COMMITTEE OF THE WHOLE HOUSE

Date 3rd December 2013
Member of Parliament: Hon. Amina Abdalla
Contribution She Made On: The Wildlife Conservation and Management Bill

She moved the following:

THAT, Clause 3 of the Bill be amended-

a) By deleting the definition of “bio-piracy” and substituting therefor the following definition-

“bio-piracy” refers to the exploration of biological resources without the knowledge and non-coercive prior consent of the owners of the resources and without fair compensation and benefit sharing”

b) By inserting the following new definitions in proper alphabetical sequence-

“bio-prospecting” means the exploration of biodiversity for commercially valuable genetic and biochemical resources”

“biological resources” includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity”;

“biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;

“conservation area” means a tract of land, lake or sea with notable environmental, natural features, biological diversity, cultural heritage, or historical importance that is protected by law against undesirable changes;

“multilateral environmental agreement” means an agreement involving three or more parties regarding sustainable environmental management;

“protected area” means a clearly defined geographical space, recognized, dedicated and managed through legal or other effective means, to achieve long-term conservation of nature with associated ecosystem services and cultural values Ministry;

“national park” means an area of land and or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means.

“national reserve” means an area of community land declared to be a national reserve under this Act or under any other applicable written law.
“marine reserve” means a marine protected area where subsistence fishing is permitted;
“marine park” means area of marine protected area where no fishing, construction work or any disturbance is allowed unless with written permission has been granted by the Director General;
“weapon” means a tool, implement, firearm, ammunition or any item that may be used to injure or kill a wild animal for any reason;
“wildlife conservation area” means a tract of land, lake or sea that is protected by law for purposes of wildlife and biological diversity conservation and may include a national park, national reserve, game reserve or sanctuary.

(a) by deleting the word “Director” and substituting therefor the words “Director General”

(b) by deleting the definition of the word “Wildlife” and substituting therefor the following new definition-

“Wildlife” means any wild and indigenous animal, plant or microorganism or parts thereof within its constituent habitat or ecosystem on land or in water, as well as species that have been introduced into or established in Kenya”.

She pointed out that the main issue is that when they looked at this Bill, they realized that there were many phrases that were being used in the body of the Bill that had not been defined. So, the Committee was proposing that the Bill be amended by defining all those phrases.

She also proposed to substitute the title “Director of the Service” with “Director- General”. That is a consequential amendment to our amendment. Finally, we propose to delete the definition of “wildlife” that is in the Bill and replace it with the one which is on the Order Paper. So, essentially, the amendment intends to bring on board terms that are used in the body of the Bill that were not initially defined.

She proposed to move:-

THAT, Clause 5 be deleted as Clause 5 purports to establish a conservation directorate at the State Department for the time being responsible for wildlife. The Committee felt that this was an over-legislation and unnecessary clause because the establishment of a directorate is an administrative function that should not be put in a legislation that would require changes should a subsequent Government wish not to have it as a directorate. So, that is the reason for the deletion.

She also proposed to move:-
THAT, Clause 8 be amended by inserting the following new paragraphs immediately after paragraph (n)-

“(na) identification and advising on user rights to Cabinet Secretary”;

“(nb) granting of permits”;

“(nc) establish forensic labs”;

“(nd) monitoring and compliance of licence terms and conditions”;

She pointed out that Clause 8 stipulates the functions that are given to the Kenya Wildlife Service. The Committee has reorganized the regulatory regime by proposing this Bill. One of the functions that we have given to the KWS is to give advisory opinions to the Cabinet Secretary who would be the chief regulator. So, we are proposing to add new paragraphs in the functions of the KWS that include identification and advise to the Cabinet Secretary, granting permits, establishment of a forensic laboratory, monitoring and compliance of licences terms and conditions to the function of the Service. For the purposes of this amendment, this Bill tries to ensure that the KWS no longer has the regulatory function by giving the regulatory function to the Cabinet Secretary.

