decision one way or the other.

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

(Clause 167 as amended agreed to)

Clause 168

Hon. Gikaria: Hon. Temporary Deputy Chairman, I remember something Hon. Kajwang' did as "chief justice" the other day, which brought him some problems. I hope with the handshake these things will be sorted out. Of course, I appreciate his intellect.

Having said that, I beg to move:

THAT, Clause 168 of the Bill be amended in sub-clause (1) by deleting the word "Commission" appearing in paragraph (e) and substituting therefor the word "Authority".

(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 168 as amended agreed to)

Clause 169

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

THAT, Clause 169 of the Bill be amended by deleting the word "Commission" and substituting therefor the word "Authority".

(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 169 as amended agreed to)

Clause 170

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

THAT, Clause 170 of the Bill be amended in sub-clause (6) by deleting the word "Commission" and substituting therefor the word "Authority".

(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 170 as amended agreed to)

(Clauses 171 and 172 agreed to)

Clause 173

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

THAT, Clause 173 of the Bill be amended—

(a) by inserting a new sub-clause immediately after sub-clause (3) -

“(4) Where a licensee enters into a contract to supply electrical energy to a consumer who is receiving electrical energy from another licensee under this Act, the new licensee shall forthwith assume all obligations of the previous licensee relating to the subject consumer and previous contract shall cease and be extinguished.”

(b) by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

Hon. Temporary Deputy Chairman, the reason for this is we seek clarity while dealing with change of contractual obligations between two or more contractors and a consumer. That is why we are bringing in an additional class.

(Question of the amendment proposed)

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

*(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 173 as amended agreed to)

Clause 174

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

THAT, Clause 174 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

Hon. Temporary Deputy Chairman, I also need to explain that the effect of the proposed deletion of the word “Commission” and its replacement with the word “Authority” is as earlier explained. This is the case from Clause 174 all the way to Clause 196.

(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 174 as amended agreed to)

Clause 175

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

THAT, Clause 175 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 175 as amended agreed to)

Clause 176

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

THAT, Clause 176 of the Bill be amended in sub-clause (1) by deleting the word “Commission” and substituting therefor the word “Authority”.

(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 176 as amended agreed to)

Clause 177

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

THAT, Clause 177 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 177 as amended agreed to)

Clause 178

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

THAT, Clause 178 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 178 as amended agreed to)

Clause 179

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

THAT, Clause 179 of the Bill be amended in sub-clause (1) by deleting the word “Commission” and substituting therefor the word “Authority”.

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 179 as amended agreed to)

(Clauses 180, 181, 182, 183, 184, 185 and 186 agreed to)

Clause 187

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 187 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 187 as amended agreed to)

Clause 188

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 188 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 188 as amended agreed to)

(Clauses 189 and 190 agreed to)

Clause 191

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 191 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 191 as amended agreed to)

Clause 192

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

THAT, Clause 192 of the Bill be amended by deleting the word “Commission” appearing in the opening paragraph and substituting therefor the word “Authority”.

(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 192 as amended agreed to)

Clause 193

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

THAT, Clause 193 of the Bill be amended—

(a) by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”;

(b) by inserting the following new sub-clause immediately after sub-clause (6) —

(7) The Authority shall review the retail tariff every three years.

Initially, there was no period given but now the Bill states that the tariff should always be reviewed after every three years.

(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)

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

(Clause 193 as amended agreed to)

(Clause 194 agreed to)

Clause 195

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

THAT, Clause 195 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 195 as amended agreed to)

Clause 196

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

THAT, Clause 196 of the Bill be amended in sub-clause (2) by deleting the word “Commission” and substituting therefor the word “Authority”.

(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 196 as amended agreed to)

(Clauses 197 and 198 agreed to)

Clause 199

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

THAT, Clause 199 of the Bill be amended in sub-clause (1) by deleting the words “by public advertisement, in at least two newspapers of nationwide circulation” appearing in the proviso and substituting therefor the words “through appropriate mechanisms including public advertisement in at least two newspapers of nationwide circulation and an announcement in a radio station of local coverage for a period of two weeks”.

(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 199 as amended agreed to)

(Clause 200 agreed to)

Clause 201

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

THAT, Clause 201 of the Bill be amended in sub-clause (3) by deleting the words “by public advertisement, in at least two newspapers of nationwide circulation:” and substituting therefor the words “through appropriate mechanisms including public advertisement in at least two newspapers of nationwide circulation and an announcement in a radio station of local coverage for a period of two weeks:”.

This is just to bring some public participation into effect. Before, only the newspapers were in nationwide circulation. However, we are also proposing an announcement in a radio station of local coverage for a period of at least two weeks. Newspapers do not reach everywhere but if we use the local radio within a specific area, most of the locals will get that information and increase the public participation.

(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 201 as amended agreed to)

(Clauses 202 and 203 agreed to)

Clause 204

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

THAT, Clause 204 the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

(2) Where energy infrastructure is removed, the surface of the land shall forthwith be restored to its former condition as far as possible by the licensee and in default thereof restoration may be carried out by the owner of the land, and the costs thereof shall be recoverable from the licensee.

