

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 22nd November, 2016

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

WITHDRAWAL OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL

Hon. Deputy Speaker: Hon. Members, the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No. 58 of 2015) was published on 18th September 2015 to effect minor amendments that do not warrant the publication of a separate Bill. The Bill, which is sponsored by the Leader of the Majority Party, contained amendments to the following Acts:

- (i) The Industrial Training (Cap. 237);
- (ii) The National Hospital Insurance Fund Act No. 9 of 1998;
- (iii) The Copyright Act No. 12 of 2001;
- (iv) The Kenya Institute of Curriculum Development Act No. 4 of 2013; and
- (v) The Kenya Law Reform Commission Act No. 19 of 2013.

You may recall that while moving Second Reading of the Bill on 5th October 2016, the Leader of the Majority Party formally withdrew amendments to the Industrial Training Act (Cap. 237) and the National Hospital Insurance Fund (NHIF) Act No. 9 of 1998. The Bill was, therefore, considered and concluded at Second Reading without the two statutes.

Hon. Members, I wish to inform the House that I have received a letter from the Leader of the Majority Party, requesting to withdraw proposed amendments to the Kenya Law Reform Commission Act No. 19 of 2013. This implies that the Bill now contains amendments to only two statutes, which negates its original omnibus intention. In this regard, I direct that the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No. 58 of 2015) be withdrawn from the House forthwith.

Nevertheless, the Leader of the Majority Party is at liberty to re-introduce the proposed amendments to the remaining two statutes, being the Copyright Act No. 12 of 2001 and the Kenya Institute of Curriculum Development Act No. 4 of 2013, by way of subsequent omnibus Bills or separate legislations. The House is accordingly informed.

I thank you.

APPEAL TO MALE MEMBERS TO SUPPORT THE 'HEFORSHE' CAMPAIGN

Hon. Deputy Speaker: Hon. Members, as you may have noticed, there is a team from the State Department of Gender Affairs in the Ministry of Public Service, Youth and Gender Affairs, at the main reception of Parliament. The team is raising awareness about the ongoing *HeForShe* Campaign aimed at co-ordinating programmes for the prevention and response to gender-based violence. In this regard, the State Department for Gender Affairs, in collaboration with the UN has developed a comprehensive programme on gender-based violence and is mounting a sustained campaign and call to action to end gender-based violence.

Hon. Members, this campaign seeks to engage men in the elimination of all forms of discrimination and violence against women and girls. To this end, I call upon all male Members to visit the desk and sign up for the *HeForShe* Campaign initiative in solidarity with women to bring an end to gender-based violence.

I thank you.

PETITIONS

Hon. Deputy Speaker Members, we have a number of Petitions. I will begin with one that was for the Speaker. Can Members settle down?

(Hon. Midiwo walked on the aisle)

Is that Hon. Jakoyo? Find a place to sit and consult with your colleague.

PROPOSED AMENDMENT TO THE NUTRITIONISTS AND DIETICIANS ACT 2007

Honourable Members, pursuant to the provisions of Standing Order No. 225(2)(b), I wish to convey to the House that I am in receipt of a Petition, signed by 42 citizens regarding irregularities at the Kenya Nutritionists and Dieticians Institute.

The Petitioners are challenging the occupancy of the office of the chairperson of the Kenya Nutritionists and Dieticians Council beyond the statutory term of three (3) years, noncompliance with the obligations to prepare financial statements and administration of the national internship programme by the Council.

The Petitioners request the National Assembly, through the Departmental Committee on Health, to urgently consider proposing amendments to the Nutritionists and Dieticians Act of 2007 so as to align it with the new Constitution; particularly with provisions relating to incorporation of requirements of Chapter Six on Leadership and Integrity. In addition, the Petitioners also request the National Assembly to scrutinise the budget and accounts of the Kenya Nutritionists and Dieticians Institute with a view to enhancing accountability and efficiency.

In this regard, the Petition is referred to the Departmental Committee on Health for consideration. The Committee may, therefore, introduce a Bill in accordance with the Standing Orders to propose amendments to the Nutritionists and Dieticians Act of 2007, as prayed.

Since the concerns and prayers relating to the audited accounts of the Institute fall under the mandate of the Public Investments Committee (PIC), I request the Committee to confirm the claims made by the Petitioners relating to audited accounts of the Institute with a view to

examining their accounts if any, or causing a specialised audit of the same in accordance with the Public Audit Act, 2015.

Thank you.

The second Petition, I believe, is by Hon. Sunjeev. They are all on the Order Paper.

Hon. (Ms.) Sunjeev: Thank you, Hon. Deputy Speaker. Unfortunately, I am not aware of anything. I was not informed. So, I am not quite sure what is on the Order Paper.

Hon. Deputy Speaker: Okay. It was a Petition on alleged negligence by Our Lady of Mercy Secondary School that led to the death of a student. But, if you are not ready to present it, it is okay.

Hon. (Ms.) Sunjeev: Yes. I am not to present it.

Hon. Deputy Speaker: The next one is by Hon. Lessonet. Are you ready to present your Petition?

PLIGHT OF EMNGUNGUNY/MORGISIS SQUATTERS

Hon. Lessonet: Hon. Deputy Speaker, I stand to present the following Petition:

I, the undersigned, on behalf of the Morgisis squatters and residents of Eldama Ravine Constituency draw the attention of the House to the following:

THAT, Morgisis/Emngunguny area is located in Eldama Ravine Constituency, Baringo County;

THAT, Emngunguny Scheme is a Government land lying to the extreme south of Lembus Mosop Location, with a total area coverage of approximately 2,000 acres engulfed by Torongo, Tinet resettlement area and Kamur Forest which also form the administration boundary of Koibatek and Uasin Gishu districts;

THAT, the Morgisis community resided in Morgisis/Emngunguny Scheme since 1870;

THAT, on 17th May 1968 the Government forcefully evicted Morgisis community residing in Emngunguny Scheme;

THAT, to date, these squatters have not been compensated by the Government or resettled and are living in abject poverty;

THAT, in 1969, the then Minister for Environment issued a directive with regard to resettlement of Emngunguny/Morgisis squatters but the directive has not been effected to date;

THAT, efforts to resolve the matter with the relevant Government agencies has been futile; and,

THAT, the issues in respect of which the Petition is made, I want to confirm, are not pending before any court of law, constitutional or statutory body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Land:

- (i) Enquires into the issues and recommend resettlement of Emngunguny/Morgisis squatters;
- (ii) The said Committee recommends degazettement of the said land; and,
- (iii) Makes any other order or direction that it deems fit in the circumstances of the case

I pray that the said do as I mentioned.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That stands committed to the Departmental Committee on Lands. Let us wait for their guidance. I will revise the Order Paper. Before we go to the next Order, we will have a few comments. Hon. Makali, do you want to say something?

Hon. Mulu: Hon. Deputy Speaker, I want to comment on the first Petition.

Hon. Deputy Speaker: Yes. The comments may not necessarily be on the last one. There have been two Petitions that have been given. So, you can comment on any of the two.

Hon. Mulu: The first Petition raises two issues which, to me, are very important. One of the issues is the one of the chief executive officers (CEOs) overstaying in some of those positions despite a very clear legal framework which provides the period a CEO should be in office. I am sure that is not unique only to this institution. As a House and part of our oversight role, it is important most of these parastatals are monitored so that we do not have situations where CEOs overstay. At the end of the day, there are a bit of irregularities which have not been monitored.

The second issue which is very important is of audited accounts. We know these institutions are funded through taxes; through the Consolidated Fund. It is unfortunate that even the public out there have to go to an extent of submitting a petition to this House to demand that accounts of such institutions should be audited while we know there is a whole audit unit which takes care of corporate institutions. In addition, there is the Public Investments Committee (PIC) of this House.

I think that Petition kind of brings up issues challenging those two institutions; our own PIC and the Government institution in charge of auditing Government corporations.

It is a very important Petition. The Committee in charge of that Petition should take this matter very seriously and fast track it so that we find out exactly what is happening.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: I want to believe those who have pressed the intervention button are the ones who want to contribute on the Petitions.

Let us have Hon. Chris Wamalwa.

Hon. Wakhungu: Thank you, Hon. Deputy Speaker. I would like to comment on the Petition by Hon. Lessonet on the issue of squatters. Whenever we have issues about squatters in this House, the matter at hand is normally land. One of the responsibilities of the National Land Commission (NLC) is to look at the historical injustices. Some time back, Hon. Wafula, the Member of Parliament (MP) for Saboti, had brought a Petition here pertaining to some squatters but up to date, we have not got any way forward on it. As per our Standing Orders, the relevant Departmental Committee is supposed to bring to this House a report pertaining to that Petition within a period of 60 days. We are aware that some people, particularly in Trans Nzoia, are keen on importing voters from Uganda in the name of squatters. It is important that we also look at the background of those petitions so that we do not allow contestants to bring people from elsewhere for purposes of furthering their own political interests now that we are approaching the 2017 elections.

The petitions I am talking about are already before this House. We are calling on the Departmental Committee on Lands to move with speed. I cannot see the Chairman in the House. I see Hon. Sakuda, with all due respect. He is the Vice-Chairman of that Committee, I did not know that. I cannot, however, see Hon. Mwiru, the Chairman. I am happy that you are present and so you can take up the mandate so that you expedite the process. These issues need to be resolved as quickly as possible particularly when it comes to matters affecting Trans Nzoia County.

Hon. Deputy Speaker: Hon. Onesmus Njuki, is it on the petitions?

Hon. Njuki: Thank you, Hon. Deputy Speaker. Even as I contribute on this Petition by Hon. Lessonet, I wanted to draw your attention to our Standing Orders on the issue of the length of time with regard to processing petitions. Today, I read in the newspapers about a gentleman who stole uniform that belongs to swimmers and other equipment belonging to the Kenya Swimming Federation (KSF).

Hon. Deputy Speaker, six month ago, I brought a Petition in this House that was castigating the behavior of the Chief Executive Officer (CEO) of KSF. To date, the Departmental Committee on Labour and Social Welfare has never even attempted to call him to appear before it let alone bringing up the issue or updating it on the website. It means that the Petition could have got lost. I only hope that the man did not have influence with regard to that Petition.

I want to support the Petition by Hon. Lessonet. The issue of land and squatters in this country is very rampant. Even as we churn out so many title deeds, we must look at the relevant laws that allow people who have been on that land for over 10 years to own it. That way, we will solve the problems about land once and for all.

We have so many squatters and yet the rich enjoy having big chunks of land. We are not living in peace as a country because of those small differences that are land-related.

With those few remarks, I support. However, I ask you to give a ruling on the Petition.

Hon. Deputy Speaker: I see the Chairman of the Committee on Labour and Social Welfare here. So, I am not going to give a ruling. Let him tell us why the Committee has not responded to the Petition by Hon. Njuki.

Hon. Were: Hon. Deputy Speaker, the hon. Member has approached me concerning the Petition he has talked about here. However, we have tried to trace it but in vain. I had raised this issue with the Clerks to the Committee and they are not listing it as one of the pending petitions. So, we have been unable to act because we have not accessed it.

Hon. Deputy Speaker: Well, that throws the ball back to the Clerks. Could you, please, expedite work and get the Petition to the Committee as directed? We normally direct petitions to the relevant committees immediately the petitions are read here. It will be wrong if after 60 days it is said that the Petition has not reached the relevant committee for it to Act.

Hon. Members, we need to move to the next Order. This particular one usually takes half an hour. I see Hon. Ronald Tonui. Do you want to comment on the petitions? Hon. Members, please, press the intervention button if you want to comment on the petitions.

Hon. Tonui: Thank you, Hon. Deputy Speaker. Mine is to support Hon. Lessonet's Petition on resettlement of Emngunguny/Morgisis squatters. It is an awkward period for the Government now that it is removing people from their settlement areas and yet the rainy season is here with us. It reminds me of the situation which prevailed in the Mau Complex. When people were removed from the Mau Forest, they suffered a lot, especially during that rainy season. We in the Jubilee Government ought not to expose our people to such inhuman situations. They should be left to stay in the farms where they are. I understand they have been staying in that place since the 19th Century.

Thank you so much. I support.

Hon. Deputy Speaker: Okay. Let us have Hon. Daniel Maanzo.

Hon. Maanzo: Hon. Deputy Speaker, I would like to comment on the Petition on the Nutritionists and Dieticians Board. After the 2010 Constitution there was concerted effort within Government and its departments to ensure they align all the laws---

(Consultations)

Hon. Deputy Speaker: Members, please, reduce the volume of your consultations. We cannot hear the Member who is contributing.

Hon. Maanzo: Hon. Deputy Speaker, I was saying that the efforts were meant to align all the laws within the Constitution. The principle in law is that any law which is not consistent with the current Constitution is inconsistent to that extent. This is likely what happened to the law touching on the Board of Nutritionists and Dieticians. If it is has not yet been aligned to the Constitution, as is being alleged, it means it is inconsistent. In fact, this Board and its CEO should go home and no public funds should be spent on such an institution.

While the Committee concerned looks at this law, it will be good for Parliament to look at any other laws in the country which have not been aligned to the new Constitution so that we do not have such situations arising in the future.

Hon. Deputy Speaker: Let us have Hon. Olago Aluoch.

Hon. Aluoch: Thank you very much Hon. Deputy Speaker, I wish to make an observation arising from what my colleagues have said, that is, the delay in presenting reports concerning petitions. As we approach elections, it is important that Members, particularly those in committees, become conscious about the sensitivity of some of the issues raised in the petitions. This is because if they do not handle it now they could contribute to causing chaos in our country. I have in mind the Petition by Hon. Omulele on the boundary between Kisumu and Vihiga counties. Unfortunately that Petition has been lying in that Committee where I am an observer and my learned friend, Hon. Chepkong'a is the Chairman. I have raised this matter orally before the Committee. I have even put it in writing, but nothing seems to be happening. In the meantime tension is rising along the borders.

Hon. Deputy Speaker, I am sorry for bringing this on the Floor. It is because my Chairman is not responsive. This is just one of the many petitions that must be done with quickly.

Hon. Deputy Speaker: Okay. That is a concern. Hon. Chepkong'a, do you want to make use of your right of reply?

Hon. Chepkong'a: Thank you, Hon. Deputy Speaker. It is true that the Petition is still pending with the Committee. However, we had very fruitful discussions in his constituency and that of Hon. Omulele. I thought we arbitrated over the matters and he was very happy. However, he wanted us to go back for a second time. Unfortunately, Parliament did not have money at that time and so we are still considering the matter. We will look for a day when there will be money for local travel. However, his matter is receiving priority. Hon. Omulele has also been concerned.

The only thing that my learned senior should note is that it is alleged that it is his group which grabbed land.

(Laughter)

I do not know. It is an allegation which we are investigating. Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Chepkong'a, do not bring us any more tension within the precincts of Parliament. Take it where it belongs!

Let us have Hon. Dr. Robert Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Deputy Speaker. I want to support the Petition by Hon. Lessonet on the issue of squatters.

Issues of squatters in some areas resulted from historical injustices dating back to the colonial times. In my county of Trans Nzoia, members of the Sabaot Community were displaced by the colonialists. Up to now the majority of them have not even been resettled. We have other communities who went to Trans Nzoia County and joined the indigenous communities there. Those people got displaced as forest evictees or as a result of clashes and many other issues. Some of them had worked on the colonialists' farms and have been living there as squatters since Independence. They have never been resettled.

Some of our colleagues have embraced the narrative of discrimination against some of the communities living there based on where they came from by claiming that they are Ugandans. Trans Nzoia County borders Uganda. That kind of narrative is retrogressive and primitive. It should not be entertained in this era.