Date 3rd December 2013
Member of Parliament: Hon. Joyce Lay
Contribution She Made On: The Wildlife Conservation and Management Bill

She questioned Hon. Mwadime’s amendment that stated “the Board may appoint persons from the communities living in the wildlife areas”. So, the contentious word is “may” and stated that so, the further amendment to his amendment should have been “the board shall appoint persons” to make it mandatory for the Board to appoint persons from the communities living in wildlife areas.

Date 3rd December 2013
Member of Parliament: Hon. Priscilla Nyokabi
Contribution She Made On: The Wildlife Conservation and Management Bill

She noted that on Clause 13(5)(a) that the wardens will have such functions as may be prescribed by rules under this Act. That is fairly questionable drafting and very questionable allocation of functions. Usually, the law would allocate functions on the face of it. The law does not save functions to be provided later. If you are going to appoint people, you appoint them with the function that you want them to serve.
She pointed out that that particular section has a problem and maybe if the Chair could address it, the easiest might be to delete that whole part. Otherwise, if you have not thought of the functions, then you cannot think of the functions after the law has passed. That particular section would have needed to be worded on the face of the law. Those functions would have needed to be here and not to be made later.

Date 4th December 2013  
Member of Parliament: Hon. Gladys Nyasuna  
Contribution She Made On: The National Social Security Fund Bill, 2013

She supported the amendment as proposed by the Chair of the Committee by noting that specifically part as put in the Bill just really clarifies that NSSF is a tripartite Fund and that it is a Fund that has the Government, workers and employers. So, this amendment is driven at having workers and employers participate in the Fund and to be more specific about it and not point out organizations.

She noted that the nominating body will be the most representative employers’ organization and the most representative workers’ organization. This means that this is the body that represents the largest number of workers and the largest number of employers. So, I support and say that we really need to bring in the workers and the employers because they are the ones who contribute to this Fund and the Government manages it. So, the Government also has its appointees.

She also noted that the Government is represented by the Principal Secretary for Finance, the Principal Secretary for Labour and Social Security and the Chair who is appointed by the Cabinet Secretary and other three persons appointed by the Cabinet Secretary.

Date 5th December 2013  
Member of Parliament: Hon. Millie Odhiambo  
Contribution She Made On: The Media Council Bill

She opposed the amendment by hon. Irungu’s by stating that he should have brought it under the Bill that dealt with universities which was passed earlier in the year because it gave that sole responsibility for education and higher institutions to do that.

She supported the amendment on paragraph 18 by stating that if one looked at it in the instance of sexual abuse, the issues of sexual abuse are not entertaining news. They are very traumatic issues. I do not know why you would want the media to highlight a victim of sexual abuse while, indeed, there are laws that provide that protection, like the Sexual Violence Act.
She further stated that if one was giving an umbrella for the media to sometime report even though the Children Act provides against reporting on children especially involved in crime and stated that she did not think it is correct.

Date 5th December 2013
Member of Parliament: Hon. Grace Kiptui
Contribution She Made On: The Media Council Bill

She pointed out that there were times when people who may not necessarily be journalists can do the work of a journalist and gave her example stating that she used to run a legal programme on radio for a long time. What the rule states is that people of that kind should also be regulated; because they are there but added that they should also be responsible or they should follow the rules.

Date 5th December 2013
Member of Parliament: Hon. Gladys Nyasuna Wanga
Contribution She Made On: The Media Council Bill

She questioned the provision that if one anything in the newspaper, including a paid up advertisement they would need permission from someone adding that journalism was a field and journalists were professionals. She also added that the definition in the amendments that have been brought is that a journalist is the only person who is recognized as such by the Council upon fulfillment of a certain criteria but insisted that she did not see why an unqualified person would have business practicing journalism.

She noted that there is space within the field for opinion pieces; which is your opinion and the media house gives you consent to use their space to put your own opinion. That should not necessarily be considered that you are non-qualified journalist. So, I think he has thought in the right direction, but I do not think that the amendment as it is actually addresses the issue that is being thought about.