In this aspect, we are talking about when an infrastructure is removed and the land is supposed to be restored back to its original condition. We propose that as far as possible, the licensee should restore the land back to its former condition and in default, thereof, restoration may be carried out by the owner of the land. We are just saying that the first person to restore the land to its former self is the licensee. If he refuses, the owner can restore the land and then claim from the licensee through the court. If you allow the licensee, he might take forever. That is why we are substituting and redrafting that 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)

(Clause 204 as amended agreed to)

(Clause 205 agreed to)

Clause 206

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

THAT, Clause 206 of the Bill be amended—

(a) in sub-clause (1) by inserting the words “and any other relevant law” immediately after the words “in this Act”;

(b) in sub-clause (2) by deleting the words “notwithstanding the provisions of any other written law, but”;

This amendment seeks to ensure that, that infrastructure is done in adherence to the existing laws. It is a matter of cleaning the Bill.

(Question of the amendment proposed)

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

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

(Clause 206 as amended agreed to)

(Clause 207 agreed to)

Clause 208

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

THAT, Clause 208 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 208 as amended agreed to)

Clause 209

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

THAT, Clause 209 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “by the implementing agencies” and substituting therefor the words “by the relevant agencies”;

(b) in sub-clause (2) by deleting the words “County Government” and substituting therefor the words “relevant County Government, local communities and any other relevant agency”.

We have two amendments. One is deleting the words, “by the implementing agencies” and substituting therefor the words “by the relevant agencies.” That is self-explanatory.

Secondly, we are proposing to delete the words, “County Government” and substitute therefor the words, “relevant County Government, local communities and any other relevant agency”. In this amendment, we want delete the words, “county governments” because it is general and we add the word “relevant” to refer to a specific area. That is the justification of the 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 209 as amended agreed to)

(Clauses 210, 211, 212, 213 and 214 agreed to)

Clause 215

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

THAT, Clause 215 of the Bill be amended by deleting the word “Commission” and substituting therefor the word “Authority”.

In Clause 215 all the way to Clause 239, we are deleting the word, “Commission” and replacing it with the wor, “Authority”. That is the justification of the amendment.

(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 215 as amended agreed to)

Clause 216

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

THAT, Clause 216 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 216 as amended agreed to)

(Clause 217 agreed to)

Clause 218

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

THAT, Clause 218 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 218 as amended agreed to)

Clause 219

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

THAT, Clause 219 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 219 as amended agreed to)

Clause 220

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

THAT, Clause 220 of the Bill be amended by deleting the word “Commission” and substituting therefor the word “Authority”.

(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 220 as amended agreed to)

Clause 221

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

THAT, Clause 221 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 221 as amended agreed to)

(Clauses 222, 223, 224 and 225 agreed to)

Clause 226

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

THAT, Clause 226 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 226 as amended agreed to)

(Clause 227 agreed to)

Clause 228

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 228 of the Bill be amended by deleting the word “Commission”
wherever it appears and substituting therefor the word “Authority”.

(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 228 as amended agreed to)

Clause 229

Hon. Gikaria: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 229 of the Bill be amended by deleting the word “Commission”
wherever it appears and substituting therefor the word “Authority”.

(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 229 as amended agreed to)

Clause 230

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

THAT, Clause 230 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 230 as amended agreed to)

Clause 231

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

THAT, Clause 231 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 231 as amended agreed to)

Clause 232

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

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

THAT, Clause 232 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 232 as amended agreed to)

Clause 233

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

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

THAT, Clause 233 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 233 as amended agreed to)

Clause 234

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

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

THAT, Clause 234 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 234 as amended agreed to)

Clause 235

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

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

THAT, Clause 235 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 235 as amended agreed to)

Clause 236

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

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

THAT, Clause 236 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 236 as amended agreed to)

(Clause 237 agreed to)

Clause 238

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

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

THAT, Clause 238 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 238 as amended agreed to)

Clause 239

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

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

THAT, Clause 239 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 239 as amended agreed to)

(Clauses 240 and 241 agreed to)

Clause 242

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

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

THAT, Clause 242 of the Bill be amended by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 242 as amended agreed to)

(Clause 243 agreed to)

Clause 244

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

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

THAT, Clause 244 of the Bill be amended—

- (a) in sub-clause (1) —
 - (i) by deleting paragraph (a);
 - (ii) by inserting the following new paragraph immediately after paragraph (h)

—
(i) applied research, technology development and innovation allied to energy sector including technology needs assessment, deployment and scaling up;

(b) in sub-clause (2) by deleting the word “Commission” appearing in paragraph (f) and substituting therefor the word “Authority”.

The justification for the amendment is that it seeks to take into account certain items that have been left out in the Consolidated Energy Fund.

Secondly, it seeks to remove reference to the Strategic Petroleum Reserve which goes to the Petroleum (Exploration, Development and Production) Bill.

More importantly, it seeks to recognise amendment of Clause 9 which creates a single regulator which we had said earlier, from Commission to Authority.

(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 244 as amended agreed to)

(Clauses 245, 246 and 247 agreed to)

Clause 248

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

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

THAT, Clause 248 of the Bill be amended—

(a) by deleting the word “may” and substituting therefor the word “shall”;

(b) by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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 248 as amended agreed to)

(Clauses 249, 250 and 251 agreed to)

Clause 252

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

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

THAT, Clause 252 of the Bill be amended—

(a) in sub-clause (1) by deleting the expression “2013” and substituting therefor the expression “131 of 2012”;

(b) in sub-clause (2) —

(i) by deleting the words “granted by the Commission” appearing in paragraph (b) and substituting therefor the words “granted by the Authority”;

(ii) by deleting paragraph (f).

This is a typographical error. The other one is about the Commission being replaced by Authority.

(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 252 as amended agreed to)

(Clause 253 agreed to)

New Clause 40A

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 40—

40A. A matter or thing or act done by a member of the Tribunal or any officer, employee or agent of the Tribunal shall not, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Tribunal, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.