As we look into the issue of squatters, let us cover the entire country – right from the Rift Valley region to the Coastal region and elsewhere. The Jubilee Government has given title deeds to squatters and other people within Mombasa and the larger Coastal region. I hope the Government will spread that programme to Trans Nzoia County and other regions within this country.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, our half hour is over. Therefore, I will, lastly, allow Hon. ole Sakuda to contribute on this issue very briefly.

Hon. ole Sakuda: Thank you very much, Hon. Deputy Speaker. On behalf of the Departmental Committee on Lands, I look forward to receiving the Petition. We will do due diligence to make sure that we look at all the issues raised therein.

Also, in the past few months, some amendment laws on lands were passed by this House and assented to by the President. In those amendment laws, there are specific items or clauses that speak to resettlement of squatters across the country. As far as historical injustices are concerned, those Bills spell out very clearly what the National Land Commission (NLC) is supposed to do, and what process they are supposed to begin.

I encourage Members, even as they bring petitions to this House, to remember that those amendment Bills are now laws. The NLC has the mandate to start looking at those relevant laws and make sure that the people who have been affected by historical injustices have a way out.

Finally, as a Committee, we have prepared a number of reports. I encourage the House Business Committee (HBC) to consider allocating time to the reports that we have tabled in this House – but which have never seen the light of day – so that they can be dispensed with.

Thank you, Very Much, Hon. Deputy Speaker.

Hon. Deputy Speaker: I hope the Chairman of the Departmental Committee on Labour and Social Welfare is listening. For purposes of the record of the House, the record from the Clerk's Office concerning the Petition by Hon. Njuki clearly shows that the Petition was forwarded to your Committee on 24th November, 2015. That is almost a year ago. Please, find out where it could have been placed in your own Committee.

Next Order!

PAPERS LAID

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

The Annual Report of the Ethics and Anti-Corruption Commission for the year ended 2015/2016

The Reports of the Auditor-General on the Financial Statements in respect of the following constituencies for the year ended 30th June 2015 and the certificates therein:

- (i) Chepalungu Constituency;
- (ii) Belgut Constituency;
- (iii) Mukurweini Constituency;
- (iv) Laikipia North Constituency;
- (v) Ndia Constituency;
- (vi) Gatanga Constituency;
- (vii) Kipkelion East Constituency;
- (viii) Gilgil Constituency;
- (ix) Kabuchai Constituency;
- (x) Gatundu South Constituency;
- (xi) Mwea Constituency;
- (xii) Samburu North Constituency;
- (xiii) Baringo Central Constituency;
- (xiv) Subukia Constituency;
- (xv) Nakuru Town West Constituency;
- (xvi) Laikipia West Constituency;
- (xvii) Bomet East Constituency;
- (xviii) Samburu West Constituency; and
- (xix) Molo Constituency.

Hon. Deputy Speaker: The Chair of the Departmental Committee on Health also has a Paper to table.

Hon. (Ms.) Nyamai: Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Departmental Committee on Health on the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United States of America concerning Co-operation in the Threat Reduction Biological Engagement Programmes.

Hon. Deputy Speaker: The Chair of the Public Investments Committee (PIC) also has a Report to table. Or is it a notice of Motion? It seems the PIC Chair is not in.

Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT ON RATIFICATION OF AGREEMENT ON THREAT REDUCTION BIOLOGICAL ENGAGEMENT PROGRAMMES

Hon. (Ms.) R.K. Nyamai: Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Health on the Ratification of the Agreement between the Government of the

Republic of Kenya and the Government of the United States of America concerning Co-operation on the Threat Reduction Biological Engagement Programmes, laid on the Table of the House today Tuesday 22nd November 2016 and, pursuant to Section 8 of the Treaty Making and Ratification Act 2012, approves the ratification of the agreement between the Government of the Republic of Kenya and the Government of the United States of America concerning cooperation on the Threat Reduction Biological Engagement Programmes.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: I see an intervention by Hon. Richard Onyonka.

Hon. Onyonka: Thank you, Hon. Deputy Speaker. I need your guidance on a substantive matter.

As you may be aware, I belong to the Departmental Committee on Defence and Foreign Relations. Close to four months ago, through this House, we made several visits to different countries where we interrogated what had been happening in our embassies there. There are reports which were done a long time ago. They were supposed to have been tabled about two months ago. I am not seeing the Chair or the Vice-Chair here. I would like your guidance as to what we can do because some of the reports that were prepared, based on the information that was collected from some of the embassies, needed urgent intervention by this House and the Executive. To a large extent, nothing has been done.

I need your guidance as to what we can do to make sure that the reports are tabled in this House so that we can come up with solutions to the very weighty matters that have been raised.

Hon. Deputy Speaker: Do you know whether the reports are complete and have been handed over? If they have not been tabled, they are still with your Committee.

Hon. Onyonka: Hon. Deputy Speaker, I am actually being very diplomatic. The Departmental Committee on Defence and Foreign Relations seems to have a problem where reports have been completed because the information they may have is not be very good. It includes misuse of public funds and cases where people who were supposed to be retired are still working and many of them are doing all sorts of things. That is why some of us in the Committee believe that the report is not being tabled on the Floor of the House.

Hon. Deputy Speaker: Maybe we can seek the intervention of the Leader of the Majority Party on why certain reports from the Departmental Committee on Defence and Foreign Relations, which should have been tabled over two months ago, have still not been tabled.

Hon. A.B. Duale: Hon. Deputy Speaker, Hon. Onyonka is a Member of that Committee. The House Business Committee (HBC) deals with reports that are tabled on the Floor of the House. He sits in that Committee and he wants me to treat the problems facing that Committee. You have very many other avenues to deal with the leadership if you read the Standing Orders. My interest comes after a report has been tabled. I then work together with the Office of the Clerk, the Speaker and other Members of the HBC. I am not aware of any reports of the Departmental Committee on Defence and Foreign Relations which are pending. If there are any, I will bring them to the attention of the HBC this evening when we resume our normal sittings.

Hon. Deputy Speaker: Hon. Onyonka, this is a matter for your Committee. If your feelings and concerns are widely felt by the membership of that committee, please, do something about it. You can use the channels that the Leader of the Majority Party has mentioned. I cannot

rule on the matter because I do not know all those details. Let them come formally. If it is a complaint, then we see how to handle it through the Liaison Committee.

Can we move on to the next Order? Just a minute, this is the problem I have been experiencing. Use the intervention button. If you make a request to speak and your name is up there, I may not know that it is for that particular Order. Let us have Hon. Amina Abdalla.

POINT OF ORDER

TALK ON DOUBLING FOREST COVER BY HON. (DR.) CARLOS RODRIGUEZ

Hon. (Ms.) Abdalla: Thank you, Hon. Deputy Speaker.

On behalf of the Departmental Committee on Environment and Natural Resources, I wish to invite all Members to a talk by Hon. (Dr.) Carlos Rodriguez, former minister for environment and natural resources of Costa Rica and current Vice-President of Conservation International, who will give us a talk on Costa Rica's experience in doubling their forest cover. As you all know, our Constitution calls for us to have 10 per cent forest cover. Currently, we are at less than five per cent forest cover. I wish to request all Members to join my Committee at the County Hall tomorrow at 7.30 O'clock to 9 O'clock in the morning to learn how Costa Rica has been able to achieve that.

Hon. Wakhungu: Will there be tea?

Hon. (Ms.) Abdalla: Member for Kiminini, there will be tea. It is not too early for you because I know you have the Catholic Mass on Wednesday morning. Please, join us at County Hall.

Hon. Deputy Speaker: Thank you, Hon. Amina. We can now move on to the next Order.

BILLS

Second Reading

THE CONTEMPT OF COURT BILL

(Hon. A.B. Duale on 17.11.2016)

(Debate concluded on 17.11.2016)

Hon. Deputy Speaker: Members, can those who are standing, please, settle down? I want to put the Question on this Order. Hon. Ichung'wah, please, settle down. We would like you to participate in this part of the proceedings. Can those Members at the Bar, please, settle down?

This Bill had been sufficiently debated and concluded. The only thing left was putting the Question.

(Question put and agreed to)

(The Bill was read a Second Time and committed)

to a Committee of the whole House tomorrow)

First Readings

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL

THE EMPLOYMENT (AMENDMENT) BILL

THE COUNTY LIBRARY SERVICES BILL

THE COUNTY OUTDOOR ADVERTISING CONTROL BILL

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

MOTION

THE HEALTH BILL

Hon. Deputy Speaker: Let us have Hon. Nyamai, the Chairperson of the Departmental Committee on Health.

Hon. (Dr.) Pukose: Hon. Deputy Speaker, I beg to move the following Motion:

THAT, the Senate Amendments to the Health Bill (National Assembly Bill No.14 of 2015) be now considered.

The Health Bill was passed by the National Assembly on 30th March, 2016 and subsequently forwarded to the Senate for consideration, pursuant to provisions of Article 110(4) of the Constitution and Standing Order No.142. The Bill was passed by the Senate on 14th July 2016 with amendments and was reverted to the National Assembly for concurrence on Tuesday, 19th July 2016 through a Message from the Senate. The Speaker of the National Assembly directed the Committee to table its report on the amendments made to the Bill by the Senate and not any other part of the Bill for consideration by the House.

The enactment of the Health Bill, 2016 is key to the implementation of the Constitution and success of provision of health services in a devolved context. The Health Bill seeks to establish a unified health system to coordinate the interrelationship between the national Government and the county government health systems to provide for regulation of healthcare services, healthcare service providers, health products and health technologies. The amendments in question were passed by the Senate on 14th July 2016 and communicated to the National Assembly for consideration as said on 19th July 2016. The amendments were subsequently committed to the Committee for consideration pursuant to the provisions of Standing Order No.41.

In considering the amendments, the Committee took cognisance of their constitutionality, best practices from other jurisdictions and alignment to the Kenya Health Policy 2014-2030. It is on this basis that the Committee submits the report for consideration by the House.

Having considered the amendments to the Health Bill 2016, the Committee recommends that the National Assembly:-

- (1) Approves the Senate amendments to Clauses 2, 7(3), 12(1), 15 (a), (f) and (i), 20 in the marginal notes, 27, 28, 46 (4), 49 (2)(a).
- (2) The Committee also recommends that the National Assembly rejects Senate amendments to Clauses 5(4), 15(c), 16(2)(a), 17(i) and (j), 18, 19(4)(a), 24(a), 25, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 62, 63, 64, 65, 66, 67, 73, 89, 91 and the First Schedule. We also reject Senate amendments, with further amendments, to Clauses 5(3), 20, 46(1)(f).

In brief, when you go to Clause 2 of the Bill, in this case the Senate proposed a definition of “abortion”. The Committee agrees with the proposal from the Senate to delete the term “abortion” as the same has not been used in the Bill. Our analysis of the Bill shows that there is no use of the term “abortion” in the successive provisions of the Bill. Therefore, there is no need to have the term defined.

In clause 2(d), the Senate added the definition of “death” which the Committee agrees with. The term has been used in Clauses 81(1), (2) and (3) and 84(1)(d). Therefore, the Bill shows that there is use of the term “death” in those clauses. This means permanent loss of capacity for consciousness and the loss of brainstem functions. We agreed with that definition.

In Clause 5 which we agreed on is the standard of health where the Committee agrees with the proposal from the Senate in order to anchor free maternity care in the law to insert sub-clause (3). In this sub-clause the national and county governments shall ensure the provision of free and compulsory vaccination of children under five years of age and maternity care.

In brief, those are some of the areas where the Committee agrees with the Senate. But we have many other areas where we do not agree with the Senate. We think that once a mediation committee is formed, it will be able to address those areas where we do not agree.

Hon. Deputy Speaker, I beg to move.

Hon. Deputy Speaker: I was just going to ask, Hon. Pukose, you have explained where you agree with the Senate. Would you also explain a little where you do not agree with the Senate because Members do not know those areas?

Hon. (Dr.) Pukose: We rejected several clauses as mentioned, but in brief, for instance, in Clause 15 where it mentions the national Government’s ministry responsible for health, we had provided that it develops health policies, laws, administrative procedures and programmes in consultations with county governments, health sector stakeholders and the public for the progressive realisation of the highest standards of health. In this case, the Senate wanted to insert “including reproductive healthcare and the right to emergency treatment” at the end of the paragraph. The Committee agreed with the proposal from the Senate.

The area that we rejected was paragraph (b) where there was a proposal that:

“(c) ensures the implementation of the right to health specified in the Bill of Rights and more particularly the progressive realisation of the right to the highest attainable standard of health, including reproductive healthcare and the right to emergency treatment.”

This had been proposed by the Senate for deletion and the Committee felt that the right to health is a constitutional requirement in the Bill of Rights which cannot be amended just through an Act of Parliament. This will require a constitutional amendment which should even require a referendum. Therefore, the Committee felt that that could not be amended through this Act. Therefore, this was rejected by the Committee because it requires a referendum to be able to amend anything that touches on the Bill of Rights.

The other example is Clause 16(2) where the Director-General for Health shall be recruited by the Public Service Commission through a competitive process, vetted by Parliament and appointed by the President. The Senate had deleted this and substituted therefor the following new clause:

“The Director-General for Health shall be recruited by the Public Service Commission through a competitive process and be appointed by the Cabinet Secretary.”

The essence of the amendment is to remove the need for vetting of the nominee for the position of Director-General by Parliament and the subsequent appointment of the Director-General to be the responsibility of the Cabinet Secretary. The Committee rejected this due to the seniority of the Director-General. Parliament should be involved in his or her appointment. The Director-General for Health shall be answerable on health matters in the whole country. Therefore, the Committee felt that this should be done by Parliament.

Paragraph (b) talks of a medical practitioner registered by the Medical Practitioners and Dentists Board (MPDB) as a requirement for the Director-General. The Senate had proposed that that could just be a health practitioner registered by the respective regulatory body. The Committee rejected the proposal from the Senate because the best practice shows that Director-General for Health should be somebody who is a qualified medical practitioner who understands matters of health. Further, the amendment seeks to open up the position of DG to other health practitioners in the sector and not to be a position for a medical practitioner. The DG shall be the technical adviser to the Government on matters related to health. Therefore, the Committee felt that in matters within the health sector, this person should have the highest qualifications.

In terms of the functions of the DG, the Senate amended Clause 17 of the Bill by deleting the provision for guidelines for registration, licensing, certification and gazettelement of all health facilities. The DG was also responsible for internship programme for health workers. The Committee rejects the proposed amendment by the Senate to delete paragraphs (j) and (k) where the role of the national Government is developing standards, policies and guidelines for registration, licensing, certification and gazettelement. It is also the responsibility of the national Government to be in charge of the internship training programme, which is training and capacity building as a function of the national Government as provided by the Constitution.

These are some of them. I will be able to submit the Report and Members can go through it and contribute effectively.

Therefore, I beg to move and ask my colleague Dr. Nyikal to second.

Hon. (Dr.) Nyikal: Thank you, Hon. Deputy Speaker. I rise to second the Report of the Departmental Committee on Health. As the Vice Chair of the Committee has indicated, we went through the amendments that were proposed by the Senate and the areas that have been mentioned including the definition of “death”, the need for vaccination and maternity care to be given by both the national Government and county governments are important because, as it is now, vaccination is still to a large extent being organised by the national Government. We feel that it is time the county governments should be involved. So, we agreed with that.

As indicated in other many amendments, there have been fundamental changes like the issue of the Director General in terms of his appointment and functions. So, all the other amendments that are listed need a lot of discussion. There are institutions that we proposed that were actually not included like a health services advisory body that the amendment from the Senate deletes.

