

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 23rd August, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

Mr. Speaker: Hon. Members, I have three communications to make this afternoon.

WELCOME TO DELEGATION FROM HOUSE OF REPRESENTATIVES OF ZANZIBAR

First, I want to introduce to you and welcome a delegation of Members of Parliament from the House of Representatives of Zanzibar, who are seated at the Speaker's Row. They are as follows:-

- | | | |
|--------------------------------|---|---|
| 1. Hon. Ali Abdalla Ali | - | Deputy Speaker and
Leader of the Delegation. |
| 2. Hon. Osman Masoud Osman | - | Attorney-General. |
| 3. Hon. Mahomoud Mohammed Musa | - | Chairperson of the House. |
| 4. Hon. Salim Awath Salmin. | | |
| 5. Hon. Asha Bakari Makame. | | |
| 6. Hon. Amina Idd Mabruk. | | |

They are accompanied by Mr. Yahya Khamisi Ahmed – Clerk of the House of Zanzibar. They are on a study visit to our Parliament to enrich their experiences in the administration and financial autonomy of Parliament and the working of the budget circle in our country.

On behalf of the House, and on my own behalf, I wish the delegation a fruitful and happy stay in Kenya. Thank you.

Hon. Members, we will pause for a minute to allow those Members at the door to walk in.

*(Members at the door walked into the Chamber
and took their seats)*

CONDUCT OF BUSINESS ON 23.8.2012

Mr. Speaker: Hon. Members, the second communication is with respect to conduct of business today in this Sitting and the extended sitting, which, by the resolution of the House will last until 10.00 p.m.

Hon. Members invoking the powers vested upon me by the Standing Orders and in particular Standing Order No.20, I direct that the sitting of the House will be extended until midnight so as to enable us to cover all business at Order No.8. Therefore be guided accordingly.

DEMISE OF HON. JOSEPH MARTIN SHIKUKU

Thirdly, hon. Members, it is with shock and sadness that we have learnt of the demise of the Hon. Joseph Martin Shikuku, the former Member of Parliament for Butere that occurred yesterday, 22nd August, 2012 following a long illness.

In his early life, Hon. Shikuku attended Mumias Secondary School and St. Peter's Seminary Mukumu. He ventured into politics in 1959 when he joined Nairobi People's Convention Party and later Kenya African Democratic Union (KADU), of which he became the youth leader. He was one of Kenya's founding fathers, who participated in the Lancaster House Conference that negotiated for Kenya's constitutional framework and Independence over the years 1962 and 1963. This conference marked the end of more than 70 years of colonial rule in Kenya and chartered the road to Independence.

He made his debut in the House in 1963, when he was first elected to the National Assembly as Member of Parliament for Butere Constituency. He was re-elected as Member for Butere in 1969 and served the people of Butere in this capacity up to 1975 when he was detained and re-elected in 1979 to 1983, 1983 to 1988 and 1992 to 1997. His Parliamentary career spanned over a period of 30 years.

Hon. Martin Shikuku served in various positions, including being appointed an Assistant Minister in the Office of the Vice-President and Home Affairs in 1969 and in the Ministry of Livestock Development in 1983.

In Parliament, he will be remembered as a stickler to Parliamentary rules and procedures renowned and reputed for never making an allegation without being able to substantiate the same. His contributions in the House centered on the cause of democracy, a feat that earned him the name "People's watchman." Hon. Shikuku would also debate for hours on a Motion without repeating himself.

To most of his friends and admirers, the late Shikuku was a fighter for human rights who never felt shy of speaking his mind. He served in the Select Committee that investigated the death of J.M. Kariuki and served as Chief Whip of Kenya African National Union. Hon. Shikuku, together with the late Jean Marie Seroney, former Member for Tinderet, are entered in the annals of our history as defenders of Parliamentary freedom and privileges, which led to their arrest within the precincts of Parliament and subsequent detention without trial in 1975.

In late 1990s he joined other Kenyans calling for political reforms and was a founder member of the Forum for Restoration of Democracy (FORD). This led to reintroduction of multipartyism in Kenya, which opened the door for a free and democratic State. In the international Parliamentary life, Hon. Shikuku was a recognized Parliamentarian within the Commonwealth Parliamentary Association (CPA) and the International Parliamentary Union (IPU).

During this time of sorrow and grief, on behalf of all Members of Parliament and on my own behalf, I send our heartfelt condolences to the family, relatives, friends and the nation for

the tragic loss of a gallant son of Kenya, and a foremost freedom fighter, the late Hon. Joseph Martin Shikuku. The void left behind will be difficult to fill. May the Almighty God rest his soul in eternal peace.

I thank you.
Next Order!

PAPER LAID

The following Paper was laid on the Table:-

Report of the Joint Departmental Committee on Administration and National Security and the Select Committee on Equal Opportunity on the matter of the inquiry into the activities of the Mombasa Republican Council (MRC).

(By Mr. Affey)

Mr. Speaker: Mrs. Millie Odhiambo, I can see you are calling for a point of order. What is it?

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. Thank you Mr. Speaker, Sir. First of all I want to give my message of condolences to the family of the late Martin Shikuku. I know it is not parliamentary practice but I was wondering whether we can observe a minute of silence.

Mr. Speaker, Sir, having said that I would also want to find out, given the heavy schedule and your earlier communication whether we will be accommodated. We know we have been moving very quickly and some of us have certain amendments, but because of the short time span we may not have made it within time. Could we be accommodated, so that we do not have to pay undue attention to normal technicalities?

Mr. Speaker: Fair enough. That is a *bona fide* point of order except for this, that at the point where you have risen to speak to that concern, you are actually out of order. This is because the matters you have spoken to were transacted at Order No.2 and you will notice that you are now rising at Order No.4. So, you are actually out of order.

However, given the sensitivity of the matter that you first spoke to, I have, as a matter of fact, very carefully and agonizingly reflected on your request, that we observe one minute's silence; I did find that it will be unprecedented for a non-sitting Member of Parliament. For us to be able to do so, as a House, therefore, it will entail very detailed consultations that will take the diversity of the House and leadership of the House on board before we take that step. Honorable as it is and deserved as, indeed, it is, we need to be careful when we get into the area of stating a possible precedent. After that careful reflection, I arrived at the conclusion that the timing is such that those necessary consultations will not take place to permit it. So, just rest assured that we reflected on this matter very carefully. The point at which I have left it, I think it is deserving and honorable to the late Martin Shikuku. So, let it rest there and, please, let us all pray that the almighty God rests the soul of the late Martin Shikuku in eternal peace. Let us begin the prayers now.

With respect to your other matter on conduct of business, we, in fact, have made all Members of the panel as will preside over the Committee of the whole House aware to the fact that they need to expedite business so that even the added time which is an extra two hours will be adequate for us to navigate through all the business at Order No.8.

Hon. Members, I appeal to you to lend further support and actually co-operate by the manner in which you will manage yourselves and your contributions.
Member for Nyakach!

Report of the Departmental Committee on Administration and National Security on the consideration of the Assumption of the Office of the President Bill, 2012.

(By Mr. Ochieng)

NOTICE OF MOTION

ADOPTION OF REPORT ON ACTIVITIES OF THE MRC

Mr. Affey: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Joint Departmental Committee on Administration and National Security and the Select Committee on Equal Opportunity and the matter of inquiry into the activities of the Mombasa Republican Council laid on the Table of the House today, Thursday 23rd August, 2012.

ORAL ANSWERS TO QUESTIONS

Question No.1604

IRREGULAR ALLOCATION OF KMC LAND TO PRIVATE DEVELOPERS

Mr. Duale: Mr. Speaker, Sir, I wrote to you this morning because the answer that I was given by the Minister for Lands is the same answer that you gave directive on two weeks ago. The answer is about the same companies and the same directors. The information I sought has not been given and that is why I wrote to you this morning on the same. I need your guidance on that.

Mr. Speaker: Assistant Minister for Lands, what is your response to this? Did you acquaint yourself with the HANSARD before you gave the answer to the hon. Member and Parliament?

The Assistant Minister for Lands (Mr. Rai): Yes, Mr. Speaker, Sir. In fact, I have actually spoken to the Questioner because I answered the Question and what was remaining was for me to get the names of directors from the Registrar of Companies. I am still pursuing that because I have gone halfway. I have about four to five files to get from the Registrar of Companies so that I get the names of the directors that are being sought by the Questioner. So, if I can get at least two weeks from now, I will be in a position to come and give an adequate answer to this particular Question.

Mr. Speaker: Member for Dujis, would you like to extend that indulgence to the Assistant Minister?

Mr. Duale: Yes, Mr. Speaker, Sir. My view to asking this Question is to get to the bottom of this matter. I, therefore, do not mind for as long as the Assistant Minister confirms to this House that the two weeks he is talking about will be two weeks and not one month.

Mr. Speaker: Very well. It is directed that the Assistant Minister comes with the final part of the answer two weeks from today.

Question No.1711

DISCREPANCIES IN KCSE RESULTS
FOR MR. GEORGE NJOROGE

Mr. Gaichuhie asked the Minister for Education:-

(a) if he is aware that Mr. George Githanja Njoroge (Index No. 511407/39) sat for his KCSE in 2007 and was awarded a different grade in his result slip from that in the academic certificate, and if so, why;

(b) if he could indicate the correct grade scored by the candidate; and

(c) what measures the Minister will take to ensure that the discrepancy in the grades is addressed and that he be allowed to sit for the Kenya National Examinations Council (KNEC) exam on a catering course he has enrolled for at the Coast Institute of Technology on the strength of the higher grade that was on the result slip.

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, when I was responding to this Question I was asked to give an explanation on how we derived the mean grade of B- (Minus) for the candidate. On that day, I said that I did not have the capacity to give an explanation. Now I want to give the explanation a little lengthy though.

Mr. Speaker, Sir, the subjects that are taken by candidates for KCSE are grouped into five. Group one comprises of compulsory subjects which include English, Kiswahili and Mathematics (Alternative A and Alternative B). Only one alternative can be taken.

Group two consists of the sciences, that is, Biology, Physics, Chemistry, Biology for the Blind and General Science.

Group three consists of the humanities which are History and Government, Geography, Christian Religious Education (CRE), Islamic Religious Education (IRE) and Hindu Religious Education. For those religious education studies, only one is taken.

Group four consists of subjects we call industrial subjects and they include Home Science, Arts and Design, Agriculture, Wood Work, Metal Work, Building and Construction, Power Mechanics, Electricity, Drawing and Design, Aviation Technology and Computer Studies.

Group Five comprises of French, German, Arabic, Kenyan Sign Language, Music and Business Studies.

When they are marked, the grading is from Grade A to Grade E. Grade A, in terms of points, has 12 points. A- (Minus) has 11 points; B+(Plus) has 10 points; B (Plain) has nine points; B-(Minus) has eight points; C+(Plus) has seven points; C (Plain) has six points; C- (Minus) has five points; D+ (Plus) has four points; D (Plain) has three points; D- (Minus) has two; and E has one point.

This candidate, Mr. Githanja, had D (Plain) in English. That one has three points. He had D-(Minus) in Kiswahili and that is two points. In Mathematics, D-(Minus), two points. Those are compulsory subjects and they must be taken into consideration when we are compiling the mean

grade. When compiling the mean grade we use seven best subjects for the candidates. Compulsory subjects must be included irrespective of the grade.