Protection from personal
liability

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Omulele): Hon. T.J. Kajwang’, I see interest from you.

Hon. Kajwang’: Hon. Chairman, we are frantically looking for this amendment.

The Temporary Deputy Chairman (Hon. Omulele): Look at page 310 of the Order Paper.

Hon. Kajwang’: Could the Chairman now lead us into a discussion on this amendment?

Hon. Gikaria: Hon. Temporary Deputy Chairman, just like any other place, we do not want to hold the members of the Tribunal personally liable for executing their powers as they carry out their duties. They need to be exempted from liability from any action.

The Temporary Deputy Chairman (Hon. Omulele): Hon. T.J, are you satisfied?

Hon. Kajwang’: Yes.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Mbadi?

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I am just wondering why this is important because usually when people execute their responsibilities, they would not generally be held liable because they have just performed their functions. There must have been some mischief that is being cured here. That mischief is what we want to know. I am not so comfortable when we legislate that someone would not be held liable unless I know why. Our justice system is such that if you execute your functions properly within the law, you do not fear any litigation. Could someone be running away from accountability with this clause? That makes it difficult for me to support it. Maybe, the Leader of the Majority Party could clarify.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Mbadi, this is an ordinary saving clause in most matters where people act in a judicial capacity but I am sure the Chair must have a good reason for introducing this amendment. Leader of the Majority Party, you will take this one.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, this is just to make it clear in terms of the difference between being held personally liable and putting the responsibility on the Tribunal. I want to remind Hon. Mbadi that Hon. Gor Sungu was taken to court for being the Chair of a Committee that investigated the death of Hon. Robert Ouko. It is a very good piece of legislation. This is more about energy. There is an element of the private sector; that whatever actions the tribunal takes, it takes as a corporate entity and not in the individual capacities of the members sitting in the Tribunal.

The Temporary Deputy Chairman (Hon. Omulele): Yes, Hon. T.J.

Hon. Kajwang’: Hon. Temporary Deputy Chairman, you have just nailed it – that, this is a clause which would usually appear where a tribunal or a committee is clogged with quasi-judicial powers to enhance its independence. If they were judicial rather than quasi-judicial, we would have given security of tenure but because we cannot give them security of tenure, the best we can do is to make them know that when they exercise their powers, believing that they are doing so honestly and faithfully, they will not incur personal liability.

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

(The new clause was read a Second Time)

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

New Clause 145A

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 145—

145A.(1) The Authority shall put in place mechanisms to avoid monopoly in distribution of electricity.

(2) The Authority shall grant more than one distribution licence provided it has received more than one application and the applicants have met the conditions under section 149.

(Question of the new clause proposed)

(New clause read the First Time)

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

The provisions that this particular Bill has in Clause 147(2) states that the Commission may – I underscore the word “may” – through a fair, open, and competitive process in accordance with procedures prescribed by the Cabinet Secretary by regulations, invite applications for a licence under Section 145. Under Clause 148, it goes on to state that the Commission may hear any objections in public at a time and place of which not less than 15 days’ notice shall be given to the applicant and to every objector and the Commission shall make known its decision regarding any objection within 30 days after the hearing.

My amendment seeks to ensure that the authority shall put in place mechanisms to avoid monopoly in distribution of electricity in this country.

The New Clause 145A (2) says the Authority shall grant more than one distribution licence provided it has received more than one application and the applicants have met the conditions under Section 149.

If you will allow me to expound for a minute, what this means is that the Authority shall be in a position to put in mechanisms, including inviting bidders through advertising. Secondly, if anyone applies, the Authority shall grant. What the Bill currently talks about is not “shall”. The Bill in Clause 147(2) says that the Commission “may”, not “shall”. I have put in an amendment regarding the same. I am reading because Hon. Duale has requested me to read Clause 145: “A person who wishes to carry out the generation, exportation, importation, transmission, distribution and retail supply of electricity must apply for a licence as the case may be to the Commission in accordance with the provisions of this Act:”

There is no doubt that you must apply. What is there in the Bill is Clause 147(2) which says the Commission “may”. That means it is on the whims and desires of the commission sitting and deciding it wants or not.

Secondly, it is simple English. It is important for all Members here to understand that this is simple English. The other side, the side of Hon. Duale and the Chairman, is in agreement that this country needs to have an overhaul of this segment. They fought very hard so that the KPLC should compensate and it was dropped. In this instance, we are simply saying that, if someone applies to become a provider or distributor of power in the country, there is no need for them to be denied that right.

The Temporary Deputy Chairman (Hon. Omulele): Very well, Hon. Nassir. I will give this to the House for discussion. We will have Hon. Kimunya since I see interest from him.

Hon. Kimunya: Thank you, Hon. Temporary Deputy Chairman. I rise to oppose this amendment or introduction of this New Clause at this stage. I have listened to the Mover. What he is trying to do does not solve the problem he is trying to solve. He seems to have a problem with Clause 147 which says “may”. But, this amendment is not referencing to amending the “may” in Clause 147 to make it “shall”. It is creating another “shall” in Clause 145. Then, we will have a “may” in Clause 147. We will end up with two laws that are conflicting; one will be mandatory and another optional.

The other issue I just want to have here is that, if you read the New Clause 145A(2) being introduced, it is basically saying that the Authority shall grant more than one licence provided it has received more than one application and the applicants have the conditions. So, what is the impact of this?

Hon. Nassir: On a point of order.