With those remarks, I second.

(Question proposed)

Hon. Deputy Speaker: Hon. Chris Wamalwa.

Hon. Wakhungu: Thank you, Hon. Deputy Speaker. I rise to support this Bill and talk briefly pertaining to specific clauses that have differences between the National Assembly and the Senate. We know very well that health is a devolved function and it is a responsibility of county governments. I am happy to note that the Senate played a very critical role in improving this Bill.

I would like to comment on Clause 1 where they are talking about abortion. Obviously, there is no point of giving a definition of a term which has not been used in a given write-up. I agree that the word “abortion” be deleted because it is not indicated anywhere. In the best practices, you only give definition of terms that have been used in a particular report.

I also agree on the issue of death which has been clearly defined. I want to talk about Clause 5 where there is a proposal to delete the word “compulsory.” I do not see why the word “compulsory” should be removed. When you look at the current Sustainable Development Goals (SDGs), they are clearly outlined on matters of health. So, I am sure that this Bill will have to go to a Mediation Committee that is going to help in resolving this matter. The issue of the word “compulsory” - I hope the Chair is taking notes. I see she is very busy - will add a lot of value when it is included.

When you look at Clause 5 which talks about conditional grants, I do not see why the Committee is against it. We know very well that health is a devolved function and it is important that when this money is given, it should be conditional so that it is not misused at the county level. We know very well that health plays a very critical role as far as the health of a nation is concerned. I call upon the Committee that as we move forward, I do not see any problem in legislating the aspect of conditionality so that if these funds are given, they specifically should go to that respective function. If we leave it hanging, we have funny governors who are likely to misappropriate these funds. That is why when you go to the health centres and dispensaries in the counties, you find that healthcare is in a mess. You find that there are no drugs or ambulances without fuel. So, it is indeed important if any grant is going to be given and particularly when it comes to free maternity, these funds should come in as conditional. So, I do not see any problem in legislating. When you say that we have over-legislated and you indicate the best practices in other jurisdictions, we need you to table evidence to show what the best practices are and in which regions of the world you are talking about. You may be comparing nations like Somalia or wherever. It is indeed important that the Committee should have gone further even to tell us where we are benchmarking from. Best practices must be benchmarked with international standards. I see that this matter is hanging.

On the matter of right to emergency treatment, we have seen many patients going to hospitals and they are told to deposit money before they are attended to. I am particularly happy about this clause because it gives people a right to healthcare. When you go to a hospital particularly when you have got an accident, you are not prepared because you do not know that you are going to have an accident. It is important that when you go to the nearest health facility, they must provide healthcare before the issue of money comes in at a later stage.

Clause 16 talks about the Director General. Previously, the Director General was the Director of Medical Services (DMS). This is a very important person because he is the technical advisor. I know very well that Hon. (Dr.) Nyikal was a DMS. The DMS is the technical advisor.

For you to be one, you must have the technical expertise. When you read today's *Daily Nation* headline, it features a medical quack who fortunately or unfortunately did a successful operation somewhere in the Rift Valley. He was in medical school, but never graduated, but he was employed. How was he employed for heaven's sake? You can only employ someone who is qualified. When it comes to medicine, it is an area you cannot compromise. You need somebody who is qualified and has met the minimum threshold. That is why we have grading in the humanities like we have First Class and Second Class Honours, Upper Division, but we do not have such grading in medicine because the difference is like life and death. It is indeed important that the DMS must be a registered medical practitioner; somebody who understands policy and has a hands on experience.

On training, we have had issues with internship. We know healthcare is a devolved function, but the national Government is involved in policy formulation. Training is under the national Government. That is why I agree with the Committee that internship is part of training to have a hands on experience. Indeed, it is important that the national Government should be in charge. We have seen these people doing very well. There should be honorarium to help these medical students who are on internship because the conditions of working 24/7 are hectic.

This Health Bill has overstayed. It is important because it is like the Constitution when it comes to healthcare. It has come very late. We call upon this House to move with speed and pass it because we need this Bill now like never before. Some of the issues are okay and we agree with them, but those we do not agree with, as we have highlighted, should be resolved by the Mediation Committee that is going to be put in place.

I thank the Departmental Committee on Health headed by Rachel Nyamai and my neighbour Hon. Pukose for the good work they have done. But they should stop shielding whatever problems you have in your Committee. Everybody is accountable. A parliamentary Committee in line with Article 125 of the Constitution can summon anybody anywhere. If at all, Hon. Rachel Nyamai said she did not do that, it is not correct. The Cabinet Secretaries (CSs) and Principal Secretaries (PSs) must appear before this honourable House and answer whatever issues. Corruption is alarming, as we have heard. I pray for the respective Chairs so that they are not removed. The Vice Chair has told me that it is now water under the bridge. It has already passed. If you have been doing that, stop shielding people because I know the CS and PS have done good work and have the capacity and capability to appear before the Committee and defend themselves.

With those few remarks, I support.

Hon. Deputy Speaker: Hon. Johanna Kipyegon.

Hon. Kipyegon: Thank you, Hon. Deputy Speaker, for this opportunity to talk about this Bill, which touches on health matters. The Committee and the Senate have done good work. You must remember that health is a very vital department. Without even elaborating much, this country needs to re-look seriously the issue of health. Although the Constitution devolved health to the county levels, there is still a very serious confusion. This is because it has not yet been determined whether some serious health services are supposed to be in the counties or in the national Government. We all know that the referral hospitals are not devolved. The hospitals that were devolved have been under siege by the county governments. Those hospitals have been managed poorly.

Just like education, health is very fundamental to this country. It is one of the issues that the founding father of this nation talked about. You remember he talked about health, literacy and poverty. It is absurd that in this time and age you will still find people who cannot be given

proper treatment in the hospitals run by the national Government. You will be shocked that in some of the hospitals run by the counties, patients cannot get treatment. It is high time we looked at health services.

This Bill discusses the inter-relations between both levels of Government in terms of health and that is a good thing. The training of nurses and doctors is still done by the national Government. However, these people are the ones going to work for the county governments. Therefore, there must be that close relationship so that both sides can work in a harmonious way. This Bill has come in handy.

Before I finish, I just wish to caution that whoever offers services in county hospitals must ensure that the service is rendered well to the people. We must avoid cases where some people are taken to hospitals---We have agreed that medical services are free especially the maternity services. The problem we have is that even if maternity services are free, we cannot even find those particular services in most hospitals in the counties. It could only be one or two hospitals where you would find free maternity service. So, even if you made maternity service free, you need to ensure that the relevant facilities exist so that people can enjoy those services.

There are cases where people have to deposit money so that they can be treated. There are so many who die before they get treated because they do not have money to deposit. We need to make medical care free. We need to have a situation whereby people are treated as is envisaged in the Constitution. It states that we must access medical service regardless of whether one has money or not. The issue of payment should come secondary, that is, after the patient has been treated. We should not turn our health services into a private affair.

There is also another situation where patients who have been treated are detained in hospital simply because they are unable to pay their medical bill. This country must understand that three-quarters of Kenyans live below the poverty line. There are people in this country who cannot afford food and so when they get sick and they go to hospital and they are told to pay, say, Kshs100,000, that is ridiculous! Such a person does not have land, cows, or a salary that he or she can use to pay that kind of money. We need to ensure that every citizen who gets services from Government facilities is released regardless of whether they have money or not. We cannot hold our people to ransom just because they do not have money.

That situation is even worse when somebody dies in hospital. We have several cases in most of the government-run health facilities where people die and the bodies are detained in the mortuary. The hospital declines to release the bodies of the deceased persons to relatives simply because the medical bill has not been sorted. Really, why do you mistreat your citizens? How can we do that to our citizens? We must have a situation whereby after patients have been treated and are good to go home, they are released and a way of recovering the money is sought. When somebody has died, we must release the body to the relatives so that they can go and bury as a way of recovering the money is sought.

I would like to talk about NHIF. This is something that has been bothering our country. We must thank the Jubilee Government for the small token they have released to the elderly people of this country who are aged between 85 years and 95 years. However, we must ensure that we provide NHIF services to persons aged 65 years and above. These are the people who were building this nation by rendering services for so many years. These are people who should be eating bonuses from the Government. Why can we not allow them to enjoy the NHIF services? It is not expensive. We must have a policy that ensures that any man or woman who is above 65 years old is covered by the Government because this is the Government they have been working for. These are the people who have sons and daughters who are working for the

Government. Some of them are doing business in this country and therefore making this country rich. So, why can we not provide these people with NHIF services for free? In any case we have cases of people stealing money from our Government facilities. We are still reading in shock about how people stole billions of money that was meant for maternity, HIV/AIDS patients and the provision of other services.

Hon. Deputy Speaker: Hon. Johanna Ng'eno, I am sure you are aware that this is a Bill which has gone through the Second Reading---

(Hon. Bii stood between the Hon. Deputy Speaker and Hon. Kipyegon)

Hon. Deputy Speaker: Hon. "Savimbi", I cannot see the contributor.

This Bill has gone through some stages and we had to approve it. The only issues that you should be raising now are the comments from the Senate and those from our Committee so that we enrich what the Mediation Committee is going to be handling. That is where you should focus on.

Hon. Kipyegon: I agree and I stand guided, but there are some issues which we must also touch. This is so that next time we have another discussion on health issues, those matters of concern are put to rest. Otherwise, I stand guided. We must look at those issues which affect our people with regard to the provision of health services.

I thank you.

Hon. Deputy Speaker: Hon. Michael Onyura, you have the Floor.

Hon. Onyura: Thank you, Hon. Deputy Speaker. I rise to support this Motion on the Report from the Departmental Committee on Health. We are moving on well. I want to believe that before long, the Health Bill will be a reality. The Committee has done a good job. We discussed this Bill here, and it was passed overwhelmingly by this House. I also notice that the Senate has made an input and it is quite useful. It is, maybe, trying to remove some ambiguities and make things clearer. That will enrich the Bill in the best way possible to serve Kenyans.

As we know, the aim is to have the Health Bill that will bring together a number of separate Bills that touch on health. Under this umbrella, we will make sure everything is aligned with the Constitution. The Constitution provides that health is a right. Access to emergency treatment is also a right. All we are doing is to ensure that the best implementation is provided through a Bill like this.

It is agreed that health is a shared function. We know that the national Government is supposed to deal with policy, standards, training and capacity building. These are very important functions that are offered by the national Government. I expect the national Government to ensure that standards are maintained throughout the country. There must be ways of making sure that there is consistency. In fact, where the standards are not met, there should be a way of dealing with the situation. Maybe there could be some sanctions for those who fail to meet the standards provided. The national Government should ensure that these standards are well understood and known in all the counties. Otherwise each county may decide to do its own things some of which might be detrimental to the health of our people.

Hon. Deputy Speaker, another area that I would like to call upon the two parties; that is the national Government and the county governments to cooperate very well revolves around human resource, staff or employees. I note that there are some strikes, demonstrations or go slow from the medical personnel in one county or another nearly every week. This is really destabilising a sector that has already enough problems, for example, corruption and lack of

medicines. We should do something to ensure that our workforce is stable and motivated. We should also ensure that the terms and conditions of service are well understood and are commensurate to the services we call upon health personnel to give. I note that, perhaps, this is not being given the attention it deserves. We strongly recommended in the Bill that we have a human resource authority or board that can address these issues and minimise the instability we are seeing by way of strikes.

Hon. Deputy Speaker, I also encourage that let this be our route towards universal healthcare. That is one area if we achieved we would really have done great service to our people. You remember when we started off after Independence we even had free medical services. We slowly started bringing in charges which we called all kind of names like cost-sharing until we have reached a stage where healthcare is unaffordable for the ordinary person in the village. This is because raising even Kshs200 for registration is a problem to the ordinary villager. They will stay sick and avoid going to hospital until it is too late. I feel that we, as a nation, should work seriously towards providing universal healthcare to our people.

Hon. Deputy Speaker, I note that there are a few areas where the Committee had disagreements with the recommendations from the Senate. However, when I look at them, I do not see them as being serious. These are areas the Mediation Committee should solve quickly.

With those comments, I support the Report from the Departmental Committee on Health. I hope we will resolve this quickly and get the Bill through the processes for it to be assented to and become operational.

Thank you very much, Hon. Deputy Speaker.

Hon. Deputy Speaker: Let us now have Hon. Gideon Irea.

Hon. Irea: Thank you, Hon. Deputy Speaker. I rise to support this Motion because this is a good Bill. Before I go to this, I had pressed the intervention button when the Member for Emurua Dikirr was speaking. He was saying that medical facilities in the county governments are under siege. That was not a good statement because for us to have facilities and the national Government to work with county governments, we have to support county governments in whatever they are doing.

We asked for devolution but we are criticizing county governments in whatever they are doing. I am saying that the medical facilities which are under the national Government and those which are under county governments should work together. We should develop a system which coordinates both facilities. That will ensure that those who are treated under county governments and are taken to local referral hospitals find the same facilities.

Where county governments are endeavouring to train medical people, the national Government should support. If we do not support medical facilities within county governments, those governments will not be motivated to give services to our people. There are no people who belong to the national Government or county governments in the medical sector. We should encourage all of them to work together so that medical facilities in this country do not have a big difference. This will ensure that the services rendered by a county government and the national Government are the same.

With these remarks, I support this Motion. I support the Departmental Committee on Health for coming up with these recommendations.

Hon. Deputy Speaker: Hon. Ken Okoth, you have the Floor.

Hon. Okoth: Thank you, Hon. Deputy Speaker. I rise to contribute on this Motion. I am happy the debate had happened in the Chamber of the National Assembly up to the Senate and the Senate has come back with its proposals on how the Bill should be. This is very important. I

would love to lobby for myself to be included in the Mediation Committee because health is one of those key human rights issues that we have been following up as the Human Rights Caucus. I also know that it is a key issue that the Kenya Young Parliamentarians Association (KYPA) and the Kenya Women Parliamentary Association (KEWOPA) have been following. We want to make sure that the final amendments and agreements on this Bill really reflect the interest of the youth and women in this country. That is the key point I would like to begin with.

Secondly, I am very concerned by the number of deletions the Senate has proposed. I have just done a quick count and the Senate is proposing, as per the Order Paper, 29 deletions, which makes it seem as if all those 30 or so clauses that we had in the Bill were superfluous. These are not subclasses or anything to do with definitions, but substantial clauses on the institutional structure of our health system and how it would be administered.

That concerns me, and I would like to urge Members of this House to be alert. We should not assume that now that the Bill went to the Senate from here then it must be good. In fact, I think the Senate used a chopping knife on the work that this House had done. We must, therefore, look back and see which of those clauses that had been proposed must be restored in the Bill. It is quite spectacular as I look at it.

For instance, there is a proposal to delete clauses 62, 63, 64, 65 and 66. I could continue until your head just twists and you get confused. That is too much because we have a Departmental Committee on Health in this House that looks at these things.

Procedurally, I have shockingly received - maybe it is through my own fault - the report of the Departmental Committee on Health which Hon. Pukose mentioned just this afternoon. So, even as I pressed to speak in detail about it, this is my chance to read about it. I will be looking at it more carefully and I hope to contribute during the Third Reading. I hope the Hon. Deputy Speaker will be indulged. I hope that will not be today because I can see it is slated in the Order Paper. For Members to receive a report now and introduce any amendments in one afternoon is unrealistic. It is very hard because it is now past midday. It will be very hard to propose any amendments and get them approved by the Speaker for debate at the Committee of the whole House and Third Reading, if that is done today.