In Group two, we take the best two subjects. In Group one, we take all the three subjects. In that case, he had a D- in Biology and a D- in Chemistry. Each one of them is two points. In Group three, we always consider one subject. In Humanities, he had a D in Geography, which is three points. Among the industrial subjects, he had a D in Agriculture. That gave him a D in three subjects. The candidate took eight subjects, but we calculate the mean grade using the seven best subjects. Among the seven best, three compulsory subjects must be included even if they were the worst. He had 3 marks for English, 2 for Kiswahili, 2 for Mathematics, 2 for Biology, 2 for Chemistry, 3 for Geography and 3 for Agriculture. That means that he had a total of 17 points for the seven subjects. So, you divide 17 by 7 and you get 2.428. The rule is that we round the figure to the nearest whole number, which is two. The letter grade for two is D-. So, this gentleman had a mean grade of D-.

Mr. Gaichuhie: Mr. Speaker, Sir, this candidate was given a result slip which indicated that he had a C- (Minus). Using that result slip with a C- (Minus), he went ahead and registered in a college for a certificate course which required a C- (Minus). He undertook a two year certificate course. The mother took a loan and educated the boy only finally to be told that he could not sit for his examinations because he had a D- (Minus), by the same KNEC which was supposed to examine him. Could the Assistant Minister use his discretion to allow this young man, whose mother has taken a loan to educate him for two good years, to sit for that certificate examination or compensate him? The boy had a result slip from KNEC.

Prof. Olweny: Mr. Speaker, Sir, I answered that question last week. What remained unanswered is the issue that was raised by hon. Mbadi, which I have explained. However, I will repeat the answer. There is very little the Ministry can do about that case because the gentleman knew very well about the changes of his grade. The school was informed that, that was not his grade. The results were withdrawn and they were later given the correct results. I think the gentleman was informed about this. I suggested to the Member that the best thing this young man could do is to do a bridging course and then he will be okay. But we cannot give him the wrong certificate and he carries it around. Then there is no point for us to give examinations.

Mr. Koeh: Mr. Speaker, Sir, as we have just heard, Njoroge registered for a certificate course based on the grade that he was given earlier. The Assistant Minister has indicated here that Njoroge was communicated to on the changes in his certificate. Could he table evidence of the communication to Njoroge telling him that his grade is a D- (Minus) and not a C- (Minus)?

Prof. Olweny: Mr. Speaker, Sir, the evidence is that the results were taken to the school. The new result slip and the certificate are in his former school.

Mr. Njuguna: Mr. Speaker, Sir, the predicament Njoroge is facing has been triggered by the KNEC. This House has already passed a Motion on radical reforms on KNEC, so that predicaments like this one will not be there. When is the Ministry going to radically reform the KNEC, so that Kenyans will be free of such predicaments?

Prof. Olweny: Mr. Speaker, Sir, all those reforms will be contained in the Education Bill, which will be tabled here. At the same time, the KNEC Bill will be brought here very soon. That will help the Minister to do some of these reforms that the Members are requesting for.

Mr. Mbadi: Mr. Speaker, Sir, I want the Assistant Minister to clarify something which he has not clarified. The grades that he has read are perfectly giving a D- (Minus) as the mean grade, based on the final certificate. Could he tell us the specific grades in the result slip which resulted to a C- (Minus)? Why are they different from what was in the final certificate? He

should explain why there is that discrepancy from a D- (Minus) to a C- (Minus). He should give us the specific grades, for instance, in English, Kiswahili and Mathematics in the result slip.

Prof. Olweny: Mr. Speaker, Sir, I am not sure whether the Member wants me to bring what was withdrawn in 2007, which had computer errors. This House remembers that we had a serious problem with the results of 2007. However, I have read the grades that the Member wants me to read and I will read them again. These are the current grades for the candidate. I cannot read the ones that were withdrawn because they were nullified.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to evade answering my question? This House deserves to be told why the KNEC gives different grades in the result slip for all the subjects? If it was just a mistake in the mean grade, one would understand, but if you give different grades on the result slip from what is on the final certificate, we need to be told what happened, which misled this student that much.

Prof. Olweny: Mr. Speaker, Sir, perhaps the Member is not getting me well. First, I explained last week that the first results that were released in 2007 had serious computation errors and the issue was handled in this House. So many of them were withdrawn and new results were released. That happened then and Mr. Githanja is one of the students who were affected. The results that were taken to his school were wrong. They were withdrawn and the right results were given later. According to the Questioner, Mr. Githanja is using the wrong results that he got the first time. He did not go back to his school to get the right results, which are lying in his school. His right certificate and transcripts are there.

Mr. I. Muoki: Thank you, Mr. Speaker, Sir. The issue of Mr. Njoroge may not be isolated. I remember there was a similar incident in my constituency about ten years ago where a student went for a P1 course and after two years, when he took his certificates to the KNEC, he was told that there was a discrepancy with the certificate. What caused this discrepancy and to what extent is the discrepancy? Could some people be going to college with different grades from what they actually obtained?

Prof. Olweny: Mr. Speaker, Sir, I am not aware of that issue. However, the issue at hand is the results for 2007 where several schools were affected. One of the schools that were affected was Subukia Day Secondary School. Several schools were affected including one in my constituency.

Mr. Gaichuhie: Thank you, Mr. Speaker, Sir. Could the Assistant Minister assure me that if this student takes a bridging course, he will be allowed by the KNEC to sit for his examinations without having to repeat for two years?

Prof. Olweny: Mr. Speaker, Sir, I did not get the hon. Member very well. Could he repeat the question?

Mr. Gaichuhie: Thank you, Mr. Speaker, Sir. The Assistant Minister has said that we should advise this student to undertake a bridging course. If this student agrees to undertake a bridging course, could the Assistant Minister assure me that he will undertake the examinations without having to repeat the course in college?

Prof. Olweny: Mr. Speaker, Sir, I do not know the examinations that the hon. Member is talking about but the student will have to take a bridging course. With regard to the college, I do not know whether they will allow him to take an examination in the college if he does not have the right qualifications.

Mr. Speaker: Order, Mr. Assistant Minister! I do not think you are getting the Member's concern. You have said to the Member, as part of your answer that the option that this candidate has - the person known as Njoroge - is to undertake a bridging course that will bring him to the

level or standard that will allow him to sit the examinations that he has enrolled for at the Coast Institute of Technology. The Member is asking you, if Njoroge undertakes that bridging course, will he then be at liberty to sit the examination without having to undergo the course all over again?

Prof. Olweny: Mr. Speaker, Sir, he should have qualified for the current course before he sits for the examinations. Currently, that gentleman is not qualified to do the examinations for---

Mr. Speaker: Order, Mr. Assistant Minister! After he undertakes the bridging course, he will be qualified if your answer is accurate!

Prof. Olweny: Yes, Mr. Speaker, Sir. If he takes the bridging course, he will be qualified.

Mr. Speaker: That is the answer, is it not?

Prof. Olweny: Yes, Mr. Speaker, Sir.

Mr. Speaker: We want to take the Member for Kilome.

Question No.1599

ACCESSING OF CONFIDENTIAL INFORMATION OF
CORPORATE BANK ACCOUNTS BY CBK

Mr. Mwau asked the Minister for Finance:-

(a) if he could clarify whether holding multiple bank accounts in any one or more banks violates the Central Bank of Kenya (CBK) Act or any other laws; and,

(b) whether the Central Bank of Kenya, in the performance of its statutory duties, is legally required to investigate tax evasion or if it is in any way mandated to obtain information pertaining to various corporate bank accounts and to compare them and/or carry out analysis relating to taxes.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

The Minister for Finance (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir.

I beg to reply.

(a) I would like to clarify that holding of multiple bank accounts in any one or more banks does not violate the Central Bank Act or any laws of the country.

(b) Section 31(3)(a) of the Banking Act permits the Central Bank to share information that comes to its possession with the Kenya Revenue Authority which is the principal Government Agency dealing with tax matters.

I thank you.

Mr. Mwau: Thank you, Mr. Deputy Speaker, Sir. I thank the Minister for answering part “a” of the Question. However, I am slightly concerned because of the evasiveness and avoiding to answer part “b” of the Question. Part “b” of the Question is very specific. It asks: Is the Central Bank of Kenya, in the performance of its statutory duties, legally required to investigate tax evasion? That is direct. The Minister has not responded to that. Secondly, is it in any way mandated to obtain information pertaining to various bank accounts and to compare them or to

carry out analysis relating to tax? That is what the Minister should be answering, but he has avoided this.

Thirdly, the section he has quoted, that is Section 31(3)(a), was amended to include the matter relating to tax and investigation agencies under Act 8 of 2009. Could the Minister confirm whether the CBK shared any information with the KRA prior to 2009 and after 2009, and if at all it did, could he then provide the nature of the information and the findings of the investigations?

Mr. Githae: Thank you, Mr. Deputy Speaker, Sir. Coming to the clarifications that the hon. Member has sought, yes, Section 31(3)(a) gives discretion to the CBK. It reads:-

“The Central Bank may disclose any information referred to in subsection (2) to any monetary authority or financial regulatory authority, fiscal or tax agency or fraud investigations agency within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting monetary authority or financial regulatory authority, fiscal or tax agency or fraud investigations agency.”

This means that the Central Bank is not mandated but may.

Although these amendments were made in 2008 specifically to empower the CBK to share this information, even before the amendments, the CBK used to share the information with other Government statutory bodies in fulfillment of its general mandate of maintaining and fostering safe and sound financial payment system. That is one of the mandates of the CBK.

Mr. Mbadi: Mr. Deputy Speaker, Sir, it is true that the Central Bank Act was amended in 2009 through the Finance Bill. I want the Minister to confirm or explain to this House before 2009 and after, if at all the CBK had shared information on tax information or such similar information with the KRA with regard to operations of certain banks. Could he give us some of this information or more particularly, was there any information that was shared with regard to Charterhouse Bank, and if so, could he give this House the details of the information and the action that has been taken so far?

Mr. Githae: Mr. Deputy Speaker, Sir, it is true that these amendments were enacted in 2009. As I said, in view of its general mandate, the CBK would share this information. In fact, Government organisations officially or unofficially share information among themselves. I can confirm an audit was done on Charter Bank in 2004. The audit was done by inter-agency task force which comprised of the Kenya Anti-Corruption Commission, the Attorney-General, the CBK, the Kenya Revenue Authority and the then Ministry of Ethics and Governance, Permanent Secretary.

Mr. Mbadi: Mr. Deputy Speaker, Sir, the Minister has just confirmed that this investigation was conducted in 2004. What were the recommendations? What has he done so far, based on the recommendations from these investigations?

Mr. Githae: Mr. Deputy Speaker, Sir, following the investigations done by the task force and, subsequent, admissions of violations of the Banking Act by Charterhouse Bank, the CBK levelled a penalty of Kshs1 million on 19th January, 2005. There was a meeting held on the same day at the CBK chaired by the then Governor. The then Managing Director of Charterhouse Bank confirmed that corrective action would be taken to remedy the weaknesses and violations that were highlighted in the report.

There was a follow up of inspection requested by station on 10th February to establish the status of compliance of review of the bank's licence. It was observed that to a large extent the observations and violations had largely been remedied, except the levy in excess of more than 25 per cent to a single borrower, insider lending without adequate security, inadequate provisions of bad debts and doubtful debts, inability of management to take reasonable measures to secure

accuracy of returns submitted to CBK, and failure to obtain account-opening documentation for a number of customers - not all of them - as required by the CBK prudential lending guidelines.