Hon. Kimunya: Let me just finish. I am reading what is included here.

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

Hon. Nassir: The Hon. Member has actually misled the House by saying that Clause 147(2) gives this Commission authority by the word “shall”. The word “shall” does not appear there. It is the word “may” that is there. Hon. Members...

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, let us not argue about the text as it presently sits in the Act because we all can see it. If I may just set the records straight, Clause 147(2) says this:

“The Commission may, through a fair, open and competitive process in accordance with procedures prescribed by the Cabinet Secretary by regulations, invite applications for a licence under Section 145.”

That is what it says; “may”. I have not heard him say there is a “shall” there.

Hon. Nassir: No. What he said is that the Commission “shall ensure”. He was not quoting verbatim on the same. If that is the case, of course this is a House of records and I am on HANSARD, I would like him to say that he has not stated there is a “shall”.

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

Hon. Kimunya: Hon. Temporary Deputy Speaker, I would like the Hon. Nassir to be attentive especially as a Mover of an amendment. Listen to the Members as they are contributing so that we do not end up with a confusion. I am very clear that Clause 147 provides a “may”. His proposed amendment to Clause 145 is providing a “shall” within the same section of the Bill. That is a conflict. Most importantly is that the New Clause 145A (2) being proposed says that the Authority shall grant more than one distribution licence provided it has received more than one application and the applicants have met the conditions. So, if you receive 10 applications and all the 10 have met the conditions, you must grant 10 licences regardless of how many licences you need for generation. Now, this is very poor drafting. Until it is properly put, I will rather we remove it because we are contaminating the law with bad laws.

I do not even need to go to the merits and demerits of whether it is a monopoly or not. By allowing this clause to pass as it is, we are creating a situation where 10 people will apply for a licence, all qualify and meet the conditions and, because of this law saying the Authority shall grant licences to all the people who have met the conditions – never mind how many licences the country requires at that point. It is simple English. The law must be constructed as it deserves.

Hon. Nassir: On a point of order.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, let me give direction on how we shall proceed on this. Hon. Nassir, you will allow Members to contribute.

They may not agree with you; they may not say things that you like but that is their opportunity to contribute. I will definitely give you an opportunity at the end of it all, to respond to all the contributions that Members will have made. That is so that you can set the record straight. We can have Hon. Kimunya finish then come to you. Actually, I can see a lot of interest on this. We can have other contributions.

Hon. Kimunya: Thank you, Hon. Temporary Deputy Chairman. The issue of the monopoly and opening up the space has already been provided for in Clause 145. We also have an anti-competition law in this country which this House has passed. It underscores the whole issue of how competition will be allowed or disallowed within the country. So, let us not try to create mandatory granting of licences to some people then end up tying ourselves in a noose that we will not get ourselves out of. Granted, this Bill is already over-edited. We are almost losing track. I wish Hon. Nassir would wait until we have the full Bill then we look at it in totality. We can introduce some of these changes far much later. For now, let us first of all see the impact of all these changes we are making on the Bill.

With those words, I beg to oppose.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Nassir, this is your amendment. I want you to just sit steady. I will give you opportunity. It is your proposed amendment and you will respond to all these. Just take notes.

I see interest from the Leader of the Majority Party and the Leader of the Minority Party. We shall start with the Leader of the Majority Party, the Leader of the Minority Party then proceed in that order.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Chairman. As I oppose this amendment, what is Hon. Nassir looking for? He is looking to kill what is called “monopoly”. Okay? There is a law in this country that this House passed, the Competition Act. There is an Authority that deals with that. But, if you read Clause 145, it is already providing for competition through open access.

A person who wishes to carry out exploration, exploitation, importation, transmission, distribution and retail supply of electricity, must apply for a licence. So, already that clause has killed any element of monopoly and it has opened up the open access system. That basically answers Hon. Nassir’s question. We do not want to legislate for the sake of it. It says, ‘must apply’. Secondly, the distribution of power is twofold. One, it is the infrastructure. The infrastructure is a monopoly. You cannot have a country where Hon. Mbadi will build his lines to a certain estate and Hon. Duale builds his to a different estate. Those services are not available. So, the distribution lines in our country are a monopoly. The guys who do the major transmission lines are the Kenya Electricity Transmission Company (KETRACO). They are the ones who do the major transmission lines. The power line is a function of KPLC. If you have one megawatt of geothermal in your farm, the transmission lines give you an opportunity to hook into that line and sell it to KPLC.

Hon. Nassir is my good friend and he told me that if the House convinces him, he would drop that amendment. I really beg him; whatever he wants to do has been taken care of in Clause 145. I am very honest. If you look at Clause 145, for the first time it has created...there will be no monopoly, whether you want to export power, transmit or supply. Clause 145 says that you just need to apply through the open access system.

I beg to oppose and ask my good friend to withdraw that amendment.

The Temporary Deputy Chairman (Hon. Omulele): Very well. I will also direct that we do not take too much time on what we need to say because we need to move. Hon. Mbadi.

Hon. Ng'ongo: First of all, Hon. Temporary Deputy Chairman, let us see what the impact of this amendment is. If you ask me, the amendment is seeking to illegalize monopoly in distribution of electricity. So, we should look at it in that context. Is there any other provision to realise that in the Bill? I do not see it.

Clause 145 that is talked about says:

“A person who wishes to carry out the generation, exportation, importation, transmission, distribution and retail supply of electricity must apply for a license as the case maybe to the Commission in accordance to the provisions of this Act.”