I hope that for consideration of parliamentarians' input, we will be allowed to have the Committee of the whole House and the Third Reading happening at another point and not this afternoon. This is because we have just received this comprehensive and dense Report from the Departmental Committee on Health.

We are taking steps because health is a human right that is protected in our Constitution. The people of this country from Kabarnet and Kabartonjo all the way to Kibera and Korogocho are watching carefully the Senate and the National Assembly. They expect the two to come up with a good framework. I am sure we will do it because we are up to the task.

Health is majorly a devolved function and a large amount of money will go to the county level where governors and county assemblies run health policies. It should not be the case that a lot of money for health sector remains in the national Ministry where it is likely to be gobbled away in scandals and mismanagement or purchases that have not been taken through proper public participation. An example is the issue of the containers that was highlighted recently. The containers were bought at very exorbitant and inflated prices and yet they remain stuck at the Port of Mombasa because they have nowhere to be taken.

So, with those few remarks, I beg to support and ask for your indulgence to allow us to propose amendments before this matter comes to the Committee of the whole House and the Third Reading as is indicated in the Order Paper today.

Hon. Deputy Speaker: Let us have Hon. Denittah Ghati.

Hon. (Ms.) Ghati: Thank you very much, Hon. Deputy Speaker for the opportunity to talk about health.

First, I thank the Committee for these recommendations. I also thank the Senate. Health is a human rights issue. It has been seriously enshrined in the Constitution. So, it is an issue that is very critical both for the national Government and county governments. It sometimes pains that even though we discuss matters health here, the Ministry of Health is engrossed in a number of allegations of misappropriation and misuse of funds.

We know very well that the Ministry of Health is yet to account for several allegations that have been made against it. The allegations range from stealing money meant for the sick, maternity provisions to antiretroviral (ARV) drugs. What are we talking about here? We need to be serious about matters health. A healthy nation is a prosperous economy. We cannot talk about health in our counties when our national Ministry is in problems and cannot account for the millions of shillings lost. There is also the issue of tenders meant for ARVs.

I agree that even though we have this Report before us, we still have a lot of loopholes and serious issues at the county level that we need addressed. It is unfortunate we have these problems despite the fact that we send millions of shillings to county governments. We are all aware that since devolution, our counties have not been well equipped to deal with the issue of maternity which is a devolved function. In fact, maternity in this country is free. However, we have counties where mothers go to hospitals to deliver and they die at the door step. To me, I consider a county where a woman gets into labour and dies at the door of a hospital a failed county.

There are several counties that cannot even talk about drugs. We also have hospitals whose shelves are empty. They do not have basic drugs and essential requirements needed in a hospital. To me, those are failed counties. A county hospital that cannot provide for the health of its people is a shame to that county. A county hospital that can also not look at the issue of gloves or even basic drugs such as Panadol and Piriton is a shame to that county.

Hon. Deputy Speaker, even though maternity is devolved, we, at the national level cannot leave the entire task of healthcare to counties. This is because we have a role to play as the national Government. The Report is very clear that our role is to provide policy at the national level, so that the implementation is left with a governor. As much as health is devolved, it is a function that is shared at the national level at some point. Therefore, the issue cannot entirely rest with a governor of a county. We have a responsibility in this House to ensure that we check on how counties are doing.

This Report also raises the issue of Health Human Resource Council (HHRC) at the county level. This is a plus. There are counties that cannot fund their qualified medical personnel. So, these counties go out there to fish for external people to come and work in their hospitals. This is very wrong. This Report and, especially, the recommendation on the HHRC, is a plus even to my county, Migori.

We do not import medical personnel in Migori. It is clear that this Council will ensure that all the people who work as medical personnel are well trained. It will also offer opportunities to our young students who go to universities and colleges to attend internships.

Hon. Deputy Speaker, we need to seriously look at this issue of internship. Students in colleges and universities should be allowed to enjoy internship and gain the experience they need within their counties. That way, they will be in a position to provide personnel that is required.

Lately, our doctors and nurses have been running around like school children agitating for salary increment. This is a good Report if at all it is going to address the issue of HHRC. We do not have to see our nurses in the streets carrying placards as they demand for better pay.

Healthcare is a very serious issue in this country if we want to move forward. That is why I support the Departmental Committee on Health on the issues it has raised in their Report as well as the Senate on the few changes it has proposed.

Despite the fact that we are talking about health, we also need to be very serious on the issue of corruption. If managers in the Ministry of Health condone corruption, the vice will be devolved. If that happens, there will be no service delivery at the county level. Therefore, we have to address this issue at the Ministry of Health.

Hon. Deputy Speaker: Yes, Hon. Gikaria.

Hon. Gikaria: Thank you, Hon. Deputy Speaker. I rise under Standing Order No.95. We deliberated on this Bill for a long time, after which it went back to the Senate. It is good for us to realise that we are just talking about the same things that we talked about the other time. Therefore, I request you to call upon the Mover to reply.

Hon. Deputy Speaker: Hon. Members, you have heard the proposal. Most of you have contributed to this Bill. I notice that it is only Hon. Nicholas Gumbo and Hon. Makali who have not contributed to it. Hon. Pukose will be responding shortly. The two Hon. Members will have a chance to contribute and then we call upon the Mover to reply.

Let us have Hon. Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Deputy Speaker for giving me the opportunity to contribute to the Senate Amendments on the Health Bill (National Assembly Bill No.14 of 2015). I am going to be very brief.

The proposed amendment on Clause 5, seeking to introduce new Sub-clause (3) to ensure that the national Government and county governments provide free and compulsory vaccination for all children less than five years old and maternity care is good. This ought to have been in the provisions that we already have. However, before we are able to do this, we need to conduct accurate demographic surveys.

I have seen what is going on in the counties at the moment. Many of our people are not able to access free and compulsory healthcare services. This is particularly with regard to vaccination of children under the age of five years and maternity care. If we have an accurate demographic survey to, for example, ascertain how many of our people are not covered by the National Health Insurance Fund (NHIF), we can provide them with this facility. It should be possible. This can be done with the resources that we already have.

I notice that there is a proposed amendment to delete Sub-clause (3) of Clause 7. This is a bit worrying because Clause 7(3) says that any healthcare provider who fails to provide emergency medical treatment to a person while having the ability to do so commits an offence and is liable, upon conviction, to a fine not exceeding Kshs1 million or imprisonment for a term not exceeding 12 months or both. I am aware that when this matter came up, there was a lot of argument on who should meet the cost of providing emergency medical treatment. Instead of deleting this sub-clause, we should provide for the creation of a fund to reimburse expenses incurred by healthcare service providers in giving emergency treatment.

Anybody who has required an emergency treatment knows that it is important for emergency treatment to be provided when it is needed. In many cases, people lose their lives because of a requirement to pay before being given emergency treatment. I do not understand the real reason for the Senate proposing the deletion of Paragraph (c), which seeks to actualise the

rights of Kenyans to access healthcare services as specified in the Bill of Rights. I have no idea why the Senate has seen it necessary to delete this clause.

The proposed deletions on Clauses 30 to 67 have the effect of removing the Kenya Health and Human Resource Advisory Council, the Kenya Health Professionals Oversight Authority, and the regulation of health products and healthcare technologies. In my view, this will have the effect of turning provision of healthcare services in Kenya into some kind of cocktails that will differ from one county to another. Such a situation will not be good for us.

We must have standards and uniformity in policies that govern healthcare services in Kenya. I would not like a situation where in Siaya County we will have healthcare standards that are different from those in Nairobi County merely because the services in Siaya County – where I come from – are being provided by the county government. The effect of such an eventuality will be scattered policies and standards across counties. Healthcare services in Kenya will be a collage and a cocktail of practices. This will reduce the quality of healthcare services in some counties and in effect differentiate healthcare in our country with an element of discrimination.

These amendments are very elaborate. It is still important for us to have unified healthcare standards and policies within the country. We are talking about the same people of Kenya. The fact that somebody moved from one county to the next should not be a reason for the standards and policies governing healthcare to be different. I am very concerned. I wonder whether the counties, with the structures that we have seen over time, will grow and have more capacity.

I wonder whether it will be possible for counties to do these things over time. We are more or less saying that provision of healthcare in Kenya is going to be fully devolved. That is a worrying trend. We have seen how healthcare services in this country have deteriorated with devolution. We have also seen how priorities have been inverted. I do not think we should consciously move towards complete devolution of healthcare services at this point in time.

I hope that these concerns have been raised by Members at the Committee Stage and will be raised in the Mediation Committee. Those of us who will be privileged to be Members of the Mediation Committee should look into these issues so that ultimately, we act in the best interest of our people. We should ensure that healthcare services in Kenya are affordable and available to the majority of Kenyans. For example, we know that maternity services are free in this country. The fact that maternity services are free makes them affordable. But are they available? Let us find a correct mix between affordability and availability for healthcare services because healthcare is in more ways than one a basic human right.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Deputy Speaker.

I also rise to support the Report of the Departmental Committee on Health in terms of the amendments to the Health Bill by the Senate. Listening to the Mover of the Report, I wish he had provided the House with more details. Based on what he said, the Senate is not proposing few amendments but very many amendments. The Health Bill is very important. This House has suspended some proposed amendments to other Acts so as to be incorporated in this Bill. That raises an issue of concern.

When I look at the amendments, I agree with the Mover on Clause 5 in terms of the issue of free maternity care and free vaccination for children under five years. It is quite commendable. I am happy that the Senate made sure that this is included unlike in the earlier Bill.

Clause 5(4) talks about conditional grants. It proposes that the Government continues to provide conditional grants to county governments. Most governors are complaining in terms of accessing these conditional grants. My wish would be a situation whereby, if we agree that we want to provide free vaccination and maternity care, then instead of talking about conditional grants for these two activities, we just lease them out to the counties the way we release money for the normal sharing of resources, so that we avoid a situation where county governments must always apply and account for money before they get it. That would sort out the issue of delays in accessing the money. That will facilitate access to healthcare.

With regard to Clause 15, the issue of including reproductive healthcare and the right to emergency treatment is quite important. It is just a matter of placing more emphasis on what we had said that Kenyans should access emergency treatment without any conditions. This is something which should be considered.

With regard to Clause 16, since the Director-General (DG) for health will be senior, I hear our own Departmental Committee saying that this position should be subjected to parliamentary vetting. I agree with the Senate that since we are vetting the Cabinet Secretary (CS) and the Principal Secretary (PS) in this Ministry, the Director can be appointed by those two already vetted officers to avoid a situation where this House will be vetting all officers. It will be very complicated for us. If we have vetted the CS and the PS, they can easily appoint the DG based on qualification and experience. This is an area where I agree with the Senate. Let us support the Senate in saying that the DG will be appointed by the CS. In that case, we will make the process easier.

The Senate has proposed to delete very many clauses and I am worried. I cannot understand why the Senate has proposed to delete over 30 clauses while our own Departmental Committee on Health or this House had included those clauses. This is a clear pointer that the Mediation Committee which will be appointed will have a lot of work convincing both sides. As we think about the Mediation Committee, we should make sure that the people who are appointed to this Committee can get to a compromise of give and take for purposes of moving this Bill forward. Otherwise, in a Bill where very many clauses are proposed for deletion, we can end up having a stalemate and the Bill may just die a natural death. This Bill is very important to this country to the extent that all effort should be made to make sure that we get it approved by both Houses.

My final word is to plead with those Members who will be lucky to be in the Mediation Committee to have an open mind so that at the end of the day, we do not kill this important Bill because of disagreements.

With those remarks, I support the Report of our Committee.

Hon. Deputy Speaker: We had agreed on those last two. I now call upon the Mover to respond.

Hon. (Dr.) Pukose: Thank you, Hon. Deputy Speaker. I want to thank the Members who have contributed to this Motion and more specifically, the Departmental Committee on Health for the effort it has made. I also thank the Senate for debating and proposing the various amendments to the Bill, which the Committee has looked into.

Healthcare is a very important function in this country. It is both a national and county function. As much as we talk about health being devolved, we need to understand the concept of devolution of health. Why do we say health is devolved? What is it that has been devolved? What is still shared at the national function? How does the referral system work? How does the standardisation of healthcare work? Those and the many other issues such as training,

registration and regulation of healthcare within this country are all encompassed and addressed in this Bill.

The Departmental Committee on Health proposes that the Director of Medical Services should be competitively recruited through the Public Service Commission (PSC) and approved by Parliament. This is because he or she is the technical adviser on healthcare matters within the country. He or she is the equivalent of the Attorney-General. It is like saying that the Attorney-General cannot be approved by Parliament. I want the House to take seriously the position of the Director-General in charge of healthcare.

Look at other states. Even in the United States of America (USA), the Director-General in charge of healthcare is appointed by the President. These are very important issues that we need to deal with. We want to take healthcare matters very seriously and address them wholesomely.

I was in my local hospital in Endebess over the weekend. The X-ray and ultrasound machines have been installed. The theatre equipment is in place. Unfortunately, the X-ray machine just requires the 3-phase power supply. It has been lying idle for six months. You then ask yourself whether it requires the national Government to come and install it. It is the hospital and the local county government that should do so.

I urge county governments to work closely with the national government - because that is what the law provides - to make sure that these services are working and that we are delivering healthcare to our citizens. There are no people who belong to county government or the national Government. This is because all of them are people of Kenya. We must serve them equally and prudently so that they can access quality healthcare. It is a constitutional requirement in the Bill of Rights.

I beg to reply.

Hon. Deputy Speaker: Hon. Members, for obvious reasons, we cannot put the Question. We will do it at the next appropriate time. I want to move to the next Order.

(Putting of the Question deferred)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

CONSIDERATION OF PRESIDENT'S RESERVATIONS TO THE ENERGY BILL

The Temporary Deputy Chairman (Hon. Cheboi): Order Members! We will start with the Consideration of the President's Reservations to the Energy Bill (National Assembly Bill No.50 of 2015).

Hon. Members, I am sure you know the process of handling Presidential Reservations. Therefore, we will proceed in that manner.

Clause 55

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 55(1)(b) of the Bill be amended by-

(i) inserting the words "nuclear power and" immediately after the words "energy and";

(ii) deleting the word "petroleum" appearing immediately after the word "energy and" so that paragraph (b) reads as follows:

"(b) carry out research, development and dissemination activities in the energy and nuclear power sector."

Clause 55 of the Bill provides the object and functions of the agency. If you look at sub-clause (1)(b), you will find that it provides a function of the agency. That is very clear. The other one is just bringing in nuclear power which is a serious institution within the Ministry of Energy and Petroleum.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give two Members a chance. I will start with Hon. Ronald Tonui. Is he in the House? Let us have the Chairperson of the Committee if he is in.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Chairman. Allow me to say that the Committee agreed with the Presidential Reservation to this clause. As explained by *Mhe.* Duale, the agency responsible for implementing the nuclear energy programme in Kenya is not in the petroleum sector. I think it is very important and we agree with the President.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Onyura, you have the Floor.

Hon. Onyura: Hon. Temporary Deputy Chairman, I want to support that amendment. To me, it looks straightforward. Issues of research, development and dissemination are important.

*(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)*

(Clause 55 as amended agreed to)

Clause 69

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 69 by deleting sub-clause (c).

Clause 69 of the Bill talks about the source of funds for nuclear power and energy. Under sub-clause (c), the one we want to delete, the proposal includes such funds from the training fund as established under the law. But if you look at Clause 79 of the Petroleum (Exploration and Development) Bill, 2016 which establishes the said fund, you will see that it only reserves that fund, in terms of application, exclusively to training in upstream petroleum operations. There is nothing to do with the Nuclear Power Agency.