So, all these were brought to the attention of the institution, but to a large extent, they did take corrective measures.

Mr. Gaichuhie: Mr. Deputy Speaker, Sir, now that the Minister says that the bank complied and it has taken seven good years before the bank opens its doors, when will he direct that this bank opens its doors because there are so many customers who put their money there?

Mr. Githae: Mr. Deputy Speaker, Sir, that is a fair question. But let me point out that this bank was not closed by the Treasury. The Treasury has also no authority of opening this bank. This was all done by the CBK in exercise of its mandate. The main reason was to avoid a rundown from the depositors. I would like to confirm that this matter has been brought to my attention by the CBK and I am looking into it. I am going to have discussions with the CBK and see how best to resolve this issue. Taking into account what has happened since the closure of the bank, if we opened it today, would it be able to operate normally? Would there be a run on deposits? We also want to look at what the statutory manager has done, so far. So, I would like to assure this House that this matter has now been brought to my attention and I am actively looking at it. I will initiate discussions with the CBK.

Dr. Khalwale: Mr. Deputy Speaker, Sir, at the time of closure of this bank, it became very evident that the former American Ambassador to Kenya was very keen on what was going on there. Could the Minister clarify whether the closure was as a result of pressure from the American Government? If so, what reasons did they advance to convince the Government to close this bank?

Mr. Githae: Mr. Deputy Speaker, Sir, let me put it in black and white, that Kenya is a sovereign Republic. It is independent country. We do not take instructions from any nation whether a powerful nation or otherwise. We do not take any instruction from any quarter. We make our own decisions. But obviously, if information is brought to us in good faith, we can consider it. The decision to close the bank was done by the CBK. It was not done by the American Government. Again, it will be opened by the CBK and not by the American Government. As I said, the issue was to protect the assets of the bank to avoid a rundown because of the bad publicity. When I refused to answer a question here in Parliament and I said I can do it in camera, it was because of the repercussions. Sometimes we make some statements which are then taken up by the Press and they cause a lot of damage. This is exactly what happened in this case where there seemed to have been a campaign of bad publicity about the bank which then forced the CBK to step in to save the depositors.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to mislead the House that he does not take instructions from other nations when we know the cancellation of the oil tender from Iran was done on instructions from the America Government?

Mr. Githae: Mr. Deputy Speaker, Sir, the cancellation of tender was not done on instructions of the America Government. As I said, we are a sovereign and independent nation. We do not take orders from anybody. We shall never take orders from any country.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. This issue of instruction is so important that the Minister needs to come out clearly. As soon we, as a Committee of this House, tabled here a report indicating that this bank be opened, a few days later, we heard that some Members of that Committee had received notice that they would not travel out of Kenya. In view of that, is he in order to refuse to confirm what I have alleged when, in fact, Members of this House as a result of their decision received adverse treatment from the USA?

Mr. Githae: Mr. Deputy Speaker, Sir, it is the sole responsibility of each country to issue visas or not to issue visas. They do not give any reason when they issue visas, or when they decline to issue. Therefore, it was up to the American Government to issue the visas or not to issue them. It is the same thing in this country; we issue visas to some people and we do not issue visas to others.

Mr. Mwau: Mr. Deputy Speaker, Sir, is it in order for the Minister to try to mislead the House? He says Charterhouse Bank was investigated and fined. I would want him to confirm that the fine he has talked about was relating to the Question I asked here which related to tax evasion. I want him to confirm whether it is true that Charterhouse Bank had an issue of tax evasion.

Mr. Githae: Mr. Deputy Speaker, Sir, the fine was not in relation to tax evasion; it was in relation to violations of the Banking Act. I have given you the instances why the bank was fined Kshs1 million.

Mr. Shakeel: Mr. Deputy Speaker, Sir, I sit in the Departmental Committee on Finance, Planning and Trade. We spent a lot of time investigating Charterhouse Bank, after which we made a report. Would I be in order to ask that, before the Minister makes any further proclamations, he either looks at that report or he appears before the Committee, so that we can update him on the situation? What he has just said is substantially incorrect.

Charterhouse Bank was fined Kshs1 million for not adhering to the banking regulations, but so were 12 other banks fined, including Barclays Bank and Standard Chartered Bank. The other banks were not closed. Furthermore, the CBK gave an undertaking to this House that it would issue very strict guidelines on operations of banks. However, the CBK has already relaxed those guidelines. It has informed commercial banks that the guidelines are relaxed. So, the CBK is not keeping in line with its undertaking to this House.

Mr. Githae: Mr. Deputy Speaker, Sir, I do not know which of the answers I have given is substantially incorrect. As I said, Charterhouse Bank was not fined Kshs1 million because of tax evasion. It was fined because of violation of the Banking Act. I can also confirm that other banks were also fined a similar amount for violating similar guidelines. Charterhouse Bank was not closed because of those violations; it was put under statutory management in order to protect depositors. When bad publicity started targeting the bank, there was fear that there would be a run on the deposits. So, it was a way of protecting depositors.

Mr. Deputy Speaker, Sir, as suggested by hon. Shakeel, I will have a look at the Committee report and seek to have a meeting with the Committee, so that we can discuss the matter and bring it forward.

Mr. Deputy Speaker: Hon. Shabesh, are you on a point of order?

Mrs. Shabesh: Yes, Mr. Deputy Speaker, Sir. The Minister is actually misleading this House. Recently, another Committee of this House investigated banks which were fined because there was a risk for the depositors. However, those banks were not closed. So, the Minister is misleading this House by giving us the same answer, but not giving us the real answer that this House wants. So, why was Charterhouse Bank closed, and why were other banks not closed? Can he give us a simple answer?

Mr. Deputy Speaker: Minister, why did it take seven or six years for this matter to be brought to your attention, as the regulators, as you put it?

Mr. Githae: Mr. Deputy Speaker, Sir, inspections are done by the CBK regularly. Whenever an inspection report shows that there are certain violations by a bank, corrective action is imposed on that institution, which is also fined Kshs1 million. As I said, inspections for

different institutions are done almost on a quarterly basis. I want to be very clear and specific. Charterhouse Bank was not closed because of violations of the Banking Act; it was closed because of bad publicity about it. Up to now, we do not understand where the bad publicity was coming from. I wish I had come with that file. I would have shown you what the print media was saying about the bank. So, the fear was that, because of the bad publicity, there would be a run on its deposits, which would then bring it down. So, in order to preserve the deposits, it was put under statutory management.

Mr. Linturi: Mr. Deputy Speaker, Sir, it is really sad for the Minister to state in this House that Charterhouse Bank was closed due to bad publicity. I would want him to tell us whether banks are supposed to be closed due to bad publicity or due to failure by them to adhere to the banking regulations, in terms of how they run their business. What he is suggesting is that if a few competing individuals decide to gang up today and spread propaganda on any bank, there will be a run down on that bank's deposits tomorrow. I do not think this is the right way to go.

Mr. Deputy Speaker: Hon. Shakeel, what is your point of order, so that the Minister can respond to both of them?

Mr. Shakeel: Mr. Deputy Speaker, Sir, I think the Minister should read the report of the Departmental Committee on Finance, Planning and Trade. The bank was supposed to be put under statutory management for a certain period of time. That period was subsequently extended by another 12 months, through a court order. There was no order by either the court or the CBK to officially close the bank. The court order expired five years ago. Is the Minister aware of that fact?

Mr. Deputy Speaker: Hon. Ekwe Ethuro is also on a point of order. There is so much interest in this Question. Can you take all the points of order, so that you can respond to them at once, Minister?

Yes, hon. Ekwe Ethuro.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I am just wondering whether the Minister is not misleading the House. He is giving us information he does not even seem to understand. He is now seized of the matter. The matter came back to this House, and the House resolved that the bank should be re-opened. There have been Questions on this same matter, and he still says that he is looking into the matter. How long does it take the CBK to close a bank because of bad publicity and violation of the Banking Act? Other 12 banks which were penalised for the same offence have not been closed.

Mr. Deputy Speaker: What is your point of order, Dr. Khalwale?

Dr. Khalwale: Mr. Deputy Speaker, Sir, it is very unfortunate that the Minister is telling us that the only thing that prompted the Government to put Charterhouse Bank under statutory management was bad publicity in the print media. This House is aware that the CBK has a Department for investigations. As a House, through a Committee report, we have resolved that the bank should be opened. The Judiciary, through a court order, has also directed that the bank should be opened. Is he in order to continue refusing to tell us the real reason as to why they closed the bank? Is he in order to refuse to comply with a decision of the court? Is he in order to refuse to agree with the same Parliament in which he sits?

Mr. Githae: Mr. Deputy Speaker, Sir, I am glad that these questions have been asked. This confirms my position when I was asked to reveal the identity of the banks that had been fined. I said that banking is a business which thrives on confidence. If depositors lose confidence

in a bank, it will go down. It does not matter how big or small a bank is. Loss of confidence in a bank can result from bad publicity.

In fact, most banks have gone under because of bad publicity. Depositors tend to take bad information to be correct. So, they go to the bank and try to withdraw their money. If today depositors go to the largest bank in the world at the same time to withdraw their money, that bank will collapse. So, the banking business thrives on confidence.

In the case of Charterhouse Bank, there was going to be a run on the deposits due to bad publicity. Therefore, the CBK had to step in to preserve the deposits and preserve the integrity of the banking industry.

Mr. Deputy Speaker, Sir, what I am now informing this House is that the report was only brought to my attention about a week ago. That is what was tabled here in the House. I promise that I am going to have a look at that report and then come back to the Committee and find out whether there is any issue that I need to take up. But I am not aware of any court order that has instructed the Central Bank of Kenya (CBK) to open Charterhouse Bank. That is because if there is a court order instructing that the bank should be opened, it should be opened. The Government believes in the rule of law. We believe in following the judgements of our Judiciary. We have no intention of ignoring any court judgement.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, could the Minister address the real issues? The reason why he is not opening that bank is because of foreign forces. It is just because the former American ambassador said that the bank cannot be opened. It is not because of anything beyond that. The bank is very solvent. The money is there and the problem has nothing to do with the running of the bank. It is just because this Government is controlled by foreign powers. That is the reason why they are trying to intimidate an indigenous bank, so that the foreign banks can continue making profits. We have seen that with Barclays Bank all over the world. Why have they not moved to Barclays Bank? Why that bank? Open the bank! Kenyan depositors are suffering.

Mr. Mwau: On a point of order, Mr. Deputy Speaker, Sir. It is important that the Minister actually embraces the feelings of the depositors who are really suffering for the last five to six years. The Minister is telling the House that the bank was actually closed because of adverse publicity. Could he tell this House whether the CBK investigated the source of that adverse publicity? That is because it would be unlawful and contrary to the Banking Act. Secondly, could the Minister be honest enough to the House and confirm whether the bank was closed or is under statutory management? Thirdly, could he further confirm whether any money of the depositors in that bank could have been used to finance elections in 2007? That could be the only reason why the bank is not being opened. Therefore, it is important that you give your directions and make your ruling that the Minister, first of all, goes back to the CBK and tables before this House the financial statement of accounts from 2006 up to date. Further, could you be kind enough to direct the Clerk to forward copies of the findings and the resolution of this House by the Finance Committee to the CBK and the Minister? That is because he has always been saying that he is not aware and yet, he is a Member of this House.