It does not say, if you apply and meet conditions, then you get the licence. That is what Hon. Nassir is trying to cure by saying that the Authority shall grant more than one distribution of licences, provided it has received more than one application and the applicants have met the conditions under Section 149. The conditions under Clause 149 are spelt out clearly. I think Hon. Nassir is right to a larger extent. We are giving the Authority powers to license, but with discretion. Even where those who have applied for the licence have met the conditions as set out in law; it is not guarantee that you would be given a licence. There is one island in Lake Victoria where they have been having power all this time, all over sudden they were switched off just because someone refused to license them. This matter needs to be looked at very critically and with open mind. If we have set out in law under Article 149, then we require someone to receive a licence and that is why is it difficult for Hon. Nassir to recommend that the Authority grants licences, without any discretion.

These Kenyans have already met the condition that is, Mr. “X” and Mr. “Y”, then you give the Authority the powers to grant it to Mr. “X” without any explanation and not grant it to Mr. “Y”. That to me is giving the Authority too much power. We need to condition the Authority. Once someone has applied and has met all the conditions, that person needs to get it.

I was listening to Hon. Kimunya very attentively. Clause 147 says:

“An application for a licence under Section 145 including an application for amendment, transfer or renewal, shall be made to the Commission in the form and manner prescribed by regulations under this Act.”

It tells you that you shall make that application to the Authority. Two, the Commission may, through a fair, open and competitive process, in accordance to the procedures prescribed by the Cabinet Secretary and by regulations invite applications. It is just talking about possibility of allowing applications.

Three, before making any application, it shall give 15 days' notice. I do not see how it is curing this. Four, every notice shall state that any person or body making any representation...I do not see. The Commission shall within 15 days after the receipt of the application inform the applicant in writing whether the application is complete. That is just informing you, they may decide to reject your licence even after.

(Loud consultations)

Hon. Temporary Deputy Chairman, could you protect me because I also understand this provision clearly. It is just telling us that the Commission will communicate within 15 days after receipt of the application. They will then inform the applicant in writing whether the application is complete. What happens in the event that you have met all the conditions and they have decided not to license you?

(Hon. A.B. Duale consulted loudly)

Hon. Temporary Deputy Chairman, I think the Leader of the Majority Party is not listening to others, he is listening to himself. I am saying if the person applying for the licence has met all the conditions and the Authority decides not to give you licence, what guarantee is there. Why do we have to take the route of going....

The Temporary Deputy Chairman (Hon. Omulele): Order Members, we shall not have a shouting match in this House. Hon. Mbadi will be heard, other Members have been heard, he is making his arguments, and anybody else who wants to make his argument will have an opportunity. Let him make his argument so that he can give way for others to speak. Hon. Mbadi, you have two minutes to wind up so that we can move on.

Hon. Ng'ongo: What I am saying as I conclude is that you go to the Tribunal if someone has violated the law. But if you have legislated in a way that you have not protected the person seeking the licence, you cannot go to the Tribunal and succeed. What Hon. Nassir is saying is making conditions difficult for the Authority to misuse their powers. So long as someone has met all the conditions of licensing, they should be licensed. I support.

The Temporary Deputy Chairman (Hon. Omulele): We shall have two more contributions, then the Chair. I will allow Hon. Kibunguchy, Hon. Cecily Mbarire and the Chair of the Committee, and then we shall put to the House to decide.

Hon. Kibunguchy you have two minutes. Hon. Nassir will tie it down in his reply. It is his proposed amendment.

Hon. (Dr.) Kibunguchy: Thank you, Hon. Temporary Deputy Chairman. I can see where the Mover of this amendment is coming from. In principle I agree with him that we need to move away from monopoly because unless we make it almost mandatory it is going to become very difficult to move away from this monopoly of KPLC. Like we have said in the past, power in this country is extremely expensive compared to our neighbours'. If there is a way we can make sure...

(Hon. A.B. Duale consulted loudly)

The Temporary Deputy Chairman (Hon. Omulele): The Leader of the Majority Party, Hon. Kibunguchy is not being heard because of your discussions with Hon. Nassir. Allow him an opportunity to contribute.

Hon. (Dr.) Kibunguchy: I agree with the spirit of this amendment. The only area that I have a bit of problems with is, unless you can deal with the two amendments to clauses 145 and 147, then there will be a bit of a hitch there. Otherwise, I agree with the spirit of the amendment, so that we have monopoly. And let us make it in mandatory terms so that we do not give discretion of "may" everywhere. I do not know how the Mover is going to deal with the two areas, clauses 145 and 147.

Thank you.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Cecily Mbarire should be followed by the chairman of the Committee.

Hon. (Ms.) Mbarire: Hon. Temporary Deputy Chairman, I think it is important that we all realise that we are dealing with power, energy, and this in itself is a security issue. It cannot just be looked at as an economic issue. So, you cannot say that, "the authority shall". You are not leaving them any room to determine whether it is the right thing to do. More importantly, I want to take Hon. Nassir to Clause 168 of the same Bill. Paragraph (d) says it shall be the duty of a distribution licensee to provide non-discriminatory open access to its distribution system for use by any licensee, retailer or eligible consumer upon payment of the system charges and

compliance with such minimum requirements of the distribution licensee. So, we are not saying that if, for example, a certain distributor or a licensee of a distribution line cannot provide access for that distribution to a private energy generator, they can access it. We are not leaving without a solution.

So, I would like to beg the Member to please reconsider his position, because clauses 145 and 147 as provided for right now take care of your concerns. Clause 168(d) even goes further to take care of his concerns.