She pointed out that the issue he is thinking about needs a lot of consultations; I think if we introduce it, we need to do it with the Committee having consulted sufficiently and added that she was a great supporter of self-regulation of the media and that they should allow the Council to define certain standards, so that not everything is written in fine print. That is why I support the definition because we are saying that there is going to be a person recognized by the council and has fulfilled a criteria set by the Council.
Date 5\textsuperscript{th} December 2013  
Member of Parliament: Hon. Millie Odhiambo  
Contribution She Made On: The Insurance (Motor Vehicle Third Party Risks (Amendment) Bill

- She pointed out that what those amendments by the Committee sought to do was, in a very big way, limit the practice in law on issues of insurance as pertains to motor vehicle third party risks. The Chair is aware of what the Constitution provides in the issue of participation.

- She noted that the Law Society of Kenya had not been consulted and it is manifestly wrong that they would be bringing amendments that drastically affect the operation of a profession, without their input and requested that the Members step them down so that they get further consultations over this matter.

- She proposed an amendment to Clause (3B) to delete the words: “any sum or judgment is satisfied by the insurer” which is the last line and instead replace the words “judgment is passed” after the words “enforceable before any”. The proposed amendment is saying that once the court has given you a judgment, the insurer can decide to go against the court judgment. He can go and prove whether your documents are valid after a judgment. So, the insurer is becoming more powerful than the courts. So, that is why I am suggesting an amendment that once the court gives you a decision, the insurer should not interfere. They should only interfere before.

- She opposed the clause on court settlement by stating that whenever the courts make decisions on compensation, they take into account many factors. For instance, if I lose my face it may not amount to much because people think we are ugly as politicians but that is different if a news presenter has a cut on his or her face. However, if you have this which does not take into account such, I oppose and I think this is what I was saying at the beginning, that we needed to have had input by the Law Society of Kenya (LSK). We were asked to declare our interests; I want to declare that I have never practiced. I have never been an ambulance chaser but I am a defender of victims of crime.

- She proposed an amendment to the definition of “judgment”. If you noticed, on Page 615, “judgment” means a determination of the right to compensation and the sums payable taking into consideration the circumstances of the course of action and categories of injuries or disablement as defined in the Schedule to this Act and added that the definition by this Act gives a different meaning to judgment other than the judgment as given by court. So, I would like to propose that you just provide judgment to mean “a determination of the right to compensation and the sums payable.” You then delete every other word after that.
Date 5th December 2013  
Member of Parliament: Hon. Florence Kajuju  
Contribution She Made On: The Insurance (Motor Vehicle Third Party Risks (Amendment) Bill

- She opposed the schedule as presented by the Committee by stating that for the years they have been in practice, judges and magistrates have had the discretion to assess, with the help of doctors, the percentage of any harm suffered by a victim of a road accident and added that one would appreciate that there were different types of injuries that are suffered by victims as a result of a road accident.

- She pointed out that there were permanent injuries; there are minor injuries and there are soft tissue injuries. It is very dangerous if we move as legislators and legislate for the courts in as far as their discretion is concerned and added that it is proper that we leave the determination of the damages to be awarded in as far as injuries are concerned to the courts otherwise, if we move and accept this schedule, we will be making a fatal mistake and really prejudicing the victims.

- She noted that one you may look at number 40 on the schedule, they would find where it reads “General”. It says: “Except where otherwise expressly provided, the following conditions shall apply to all assessments in this schedule;-
  a) Combination of two or more categories of injuries or disablement. Percentage for the most severe or dominant injury”.

Date 5th December 2013  
Member of Parliament: Hon. Zuleikha Juma  
Contribution She Made On: The Insurance (Motor Vehicle Third Party Risks (Amendment) Bill

- She proposed the following amendment:

  “In considering the report pursuant to subsection (4), Parliament shall not interfere with the context, text, form and substance of the report.”

- She pointed out that in 2007/2008 and since independence, the country had gone through many atrocities. Families in this country are mourning. They have not settled. They have not rested their loved ones. Maybe, some of us here have not lost our loved ones in the circumstances that other families have lost their loved ones. Maybe, that is why we can sit here tonight and say that we want to alter the TJRC Report.