Mr. Deputy Speaker, Sir, so, it is very important if you can direct that the Clerk sends copies of those resolutions and the report to the Minister, the Permanent Secretary(PS) and the Governor of CBK. Thereafter, he can report to the House.

Mr. Githae: Mr. Deputy Speaker, Sir, again I want to report that Kenya is a sovereign country. We do not take instructions from any power. If the bank was closed by the former

American ambassador, we now have a new ambassador who should have opened the bank. However, I can say that the bank was put under statutory management to protect the depositors.

Mr. Deputy Speaker: Hon. Minister, all the more reason! When you really want to assert and demonstrate the sovereignty of a country, you deal with a matter and dispose of it very expeditiously. You do not allow the communications which, of course, the House is in possession of from the ambassador to basically--- Then, basically, of course, everybody will assume that the sovereignty is in question.

Proceed, Minister!

Mr. Githae: Thank you, Mr. Deputy Speaker, Sir. We will try to get to the source of that bad publicity. That is because, clearly, there was somebody who was manipulating the Press. We tried to get the source and the people from the media said that they could not disclose the source. They refused to disclose the source of that information. But you can see it was more of a concerted effort to bring bad publicity on that bank. I feel for the depositors. I have met a few of them and I have heard their cries. Some have explained how their businesses collapsed. Some of the contractors who had money there had been awarded contracts. But they were unable to fulfill them. I feel for them and if there is something I can do to alleviate their suffering, I would like to assure this House that I would like to do it.

Mr. Deputy Speaker, Sir, lastly, I agree with what hon. Mwau has said. I will get the report and then discuss it with the CBK and we will come up with a solution to this matter because it cannot continue forever.

Mr. Deputy Speaker: Hon. Minister, all the more reason why you should because the Chair heard you say very clearly that you are protecting the interests of the depositors. You have also said that the depositors are crying and they want the bank to be opened.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to keep on coming to do public relations here to please his foreign masters, while we know that this Government does not obey reports by commissions, court orders and reports prepared by this House? In this particular case, I presented a petition on behalf of the depositors, and the Committee on Finance, Planning and Trade brought a Report and it was passed. It recommended that the bank be re-opened. The Solicitor-General and the Attorney-General have written to the Government, which does not like to listen to any professional advice, to open that bank. So, is the Minister in order to come and do public relations here and shed crocodile tears by pretending that he has mercy on the depositors? You should take your responsibility as the Minister in charge and open the bank for the people to access their money.

Mr. Koech: On a point of order, Mr. Speaker, Sir. Is the Minister in order to come and pretend not to have knowledge of the position? The Report that was tabled and passed by this House contained the court order. The Minister is now wondering why they are not implementing it. Is he in order to avoid answering the question? This is a very serious matter because a resolution of the House was not implemented. Is the Minister in order to come here and purport to go and consult the CBK?

Mr. Outa: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister, who I highly respect when I go to his office, in order to come here, go round in circles and shed crocodile tears without giving the answer as to why Charterhouse Bank was closed? It is because of the influence of foreign powers. They got instructions not to reveal the reasons why the bank was closed. I want to believe - even if the Minister is denying that they are not taking instructions - that even today, those foreign powers have already had their hands in the tendering of the

biometric voter registration kits. We might miss the general elections because they are struggling because of instructions from foreign powers. Is he in order?

Mr. Chanzu: On a point of order, Mr. Deputy Speaker, Sir. I got to a point where I thought the Minister was misleading this House. That is because he talked about bad publicity. In fact, it is not only Charterhouse Bank alone. There are other banks which closed. There was Trust Bank, Post Bank, Trade Bank and Euro Bank. I do not know whether it was because of bad publicity. I think we need to leave this matter so that the Minister can come and give this House a comprehensive statement on the banking situation in the country. I think you need to make a direction on that.

Mr. Ochieng: Mr. Deputy Speaker, Sir, the Minister is not honest with this House. Could he tell us how much Charterhouse Bank is paying to the Central Bank of Kenya (CBK) in terms of fees, or if the Ministry is enjoying the same fees as the CBK, and whether that is why they do not want to release depositors' money? Could he tell us how much they have raked in so far?

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Dr. Khalwale, even when we are using Information Communication Technology (ICT) here, you still have to shout from where you are! Can you have the last shot then we proceed on?

Mr. Linturi: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Not you, Mr. Linturi.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I must thank you because this is a very serious matter. The Attorney-General, and I mean the new Attorney-General, the one we vetted, has advised this Government that it must obey court orders. The Chair, none other than the Speaker himself, has severally reminded Ministers that they must comply with the decisions of this House. In view of these serious observations, since we trust the Minister and he came on the job the other day, when this thing was taking place he was not in the office, we give him time to look at the reports of the House, and the court order. We should then force him to come back here next week and announce from the Dispatch Box, and not from where he is seated, that Charterhouse Bank has been re-opened.

Mr. Deputy Speaker: Mr. Minister, do you want to respond or seek the direction of the Chair? I thought you had already made a request that you want to go back and get more information!

Mr. Githae: Mr. Deputy Speaker, Sir, it is true that we require your guidance, but I just wanted to clarify one or two things. Kenya is a sovereign country. We do not have foreign masters. This Government is a Government that follows the rule of law. We will follow the court orders and we have been advised so by none other than the Attorney-General himself. So, the Government must implement court orders. We have no intention of disobeying any court order. As you can see, my eyes are not shedding any crocodile tears; I am genuine. I am feeling for the depositors.

As I said, I have met some of them here and they have told me their tribulations, how they suffered, how their children were sent away from school due to lack of school fees and how they lost contracts because of lack of the money. As I said, I was not there when these things were happening and this matter was brought to my attention last week. So, I am going to study all those reports.

Mr. Deputy Speaker: Mr. Minister, the mood in the House shows that it is not satisfied with the answer that was given. So, I direct that this Question be listed on the Order Paper. How much time do you need to come up with a comprehensive answer?

Mr. Githae: Two weeks.

Mr. Deputy Speaker: Is that okay with you, Mr. Mwau, or will you be out of the country on any business, parliamentary or otherwise? Let me empower you. I am glad this thing helps me when it comes to Dr. Khalwale and others.

Mr. Mwau: Mr. Deputy Speaker, Sir, this is a very serious and urgent matter. The Minister must be careful because his technocrats in the office are wizards in manipulating these things. So, he must be very careful. The Governor is elusive. So, it would be advisable that we give him only one week.

Mr. Deputy Speaker: Mr. Minister, given the agony which you have also demonstrated of the depositors, would you wish to reconsider that and take only one week?

The Minister for Finance (Mr. Githae): Yes, it is true that this is a very serious matter, particularly when you consider the sufferings of depositors; but I am requesting for two weeks, so that I can read all those reports and the history of the matter. I saw the file and it is more than eight inches in thickness. I would definitely require more than a week to go through it, and that is why I have requested two weeks.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. This matter is grave. Some of us have been accused locally and internationally as having been bribed by owners of this bank to recommend its opening. We investigated these circumstances, and I want the Minister to take it a bit more seriously; we found that this bank committed only one crime for which it was fined Kshs1 million. The Departmental Committee on Finance, Planning and Trade received letters from the United States of America (USA), calling us corrupt for doing our work.

I want the Minister to understand that there are people in his Ministry who are working to make sure that this bank remains shut with depositors' money. The facts are obvious. I want you to ask the Minister to come back here on Tuesday, prepared and we shall be ready to interrogate him with the aim of opening this bank, so that Kenyans can get their money.

Mr. Deputy Speaker: The Minister has asked for two weeks and I think it is only fair to accept his request. The bank has now been closed for about seven years. I want to ask the Minister to make sure that the interests of Kenyans are protected. People want to believe that you are not controlled from outside this country for reasons that our people do not know. So, the Chair directs that the two weeks are fair.

Mr. Mwau: Mr. Deputy Speaker, Sir, if two weeks are fair then I would accept it; but I would ask the Chair to direct that a copy of the Report of the Ninth Parliament relating to the inquiry of the Charterhouse Bank, and also the report of the Tenth Parliament be dispatched to the Minister, the Permanent Secretary, the Financial Secretary and the Governor of the Central Bank of Kenya, so that there will be no blame thereafter.

Mr. Deputy Speaker: The Chair so directs. The Office of the Clerk will make sure that copies of the relevant dignified reports of this House are in the hands of the people who are supposed to make the decision.

The Chair directs that this Question be listed on the Order Paper exactly two weeks from today.

Next Order.

MINISTERIAL STATEMENTS

The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Speaker, Sir, I am supposed to issue a Ministerial Statement.

Mr. Deputy Speaker: Who sought the Ministerial Statement?

The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): It was Mr. Mungatana.

Mr. Deputy Speaker: Is he in the House?

The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): He is at the scene of the crime.

Mr. Deputy Speaker: It is only fair that this Ministerial Statement is issued when Mr. Mungatana himself is in the House. The Chair directs that this Ministerial Statement be issued at a time when he is around.

The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Obligated, Mr. Deputy Speaker, Sir.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Mr. Mungatana has rushed to the scene of the violence, but because of the urgency of this matter, it would be comforting for the nation and for the people of Tana River to get to know what really happened and what action the Government is taking.

Mr. Deputy Speaker: The Chair directs that the Ministerial Statement be issued at the earliest opportunity when Mr. Mungatana is around. That could even be Tuesday when the House sits next. We have had a tradition here under which we basically do not transact business of issuing Statements without the hon. Member who is supposed to interrogate it.

Mr. Koech: On a point of order, Mr. Deputy Speaker, Sir. Although I do not want to go against your ruling, the country is actually mourning. I would have liked it if the Minister gave even a ten-sentence statement to the people of Kenya.

Mr. Deputy Speaker: I know that this morning, there was a meeting of all the Members of Parliament from northern Kenya and the Tana Delta on the same, and the media was there. Mr. Haji, you do not have to give the contents of the Statement; you just have to reassure Kenyans that there is peace and that the Government is doing what it has to do.

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Deputy Speaker, Sir, as I stand here, we have sent over 200 regular and Administration police officers there to make sure that security, law and order is maintained in that area. Besides that, as you have rightly said, we had a meeting this morning with all the leaders from the former Tana River District together with Members from North Eastern Province to discuss what is happening in Tana Delta, Mandera and other areas. We have put elaborate measures, including providing vehicles, so that the officers are mobile. They are up to the task as I stand here.

Ms. Karua: Mr. Deputy Speaker, Sir, although the Minister is assuring us that he has deployed security, he has not, at all, indicated that he is taking any action on those who have incited and/or sponsored violence. He could also confirm to us whether, indeed, it is true that it is some local politicians who incited and sponsored the violence, and whether he is ready to take action against them. It is this type of impunity that is causing violence all over the country.

Mr. Deputy Speaker: Mr. Haji, will you take one more point of order and then we will bring this to closure. Where is Mr. Hassan? Why did you disable your microphone?

Mr. Hassan: Mr. Deputy Speaker, Sir, I was not sure whether I was going to get the chance to speak. Since the introduction of this electronic system, it is not very clear whether one has any chance to contribute.