Accordingly, the proposal which could have entailed the use of these funds for the implementation of nuclear energy programme in Kenya is in direct conflict with that clause. In view of the foregoing, we agree with the President's recommendation that the Bill be amended in Clause 69 by deleting sub-clause (c).

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give two Members a chance. Let us start with Hon. Kiptanui, on behalf of the Committee.

Hon. Kiptanui: Hon. Temporary Deputy Chairman, the Committee agreed with the reservations to Clause 69(c). It is very clear that paragraph (c) is in conflict with Clause 79 of the Petroleum (Exploration, Development and Production) Bill, 2016.

The Temporary Deputy Chairman (Hon. Cheboi): Yes, Hon. Chanzu.

Hon. Chanzu: Thank you, Hon. Temporary Deputy Chairman. We should avoid contradictions as much as possible when we are making laws. I agree that it is in order because we do not want to have contradictions. We want clarity in everything that we legislate and approve here.

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

(Clause 69 as amended agreed to)

Clause 194

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 194 of the Bill be deleted and substituted therefor with the following –

Penalties and compensation for failure and defects in electricity

194. (1) Subject to any agreement which may be entered into between a licensee and a consumer as provided for under this Act, whenever the licensee defaults in supplying electrical energy to any consumer, the licensee shall be liable in respect of each default to a penalty as prescribed by regulations.

(2) The licensee shall be liable to pay appropriate compensation to that person if, due to failure, poor quality or irregularity of electricity supply, the person incurs damage to his or her property, financial loss, loss of life due to negligence or avoidable default by the licensee.

(3) For the avoidance of doubt, the licensee shall not be

liable to pay compensation under subsection (2) if the failure, poor quality or irregularity of supply was caused by third party interference to the licensee's electricity supply lines or inevitable accident or the *force majeure* was so slight as not to materially affect the quality or value of the supply.

(4) The Cabinet Secretary shall make regulations to give effect to this section within six months of the coming into force of this Act.

The essence of Clause 194 was to impose liability on the licensee, that is, Kenya Power, for any damage suffered by a consumer when a power outage occurs. It provided for a number---

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Members! Order, the Member for Emurua Dikirr! Proceed, the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, of late the Member for Emurua Dikirr is not behaving well. He is exporting this behaviour to the House but we have forgiven him. He can go and have a cup of tea.

Hon. Temporary Deputy Chairman, the essence of what we are deleting was to impose liability on the licensee, the Kenya Power, for damages. We are deleting this provision because it fails to take into account the losses, injuries and other damages which could result, not only from power outages, but from other factors such as poor quality, poor workmanship in terms of wiring and poor inputs or irregular supply.

You saw last night on business news, the Chief Executive Officer of Kenya Power was talking about how there are many illegal supplies in many parts of the low-income estates in Nairobi. This can be as a result of illegal or irregular supply. In addition to that, such damage can affect persons who are not consumers.

The provision does not also take into account the contract between the licensee and the consumer. Does it cover such? Each and every customer signs a contract with the licensee, whether it is a telephone company, power company or security company. The contract is important. In this case, this provision does not entail and is not part of the contract.

Sub-clause (2) proposes an administrative challenge in terms of implementing these provisions. It is generally very difficult to determine the duration of outage, especially at medium and low voltage levels. Power disappears, so what and for how long? The determination by the consumer becomes a problem. Implementing this section of the law gives the implementing agency some administrative challenge.

Sub-clause (3) erroneously refers to compensation by the licensee by way of subsidy. It becomes complex. What do we mean by subsidy?

Hon. Temporary Deputy Chairman, a number of issues contained under Clause 194 are matters that should be addressed under subsidiary legislation. I remember that this is an amendment we discussed at length with Hon. Nassir, colleagues from the Ministry of Energy and Petroleum and Kenya Power. The reason that could not prevail then has to prevail this afternoon because the President has made his reservations and it is in law.

He is applying Article 115(1)(b) of the Constitution. I am sure the reasons given are very valid. I hope we will now amend the Kenya Power Act for it to conform to what my colleague

from Mvita wanted. So, we will still follow and look at whether we can do the same through subsidiary legislation.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give three Members a chance this time. Let us start with the Chair of the Committee, Hon. Kiptanui. After that, I will give an opportunity to Hon. Nassir.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Chairman. The justifications given by Hon. A.B. Duale are very clear. When we sat as a Committee, we agreed with the President's Reservations to Clause 194.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Nassir. I know he is the original Mover of the amendment.

Hon. Nassir: Yes, Hon. Temporary Deputy Chairman. This is an amendment that I proposed. As Hon. A.B. Duale rightfully put it, this is an amendment that we did not just discuss at length with the KP and other stakeholders, but at the Committee stage. I would have expected a bit of professional courtesy from the Chair - forgive me for raising it here - to call me to the Committee meeting. This is because an amendment I had moved was being reserved by the President. As Hon. A.B. Duale rightfully put it, there are some parts to this, including the fact that it is not just financial losses that can be incurred.

The President's Reservations here talk about, "subject to any agreement which may be entered." As we are talking right now, there are millions of people who already have existing contracts with the KP, the licensee. However, such agreements are not in effect. The amendments that I sought were to give some timeframe. The President's Reservation does not give any form of indication to that end.

As much as the Reservations are constitutional, the President has already made them more or less into law bearing in mind we do not have the required numbers. Definitely, we will be looking at the regulations that the Cabinet Secretary will be pushing forward for the purpose of Kenyans. The economy of this country is determined more or less by the cost of power. When we have outages, they are an immediate cost to power. It should not be viewed as if we are against the Government or the KP as an institution. We need people to be held accountable when people are making losses.

Since the amendment did not pass as we would have wished, we will simply wait for the regulations. Once the law comes into effect, within six months, the Cabinet Secretary should bring the regulations. I hope we will be in Parliament then and we look forward to that.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nassir, the Committee would not be obliged to that other than issues of courtesy of course.

Hon. Nassir: I said it was an issue of professional courtesy.

The Temporary Deputy Chairman (Hon. Cheboi): Once the amendment passed, it ceased to be your amendment. It became something the House has---

Hon. Nassir: It belongs to the House!

The Temporary Deputy Chairman (Hon. Cheboi): Therefore, the Committee would be the representative of the House. So, whether they invited you or not--- If it is an issue of courtesy, they are not obliged at all, but you have been heard.

Hon. Nassir: I agree to that, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Let me give the Leader of the Majority Party the first chance and then Hon. Gikaria.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I totally agree with Hon. Nassir. This affects all of us, in fact, the low income citizens who vote for us. If you look at the amendment and the Reservation by His Excellency the President, you will find that he has made a step. It is for us now to improve it through amendments to the Regulations. This is a matter that is of concern to Kenyans.

If you look at the President's Reservation that has now replaced the one by Hon. Nassir, you will realise that it takes care of both consumers and the KP. For example, the licensee shall be liable to pay appropriate compensation to that person if, due to failure, poor quality or irregularity of electricity supply, the person incurs damage to his or her property, financial loss, loss of life due to negligence or avoidable default by the licensee. That was not there before.

The President has really listened to what Hon. Nassir argued before the House at the initial stage. We did not have regulations before, but now we have them. That is all. The Departmental Committee on Energy, Communication and Information needs to tell the Cabinet Secretary for Energy to fast-track the regulations to the House for further deliberation by the Committee on Delegated Legislation.

The President did not delete although he had powers to do that. He listened and looked at it and took a middle ground between Hon. Nassir's amendment, the advice given to him by the Attorney-General and the Ministry of Energy and Petroleum and what the Member desired to achieve through his amendment.

I am sure the people of Mvita are listening and on that basis the Member will get some votes.

The Temporary Deputy Chairman (Hon. Cheboi): Let me have the Member for Nakuru Town East. Let it be a brief one.

Hon. Gikaria: Hon. Temporary Deputy Chairman, I agree with what the Leader of the Majority Party has said. The Jubilee Government has taken electricity right to the villages, to grass thatched houses and *nyumba za mabati*, as its manifesto stipulates. All these have got electricity. This is a timely legislation that is coming into effect to cater for not only financial losses but also loss of life.

The only problem is the six months. I know the Cabinet Secretary for Energy and Petroleum is very effective. He might not even need the six months. Within a month or so, we could have the regulations here so that we can make use of this legislation.

*(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 194 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Mover reporting.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the President's Reservations on the Energy Bill (National Assembly Bill No.50 of 2015) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we will proceed to the next one first.

CONSIDERATION OF PRESIDENT'S RESERVATIONS TO THE
PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

Clause 51

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, there is a *kamukunji* of women Members of Parliament at the back of the Chamber. They might be discussing the issue of Hon. Lempurkel and Hon. (Ms.) Korere. They should not bring the Press conference to the Chamber.

The Temporary Deputy Chairman (Hon. Cheboi): The Member for Siaya, Hon. Ms. Mitaru and the Member for Nyeri Town, kindly take your seats. You can resume your debate later elsewhere.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 51 of the Bill be amended in Sub-clause 9 by deleting Paragraph (a).

The President is using his powers provided under Article 115(1)(b) of the Constitution, which requires a contractor who intends to carry out upstream petroleum operations to apply for an operational permit from the Authority and make provisions for *inter alia* the procedure to be applied by the Authority.

In this memorandum, Sub-clause 9(a) requires that such participation be guided by the principle of citizen participation as set out under Section 87 of the County Government Act, 2012. However, the specific requirements of that section were intended to govern participation of citizens in county governments and not in petroleum exploration business. Therefore, they are misplaced in this content.

The President recommends that Clause 51 of the Bill be amended in Sub-clause 9 by deleting Paragraph (a). I am sure that the Vice-Chairman of the Departmental Committee will have his say on it. It is tidier because Section 87 of the County Government Act does not provide for citizen participation on matters that are outside the jurisdiction of county governments.

(Question of the amendment proposed)

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

(Clause 51 as amended agreed to)

Clause 58

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 58 of the Bill be amended –

(a) by deleting Sub-clause (1) and substituting therefor the following new Sub-clause –

(1) The Cabinet Secretary shall, within thirty days of the approval of field development plan submitted in accordance with the terms of a production sharing contract entered into under this Act, submit the production sharing contract together with the field development plan to Parliament for ratification in accordance with Article 71 of the Constitution.

(b) by deleting Sub-clause (2) and substituting therefor the following new sub-clause –

(2) Parliament shall, within sixty days after receiving the production sharing contract and field development plan under subsection (1)–

(a) ratify the production sharing contract and the field development plan; or

(b) refuse to ratify the production sharing contract and the field development plan and refer the documents back to the cabinet secretary for reconsideration stating the reasons for the refusal.

(c) by deleting Sub-Clause (5) and substituting therefor the following new sub-clause–

(5) If Parliament does not make a decision under sub-section (2) within ninety days, the production sharing contract and the field development plan shall be deemed to have been ratified.

Hon. Temporary Deputy Chairman, this means the Cabinet Secretary is under obligation to, within 30 days, bring the production sharing contract, field development contract and field development plan documents to Parliament for ratification. He cannot engage the stakeholders without Parliament's approval, and this is in accordance with Article 71 of the Constitution.

The President is also telling us to delete Sub-clause 2 and substitute therefore with a new clause which says: "Parliament shall within 30 days after receiving the same document from the Cabinet Secretary." The Cabinet Secretary and Parliament are given 30 days. I do not know how our colleagues in the Senate will survive with this 30 days' timeline. The President should have been advised by the Attorney-General that the Senate is slow and cannot do this within 30 days. They should be given 60 days.

The Temporary Deputy Chairman (Hon. Cheboi): That is not a legal issue.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, as the Leader of the Majority Party, I work with the Senate through the many messages they send to this House. The Health Bill came back this afternoon from the Senate after being passed a year ago. Both Houses are given 30 days to deal with the production sharing contract and field development contract. This is respecting Parliament in terms of ratification of those documents. This gives the people's representatives the right to scrutinise contracts and plans taking place in their constituencies and counties. The Senate represents the counties and we represent the people.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the first opportunity to the Vice-Chairman of the Committee.

Hon. Kiptanui: Hon. Temporary Deputy Chairman, the Committee agreed to the Reservations by the President on this clause. There is need to include the field development plan, which sets out in detail how the contractor will exploit the oil resource and form the basis of exploitation.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Eng.) Kiragu.

Hon. J.K. Chege: Hon. Temporary Deputy Chairman, I rise to support the President's Reservation because exploitation of oil is of national interest. It is important that Parliament is involved because it will make sure that Kenya does not go the route that other nations have gone concerning profits coming out of the oil fields.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Yes, Hon. Mwaita.

Hon. Mwaita: Thank you, Hon. Temporary Deputy Chairman. I support the President's recommendation because it says that the people's representatives should scrutinise the production sharing contract. It is very critical for us to do so.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): The Member for Nakuru Town Constituency, you have the Floor.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Chairman. As the Leader of the Majority Party has just said, it is important for timelines to be set in the law so that nobody will have the luxury of--- He has said that the National Assembly will do its work within the timelines. We are also pleading with our brothers and sisters in the Senate to do the same.

My only problem is about Sub-clause 5. That is if Parliament does not make a decision under Sub-section (2) within 90 days. I now wonder. First, it was 60 days. Therefore, where are the 90 days coming from? I might be confused but since it has been given 60 days after receiving the agreement from the Cabinet Secretary, then it must be within 60 days. What happens to 30 days after 60 days, or is it the 30 days when the agreement is signed? That is the only issue I had.

The Temporary Deputy Chairman (Hon. Cheboi): You will make your decision anyway?

*(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 58 as amended agreed to)

Clause 85

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 85 be amended –

(a) in sub-clause (2) by inserting the following proviso –

Provided that the amount allocated in accordance with this sub-section shall not exceed twice the amount allocated to the county government by Parliament in the financial year under consideration;

- (b) by deleting sub-clause (3);
- (c) in sub-clause (4) by deleting the word “ten” and substituting therefor the word “five”; and
- (d) in sub-clause (4) by inserting the following proviso –
Provided that the amount allocated in accordance with this sub-section shall not exceed one-quarter of the amount allocated to the county government by Parliament in the Financial Year under consideration.

Hon. Temporary Deputy Chairman, Clause 85 basically makes provisions for the sharing of the petroleum revenue among the national Government, county governments and the affected communities. Sub-clause (2) of the Bill provides that the county government share shall be equivalent to 20 percent of the national Government share.

Sub-clause (3) provides that the county government share shall be exclusive of the allocation by Parliament to county governments in a Financial Year. That is what they receive within the reading of the Division of Revenue Bill. The President is touching on all those clauses. Sub-clause (4) provides that the local community share shall be equivalent to 10 per cent of the national Government share and shall be payable.

The problem in this, and which His Excellency the President is highlighting, is found when it comes to the implementation of Clause 85 as passed by Parliament. This, in the words of the President, pose a challenge of inequitable distribution of resources. This creates an unequal society where the county governments have their own share, the national Government has its share and the community where the resources are found has a small share. Again, the risks that county governments and local communities shall receive are disproportionately higher allocations, which might create a problem in terms of absorption.

Because of those reasons, the President proposes that Clause 85 be amended, first, in Sub-clause (2) by inserting a proviso, which reads:

“Provided that the amount allocated in accordance with this sub-section shall not exceed twice the amount allocated to the county government by Parliament in the financial year under consideration;”

Let me take an example of my county. It gets about Kshs7.5 billion, which we do not see what they do with it. However, the people of Garissa will have their say in eight months. So, the amount allocated to them by Parliament shall not exceed twice that amount. So, they cannot get Kshs15 billion from this while they have been getting Kshs7.5 billion. That is what the President is talking about. He is deleting sub-clause (3) completely.