Hon. Temporary Deputy Chairman, may I request that the Member withdraws his amendment and allows us to go with the Bill as provided. If not, the House can make a decision.

The Temporary Deputy Chairman (Hon. Omulele): We shall have the Chair.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Chairman. First, let me make my pronouncement on what Hon. Amos Kimunya, Hon. Duale, Hon. Cecily Mbarire and Hon. Kibunguchy have said. I wish Hon. Nassir was here when we started this. We started by the definition of “open access”. We actually wanted to delete it, but we stopped deleting and just removed the petroleum aspect in the definition of open access. Later now open access is being used in various clauses.

One thing that you need to understand, Hon. Nassir, if you look at Clause 145, it talks of a person, and a person is anybody who will apply for a licence. It does not matter that there will be any discrimination. It is important for you to appreciate that the clause refers to a person. So, it is anybody. It is open.

Secondly, as Hon. Kimunya put it, in this Bill we have quantified a place for a licence. Assuming you are 50 people applying to do an area like Parliament and the CBD, a very small area...

The Temporary Deputy Chairman (Hon. Omulele): Hon. Gikaria, you will address the Chair, not Hon. Nassir. This is business of the House.

Hon. Gikaria: Sorry. I stand guided. If you allow, as Hon. Kimunya is saying, this amendment, it means that any person who applies must get a licence. Assuming the area that you are applying is very small for purposes of distribution, what happens? If 100 people have applied to do a distribution of one-kilometre square, what happens? Do you give to the 100 applicants? You have to go back to the aspect of Clause 145 which gives requirements of a licence. Secondly, Clause 149 on factors to be considered.... They could have qualified all of them, but you have to decide whom to give. Of course, as Hon. Cecily Mbarire has just indicated, Clause 168(1)(d) is very clear.

But most importantly, and I think this has been said, is that the Competition Act allows everybody to be accorded equal playing field without discrimination. If you remember, in some other clauses before this we were saying that if you are migrating from one person to the other, you must carry the burden. All this is carried in other subsequent clauses that we have already amended. Again, this is going to affect... Now we have agreed on the first amendments that we were doing, and you bring this, then what happens to the amendments of the clauses that we have already agreed to? I stand to oppose this amendment.

The Temporary Deputy Chairman (Hon. Omulele): I will now give Hon. Nassir the last say on this so that the House can decide one way or the other.

Hon. Nassir: Hon. Temporary Deputy Chairman, I would like to base my last arguments on my colleagues' arguments. I think English is a very simple language. The next amendment, if you allow me, I would like to move it in Kiswahili. Hon. Kimunya questioned...

The Temporary Deputy Chairman (Hon. Omulele): Hon. Pukose, Hon. Nassir will be heard.

Hon. A.B. Duale: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Omulele): What is out of order, Leader of the Majority Party? Hon. Nassir, hold your horses, the Leader of the Majority Party says there something out of order.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, Hon. Nassir is imputing bad motive on Members sitting in this Chamber: that because we have a problem with English, in future, he will bring his amendments in Kiswahili. That is a very bad insinuation. If he wants us to parade our certificates, we can do it. We have even gone to better schools. So, let him withdraw that statement.

The Temporary Deputy Chairman (Hon. Omulele): I do not think there is anything out of order because it is recognised in our Constitution that Kiswahili and English are both languages of this nation.

Hon. Nassir, just retain your attention to what you are proposing to amend so that we can move.

Hon. Nassir: Thank you very much, Hon. Temporary Deputy Chairman. I would like these last arguments to be based on a number of things. If my statement regarding doing this in Kiswahili rather than English has been offensive to Hon. Duale, then I withdraw.

Hon. Kimunya talked about what happens if 10 people applied. In the clause that I have proposed, the Authority shall grant more than one distribution licence. That means it is two or more. That is what my proposal has suggested.

Hon. Duale had asked: what happens in situations where power systems are already in place? What happens in situations like Remba Island where Kenya Power Company has failed to provide services? People have currently applied, but nothing has happened. It is the desire of a certain person sitting behind a desk to decide whether or not services should be rendered.

Members, when you say that protecting KPLC is not an economic issue, then believe me you are not in touch with your constituents. When you say protecting KPLC is not necessarily protecting the economic interests of this country, then you have no desire to protect the economy of this country. All these clauses have been mentioned one by one. Clause 168 has no relation to what I am talking about. The Chairman of the Committee has gone ahead and given indication of what open access means.

The Chair has gone ahead to allude that with this particular clause that we are seeking to amend, it will mean that other amendments are going to be affected. No other amendment is being affected. Chair, I am requesting this House to vote for Kenyans on a bipartisan approach. Let us vote for Kenyans. This amendment seeks nothing else except to ensure that Kenyans get value for their money.

I beg to rest on this particular matter. It is at your discretion to call it to vote.

Hon. (Dr.) Pukose: On a point of order.

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

Hon. (Dr.) Pukose: *(Inaudible)*

The Temporary Deputy Chairman (Hon. Omulele): We have closed debate on this. It is now my duty to put this to Question, so that the House can make a determination on it.

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

First Schedule

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

THAT, the First Schedule of the Bill be amended at the heading by deleting the words “THE ENERGY REGULATORY COMMISSION” and substituting therefor the words “THE ENERGY AND PETROLEUM REGULATORY AUTHORITY”.

This is just to merge the Authority and the Commission.