(Laughter)

Mr. Deputy Speaker: There are no strangers who use these facilities; it is all hon. Members. So, proceed! When you are not talking, another hon. Member is talking.

Mr. Hassan: Mr. Deputy Speaker, Sir, I think there are various deaths that have occurred in our country in the last week in Mandera, Wajir and, lately, in Tana River. It is a matter of grave concern as far as our national security and peace are concerned. It also has implications economically as well as our perceptions internationally. So, I wanted to ask the Minister responsible - in addition to what Ms. Karua has just asked him - what concrete action is the Government taking, not only to address those issues, but also to ensure that, that crisis does not escalate beyond what it is? It would have been very useful to hear more about what the Government has done in all those areas in the country.

Mr. Deputy Speaker: Mr. Minister, can you take one minute and then we go to the next Order? We have constitutional Bills and, unfortunately, we have to dispose them of before the end of the day today or tomorrow, if we have to sit.

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Deputy Speaker, Sir, I want to agree with Ms. Karua that besides the drought situation in that area and the conflict between the farmers and pastoralists, it has some element of political instigations. I say that because this morning, when I called a meeting for all the political leaders, there is one single Member of Parliament who is also an Assistant Minister who refused to attend that meeting. He has been bragging here in Parliament and in front of all Members of Parliament who have called me that he is not going to attend those meetings in spite of the fact that over 60 Kenyans have lost their lives. Therefore, he will be investigated.

Hon. Members: Who is that?

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): It is hon. Godhana! He is the one! He told the Permanent Secretary that he will not attend the meeting and even in the meeting with hon. Members, some who attended that meeting said that he was not attending the meeting because he had some reasons why he was not attending. In the House here, in the presence of many Members of Parliament, more than three Members have come to tell me what he has been talking about here. Therefore, I am directing the Criminal Investigations Department (CID) to investigate that Member of Parliament.

Hon. Members: Who is that?

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Godhana, the Assistant Minister!

Mr. Deputy Speaker: Fair enough; the point has been made.

(Loud consultations)

Order, hon. Members! We have constitutional Bills which are going to lapse today.

Hon. Members: Ah!

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. If, indeed, what the Minister is saying is true, and that is the Government we are looking at--- He has said that there is an Assistant Minister who is inciting people to kill others and he has done it and you are the Government--- You cannot sack him and he serves in the Government as a Cabinet Minister. Is he in order to plead that he is taking action when the man is still holding office as an Assistant Minister? If the Government is serious, sack the man first and talk later!

Mr. Konchella: Mr. Deputy Speaker, Sir, that is an unparalleled human brutality by whoever is perpetrating it. This nation cannot stand this sort of thing; to kill women and children. In our African tradition, that does not happen. Where the brutality has come from, we do not know. We are going for the general elections and unless something is done to arrest and prosecute whoever is involved, whether he is in this House or somewhere else, this country is not going to be at peace. So, I want to urge the Minister: "Please, you have the support of the entire Kenya. Please go and use your power and make sure this thing stops forever."

Ms. Leshoomo: Bw. Naibu Spika, pia mimi ningechangia kusema ikiwa Wakenya wanakufa namna hiyo, na pengine inajulikana ni nani anamaliza akina mama na watoto, ningeomba Waziri achukue hatua ya haraka. Sasa hivi vile tunaongea, watu zaidi ya 60 wameuawa. Na tunapata wengine wakiongea kama huyu Bw. Godhana – mimi sijui jina lake – lakini kile alichosema pale kiliniumiza roho. Alisema hatakwenda kwa mkutano ule Mhe. Haji yuko. Mr. Haji hayuko hapo kama nyumba yake. Yuko hapo kama muakilishi wa Ofisi ya Kenya nzima. Kwa hivyo, sijui ni kwa nini hangechukuliwa hatua kwa sababu ni kama anajua ni nini kinachofanyika huko.

(Applause)

(Loud consultations)

Mr. Deputy Speaker: Mr. Midiwo, the last point of order.

Mr. Midiwo: Mr. Deputy Speaker, Sir, this is not a small matter. It is only five months to a general election. I want to plead with our Minister in charge of internal security that bad signs are springing up. I want to plead with the Minister that where Kenyans are being massacred like chicken, we require investigations. Let us not trivialize it. This morning, an intelligence officer sent me a message saying that the issue that has taken the lives of innocent Kenyans is political. He asked me to raise this issue in Parliament. He reiterated that down there, people have taken positions on who should be the governor, the senator or Member of Parliament. It is those positions against other positions taken by rivals that are causing the death of innocent Kenyans. The Police Force is either asleep or is deliberately trying to watch over another mayhem in Kenya. Just last week, there was that nomination in Ndhiwa. You saw the carelessness with which those youths were fighting and yet, we are talking about a peaceful election. How come these boys were not arrested? The violence we saw on television in Ndhiwa, how come those people are not in jail?

Mr. Deputy Speaker, Sir, only a month ago the police escorted a Kenyan to the airport in the name of Miguna. He is back. How come he has not recorded a statement? What is the police doing in this country? What is their responsibility?

Hon. Members: Come, baby, come!

Mr. Midiwo: Baby, he has come! he needs to record a statement.

(Mr. Midiwo gestured)

(Laughter)

Hon. Members: Order! Order, hon. Bony Khalwale. Order! This is not a public rally.

Hon. Shebesh, you keep on gestbilating with your hands and I do not see you name here unless you do not know how to use this thing.

Proceed, now!

Mrs. Shebesh: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. I am the one who brought up the name of hon. Godhana here yesterday. I am the one who put the original Question that Godhana had given me. I thank God for being in the Backbench with good colleagues because when I consulted on that Question, they told me that this was not a Question, but an incitement.

The day I was asking my Question on his behalf he had put off his phone. I consulted my colleagues who have been here for longer than myself and they told me not to ask a Question on behalf of a Member who was not in the House. So, I did not ask it.

Mr. Deputy Speaker, Sir, later on, hon. Godhana, without my knowledge, filed 16 Questions with the Speaker's Office in my name. I was shocked when my Personal Assistant told me that I have 16 Questions all on issue of Tana River. I instructed my PA to write to the Speaker's Office denouncing those Questions. I thought I was helping this country. Yesterday, he was here and I asked him to confirm to me that 48 people had died, so that we seek for a Motion of Adjournment to discuss this matter, but he dismissed it. I was with hon. Mung'aro.

Because of my good intentions, there is no way I will continue sitting here with hon. Members who are inciting their people to kill other Kenyans. I will not be part of that Parliament. If, by today, hon. Godhana has not been asked to record a statement about the killing of his people, then I think we, as leaders, have failed this country.

Mr. Deputy Speaker, Sir, I am urging the Minister to take the necessary action. He should not wait for further instructions.

Mr. Deputy Speaker: Order! Hon. Members, much as this is a very sensitive issue, we also have our Standing Orders.

It is sickening and very saddening, indeed, what we are hearing on the Floor of this House. Nonetheless, if you want to discuss the conduct of Members of Parliament on the Floor of the House, you know how to do it.

On the other hand, there is the Government machinery. Enough red lights have been shown and the Government is there to act and save and preserve the lives of Kenyans. At the end of the day, I want to tell this Government, regardless of who is perpetrating, whether one is in the Government or not in the Government, it is the Government's responsibility to protect Kenyans. None other than the President and the Prime Minister will have to take responsibility for the loss of lives of Kenyans.

(Applause)

So, it is very important that when we leave here, this Government has to show it is acting and working differently from the way it has done in the past. We need to see results.

Hon. Members, with that, we have come to the end of this Order. We now move on to the next Order. We have constitutional Bills to pass. The House will sit late. We also have a responsibility to Kenyans to deliver on these constitutional Bills before they lapse.

Next Order!

COMMITTEE OF WHOLE HOUSE

(Order for the Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Mr. Ethuro) took the Chair]*

THE ASSUMPTION OF THE OFFICE OF THE PRESIDENT BILL

The Temporary Deputy Chairman (Mr. Ethuro): Order! Order, Members. We are in the Committee of the whole House. We will be considering six Bills. We will start with the first one.

Order, Members! We are starting with the Assumption of the Office of the President Bill, Bill No.30 of 2012 as per your Order Paper.

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, as you realize, the Committee report on that particular Bill has just been tabled. I was going to request that you give us time to look at that Report and come to it a bit later, because some of us may have amendments on that particular Bill. The report has just been tabled. I request that we do not make it the first one.

The Temporary Deputy Chairman (Mr. Ethuro): While the Chair is understandable to your request, there was also a requirement that we have passed procedural Motions in this House reducing the number of days and the rest.

There is also no requirement that the report must be there before the Committee of the Whole House. There was a deadline for amendments to arrive by latest 2.30 p.m. You cannot make other amendments after 2.30 p.m. So, we will proceed accordingly.

(Clause 2 agreed to)

(Clauses 3 and 4 agreed to)

Clause 5

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Millie Othiambo, you have an amendment.

Mrs. Odhiambo- Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5(2) be amended by deleting the same and replacing therewith the following.

“Two persons nominated by the President elect and one person nominated by the Presidential runners up”.

Mr. Temporary Deputy Chairman, Sir, we have discussed with the Minister. Based on the discussion with him, I will drop this particular amendment on Clause 5(2).

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5(3) be further amended by deleting the words “at least thirty days before the date of the general elections” and replacing with the words “upon commencement of this Act.”

Mr. Temporary Deputy Chairman, Sir, there was some timeline conflict.

The Temporary Deputy Chairman (Mr. Ethuro): It is my understanding that you have dropped all your other amendments, except the one you are proposing on Clause 5(3).

Mrs. Odhiambo-Mabona: Sorry, Mr. Temporary Deputy Chairman, Sir, that is the correct position. The only one I have dropped is the amendment that I had proposed on Clause 5(2). I have retained my amendment to Clause 5(3).

The Temporary Deputy Chairman (Mr. Ethuro): Well, you have clarified to hon. Members.

Hon. Members, the amendments proposed by hon. Odhiambo-Mabona are not in the Order Paper. So, make sure that you have a copy. If you do not have, you can approach the Table.

The amendment is that Clause 5(3) be amended by deleting the words “at least 30 days before the date of the general elections” and replacing it with the words “upon commencement of this Act.”

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Odhiambo-Mabona, you still have more amendments on Clause 5(2).

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I wish to propose an amendment in Clause 5(2) by adding new sub-clauses “q” and “r”, which is to include the Ministry responsible for matters relating to local Government and the Ministry responsible for matters related to Works.

Mr. Temporary Deputy Chairman, Sir, I have, again, consulted the Minister and he has a further amendment to my proposed amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, I, therefore, wish to propose the Question; that Clause 5(2) be further amended as proposed by hon. Odhiambo-Mabona, by adding new sub-clauses “q” and “r.”

(Question of the amendment proposed)

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, my counter-proposal is that instead of the Principal Secretary in the Ministry responsible for matters related to Local Government, it should be the Principal Secretary for Cabinet Affairs.

Mr. Temporary Deputy Chairman, Sir, in Clause 5(2) where my sister is proposing that a new sub-clause “r” be added, I propose that the Principal Secretary in the Ministry responsible for matters related to Works be deleted, since he can be co-opted. This is because his role will be only when a dais is being constructed.

Mr. Koech: On a point of order, Mr. Temporary Deputy Chairman, Sir. We are in a very important stage of completing these Bills. Listening to the proposed amendments, we are at a loss. We are likely to make amendments that are going to conflict. Would I be in order to request that all these proposed amendments are circulated to all of us and then, we dispose of each amendment at a time?