- She proposed to move:-
THAT, Clause 4 be deleted and justified it by stating that if they wanted national cohesion and integration to succeed in this country, they cannot allow some of these proposed amendments to pass through. This is why I move that Clause 4 be deleted.
NOTICE OF MOTIONS

Date 3rd December 2013
Member of Parliament: Hon. Jessica Mbalu
Contribution She Made On: Adoption of Report on Amendments To Standing Orders

- She give notice of the following Motion:–
  THAT, this House adopts the Third Report of the Procedure and House Rules Committee on Amendments to the Standing Orders Submitted Pursuant to Standing Order No.262 and laid on the Table of the House on Wednesday, 4th December, 2013.
She supported the Motion by stating that in doing so, she wanted to make two points. One is with regard to the specific amendment that has been brought by the Procedure and House Rules Committee. It is a very welcome amendment because the process of coming up with a Bill and seeing it through the First Reading and the Second Reading is rigorous. It can be very discouraging for one to lose a Bill at the lapse of a parliamentary session, particularly if it is a Private Members’ Bill.

She also stated that secondly, in the process of carrying out a comprehensive review of the Standing Orders, the Committee should also look into the aspect of going digital and added that with the adoption of a digital system, we will reduce the amount of paper that we use, so that we can have a very limited use of paper. We will not be receiving copies of the Order paper on the entrance to this Chamber. We will be walking in with them on our gadgets. Once this happens, we will be looking forward to the Committee adjusting the rules to conform to technology. She added that they will be reviewing the Standing Orders and making recommendations to the Committee to allow a digital system of operation on the Floor of this House. We will be looking at how to deal with situations which require paper and signatures.
MOTION FOR ADJOURNMENT

Date 6th December 2013
Member of Parliament: Hon. Sarah Paulata Korere
Contribution She Made On: Insecurity In Marsabit County

- She stated that it was very sad when Kenyans die and butcher each other as we watch helplessly. Our military and Defence Forces sit in the barracks, go to the messes, take wine and slash grass as if there is nothing else useful they can do in this country.

- She warned Members that the politics of yester years, where leaders incite people to fight, thumb their chests and think that they are more men than others because their clansmen have butchered many people, were gone and it was pathetic and primitive and as a country we cannot stand this in this era.

- She pointed out that two weeks before, a leader from her county paraded her in a meeting of leaders and said that “this is the woman who tells the Government that the warriors have guns and bullets” and added that the fact that she is nominated by the Jubilee Government does not make me any important in the Jubilee.

- She called the attention of the Members to the fact that her life was in danger. We take some of these things for granted. She noted that the animosity we are witnessing around, even if we deploy all the military forces to our villages, is immense. Peace must start with us as individuals. I urge the leaders from the warring communities, especially the pastoralists communities where I come from, that time is up.

- She pointed out that the government spends a lot of resources on this. It is a shame. Our girls were not going to school because every time our leaders stand here, they talk about security. What security? I want to tell these people that our girls need to go to school. We need to have women lawyers from the pastoralist communities. We need to fight the female genital mutilation and early marriages. This security issue is a creation of leaders, and as leaders they need to start making the changes.
REPORT, CONSIDERATION OF REPORT AND READING

Date 4th December 2013
Member of Parliament: Hon. Gladys Wanga
Contribution She Made On: The National Social Security Fund Bill [2nd Reading]

➢ She pointed out Parliament by passing the National Social Security Fund (NSSF) Bill with the amendments will radically improve social security in the country adding that people would start making enhanced contribution to the NSSF, and the enhanced benefits coming back to them.

➢ She further noted that when people retire, they will retire to much better lives. We are going to see an NSSF that is far much strengthened. We look forward to seeing much more accountability at the NSSF in terms of investments of members’ funds and this is the form that we have now given NSSF.

➢ She stated that with that kind of NSSF now, it should not be borrowing externally or even from members of the public for major infrastructural projects. The NSSF should now be able to fund a lot of infrastructural programmes for Government so that we have our money well invested, so that when members retire, they have a much better retirement.

Date 4th December 2013
Member of Parliament: Hon. Tiya Galgalo Ali
Contribution She Made On: The National Social Security Fund Bill

➢ She supported the Bill by stating that Members had already talked about the importance of this Bill, which will transform this country; it will give us the motivation to save for our working and non-working members out there. The Bill, if passed, will give this country a lot of resources. As I have already said, the Government will not borrow money from other countries.