(Question of the amendment proposed)

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

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

(First Schedule as amended agreed to)

Second Schedule

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

THAT, the Second Schedule of the Bill be amended—

- (a) at the heading by deleting the words “THE ENERGY REGULATORY COMMISSION” and substituting therefor the words “THE ENERGY AND PETROLEUM REGULATORY AUTHORITY”;
- (b) in paragraph 1 by deleting the word “Commission” and substituting therefor the word “Authority”;
- (c) in paragraph 2 by deleting the word “Commission” and substituting therefor the word “Authority”;
- (d) in paragraph 4 by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”;
- (e) in paragraph 5 by deleting the word “Commission” and substituting therefor the word “Authority”;
- (f) in paragraph 6 by deleting the word “Commission” and substituting therefor the word “Authority”;
- (g) in paragraph 7 by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”;
- (h) in paragraph 8 by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”;
- (i) in paragraph 9 by deleting the word “Commission” wherever it appears and substituting therefor the word “Authority”.

(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)*

(Second Schedule as amended agreed to)

Third Schedule

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

THAT, the Third Schedule of the Bill be amended by deleting paragraph 1 and substituting therefor the following new paragraph—

1. Energy and Petroleum Regulatory Authority

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)*

(Third Schedule as amended agreed to)

Fourth Schedule

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

THAT, the Fourth Schedule of the Bill be amended by deleting paragraph 1 and substituting therefor the following new paragraph—

1. ENERGY AND PETROLEUM REGULATORY AUTHORITY

(a) The Energy and Petroleum Regulatory Authority established under section 9 shall be the successor to the Energy Regulatory Commission established by the Energy Act (now repealed) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Energy Regulatory Commission existing at the commencement of this Act shall be automatically and fully transferred to the Energy and Petroleum Regulatory Authority and any reference to the Energy Regulatory Commission in any contract or document shall, for all purposes, be deemed to be a reference to the Energy and Petroleum Regulatory Authority established under section 9.

(b) The persons who at the commencement of this Act are the Chairperson and Commissioners of the Energy Regulatory Commission shall become Chairperson and members of the Board respectively, as the case may be, of the Authority for the remainder of their tenure in accordance with their appointment under the repealed Act.

(c) For the greater certainty and subject to subsection (2), such persons shall have and may exercise and perform all the powers and functions of Chairperson or members of the Board, as the case may be, as if they were appointed under section 12.

(d) Every person who at the commencement of this Act is an employee of the Energy Regulatory Commission, not then being under notice of dismissal or resignation shall, on that

day and subject to this Act, become an employee of the Energy and Petroleum Regulatory Authority on the same terms and conditions.

Question of the amendment proposed)

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

Hon. (Dr.) Kibunguchy: Thank you, Hon. Temporary Deputy Chairman. Sorry I might be seen to be taking some people back but when you look at these headings. One talks about Energy and Petroleum another one is about Energy Regulatory Authority. Yet you are amending by removing the word “Commission” and putting the word “Authority”. So in the end you are going to end up with Energy Regulating Authority. You have left out “Petroleum”. Maybe the Chair can clarify especially in areas where he is saying remove “Commission” and put “Authority”.

Hon. Gikaria: Hon. Temporary Deputy Chairman, I just need to indulge Hon. (Dr.) Kibunguchy. If you look at the First Schedule, I read clearly as per the Order Paper thus:

“THAT, the First Schedule of the Bill be amended at the heading by deleting the words “THE ENERGY REGULATORY COMMISSION” and substituting therefor the words “THE ENERGY AND PETROLEUM REGULATORY AUTHORITY”.

That solves the whole problem. There is no any ambiguity in that. We are just moving from ERC to the Energy and Petroleum Regulatory Authority (EPRA). We are removing the Commission and using complete new wording for the same. So, there is no ambiguity.

*(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)*

(Fourth Schedule as amended agreed to)

(Fifth Schedule as amended agreed to)

Clause 2

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

THAT clause 2 of the Bill be amended—

(a) by deleting the following definitions—

“adulterated petroleum” means any mixed refined petroleum products that alter product specifications detailed in the applicable Kenya Standards;

“downstream petroleum operations” means all or any of the operations related to distribution of petroleum to residential, industrial, or power generation end users;

“liquefied petroleum gas” means commercial propane, commercial butane, commercial pentane and mixture thereof as specified in the relevant Kenya standard;

“minimum operational stocks” means the amounts of petroleum prescribed by the Cabinet Secretary on the recommendation of the Commission under section 113;

“open tendering system” means the mode of procurement of petroleum products in Kenya whereby the lowest bidder on any given product is allowed to import on behalf of all the other oil marketing companies;

“petroleum business” means a concern carrying on the importation, exportation, refining, storage, transportation, supply or sale of petroleum;

“pipeline” means a pipe or system of pipes that is used or to be used for the transportation of petroleum and any apparatus and works associated therewith, including –

(a) apparatus for inducing or facilitating the flow of petroleum through the pipe or system of pipes;

(b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the course of the pipe or system of pipes;

(c) apparatus for supplying energy for the operation of any such apparatus as is mentioned in paragraph (a) or of such works as are mentioned in paragraph (b);

(d) apparatus for the transmission of information for the operation of the pipe or system of pipes;

(e) apparatus for affording cathodic protection to the pipe or system of pipes; and (f) a structure for the exclusive support of a part of the pipe or system of pipes; “refine” means to process petroleum crude in a refinery in order to yield petroleum products;

“refined petroleum products” means the products yielded from the refining of petroleum;

“refinery” means a distillation plant for refining of petroleum crude to yield petroleum products;