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Koech, if you have the Bill itself and then look at the amendment--- That is why we are allowing the hon. Member. Ordinarily, if they were on the Order Paper already, we would not read them. But because they came on a separate sheet, we are asking the hon. Member to read them loudly and she has done so. If you look at that particular Clause, it is just adding the particular Cabinet Secretary. It is a matter of numbers. It is not changing the substance of the argument.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I would like to indicate that the Minister has actually added one other thing that we did not agree on. Because of that, I do not know whether we should first go by his proposed amendments and then go to mine. What he is proposing is a totally new amendment and it is totally negating the essence of my amendment. Is it possible, therefore, that we dispose of mine and if it is carried it, we move on; but if it is not carried, the Minister can then propose his amendment, because he has the right as the Minister? We had agreed only on one amendment.

The Temporary Deputy Chairman (Mr. Ethuro): I have heard you, hon. Odhiambo-Mabona. Mr. Minister, I do not have your amendment.

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, you were given this amendment close to the time when you were going to the Chair. That is why we are making the counter-proposal. You said that we can read the Bill itself and make proposals. So, on that basis, we are making that proposal.

The Temporary Deputy Chairman (Mr. Ethuro): Then in terms of the procedure, I will dispose of the proposals by hon. Odhiambo-Mabona separately, so that the Minister can now speak to each one of them.

We had proposed that Clause 5(2) be amended as proposed by hon. Odhiambo-Mabona in the first part which should read:-

“By adding a new sub-clause “q”, which is, the Principal Secretary in the Ministry responsible for matters relating to local Government.”

If you are agreeable to that one, then we will dispose it.

Minister!

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, in view of the fact that we are going towards counties in the whole country, I do not know whether

there will be a Principal Secretary for Local Government. Therefore, I stand by my proposal that it should be Principal Secretary for Cabinet Affairs, who will always be there.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Minister, instead of Local Government you are proposing---

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Principal Secretary for Cabinet Affairs.

Mr. Temporary Deputy Chairman (Mr. Ethuro): Hon. Odhiambo-Mabona, the Minister is raising a fundamental issue.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, given that it is the Ministry for Local Government that actually looks at issues of devolved governments, I would say that for the time-being, the Minister responsible for issues of devolved Governments. What he is saying would be a totally new concept. It does not take into account what I was suggesting in the amendments. If we could say: "Cabinet Secretary responsible for matters of devolution." I see that the Minister agrees with me.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members! First, in order to dispose of it, you could actually treat them as separate because the Minister is bringing an additional clause and you are bringing another one. The problem, however, is that both of you are dealing with the Principal Secretary and yet you want to run away to the Cabinet Secretary. I think that changes the composition of the Committee if you go to the Cabinet Secretary. If you let it remain as Principal Secretary then I will just dispose of it as you had proposed initially. I will then come back to the Minister's separate amendments.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, we have substantially agreed with the Minister on the one for the Local Government. We just need to change it so that it reads, "for the time being related to matters of devolved government." This is instead of saying "Local Government".

The Temporary Deputy Chairman (Mr. Ethuro): So, is the Minister withdrawing the one of the Cabinet Office?

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, I have no objection if we capture that there should be a Principal Secretary in charge of devolution – if there will be such a person.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! You know if you do not agree, I will be forced to use the rules that I know. However, it will appear to me that the Principal Secretary would--- If you changed the Cabinet Secretary then it would actually be a different amendment from what had earlier been proposed.

(Question, that the words to be added be added, agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Millie had actually put the other amendment that Clause 5(2) be further amended by adding a new Sub Clause (r) which is: The Principal Secretary in the Ministry responsible for matters relating to works.

(Question of the amendment proposed)

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Temporary Deputy Chairman, I think the work of the Principal Secretary in the Ministry of Public Works will be very minimal. It is, therefore, not prudent, surely, to increase the number of membership. If there is need, he can be co-opted. So, I propose that it be deleted.

Mrs. Odhiambo-Mabona: That is okay.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Millie Odhiambo, it is not just okay. You would wish to formally withdraw the amendment.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I wish to withdraw that amendment to take into consideration the concerns of the Minister.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Kapondi, do you have amendments too?

Mr. Kapondi: Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, the Bill be amended in Clause 5-

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

(gg) the Principal Secretary in the Ministry responsible for matters relating to the Cabinet Office;

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Kapondi! Let us dispose of the first one on Clause 5(2) and then we will give you another opportunity for Sub-clause 4.

(Question of the amendment proposed)

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, we do not have these amendments. We have not seen them. Like you said, they had been submitted before 2.30 p.m. I raised this issue. We are about to pass things we do not understand. We will all be responsible at the end of this exercise. I told you that for all these other Bills, we are conversant and we have their amendments. However, for this particular one, we have nothing. I beg.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We are checking to find out whether the amendments had been distributed. The order of 2.30 p.m. was for the submissions of your amendments. So, distribution is another issue. By the time I was looking at that, you could not bring new amendments after 2.30 p.m. So, as we find out, let me entertain more points of order.

Mr. Koech: Mr. Temporary Deputy Chairman, apart from not having some of these proposed amendments, I think we need to be guided further. This is because in Clause 5(2) we are forming a Committee. If the proposed amendment by hon. Millie carried the day, then we have an odd number. The moment we add another one, we are going to have an even number which traditionally--- we always say that a Committee should have an odd number. We need also to be clear---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Koech! That is not the job of the Chair. You can use that as an argument to oppose or support. For the reason, I think hon. Kapondi should be able to respond, but before he does so let us get a point of order from hon. Millie Odhiambo.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, my request is that given--- I know many Members, because of the time span that we are moving, I had even raised it earlier with the substantive Speaker; is it possible that some of these proposed amendments be run even as we are dealing with these? This is because I have several other amendments which

because of the deadline, they were not put on the Order Paper. Is it possible that they be run as we are moving on so that hon. Members can also follow what we are doing?

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Shakeel!

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, a proposal has been put forth which I want to second. It is that you delay looking at amendments for this particular Bill and proceed with the others. I would like to propose that we continue with the Petitions to Parliament (Procedure) Bill and then return to this one thereafter. This will give time for everybody to be on the same page. Otherwise you---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members! To be honest, the amendments on this Bill are not that critical if you actually have the Bill. You can see where they are coming from and that is why we thought we can actually proceed. They are very few. The others are even more complicated and they are very many. We are starting here because this is relatively easier. All you need is for the hon. Member to bring the amendment. There is a Committee and we want to know who we are adding and who we are removing. That does not really, hon. Shakeel, need rocket science.

The Assistant Minister, Ministry of State for Planning, National Development and Vision 2030 (Mr. Kenneth): Mr. Temporary Deputy Chairman, I agree with you that we need to make progress. I also agree that on this particular Bill, we can proceed. The confusion is that the amendments by hon. Kapondi have been circulated, but the amendments by the Minister and hon. Odhiambo-Mabona have not been circulated. I was going to support you, so that we can make progress, but in the meantime, please, order that all the amendments to the other Bills, which are complicated, are brought here, so that we can look at them as we discuss.

The Temporary Deputy Chairman (Mr. Ethuro): I agree and I order the clerks-at-the Table to ensure that there are sufficient copies of all the proposed amendments. They should be distributed to the Members. Hon. Kapondi, in the meantime, you need to explain why you need a representative of the Cabinet Office to be part of the committee.

Mr. Kapondi: Mr. Temporary Deputy Chairman, just before I do that, I want to correct an impression. The amendments by the Minister are the same amendments that are agreed by the Committee. Basically, he does not have his own amendments.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Kapondi! You are just making it worse. Hon. Kenneth is saying that all the initial amendments by hon. Odhiambo-Mabona and the Minister were not before us, but yours are before us and they are the same with the Minister's. So, it is different. Yours are okay, but the initial ones by hon. Odhiambo-Mabona were not available to us. Proceed on yours.

Mr. Kapondi: Mr. Temporary Deputy Chairman, our proposal to have the Principal Secretary in charge of Cabinet Affairs as the secretary in (b)4 was to ensure that we have certainty. We should not have a team of principal secretaries---

Mr. Samoei: On a point of order, Mr. Temporary Deputy Chairman. I do not know whether you can help because this place has become so hot. The Members are very uncomfortable. It has become an oven. The fact that you do not see Members here is not because they are not around, but it is because most of them are leaving because this place has become an oven. Can you do something, so that we can participate in this very important business of the House?

The Temporary Deputy Chairman (Mr. Ethuro): That is correct. Serjeant-At-Arms, let us have the air conditioner on.

Mr. Kapondi: Mr. Temporary Deputy Chairman, we wanted to have certainty. Secondly, a Principal Secretary in charge of Cabinet Affairs is a person who is very relevant when it comes to matters of assumption of office of a new President. Basically, we are not talking about the handing over of 2013, but all the future handing-overs that we are going to have in this country.

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Temporary Deputy Chairman, the air condition should also be moderated because people like you and me from hot areas will prefer heat than very cold air. It should be moderated.

The Temporary Deputy Chairman (Mr. Ethuro): I agree except that you requested. You should have stood on a point of order. Even from your circumstances, it is very hot. It is not like the normal one.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Chairman. I wish to ask hon. Kapondi to clarify to us further how the Committee said that this is not for the 2013 transition, but for posterity, which reasoning I think is good. But how did the Committee deal with the issue of 2013 transition? If you look at the composition here, all these people are from the PNU Ministries. We are concerned and people are asking. We need to address this as a House, because of the fears that Kenyans have out there and the nature of the Government that we have.

Mr. Kapondi: Mr. Temporary Deputy Chairman, if my good friend, the Chief Whip, has gone through the Bill very well, the Bill is not about the handing over in 2013. It is a Bill for posterity. That is what it is. So, the concern that he is raising that maybe because of the Government arrangement that there is one side of the coin and the other side is not there, if you go down, there is an element of co-option of three members from the President elect. So, that takes care of that gap.

The Temporary Deputy Chairman (Mr. Ethuro): We need to dispose of this matter.

Mr. Midiwo: Mr. Temporary Deputy Chairman, the reason I raised that issue is because an amendment has just been made that this Committee will begin work 14 days after the President assents to the Bill, which is in two weeks.

Mr. Kapondi: Mr. Temporary Deputy Chairman, he should read the Bill again. The actual work of this committee will commence 14 days to inauguration.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Kapondi, we have just carried an amendment on the commencement.

Mr. Kapondi: Then that is a faulty amendment!

The Temporary Deputy Chairman (Mr. Ethuro): But still the issues raised by hon. Midiwo would be handled differently if you wanted to pursue that route. The chairman elected to pursue this one.

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

(Clause 5(a) agreed to)

Clause 5(b)

Mr. Kapondi: Mr. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended in Clause 5-

(b) deleting sub-clause (4) and substituting therefore the following new sub-clause

(4) The Principal Secretary in the Ministry responsible for the matters relating to the Cabinet office shall be the secretary to the Committee.

The rationale for that is that the person designated here as the secretary of the Committee is the Principal Secretary responsible for matters relating to the Cabinet Office. That is what we are trying to amend.