In sub-clause (4), he is deleting the word “ten” per cent and substituting it therefor with the word “five” per cent. In sub-clause (4), there is an insertion of a proviso that reads:

“Provided that the amount allocated in accordance with this sub-section shall not exceed one-quarter of the amount allocated to the county government by Parliament in the Financial Year under consideration.”

Basically, accountability is a challenge in the absorption of resources at the three levels: the national Government, county governments and community level.

I beg to move the Memorandum amendments based on the Reservation by the President.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to two Members on this one. Let us have the Vice-Chair of the Committee and then we go to Hon. Ngikor.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Chairman. On this Reservation, we had a very lengthy debate and some members of my Committee were really opposed to it. But eventually, we agreed to support the Reservation by the President.

Hon. Duale has given an example of his county. If they are receiving Kshs7.5 billion per year, the President has provided a provision here that it should not exceed two times. So, if they are getting Kshs7.5 billion, then they can get Kshs15 billion from oil exploration plus the Kshs7.5 billion they get from the national Government, which comes to Kshs22.5 billion. This, to us, makes sense because we are also facing a number of challenges because many of our governors are not able to spend the money we give them each year. If they are unable to manage Kshs7.5 billion, how can they manage Kshs22.5 billion?

We support.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Ngikor, you have the Floor.

Hon. Ngikor: Thank you, Hon. Temporary Deputy Chairman. I am a Member of the Departmental Committee on Energy, Communication and Information. As the Vice-Chair has said, we discussed this and some of us, especially me, did not agree with this Reservation by the President.

Hon. Duale has given an example of his own county. He said that after getting all this money, we do not know where it goes. We have a window in which some communities can access this money and run it by themselves as a fund. We want to reduce this money from 10 per cent to 5 per cent. Counties are getting money but we do not see what it does. I disagree with this because there are structures which have been put in place to see how this money is being spent by counties.

To me, it will be a good idea to have the 10 per cent given to the communities to be run by the communities themselves so that they can do their development with this money than attaching it to what the national Government gives the counties. We do not see what this money does. It is being taken by a few individuals and the communities are not getting it. We need to support anything that touches on communities so that they can run by themselves. We should leave it at that level. It will even be wise to reduce the 20 per cent to counties and leave the 10 per cent going to the communities because the communities will be accessing this money to use. It is just like the National Government Constituencies Development Fund (NGCDF).

The NGCDF is being run by communities and local people. People are not getting the money disbursed to counties and is being run by county executives. So, why are we denying the communities what they can access and use for their own development and support the corrupt system at both the national and county levels? To me, it is like we are supporting corruption instead of supporting the right things in this community.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, I hope you are winding up so that we do not open up debate.

Hon. Ngikor: The other issue is on money allocated to counties. It is presumed that since county "A" is getting this, they cannot absorb the money. Who says they cannot absorb the money? That is a lie. Any county can handle their money if corruption can be handled at the county and national level.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, Hon. Ngikor.

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

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

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

(Clause 85 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Mover; the Leader of the Majority Party.

Hon. A.B. Duale: Sorry, Hon. Temporary Deputy Chairman. I was talking to the party leader of the Labour Party of Kenya. He is a serious leader. That is why I was somewhere else. He is a leader who does not believe in dictators in parties.

Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the President's Reservations to the Petroleum (Exploration, Development and Production) Bill, and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chairperson, we are starting with the President's Reservations to Energy Bill.

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the President's Reservation to the Energy Bill and approved the same without amendments.

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

I request Hon. Kiptanui the Vice-Chair of the Departmental Committee on Energy, Information and Communication to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Kiptanui.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Speaker. I second.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I will not be put the Question at this time, I will just propose it.

(Question proposed)

We will be putting the Question at the appropriate time.

(Putting of the Question deferred)

Let us now move to the other Bill that the Committee of the whole House has dealt with, which is the Reservations on the Petroleum (Exploration, Development and Production) Bill.

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the President's Reservation to the Petroleum (Exploration, Development and Production) Bill, and approved the same without amendments.

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

I request Hon. Kiptanui, the Vice Chair of the Departmental Committee on Energy, Information and Communication to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Speaker. I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Once again, we will be putting the Question at the appropriate time.

(Putting of the Question deferred)

Next Order!

BILLS

Second Reading

THE ELECTION LAWS (AMENDMENT) (NO. 3) BILL

(Hon. Chepkongá on 4.5.2016)

(Resumption of Debate interrupted on 30.6.2016)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, on the Election Laws (Amendment) Bill, Hon. George Ogalo was on the Floor, I do not see him in the House. So we will take any other Member who has interest in debating on the Election Laws (Amendment) Bill.

Hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, this Bill has been before this House close to nine months now. It was put aside when the Orenge-Kiraitu led Committee of both Houses was working on the IEBC issues. I would indulge you that we ask the Mover to reply

tomorrow afternoon. People have spoken to it and unless you have requests on your screen, I would indulge you that we call upon the Mover to reply. He is not here.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Leader of the Majority Party that is our challenge. Even if we want the Mover to reply, we do not have the Chair or the Vice-Chair of the Departmental Committee on Justice and Legal Affairs in the Chamber. I see three Members on my screen. I do not see one of them. Do we have the Member for Bomet Central?

Hon. Members: No.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I see Member for Budalang'i as the only Member who wants to contribute to this. Do you want to contribute on the Election Laws (Amendment) Bill?

Hon. Ababu: Hon. Temporary Deputy Speaker, I believe I have contributed to this Bill. So, I will pass it. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes you have. We have no requests and it is only fair that we go with what the Leader of the Majority Party has said, and we will be asking the Mover to reply when it next comes on the Order Paper.

(Bill deferred)

Next Order.

Second Reading

THE NATIONAL HONOURS (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, this is a Bill by the Departmental Committee on Administration and National Security. Hon. Leader of the Majority Party, I cannot see the Chair of the Committee. So we will defer it until the Chair is available to move the Second Reading.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, because of party hopping, even the leader is losing his troops. Even the Chairs are nowhere to be seen. I can only see one Chair who happens to be the Chair of the National Cohesion and Equal Opportunity Committee. We will also defer this because Hon. Kamama is out of the country on parliamentary business.

(The Bill deferred)

Next Order.

Second Reading

THE PENAL CODE (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chair of the Joint Committee on National Cohesion and Equal Opportunity, Hon. Sakaja. Are you ready to move Second Reading?

Hon. Sakaja: Thank you, Hon. Temporary Deputy Speaker.

I beg to move that the Penal Code (Amendment) Bill, National Assembly No. 13 of 2016 be now read a Second Time.

This Bill comes as a result of the Committee on National Cohesion and Equal Opportunity's work around areas where cattle rustling has been prone in our country. Cattle rustling has been an issue that has often been viewed within the context of legitimising tradition, climate change and resource conflict. Increasingly, it was much more to do with organised crimes.

There is a rising demand for meat products and attendant political violence that result from the devolved system of government, which is established under the Constitution of Kenya, 2010. The human cost of cattle rustling is indeed immense. Hundreds of people are killed every year and thousands have been forcibly displaced. Cattle raids by young men involve attacks on rival ethnic groups or clans and, at times, raiders come from neighbouring countries such as South Sudan. We have also had issues from Ethiopia. Many Members from those areas will tell you that the traditional cattle rustling did not necessarily involve the kind of killing we see today. These days, it has become invariably lethal and it is no longer the traditional cattle rustling where you would raid a neighbouring village to get some cows for dowry without killing anyone *per se*.

It is very unfortunate that conflicts in the North Rift region of Kenya have been accepted to be part and parcel of a pastoral culture and livelihood of the resident communities. For example, conflicts between the Marakwet and Pokot communities; and the Turkana and Samburu are deemed to be resource-based resulting from competition of pasture and water. It is with these considerations that the Joint Committee on National Cohesion and Equal Opportunity together with the National Cohesion and Integration Commission (NCIC) undertook tours in order to address the issue of cattle rustling through amendments to the Penal Code to prescribe punitive sanctions against cattle rustling and the stealing and handling of stolen livestock and livestock produce. It is no longer what it used to be.

Hon. Temporary Deputy Speaker, thousands of people are dying. If you came with us on our tour – I know you have a heart for the people - your heart would be bleeding because of sad stories of the killing of hundreds of women and children. Their bodies are normally found mutilated. Many young children have become orphans. The sad thing in this country is that these killings happen in Loruk, Nginyang in Baringo, Lokwar and Nakuse, and yet we see it as normal. Such stories never hit the front page of our newspapers. If this was to happen in Kisumu, Nyeri or Mombasa, that 60 people have been killed in a raid, it would cause national outrage. These people kept asking us: "When you go back to Kenya, please, tell them we need security on this side." They do not see themselves anymore as Kenyans because of the manner in which we decided to be lax about what they go through.

I will now move to the specific clauses in this Bill, which I will ask my good friend Hon. Abdullswamad to second; he can do so by just bowing. There was a case where about 1,000 head of cattle were stolen in Samburu. Two days later, it was said that the cattle could not be traced.

Hon. Temporary Deputy Speaker, you and I come from Nairobi. When five cows are moving, everyone notices them moving. You even see dust. What would happen in the case of 1,000 cows? What we realised is that those cows are stolen and slaughtered immediately. The carcasses are put in trucks and transported to other places. The meat you eat in Nairobi from places such as Dagorreti Corner, Kiamaiko and what not, a lot of it is the product of cattle rustling. The meat that goes to Mombasa, *Mheshimiwa* Abdullswamad; some for export and some for local consumption, comes from those areas where people have been killed. It is time we

put a stop to this. I was giving an example the other day of what cattle rustling is. If your car is forcibly taken away from you by thugs at gun point and then they kill you, would we call it vehicle rustling? That is not vehicle rustling. It is murder. It is theft. That is how we must look at this issue of cattle rustling.

Clause 2 seeks to amend Section 4 of the Penal Code Cap. 63 to insert the definitions of “livestock” and “livestock produce” in a much more exhaustive manner than what was described before. The time that these provisions were put in, we did not have the kind of livestock that we are dealing with today.

Clause 3 amends the Penal Code Cap. 63 to repeal the current Section 278 and replace it with the new Clause to provide for the offence of cattle rustling and a more stringent penalty. We are saying that the offence is punishable with imprisonment for a term of not less than 15 years. The current provision is imprisonment for a term not exceeding 14 years. What we have seen in practice has been--- Many women, children and young men have been killed and houses torched, but all that the law enforcement officers say is: “Let the *wazees* and courts speak”. We let them sit round a table and exchange livestock when people have been killed! We are saying that the minimum sentence for stock theft will be 15 years. We are also saying that the National Police Service (NPS) should play a crucial part in peace and security. This clause will ensure that the police are not negligent in their work. If this amendment goes through, a police officer who, being aware of an offence of cattle rustling taking place, fails to take steps to prevent that cattle rustling from taking place or fails to investigate the crime, he or she also commits an offence and will also be liable to conviction. This is because as we went through these areas, we had cases of complicity of a lot of police officers in these issues. A lot of those officers, some are even just constables, not very senior, we hear them owning so many head of cattle in areas where they are not from. A villager will tell you that they have quite a number of cattle, but in truth they are keeping those head of cattle as barter from the rustlers.

Clause 4 amends the Penal Code to introduce two new sections, 278A and 278B. This is to provide for the offence of theft of livestock produce and handling of stolen livestock or livestock produce. Beyond the livestock, there is the produce. I have already given an example. A lot of these cows, goats and camels are slaughtered on site. So, we must also put an offence of handling the stolen animals and also the theft of the produce.

Clause 5 and 6 effect a consequential amendment to the Animal Diseases Act, Cap 364 to require the issuance of a permit for the movement of cattle from one county to another. When these cows are stolen, they move through counties. There is a time when there used to be permits that you had to move around with in the form of a book. It had to be signed when you moved through every county. This permit that we are proposing in the Bill must state:

- (i) The conditions of movement;
- (ii) the number and description of the animals to be moved;
- (iii) the route by which the animals are to travel;
- (iv) the period for which the permit applies;
- (v) the place to which the animals may be moved; the method by which the animals may be moved; and such other particulars as may be prescribed by the Director of Veterinary Services.

I must take this opportunity to thank the director of Veterinary Services who was instrumental in this process with our Committee. He even took us through some of the technology being used in countries in the southern part of Africa where they are making a lot of money through legitimate dealing in livestock. I am glad to see Hon. Moroto. I know he has

experience not in rustling, but in what happens when this goes on in his area. He will tell you the untold stories. All permits will be in triplicate. The original one will be for the applicant, the second one to the officers that are required. Further, the holder of the permit for the movement is placed under obligation to ensure that a person whom he places in charge of the cattle holds the permit at all times and there is no excuse for not having this permit or a copy of it.

Clause 7 effects a consequential amendment to the Stock and Produce Theft Act, Cap. 355 by deleting Section 9, which provides for the offence of illegal possession of stock. The definition and penalties provided under amendments proposed to the Penal Code are broader and serve as a better deterrent than what was originally provided for in the Stock and Produce Theft Act.

Hon. Temporary Deputy Speaker, I do not wish to take too much time. The practice of cattle rustling which is quite rampant amongst pastoral communities in Kenya and many times occurring across our borders, destabilises these communities such that they are not able to pursue their normal livelihood strategies. That must be contributing to increased poverty.

Policies pursued by successive governments have failed to contain this menace because the traditional conflict-solving institutions have been undermined by the creation of administrative structures that are not subject to traditional institutions. Besides, the high level of unemployment and rising poverty levels amongst pastoral communities are fuelling this cattle rustling. It is no longer a cultural and traditional act. It has become a criminal and commercial affair. We must know that there is no word such as “cattle rustling” that exists any more.

I want Hon. Sara Korere to listen, through you. She needs to listen because these issues are happening in her county as well. When you burn a house, it is not cattle rustling. It is arson. When you kill somebody, it is not cattle rustling. It is murder. When you use a weapon to steal goods and livestock from somebody else, it is not cattle rustling. It is robbery with violence. It must attract the penalty of those crimes because the people in the North Rift - from Lokwar Nakuse to Nginyang to Sindai, we went to all these areas, to Baragoi where we even signed the first peace deal ever between the Samburus and the Turkanas in Samburu County - have never seen peace. Until today, they have calm; they want disarmament; they want peace but, they want their lives to be as valuable as a life in Nairobi, as a life in Nyeri, as a life in Kisumu and as a life in Mvita.

In conclusion, this Bill has been brought before this House after a lot of consultation amongst stakeholders. We have consulted pastoralists. We have consulted victims of cattle rustling and various Government agencies. I am glad that tomorrow, for the benefit of the House, I will be tabling a Report that follows our tours around these areas. The Report gives details of what people go through. So, when Members are contributing, they will be able to benefit from the insights the Joint Committee on National Cohesion and Equal Opportunity gained through these tours.

We have also undertaken a participatory research that included pastoralists. We have consulted with the Director of Veterinary Services. We went to the extent of summoning the Kenya Revenue Authority (KRA) to tell us about this trade. People think about contraband business in terms of drugs only and in terms of arms but, there is huge contraband dealing in terms of stolen animals. The worst thing is that we are all eating those stolen animals and we do not know.

This Bill is the first step to cure this menace of cattle rustling amongst pastoral communities and achieving harmony. For a long time, we have had a lacuna in the law. Once we pass these amendments, the lacuna will no longer exist. We can now modernise our approach to

dealing with this as a serious crime and as a serious offence. But, I would like to take this opportunity, as I close and move, to really thank Members from the North Rift counties. In 2014, they were led by the Deputy President of the Republic of Kenya, His Excellency William Ruto, who went on a tour of all these counties with these Members and preached peace. The Members of these counties were told that people in other parts of Kenya are engaging in stock exchange yet they are left in stock theft; they need to transition from stock theft to the stock exchange in Nairobi.