“retail dispensing site” means premises where petroleum is stored in bulk in one or more tanks and dispensed to consumers for their own use and includes filling and service stations;

“storage depot” means premises consisting one or more tanks for storing petroleum;

“strategic stocks” means petroleum kept for purposes of ensuring security of supply;

(b) by deleting the words “Physical Planning Act” in the definition of the term “building” and substituting therefor the words “relevant written law”;

(c) by deleting the definition of the term “Commission” and substituting therefor the following new definition—

“Authority” means the Energy and Petroleum Regulatory Authority established under section 9;

(d) by deleting the definition of the term “distribution licence” and substituting therefor the following new definition—

“distribution licence” means any document or instrument authorizing a person to operate a distribution system for the purpose of enabling supply of electrical energy to consumers or to other licensees;

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

“local content” means the added value brought to the Kenyan economy from energy related activities through systematic development of national capacity and capabilities and investment in developing and procuring locally available work force, services and supplies, for the sharing of accruing benefits;

(f) by deleting the words “(excluding upstream petroleum and coal activities)” in the definition of term “energy”;

(g) by deleting the words “authorizing the importation, exportation, refining, storage and sale of petroleum” in the definition of the term “licence”;

- (h) by deleting paragraph (b) in the definition of the term “undertaking”;
- (i) by deleting the word “Commission” and substituting therefor the term “Authority” in the definition of the term “undertaking”;
- (j) by deleting paragraph (b) in the definition of the term “works”;
- (k) by deleting the word “Commission” and substituting therefor the term “Authority” in the definition of the term “agent”;
- (l) by deleting the word “Commission” and substituting therefor the term “Authority” in the definition of the term “licensing authority”;
- (m) by deleting the words “or common user petroleum logistics facility” in the definition of the term “open access”;
- (n) by deleting the word “Commission” and substituting therefor the term “Authority” in the definition of the term “tariff”;
- (o) by inserting the following new definition in its proper alphabetical sequence—
“Competition Authority” means the Authority established under section 7 of the Competition Act No.12 of 2010.

This is with the exception of the “open access” which is not going to be deleted as indicated. We are going to retain it there. It is an amendment of an amendment. It talks about deleting “adulterated petroleum”. The third last item is “open access”. We are going to delete the wording immediately after distribution system “or common user petroleum logistics”

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

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

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, we are being told to pay Kshs5,000. The machines themselves have problems. Why should we pay for the cards when we lose it?

Hon. Temporary Deputy Chairman, I beg to move that the Committee does report to the House its consideration of the Energy Bill (National Assembly Bill No.50 of 2017) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, that is it for the Energy Bill. I direct that we move to the next Order Paper.

THE PETROLEUM (EXPLORATION, DEVELOPMENT
AND PRODUCTION) BILL

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, because of the importance of the Petroleum (Exploration, Development and Production) Bill, I indulge you that we step it down for now and deal with it as the first item tomorrow at 2.30 p.m. This is an important Bill. Let us start it tomorrow as Order No. 8, in concurrence with the House Business Committee (HBC).

The Temporary Deputy Chairman (Hon. Omulele): Having considered your request, Leader of the Majority Party, I direct that consideration of this Bill be deferred as requested.

(Consideration at the Bill at Committee of the whole House Bill deferred)

(The House resumed)

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

CONSIDERATION OF REPORT

THE ENERGY BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Can we have the chairperson of the Committee of the whole House to report to the House?

Hon. Omulele: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Energy Bill (National Assembly Bill No.50 of 2017) and approved the same with amendments.

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

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

Hon. (Ms.) Mbarire: Hon. Temporary Deputy Speaker, I second.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Chair of Departmental Committee, would you want to move a recommittal?

Hon. Gikaria: Hon. Temporary Deputy Speaker, I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words "subject to re-committal of Clause 84.

I request Hon. Pukose to second the Motion for the recommittal.

Hon. (Dr.) Pukose: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): There is no debate that is arising. I am not in a position to put the Question because of obvious reasons.

Next Order!

MOTION

REPORT ON THE NATIONAL TRANSPORT AND SAFETY AUTHORITY
(OPERATION OF COMMERCIAL VEHICLES) REGULATIONS, 2018

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the National Transport & Safety Authority (Operation of Commercial Vehicles) Regulations, 2018, laid on the Table of the House on Tuesday, 17th April 2018, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4) (b) annuls in entirety the said Regulations.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I cannot see the Chairperson. Who is the chairperson of the Committee on Delegated Legislation, Hon. Duale?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, the Chair is out of the country. After consultations, we are of the view that you step down this Order and the one that follows it so that during its meeting this evening, the House Business Committee can reallocate them time.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Very well. We step down Order No. 12.

(Motion deferred)

BILL

Second Reading

THE KENYA COAST GUARD SERVICE BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Now that we have stepped down the other Order, are we ready for this one, Leader of the Majority Party?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, the Chair of the Departmental Committee on Administration and National Security will table the Report tomorrow. Therefore, I seek your indulgence that we also step down this Bill. Tomorrow afternoon, we will start with the Petroleum (Exploration, Development and Production) Bill followed by the Kenya Coast Guard Service Bill, if the House Business Committee will agree to my suggestion.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, again, following a satisfactory explanation by the Leader of the Majority Party, I step down Order No.13.

(Bill deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I must thank you for the good work you have done this afternoon.

There is no further business on the Order Paper. Therefore, the House stands adjourned until tomorrow, Wednesday, 25th April 2018, at 9.30 a.m.

The House rose at 6.30 p.m.