(Question of the amendment proposed)

Mr. Koech: Mr. Temporary Deputy Chairman, while I want to support the Chairman on that, I want some clarification, especially noting that there are two Clauses 5(2), so that we are very clear on the amendments that we are proposing. Which 5(2) have we been referring to?

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Koech, that is more clerical. I am sure the Clerk's Chamber and the Attorney-General will work on it on the basis of the proceedings from the HANSARD. Let us not squander the valuable time of the House.

Mr. Bahari: Thank you, Mr. Temporary Deputy Chairman, Sir. In view of what Mr. Midiwo has raised, in fact, in a situation where we do not have a coalition government, this will definitely be one sided in terms of the team that will be there. I was going to propose that probably the Secretary, instead of being the Secretary for Cabinet Affairs--- Let that Secretary be one of the persons appointed by the President-elect so that they can play a critical role.

The Temporary Deputy Chairman (Mr. Ethuro): The amendment is that the Principal Secretary in the Ministry responsible for matters relating to Cabinet Office in an amendment we had carried earlier on shall now be the Secretary to the Committee. So, the issue is whether that Principal Secretary should be the Secretary to the Committee as well.

Mr. Bahari: Thank you, Mr. Temporary Deputy Chairman, Sir. I have understood you. However, I was expressing my fears which are even worse than hon. Midiwo's, so that one of the representatives of the President-elect must play a critical role in view of the hand-over. I was just raising this concern.

I am ready to be informed because I can hear there is a point of information.

Mrs. Odhimbo-Mabona: On a point of information, Mr. Temporary Deputy Chairman, Sir. If I am getting the Member correct, then Clause 5(2)(N) with regard to three persons appointed to the President-elect is already there. I do not know whether that is what the hon. Member is talking about. I do not know whether I got the Member correctly.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! This is not debate time. I think we have heard each other. I will put the Question.

*(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 5 as amended agreed to)

(Clauses 6 and 7 agreed to)

Clause 8

Mr. Kapondi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in Clause 8 by inserting the following new sub-clause.

(2) The three committee members nominated by the President-elect under Section 5(2)(n) may cause the Chairman to call for a meeting to consider important matters of an urgent nature regarding the assumption of office by the President-elect.

The rationale is all very clear that considering any agency by the President-elect, the Members he has co-opted in the committee may call the Chairman to convene a meeting so that they can deliberate on any issue that is of urgent nature.

(Question of the amendment proposed)

The Assistant Minister for Planning, National Development and Vision 2030 (Mr. Kenneth): Mr. Temporary Deputy Chairman, Sir, perhaps the Chairman should have told us why out of the long list of about 20 people only three will be required to call for what is urgent. This is because it is an issue of a quorum that can call for a meeting. I just need a clarification.

Mr. Kapondi: Mr. Temporary Deputy Chairman, Sir, I think this is a very straightforward case because the rest of the membership could be coming from the incumbency. The three, considering the fact that they are representing the President-elect, and the President-elect has some issues that are critical, the three in our view as a Committee, in agreement with the Office of the Minister could carry the day by urging the Committee Chair to convene a meeting. Basically, this is something that is very clear.

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

(Clause 8 as amended agreed to)

(Clauses 9 and 10 agreed to)

Clause 11

Mr. Kapondi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in sub-clause (2) of Clause 11 by inserting the words “in writing” immediately after the word “request”.

The rationale here is very clear. The Constitution stipulates that any communication to any office should be in writing, and we should not deviate from that format.

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

(Clause 12 as agreed to)

Clause 13

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 13(2) be amended by adding the words “save that the Deputy Chief Justice shall undertake the tasks only in circumstances where the Chief Justice is incapacitated”.

The purpose of this is that the swearing in will be either by the Chief Justice or the Deputy Chief Justice. However, to avoid conflict, you need to be clear that the Deputy Chief Justice should do that only where the Chief Justice is incapacitated and to avoid issues of insubordination.

(Question of the amendment proposed)

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

(Clause 13 as amended agreed to)

(Clauses 14, 15, 16, 17 and 18 agreed to)

Clause 19

Mr. Kapondi: Mr. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in sub-clause (1) of Clause 19 by deleting the words “three months” and substituting therefor the words “one month”.

Mr. Temporary Deputy Chairman, Sir, the reason for reducing from three months to one month basically is that there was no rationale to have a report prepared after the handing over has been done to wait for three months. So, the Committee felt that one month is enough. That is the reason we resolved to have it amended.

(Question of the amendment proposed)

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

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

(Clause 19 as amended agreed to)

(Clauses 20, 21 and 22 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of Assumption of the Office of the President Bill (Bill No. 30 of 2012) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! I hope you understood. When we do a recommittal we will be opening clauses 4 and 5. The procedure is that we go back to the plenary, we do not want to go back for now. We just want to go to the next one and then we come to that stage when we are really doing it.

Order, hon. Members! We are now on the second Bill which is the Petitions to Parliament (Procedure) Bill (Bill No. 34 of 2012).

THE PETITIONS TO PARLIAMENT (PROCEDURE) BILL

Clause 2

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I am moving these amendments on behalf of the Rules and Procedures Committee.

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended-

(a) in the definition of “petition” by deleting the word “Article” and substituting therefor the words “Article 37 or 119” ;

(b) in the definition of “petitioner” by deleting the word “Article” and substituting therefor the words “Article 37 or 119”

Mr. Temporary Deputy Chairman, Sir, the justification is that in the Order Paper, they have only mentioned on Clause 119 and actually in the Constitution it is both Clause 119 and 37 that talk about petitions to Parliament.

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

Clause 3

Dr. Laboso: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 3 of the Bill be amended-

- (a) by deleting the words “under to Article 119 of the Constitution”;
- (b) by deleting paragraph (f) and substituting therefor the following new paragraph-
 - (f) indicate whether any efforts have been made to have the matter addressed by a relevant body and whether there has been any response from that relevant body or whether the response has been unsatisfactory.
- (c) by deleting paragraph (g) and substituting therefor the following new paragraph-
 - (g) indicate whether the issues in respect of the petition is made are pending before any court of law or other constitutional or legal body;

The import of this amendment is that one of them is to do with whether the petition is either in court or the matters discussed in the petition are in court. We want to delete “(f)” as indicated in the Order Paper saying indicate whether any effort has been made to have the matter addressed by a relevant body and whether there has been any response from that relevant body and whether the response has been unsatisfactory and, therefore, calling for the petition to Parliament.

(Question of the amendment proposed)

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

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

(Clause 3 as amended agreed to)

Clause 4

Dr. Laboso: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended by deleting the words “addressed to the Clerk of the wrong House” appearing in Sub-Section (1) and substituting therefor the words “not addressed to the Clerk of the relevant House”.

Mr. Temporary Deputy Chairman, Sir, this is just almost a typo. Hon. Members can see that it is written “to the wrong House”. We are saying that there is no “wrong House”. It is more to do with the “relevant House”.

(Question of the amendment proposed)

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

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

(Clause 4 as amended agreed to)

(Clauses 5 and 6 agreed to)

(Schedule agreed to)

Long Title

Dr. Laboso: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the long title to the Act be amended by deleting the word “Article” and substituting therefor the words “Article 37 or 119”.

Mr. Temporary Deputy Chairman, Sir, here, again, the amendment is just to include Article 37. The Bill talks about Article 199 only.

(Question of the amendment proposed)

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

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

(Long Title as amended agreed to)

(Short Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Who is the Minister responsible? Yes, Assistant Minister for Justice, National Cohesion and Constitutional Affairs!

(Mr. Cheptumo consulted the Attorney-General)

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Mr. Temporary Deputy Chairman, Sir, I am sorry; I was consulting with the Attorney-General.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Assistant Minister, you should have done the consultation much earlier. These clauses are on the Order Paper.

Proceed.

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Petitions to Parliament (Procedure) Bill, Bill No.34 of 2012; and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we are now moving to the third Bill – The Kenya Defence Forces Bill, Bill No.35 of 2012. I hope that the Minister of State for Defence is here, and that he is following the proceedings.

THE KENYA DEFENCE FORCES BILL

Clause 2

The Temporary Deputy Chairman (Mr. Ethuro): Yes, hon. Millie Odhiambo!

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, even though hon. Duale is telling me that I will look stupid by raising this issue, I want to go on record because I sit in this House. I want to confess that due to the speed at which we have been going through these Bills, I have not looked at this particular Bill. So, I have no clue as to what is in it.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Millie! You had actually requested for a point of order. The amendment is by hon. Keynan.

Proceed, hon. Keynan.

Clause 2

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in Sub-Clause (1) of Clause 2 by deleting the definition of the term “non-public property” and substituting therefor the following new definition-

“non-public property” means non-public funds or property acquired by members, a formation, unit or sub unit from non-public funds;

Mr. Temporary Deputy Chairman, Sir, the amendment is just about the definition.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, for the amendments that are already on the Order Paper, if you say “I beg to move that clause so-and-so be amended as it appears on the Order Paper”, it will be fine. The amendments that should be read out are the new ones, which are not on the Order Paper.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Ethuro): Yes, hon. Njuguna.

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, could the Chairperson of the Departmental Committee explain to the House the import of this amendment?

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Njuguna! The Chairman had actually explained that it is just being repetitive.

*(Question, that the words to be
left out be left out, proposed)*

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

(Clause 2 as amended agreed to)

(Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 agreed to)

Clause 16

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in paragraph (n) of Clause 16 by inserting the words “through the Chief of the Defence Forces” immediately after the words “Cabinet Secretary”

Mr. Temporary Deputy Chairman, Sir, this is, again, to just insert the words indicated above. This is because the President is the Commander-In-Chief. So, that chain is missing.

(Question of the amendment proposed)

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

(Clause 16 as amended agreed to)

(Clauses 17, 18, 19, 20 and 21 agreed to)

Clause 22

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in Sub-clause (3) of Clause 22 by deleting the words “but shall not have the right to vote” and substituting therefore the words “but shall not participate in the making of decisions”.

Mr. Temporary Deputy Chairman, Sir, the decision of the Council is normally arrived at through consensus. So, the issue of voting is very risky. So, we said all decisions as far as the Council is concerned must be arrived at through consensus instead of voting. I think this is completely not in line with some of the best practices that we have gathered in the developed countries.

(Question of the amendment proposed)

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

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

(Clause 22 as amended agreed to)

Clause 23

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 23 be amended by deleting paragraph (a) of Sub-clause (4).

(Question of the amendment proposed)

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

(Clause 23 as amended agreed to)

(Clauses 24, 25, 26 and 27 agreed to)

Clause 28

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended in Clause 28 by deleting Sub-clause (2) and substituting therefore the following new sub-clause-

(2) In developing the criteria for the recruitment, promotion and transfer of members of the Defence Forces, the Defence Council shall consult with the Public Service Commission.

Mr. Temporary Deputy Chairman, Sir, again, the input of this is that the Public Service Commission (PSC) is a critical component in human resource, both in developing human resource, recruitment procedures, promotions and all other issues pertaining to human resource. That aspect of the PSC was missing and, therefore, again, it was agreed that in developing this criteria, we must have the input of PSC.

(Question of the amendment proposed)

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I wish to move a further amendment to Clause 28.

THAT, the Defence Council shall advertise the chances allocated per county at least 30 days before recruitment.

Mr. Temporary Deputy Chairman, Sir, this is so that people know what each county has been allocated during the recruitment, at least, 30 days before recruitment.