I would also like to really thank the National Cohesion and Integration Commission (NCIC) that is chaired by former Speaker, Hon. Francis Xavier Kaparo. Hon. Kaparo has shown a level of strength that was not expected from a man of his age. He has gone to each and every one of these villages I have mentioned and even more than we have. He has been reporting to our Committee that the law is not allowing him to do his work. This amendment is one step towards giving him the teeth to do his work to stop this untold suffering.

I want to also recognise and thank a former member of this Committee who happens to be the Cabinet Secretary (CS) for Interior and Coordination of National Government, Hon. Joseph Nkaissery. Maj-Gen. Joseph Nkaissery has actually supported this work. He has also shown that he has the time and energy. Understanding the issues, having been a member of this Committee, he has been able to ensure that we do not have as many cases of deaths and killings in the North Rift as they were before. He has led a process of disarmament in the North Rift that is starting to bear fruit. It is beginning to bear fruit. Of course, there are certain things we are proposing that need to be done.

For example, I remember we were sitting with the young people in Turkwel, the border between Pokot and Turkana. Those young men told us: "We are ready to give up our arms. In fact, we have started doing peace missions together with the Turkanas and we could never see eye to eye. But when you do recruitment of police or the army or the National Youth Service, you are getting soft people. Recruit us. In fact, when you recruit us, you do not need to train us. We already know how to use these guns. Just tell us that these are the criminals and we will get them. Tell us where the *Al Shabaab* are and we will get them." So we are appealing to the Ministry of Interior and Coordination of National Government as well as the Kenya Defence Forces (KDF) to do some preferential recruitment of young people from these areas where cattle rustling has been happening because they are telling us that: "Yes, we will stop doing this but, where else are we going to earn a living from? People are paying us to bring these cows to them. We are not taking the cows." So, we need to find a way, even for the NYS to go there and establish itself in these cattle rustling prone areas.

With those many remarks, I am glad I have seen my colleague, Hon. Sara Korere. They are dealing with these issues. Yesterday they were in the office of the Cabinet Secretary dealing with these issues. We heard what happened in that office and it is unfortunate that a fellow colleague in the office that is supposed to provide security, the office that is supposed to protect Kenyans, a fellow colleague who is a man, attacked Hon. Sara Korere in the office of the Cabinet Secretary of Interior and Coordination of National Government when we are dealing with the Bills around cattle rustling.

So, we are telling that Member, if he wants to look for someone to fight, Hon. Sakaja has volunteered. I am a man. We can deal as men. I am sure Hon. Maanzo is also ready; Hon. Gikaria is also ready; and Hon. Savula, who comes from my home in *Ingo* and has eaten *Obusuma* and *Ingokho*, is ready. We will not allow female Members to be intimidated. We will not allow female Members to be threatened because of politics. We will defend them. In as much

as we are dealing with the global issues of security, this issue must show us the resolve of the Government of Hon. Nkaissery and of the Ministry of Interior and Coordination of National Government in putting the Member who perpetrated these crimes under the law. He must answer for what he did.

With those many remarks, I wish to move. Thanks very much.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Who is seconding you, Hon. Sakaja?

Hon. Sakaja: It is Hon. Abdullswamad.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Abdullswamad.

Hon. Nassir: Thank you, Hon. Temporary Deputy Speaker.

I wish to second this amendment of the Bill. Even though I am not a member of this Committee, I have gone through it. As Hon. Sakaja rightfully put it, emphasis is on Clause 278(1) where it says:

“Any person who has stock in his possession which may reasonably be suspected of being stolen or unlawfully obtained shall, if he fails to prove to the satisfaction of the court that he came by the stock lawfully, be guilty of an offence and is liable on conviction to the penalties prescribed for theft.” He will be liable, on conviction, to imprisonment for a term of not less than 15 years. That is excellent. However, I will indulge my colleagues to relook at 278(2)(b) where it says: “If a police officer who, being aware that an offence of cattle rustling intends to be, in the process of being or has been committed, fails to take necessary steps...” That offence is only liable for a conviction to imprisonment for a term of not less than 10 years whereby if a person steals – a thief is a thief – he is given a minimum of 15 years sentence but, if a person aids, especially that person being a police officer, he is only being given 10 years. So, I would look at it to be reversed that if a police officer is aiding in such a crime, it becomes a problem.

Secondly, 8(a) says that a person shall not move cattle from one county to another except in accordance with a permit. I would like it to be amended to read “a person shall not move cattle or livestock...” The definition of “cattle” has been very clear but the definition of “livestock” is different. It should include that “...move cattle or livestock”.

Where I come from in Mombasa, we have a lot of stray cattle. By definition, “cattle” include cows, swine, sheep, goats, captive or wild animals. The definition of “livestock” is “the male or female or young one of a horse, mare, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe” whether goat or pig.

On a light note, when I was still studying and hoping to become a Member of Parliament there is a lesson that I learnt. Hon. Sakaja and I went to very good schools. We went to Lenana School. One of the things that we learnt is that during the colonial times, the City Council of Nairobi had passed an Act which outlawed the rearing of chicken in residential areas. When that was passed, people started bringing in cows and goats into residential areas. So, the definition of “chicken” had to be changed to mean and include goats, cows and other like animals. So, this is an excellent Bill. I would like to congratulate the Committee led by Hon. Sakaja. There are those few amendments I have cited and I hope that the Committee will look into them. Some of them have typographical errors that need to be looked at so that we do not have issues of law being read badly. I still insist that a police officer who aids and abets cattle rustling should be subjected to more punitive measures than the person who is stealing the cattle. There is also the definition of the words “cattle and livestock”. The Bill also talks of one getting a special permit to transfer cattle from one county to another. A person who fails to comply with the conditions stipulated

then should have punitive action taken against them. We need to have a clause on that inserted in this Bill.

I beg to second.

(Question proposed)

Let us have Hon. Gikaria.

Hon. Gikaria: Thank you, Hon. Deputy Speaker for giving me this opportunity to support this Penal Code (Amendment) Bill, which has been brought by our able Chairman. It is unfortunate that we keep on legislating on issues that are supposed to have been addressed a long time ago. I am a member of the Departmental Committee on Administration and National Security whose Chairman is Hon. Asman Kamama. The petitions we get about cattle rustling are in large numbers. This is a legislation that is going to address this mess. We have been grappling with this problem of cattle rustling for a long time now. We who come from counties that do not experience that challenge really try to understand what cattle rustling is all about and the evil things it brings with it.

Hon. Kamama comes from Tiaty, a place where this business has taken root. We have so many hon. Members here, including Hon. Moroto and Hon. Lentoimaga who come from areas where cattle rustling is a problem. I thank the Committee for coming up with amendments to the Penal Code that are going to address this issue. They have come up with offenses which will address the issue of magistrates or judges being limited in terms of giving sentence. It has now been proposed that the new law should talk of a minimum sentence of 15 years. This is so punitive and is going to stop the vice. It is not only talking about cattle movement, but also the product. As the Chairman stated, it boggles the mind how a herd of cattle in their thousands can disappear all of sudden in thin air. When you ask the police to track them, they say they are unable to do so. It only means the cattle have been diverted somewhere for slaughtering and the meat is transferred to markets here in Nairobi or elsewhere. Some of it is even exported. It is sad that every time this happens, life is lost.

The other day we were reading in the newspapers about what is happening along the border of Samburu and Turkana. It is quite saddening. We have, time and again, as a Committee, summoned the Cabinet Secretary (CS) for Interior and Coordination of National Government to come and tell us what he has done regarding the National Police Reserve (NPR). When we visited Turkana and Pokot on matters to do with NPR, what we saw and heard saddened us. We have passed legislation here and even done amendments to existing laws. We have also requested the Ministry to employ more personnel in the NPR so that they can address some of these issues. Even the National Police Service itself cannot address this issue. This is because when they go to a particular terrain, they cannot even go beyond a kilometer. The NPR in Turkana and Pokot counties asked us to give them uniform and a small token and they would stop the mess that is cattle rustling.

Unfortunately, the governors in these counties have also been part and parcel of cattle rustling. The NPR admitted that they can work together because it would not matter to them whether one was a Pokot or Turkana. They said that they know their people better. In Turkana, the Governor wanted to take over the NPR. He said that he has money to pay them. However, the Ministry of Interior and Coordination of National Government refused because that would have brought a huge conflict of interest. I thank the Ministry for stepping in.

As has been said, the issuance of permits will go a long way in addressing the issue of movement of cattle. I listened keenly to the Chairman when he was talking about the issue of permits. He talked about the number of cattle and how they are supposed to be moved, but he did not talk about the carcass. Should we not have a condition on slaughtered animals, that is, the carcasses? I think it is a condition that we should include. More so, if you participate in cattle rustling and end up killing a neighbour, or a person from another county, you are supposed to be charged with murder. You are not supposed to be handled like someone who did nothing. The practice of elders meeting and resolving disputes through exchange of goats, cows and gourds should not be allowed anymore in this era. Elders just sit and decide that they are in a position to resolve such disputes yet they do not do enough justice to the affected persons. As the Committee Chair said, lives have been lost. What happens to the dependants of the people who have been killed? These are matters we need to look into. I concur that we should look at the Bill itself in detail with a view to introduce amendments where necessary.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now want to give the Floor to the Member for Migori County, Hon. Dennitah Ghati.

Hon. (Ms.) Ghati: Thank you very much Hon. Temporary Deputy Speaker for giving me the opportunity to talk about cattle rustling. I support the Penal Code (Amendment) Bill and thank the Joint Committee on National Cohesion and Equal Opportunity. The attempt to comprehensively deal with the issue of cattle rustling is long overdue. Cattle rustling should be considered a national disaster.

When we talk about cattle rustling, some people think that it only happens in Marsabit and in the North Rift. They do not understand that any community that has cattle, goats, sheep and chicken also faces this problem. The Kuria Community – to which I belong – has for a long time been engaged in cattle rustling with their Maasai neighbours. You can ask the Member for Emurua Dikirr. Every now and then, elders from my community sit down with elders from the Maasai community to broker peace deals and negotiate on how to take care of the people and the livestock of the two communities, and how to coexist.

Young people and women in Kurialand cannot sleep in their homes as we speak. Right now they are carrying their luggage. Young people armed with machetes, *rungus* and illegal firearms are responsible for providing security. You see young people walking around the borders of Masangura and Gwitembe. People in Makararagwe, Ikwabhe-re-kuria and Kugitimo in Kuria East have not known peace. Members of the Kuria Community living along the Kuria/Maasai border do not sleep. That is why our young people are always at loggerheads with members of the Maasai Community. We have not known peace for a long time.

I now want to delve on the land issue. My people have no means of livelihood. We need to seriously look at that issue. I am very happy because of the punishment that has been introduced on cattle theft. Fifteen years imprisonment is a lenient sentence. Cattle raiders are people who destroy other people's livelihoods. They rape women and girls, maim people, destroy whatever they come across and do all manner of bad things to their innocent victims. Fifteen years imprisonment is good for cattle rustlers.

The second issue I am happy about the Penal Code (Amendment) Bill is the way it seeks to address the issue of laxity among law enforcers. Some police officers overstay in areas affected by cattle rustling until they become acclimatised to the cultures of the local communities. They become so comfortable until they get used to those cultures. These are the same police officers who are used to hide cattle rustlers. They know the perpetrators of the vice.

At times some police officers participate in cattle rustling. It is good that this Bill recognises this issue and proposes that any police officer who during his time of duty becomes aware of an impending cattle rustling attack but fails to act should be liable to imprisonment for 10 years. Such an officer should be imprisoned for more than 15 years. Some police officers come from areas where there is no cattle rustling but once they are posted to areas where cattle rustling is practised; they get involved because they have the machines. At times they are used by cattle rustlers for protection. Police officers should not stay in a community like that for over three years. We should even reduce the years. A police officer cannot go to a community and overstay. They need to be transferred very regularly because when they overstay they become culprits.

I know that my people are very happy about this Bill. I am sure that they will happily support it. We have women who have been raped, bread winners who have died and young people who do not go to school because there is tension in the border areas. Children in Kugitimo, in Kuria East – which I represent here – do not go to school because school premises are used by raiders as their hideouts. There are so many ills that happen within the community. What happened to the issue of police reservists? I want to bring the issue of police reservist to this House again. A lot of our young people have completed college and university education, and who just loiter in the streets, can serve well as police reservists. They should be trained on how to use guns correctly to provide security.

We urge that peace is restored in our borders. As I speak, there is an area in Kuria East Constituency called Ikwabhe-re-kuria. That is an area where people do not sleep because of cattle rustling. I want this House to know that the cattle rustling menace does not just affect the Pokot, the Njemps and the people of the North Eastern Region. The other day we saw a Member of Parliament mobilising his community to go and look for cattle in the Kuria Community. In Migori County, where I come from, we have all these communities. Some of us, like the Kuria Community, are pastoralists. Others are fishermen. We are looking for ways of coexisting. If, for example, someone from Migori Town goes to Isebania and steals cattle, that person needs to be held responsible because he will have destroyed the livelihood of the community he stole from. We need to seriously look at the issues of police transfers. How long should a police officer serve in a community or in an area where he is posted before he gets so comfortable to start engaging in cattle rustling? Those men have to be transferred every three years. The whole issue of fine or 15 years imprisonment for cattle rustlers should not be compromised.

That is the only way we can ensure that this legislation becomes an effective law. It is a good step. It is something that is going to happen. Some of us have seen it all. Even my own mother has been a victim of cattle rustling. There was a time when she lost 19 cows. She is a pastoralist. When all her cows were stolen, she cried. She is still crying. She still recalls what happened. She has not forgotten. Cattle rustling is a serious source of pain. It needs to be given the attention it deserves.

With those few comments, I commend the Joint Committee. We need to look at the issue of law enforcement so as to avoid the issue of proliferation of illegal firearms amongst our people. We have so many illegal firearms being used in our communities because people are looking for ways of protecting themselves because the law is not protecting them against cattle rustling. So, we need to look at these issues very seriously.

Cattle rustling is as serious as any other crime in this country. That is why I feel very passionate about this amendment Bill. Its passage will save my people from rape and being maimed. Women in my constituency will be able to sleep tonight if this Bill becomes law.

I fully support this amendment Bill because we are also looking for ways of promoting peace within our borders. My Kuria community needs to be protected from the Maasai Community. The Maasai also need to be protected from the Kuria. We need to coexist in harmony. That can only be achieved if we have a law that criminalises cattle rustling. That can only be achieved if we have a law that also criminalises cattle rustling. Therefore, as soon as yesterday, I support the Penal Code (Amendment) Bill and when it comes again, I will support it.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): This is a very emotive subject. We only have half an hour. If you can be kind to each other, you do not need to take 10 minutes. You can even take three or five minutes so that as many people as possible can speak.

I now want to give the Floor to the Member for Turkana, Hon. Joyce Akai.

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Speaker. I want to thank the Chairperson of the Committee on National Cohesion and Equal Opportunity and his Committee for coming up with the Penal Code (Amendment) Bill which is responding to the needs of millions of conflict ridden pastoralists who have fallen victim to cattle rustling.