➢ She further stated that Parliament had looked at all the dimensions of this Bill including the issue of the Board of Trustees and membership and have ensured that we have put enough measures in place to ensure that we do not give all the powers to particular individuals; at least we will have checks and balances.

➢ She called upon her fellow Hon. Members to support this Bill because it will transform the whole country. I am sure quite a number of us are dealing with issues of social security in our respective counties. We are taking care of old people who have been working. For example, if this Bill is passed, then we will have no problem in terms of hon. Members chasing terminal benefits for their constituents.
She pointed out that before the Committee’s report what has come out is clearly controversial. There are proposed amendments to the NGO sector, gender balance in the appointment of the Inspector-General (IG) and his deputies. Another controversy is about the SRC. I will be interested to see the proposals of the Committee. It was good to hear the hon. Member who has spoken before me speak about the good things in this miscellaneous amendments Bill.

She further pointed out that there were controversial proposals, but we must always be able to recognize those that are not, and those that are helpful. I want to be one of those who want to go on record---- I have already given my opinion to the Leader of the Majority Party, who moved these amendments. It is that for as long as you keep on clawing back at the gains that women in this country have fought for, for years, we will not be party to supporting anything that is brought here in the name of doing away with the gender balance in the appointment of the IG and his deputies.

She noted that as they debated, the deputy of the IG is Lady Grace Kaindi and added that it is obvious that by bringing this amendment you are saying that either you have no confidence in the leadership of Lady Kaindi, or that there are no other women who can do the kind of work she has done. It is good to note that during the interviews for the IG, gender balance was observed. The person who became second in position at the interviews was a woman.

She further noted that women are always discriminated against either because of their gender, where they got married or how they dress. The lady who was in second position hails from the Kalenjin Community; she could not be given the position because Mr. Kimaiyo, the IG, is also from the same community. We need to be fair on the basis of merit. If there is a female police officer who can rise to the position of the IG or deputy IG, then she should not be dropped in favour of a man, if everything is about community balancing. Once in a while, community balance can also involve women.

She stated that today, you suggest that you want to take away that particular provision because we have no women police officers qualified; this would be a shame in this country. I have mentioned a few proposed amendments and there are many more. I just want to put it on record that unless that amendment is withdrawn by the Leader of Majority Party, we will be saying that we have no confidence in these amendments and their sincerity. We cannot claw back at gains that have been made over the years by women in this country. I will support this Bill only if the Leader of Majority Party withdraws this draconian amendment.
She raised a few issues that she had seen in this Statute Law (Miscellaneous Amendment) Bill by stating that she had seen the National Honours Act has proposed amendments but even before then, may I say that it is very disappointing how some men find themselves on the national honours for commendation by this country or the Head of State. This is because we still continue to see people topping that list but they do not find themselves on the final list. Even as we seek to make amendments on this, we should really think, as a country, who should find themselves on that list.

She noted that Section 6 of that Act should be amended because we have Section 6(2) which establishes the Parliamentary Honours Advisory Committee which is to be chaired by the National Assembly Speaker and the Speaker of the Senate. This is how we come up with legislation that continues to perpetuate the fights and conflicts that we have between the Senate and the National Assembly. This is because if that Committee will be chaired by the National Assembly Speaker and the Speaker of the Senate, who is actually chairing that Advisory Committee--- We should either say that one of them is assisting the other.

She pointed that in accordance to the precedence the National Assembly Speaker should chair that Advisory Committee, assisted or deputized by the Speaker of the Senate. I want to add my voice to those who have raised issues on the amendment to the National Police Service Act of 2011, No.11(A). The proposal to amend Section 14(b) of that Act is extremely annoying and unacceptable.

She further pointed out that the proposed Section 14(b) says that in the entire recruitment and appointment process of the Inspector-General and the Deputy Inspector-General, the Commission, Parliament and the President as the case may be shall ensure that, at all times, one of the three positions of the Inspector-General and the Deputy Inspector-General is of the opposite gender and questioned the value of Article 27(7)(8) of the Constitution based on the arguments that had been brought out.