When people hear of cattle rustling, they just think of cattle being stolen. It is much more than that. You cannot compare it to the theft of millions of shillings from banks. It is about people's lives. It is about loss of livestock, which is a livelihood. It is about loss of food security. It is about property, infrastructure, schools and, water facilities which have been burnt. It is about abductions, kidnapping and rape. I do not know whether we need to capture all that in the definition. Cattle rustling does not include all that but that is what usually takes place when there is cattle rustling. It is about displacement of thousands of people who lose their homes. It is about displacement of schools, institutions of learning and other institutions of public services. It is about destitution and poverty. This is what has exacerbated poverty in this country. All these are synonymous with those communities that have engaged in cattle rustling. Those communities have no idea what is going on in the rest of Kenya because they are preoccupied with how they should protect themselves and acquire cattle for social purposes and, for feeding, at any cost, including loss of lives.

I am happy that the definitions provided in this Bill will help criminalise this practice and subject the culprits to the required penalties. I am happy about the 15 year prison sentence. It should be more. That is adequate enough to cause deterrence and even punish the people. The Bill takes care of those who handle stolen livestock. This is where politicians and leaders who incite and partake in the business of selling stolen livestock and benefit come in. This is where security officers who take sides while handling those issues come in.

I would be interested to see what the Bill says about the reformed warriors because the Jubilee Government has finally secured peace between the Turkana and Pokot. For the last two years, we have been able to sleep peacefully. For the last two years, the Turkana and Pokot women have been able to get babies. Initially, their husbands were in the bush all their lives and they are now living happy family lives thanks to the Jubilee Government. This Bill will just compound what the Government has already started. I hope it will happen with the other communities which have not attained peace. This includes the Samburu, the people in Laikipia and Isiolo.

People have used cattle rustling as a disguise to promote tribalism, nepotism, torture and segregation in counties where different communities live together. Those are things we need to look at. As a victim of cattle rustling and conflict in the North Rift, I know what it means to thank the Government for the peace that is now prevailing. I have personally lost close to 1,000

goats to the Pokot. I have not forgotten that. Given that this Bill seeks to bring unity and harmony, I think I will finally forget. I do not know what we will do with the cross border cattle rustling and whether an extension of this Bill should go to the East African Legislative Assembly (EALA). For instance, in Todonyang' in Turkana North, the Member of Parliament (MP) has been there for a whole month dealing with the issue of the Merille from Ethiopia and in Kibish the issue of the Dong'iro in Sudan and Uganda. The Bill should also be extended to the rest of East Africa.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Makueni, Hon. Dan Maanzo. Please, be kind to each other.

Hon. Maanzo: Thank you, Hon. Temporary Deputy Speaker. I want to be very brief. I want to give it a lawyer's touch. This is long overdue. When dealing with capital offences, cattle rustling has not been one. At the same time, I encourage my brother, the owner of the Bill, Hon. Sakaja, that we still need to do more at the Third Reading Stage so that these offences come out clearly. We have left out the issue of retribution. If somebody had cattle stolen and now it has been recovered---You can hear the hon. Member lost 1,000 goats. When the cattle or the livestock is recovered, we need to find a way to return the livestock. We need to find a way in this law of returning the recovered animals to the owners.

There is the issue of marking. I also like the fact that you have brought in futuristic thinking of electronic equipment. We are thinking of going the way of Botswana of having our animals traced whenever they get lost. That has also been introduced in this Bill. I do not think the issue of theft, murder, robbery and rape have come out, though they appear in other sections of the Penal Code. We need to marry them again at the Third Reading Stage so that we get the offences right. When somebody engages in cattle rustling, they have an intention. They know by their act that somebody is likely to die. Therefore, it cannot be manslaughter. It is outright murder. That needs to come out really well. We need to properly associate it with cattle rustling and movement of livestock. The issue of theft has now been married well so that a chicken thief and a cow thief both get 15 years. That has come out very well.

We also need to think of the cross border cattle rustling. This is with regard to the issue of Interpol and relationships with other countries. There are countries within East African Community (EAC) and those without such as Somalia, Ethiopia and South Sudan, although, South Sudan will join the EAC. During the Third Reading, I want us to come up with suggestions that make this law better. Otherwise, I congratulate Hon. Sakaja for it. This is a big move. Nobody has tried to amend the Penal Code for a long time. It has been eroded by many other Acts but this is a really a good move. I congratulate you. We will support you during the Third Reading Stage.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Member for being kind. I now want to give the Floor to the Member for Lugari, Hon. Ayub Savula.

Hon. Angatia: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this important Bill. First and foremost, I would like to congratulate the Committee for having done a good job.

Secondly, the Bill is timely. In my constituency, we do not have cattle rustling but there are a few cases of cattle theft. Using the National Government Constituencies Development Fund (NGCDF), I have invested in police dogs. I will commission a police unit at Lumakanda that will help me deal with this small menace in my constituency. I have also invested in a police section

whereby we are using the community policing unit to assist us to identify the suspects in the society and hand them over to the police.

This Bill is so important that it will eliminate the cattle rustling menace that has been experienced in areas like West Pokot, Baringo and Turkana. The characteristics of a suspect involved in robbery with violence are exactly similar to the characteristics of a cattle rustler who has shot and killed victims in the process of executing the criminal act. Therefore, I would urge the Committee to move some amendments and ensure that where victims lose lives and stock, there is a section in this Penal Code that treats the matter as robbery with violence and attracts stiffer penalty than the sentence for a term of not less than 15 years. We should not be lenient to these people. In this time and era, a whole Deputy President of the Republic of Kenya moving in villages, chairing security meetings involving cattle rustlers? It is a shame for this country. We need to put in place stringent laws that will end this menace once and for all.

Secondly, I will also request that we move further and involve fully the county governments in taking stock of how many cattle are in particular homesteads so that when you acquire more, you are liable to explain to the county government where you got the extra stock from. The issue of veterinary services is devolved.

Lastly, I also condemn the incident that happened at Harambee House where a female Member of Parliament was assaulted by a man. He should face us men, and not deal with small ladies in this House. They are our girls.

(Applause)

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I want to give the Floor to the Member for Kapenguria, as I urge you again to be kind to each other. You can even do three minutes.

Hon. Chumel: Thank you, Hon. Temporary Deputy Speaker. I will be brief because I also want to hear from my colleagues on how we can improve handling of this menace. I want to thank the Committee although at one time we had to exchange with the Chair when he went to my constituency without informing me. I know they are doing good things. But because it is not only to find how cattle rustling is being carried out, you need also to know the cause. Why are these people doing this? Nobody would wish to go and steal from a neighbour. Nobody would wish to kill a neighbour. These people know each other; they are married. If you talk of the Maasai, Kuria, Pokot, Turkana and the Sebei of Uganda and Trans-Nzoia, these are people who know each other. But there are circumstances which force them to do that. If we are only talking about passing these laws without seeing how to cure the problem, we will be doing nothing.

When Kenyatta was there, he carried heavy operations in these areas using the military. When Moi came in for 24 years, he did the same thing. In fact, the worst one was the 1984 operation where the person who was leading is the current CS for Interior and Coordination of National Government. But nothing good came out of it. Cattle rustling continued; killings continued. But I want to thank the immediate former President, Hon. Kibaki. Before that, Moi used to use 'nyundo' operation where you just conquer once and kill. But Kibaki came with the '*Dumisha Amani Operation*'. When he was doing this, he initiated some programmes like health facilities where the army which used to hit us hard had to come and treat people. They also had to build roads and health centres and consider getting water for animals and human beings. And this problem went down. Like now when you talk of Pokot and Turkana, there is nothing.

Let us look at the root cause. The Sessional Paper No. 10 of 1965 is where marginalisation started. Members who were sitting the way we are sitting decided that areas that could not produce coffee and tea would not be given finances to develop them. You have to take that path. Most of these areas where you hear cattle rustling going on are the people who suffered, like West Pokot was a closed district during the colonial time and when we got Independence it continued up to when Kibaki came in. That is when we saw life. And the current group, the Jubilee Government, we are now seeing tarmac for the first time. We are seeing development. There is even power coming in now.

The Committee is talking of licences. You are now enriching police officers on these road blocks. You are enriching livestock officers. These are the people who give out licences. During the Committee of the whole House stage, we will come in and support. Otherwise, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): The Member for Njoro, Hon. Kiuna.

Hon. J.K. Ng'ang'a: Thank you, Hon. Temporary Deputy Speaker. I support the Bill. As I support it, let us not just dwell on those things which people have repeatedly said. Let us try and look at the root cause of this menace.

I hope you will agree with me that other than the culture, this is a cartel, a *mafia* of billions of shillings which is normally transacted. Let us not pretend, especially those people who practise it, either from northern Kenya, Pokot or Turkana. It is the leaders themselves who encourage the communities. It is the high time, if we want to eradicate this issue once and for all, we called a spade a spade. A person who is caught or suspected to be aiding or funding these youth must be held responsible and face the full force of the law. Other than that, there are others who normally practise it and at the end of it they say it is business as usual. I know of somebody, I do not want to mention him by name, who says, "*Ni mboga ya watoto.*" That is what they normally say. This issue must come to an end by making sure that those who encourage their people are held responsible. I support the Bill.

As I wind up, I would like to take this opportunity to condemn yesterday's incident where a very innocent, beautiful young girl, our fellow colleague, was molested and beaten by a man calling himself a *Moran*. It is an outdated thing. We should condemn it because it shows a lot of disrespect to our honourable Members of the other sex. It is very shameful. If you are a total man, as you regard yourself, come and face *Mheshimiwa* Kiuna.

Thank you. I support the Bill.

(Applause)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Igembe North.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. The menace of cattle rustling is a serious crime, a crime against the livelihoods and cash of the people. I have witnessed in my constituency people who were rich and had invested in livestock being made poor within a day. By their livestock being taken away, they have ended up being sick and some dying because of depression because they have lost all they had. So, making the penalty huge is good.

At the same time, it is also good to realise that the business of cattle rustling has changed and it is now a multimillion business where people involved in it use lorries and other small motor vehicles to transport the stolen livestock.

The other thing accompanying this Bill that I support is imposing penalties for those who are involved in its products and transportation. It is also important, but that can come in another way where the livelihoods of the people involved in cattle rustling are also changed because that can also change the way of living of the people. As it is, we should not take cattle rustling business as usual where people go and negotiate with the people who steal. By negotiating, it makes this criminal activity legitimate when elders go and negotiate with the criminals rather than them being in jail.

I want to end there. I would also like to condemn what happened yesterday. Any man who beats a woman is a coward. You should not beat a woman. It is cowardice. It is not the way to go. Somebody who feels man enough should come and face a man like M' eruaki and he will know the substance I am made of rather than going for soft ladies who are trying to also express themselves.

Thank you, Hon. Temporary Deputy Speaker for the opportunity.

The Temporary Deputy Speaker (Ms.) Shebesh: I now give the Floor to the Nominated Member, Sarah Korere.

Hon. (Ms.) Korere: Thank you Hon. Temporary Deputy Speaker. I also want at the outset to thank the initiator of this Bill. This is a Bill that is timely. In my understanding, I know that cattle rustling is a primitive out-dated culture of the yesteryears. But what we are experiencing in this country is not just culture as everybody wants us to believe. Cattle rustling is a more technical and organised thuggery. In my view, this Bill is very timely because for the last two years in the constituency where I come from, I have witnessed families becoming poor as a result of cattle rustling. I find it very ridiculous when somebody asks old men to go and negotiate with these robbers. If somebody can shoot, kill and drive away your livestock, that is robbery with violence and it should be treated exactly as such.

In the last two weeks in Rumuruti where I come from, we have witnessed losses of more than 15 lives, more than 800 herds of cattle stolen, and more than 1,000 goats and sheep stolen. It is very sad that in this era and time, some of us cannot condemn cattle rustling but instead use it for sideshows, to accuse one community against another and to champion the status quo.

What has cost me a few slaps and some kicks is my stand against cattle rustling which I will still stand against. I will speak against it and I will continue to say on the Floor of this House that I have lived in Laikipia for 40 years and it has been known to be the home of peace. My stand on disarmament in Laikipia which is causing threats even to my life remains the same. I still urge the Cabinet Secretary (CS) for Interior and Coordination of National Government to go on with disarmament in Laikipia because we want the illegal firearms to be flashed out of Laikipia and we want the thugs who have caused so much agony to the residents of Laikipia to be flashed out.

Finally, as I support this Bill, I also want to appreciate my colleagues both male and female in this House who have stood with me. I have suffered in silence for the last so many years. But, I reiterate that this is not going to stop or intimidate me. My strength and agitation to go for the Laikipia North seat is as strong as ever. No amount of slaps, kicks or name calling will stop me. As I urge the CS for Interior and Coordination of National Government and concerned authorities to take action on this brother who did this barbaric act to me, I also pray that God will give him the grace to search his soul and know that what he has done is cowardly and not manly.

I support.

The Temporary Deputy Speaker (Ms.) Shebesh): I now give the Floor to Hon. Member for Nyaribari Chache, Hon. Tong'i. Hon. Tong'i, if you could do two minutes, Hon. Cheptumo will also have two.

Hon. Tong'i: Thank you Hon. Temporary Deputy Speaker for the opportunity to speak to this Penal Code (Amendment) Bill which has come in aptly. I come from a region where, for a long time, we did not know the challenges of cattle rustling until recently when we experienced some challenges with our neighbours.

Before this happened a couple of weeks ago, I used to imagine that cattle rustling was all about stealing cows and goats. But, I have come to discover that it is not only about stealing cows but that it also affects education, families being broken and politics. All these things are affected when animals are stolen by neighbours. As we speak now, students are not going to school and some have not even sat for their exams just because of cattle rustling which is not a very familiar terminology in my region. It is not a common experience where I come from. We are disappointed it has happened, but it a good experience that now when I will hear my colleagues talking about animals getting stolen, I will now fully understand what it means. Schools and other many social amenities have been affected.

We thank President Uhuru Muigai and his deputy for the support they have given us. They gave us policemen who have managed to calm down the situation. It is not as bad as it was then. Recommendations in this Bill will go a long way to discourage this kind of culture which is not beneficial to the community and does not help anybody because our people are hurting and hurting badly for things which can be controlled.

In the interest of time, I also take this opportunity to agree with my colleagues who have spoken against beating of women because it a barbaric culture. It has been overtaken by events. It is a shame that we are here as Members of Parliament who society looks up to for guidance and leadership yet we are accused of beating ladies. It is unfair and should never happen. I take this opportunity to say that, as a man, I am ashamed of what we do sometimes. That is hitting below the belt and not necessary. They should have agreed on a better way of resolving whatever differences they had just as we have agreed with our neighbours that whenever there will be an opportunity - we hope it does not happen again - of cows getting stolen from either party, we will never resolve it by fighting back or stealing cows to revenge because we have discovered that it is not a sure way of resolving or making peace with neighbours. We need each other. We know that we are stronger when we are together as a team.

With those many remarks, I support these amendments to the Penal Code.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, the debate on this Bill will continue when it comes back on the Order Paper.

I will give Hon. Cheptumo a minute to contribute.

Hon. Cheptumo: Thank you, Hon. Temporary Deputy Speaker. I support this Bill.

A month ago, this House passed a Motion I had moved. We declared cattle rustling a national disaster. I further urged the Government to set up a special fund to compensate victims of cattle rustling. This menace is a big challenge to the communities where cattle rustling is rampant. In 1977, I narrowly survived a bullet from raiders who had come to our compound. They took away all our livestock and we were left poor.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Cheptumo, you will have your balance of nine minutes when this item comes back on the Order Paper. Make sure that you follow up so that you are here to utilise your nine minutes.

ADJOURNMENT

Hon. Members, the time being 6.30 pm, this House stands adjourned until tomorrow Wednesday, 23rd November, 2016 at 9.30 a.m.

The House rose at 6.30 p.m.