The Temporary Deputy Chairman (Mr. Ethuro): Let us dispose the further amendment first and then we come to the substantive one.

(Question of the further amendment proposed)

The Assistant Minister of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, I just want to explain that this actually relates to recruitment of staff generally to perform certain duties that are not performed by soldiers. In essence, priority is normally given

to retired soldiers who are called constabulary. They are covered in Clause 30. I think the Committee will be in order to allow the Military since they are recruiting within the retired personnel to carry out the recruitment without having to advertise as it is when you are recruiting new staff. So, let me persuade my friend, hon. Midiwo, to abandon that proposal.

Mr. Konchella: Mr. Temporary Deputy Chairman, Sir, following what the Assistant Minister has said, then we should bring the issue of non-combatants. That is because we must clearly define who is to be recruited or promoted. Are they combatants or non-combatants?

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, I have listened to the hon. Assistant Minister and I see no contradiction from what hon. Midiwo has said. Even if it is a question of hiring retired personnel, we would still want a law that makes it transparent to the extent that all regions - as represented in the counties and all ethnic communities have a sense of justice. I, therefore, support hon. Midiwo.

Mr. Chachu: Mr. Temporary Deputy Chairman, Sir, I also support hon. Midiwo's further amendment for transparency. It is very important for us to know how women and men in our defence forces are recruited. I think it is important that it is advertised per county or even per district. I support the further amendment.

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

The Temporary Deputy Chairman (Mr. Ethuro): Let us now go to the original amendment by hon. Keynan.

(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 28 as amended agreed to)

(Clause 29 agreed to)

Clause 30

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT Clause 30 of the Bill be amended-

(a) in paragraph (b) by deleting the words "whose members shall be recruited and drawn from members of the Defence Forces;"

(b) by inserting the following new sub-clause-

(2) The Defence Council shall by regulations determine the extent to which this Act shall apply to the members of the units created under sub-section (1) (a) and (b)."

Mr. Temporary Deputy Chairman, Sir, the import of this again is to make a distinction between the serving and former members. The constabulary officers are what we normally refer

to as “askari wazee”. These people should be available at the direction of the defence senior officials. Therefore, it is just meant to improve on the clause.

(Question of the amendment proposed)

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, I think I pressed the button erroneously.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Konchellah, I think you have a pressing point of order, or is it similar to the Minister’s? From your body language, I can determine that.

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

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

(Clause 30 as amended agreed to)

Clause 31

Mr. Letimalo: Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT Clause 31 of the Bill be amended-

- (a) in paragraph (a) by deleting the words “and report to the National Assembly whenever deployed in such circumstances” and substituting therefor the words “but deployment in such circumstances shall require the prior approval of the National Assembly”
- (b) in paragraph (b) by inserting the word “prior” immediately before the word “approval”

Mr. Temporary Deputy Chairman, Sir, the import of this is that before the Kenya Defence Forces undertake any exercise, it should get prior approval from Parliament, and Parliament will ascertain whether they can undertake that exercise or not.

(Question of the amendment proposed)

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, I have really discussed this with my friend because it is not practical. Here, it talks of situations of emergency or disaster. I want to give the example of the American bombing when the military moved in to help. Now my friend is suggesting that before doing that, we come to Parliament to seek approval. We oppose this amendment very strongly.

Mr. Duale: Mr. Temporary Deputy Chairman, Sir, I want to urge my colleague, Mr. Letimalo, to drop this amendment because looking at the regional engagement and the insecurity we have, at times, the Military will be needed to move within 24 hours to a new site. I really want to urge my colleague to withdraw the amendment.

The Assistant Minister, Ministry of State for Planning, National Development and Vision 2030 (Mr. Kenneth): Mr. Temporary Deputy Chairman, Sir, I want to support the sentiments by Mr. Musila. I notice that the same clause that Mr. Letimalo is trying to amend is the same one in Clause 33, where the Chair is also trying to impose the same conditionality. Also, there are times when the National Assembly is not sitting and there are emergencies. There are times when the House is dissolved and there is an emergency; will the Military have to wait until the House is reconvened for it to give an approval? So, I want to appeal to the Chair of the Committee on Defence and Foreign Relations and Mr. Letimalo that, for the sake of national interest, this conditionality be removed.

Mr. Letimalo: Mr. Temporary Deputy Chairman, Sir, I am convinced by the explanation given by both the Assistant Ministers and the hon. Member. Therefore, I withdraw my amendment.

The Temporary Deputy Chairman (Mr. Ethuro): First, we should know that there is no amendment to Clause 31. The one that was there has been withdrawn by the hon. Member.

(Proposed amendment by Mr. Letimalo withdrawn)

(Clause 31 agreed to)

(Clause 32 agreed to)

Clause 33

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT Clause 33 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “and in the restoration of peace in any part of Kenya;”

(b) by inserting the following new sub-clause-

(2) The Defence Forces may, with the approval of the National Assembly, be deployed to restore peace in any part of Kenya.

The import of this is to make it consistent with Article 241 of the Constitution and we were in agreement.

(Question of the amendment proposed)

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, I agree with the Chair that during discussions, we allowed this amendment, but how practical is it? For example, if it is necessary to restore peace during a time when Parliament is not sitting, and we are talking about in the country not outside. We agreed that before the forces are deployed outside, parliamentary approval will be a must. But here we are talking of a situation similar to that of 2008, when things became very bad in Nakuru and the Commander-in-Chief ordered the Defence Forces to go and restore order when police had failed. If he had to call Parliament, and we had not even been sworn in, the situation would have gone out of hand. Therefore, I want to plead with the Chairman that we do away with this amendment, because doing this would be in the interests of our Republic.

I beg to oppose despite the fact that we agreed in view of, especially, what Mr. Kenneth has said.

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, while I empathize with what the Assistant Minister has said, we only need to familiarize ourselves with Article 241(3)(b) which says that the Kenya Defence Forces shall assist and co-operate with other authorities in situations of emergency or disaster and report to the National Assembly whenever deployed in such circumstance, and may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly. So, even if this is deleted, it is clear in the Constitution. Again, we have to decide on what we really want. It is in the Constitution even if we do not put it in the Act; the Constitution still remains paramount. This is something that this House has to make a decision on. I have no personal attachment to---

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Keynan, you have put your case.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, this is one of the challenges we have. Come 14th January, there will be no Parliament, yet we will need all security apparatus in this country. One of the challenges that this Parliament must think of, not only in enacting this law, but also in relation to other laws, is the issue constitutional amendments. Is it possible to say that in case there is no Parliament, and there is a crisis we cannot use our Military to restore peace within the country? I think it is a matter that, even if we are not going to put it in the Bill, we must think about when thinking about the issue of gender and see to it that it is addressed through a constitutional amendment.

Mr. Kapondi: Mr. Temporary Deputy Chairman, Sir, I wanted to echo what my colleague, the Chairman of the Committee on Defence and Foreign Relations has said. It is all clear that the Act cannot be superior to the Constitution. The Constitution is supreme. So, I support the amendment as proposed by Mr. Keynan.

The Minister for Energy (Mr. Murungi): On a point of order, Mr. Temporary Deputy Chairman, Sir. In the interest of saving time, the position is very clear as put by Mr. Keynan. We have no choice but to accept this amendment in view of the fact that our hands are tied by the Constitution. Until it is amended, we cannot purport to pass through this House an illegal provision. So, I am pleading with my colleague to drop his opposition to the amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Murungi, there is also the Attorney-General of the Republic, who is the Principal Legal Advisor to the Government. What is your position? I suppose that is why we have the wisdom of you sitting in this House.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I think my own advice would be that we must stop trying to make legislation where the Constitution itself has spoken in clear language. That is because we then create ambiguity which we do not require.

(Ms. Karua consulted loudly)

I do not know whether I still have the microphone because I hear other hon. Members, especially the hon. Member for Gichugu---

The Temporary Deputy Chairman (Mr. Ethuro): You are responding to the Chair and not to the hon. Member for Gichugu, no matter how interesting that contribution might be. I think it is now up to the Assistant Minister. Are you willing to withdraw your amendment?

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, in view of the advice of the learned Attorney-General, and since the Constitution has already spoken as the Chair has said, then we do not need it here. So, I propose

that we do not have it here; it remains in the Constitution. I think that is the advice we got from the Attorney-General. The Constitution is clear and so, why do we need to legislate what the Constitution has provided? Therefore, I suggest that we do not approve the amendment.

Mr. Samoei: Mr. Temporary Deputy Chairman, Sir, I think the Assistant Minister of State for Defence is missing the point.

(Applause)

If we go his route, we will actually be legislating here against the Constitution. That is why he is being asked to withdraw his amendment. That is because if we do not pass it the way Mr. Keynan has proposed, the President can order our defence forces in the law while in the Constitution, he can only do so with permission of Parliament. So, I think the advice of the Attorney-General is very clear. In the very first place, we should not have had clauses in this Bill dealing with a matter that is already expressly provided by the Constitution. Now that we went the route of writing it into the law, we should write it the same way the Constitution is written.

(Loud consultations)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members. I think the arguments here are very clear and we are at the Committee Stage; we are not debating. The Assistant Minister has nothing to withdraw. We just thought that he would kind enough to concede but since he has not, I will just proceed. Parliament guides us in how to resolve these matters. There is a very simple procedure which I am going to use.

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

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

(Clause 33 as amended agreed to)

(Clauses 34, 35 and 36 agreed to)

Clause 37

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in Clause 37 by inserting the following new sub-clause

(2) A treaty or agreement entered into under Sub-section (1) shall put in place mechanisms to protect the interests of the local community of the place where the foreign military forces are deployed and such treaty shall also provide that the foreign forces are subject to the Constitution and all the laws of Kenya.

Again, that addresses some of the issues that Mr. Letimalo had raised. You realize that over the last few years or decades, we have had instances where foreign forces--- Of course, we

have mutual agreements and MoUs saying: “Just come to Kenya, go to any part in the Republic and without any due regard to the local communities, engage in a lot of illegalities.” So this amendment will address what has been happening in Samburu East, Ngong and other parts of the country. Therefore, this will clearly ensure that any foreign forces who come to Kenya will have to engage our Armed Forces in an organized manner that will be consistent with our laws; that will also take care of the interest of the host community. This, therefore, cures that amendment by Mr. Letimalo.

(Question of the amendment proposed)

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I rise to support this proposal. This is a very important proposal. Even apart from what concerns Mr. Letimalo, there are soldiers who come here for whatever reason. They travel all over the country. They go to northern part of Kenya where they go to train. They travel to Coast Province in the guise of going after the terrorists and they misbehave. There is this general assumption that they are above the laws of Kenya. So, I think from now on, foreign soldiers must know that when they step in here, we can jail them because they will be under our Constitution.

(Mr. Konchella stood up in his place)

The Temporary Deputy Chairman (Mr. Ethuro): What is your point of order, Mr. Konchella?

Mr. Konchella: Mr. Temporary Deputy Chairman, Sir, it is not a point of order. It is just a comment.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Konchella! You need to know which button you are dealing with. The intervention is a point of order but your request is a comment. But since I am told that the learning cap for some hon. Members may be a bit longer, I will allow you to proceed.

Mr. Konchella: Mr. Temporary Deputy Chairman, Sir, we need to capture the issue of clearance of unexploded ordinance. Once there is a training going on like it is happening in Samburu, that is where many Kenyans are maimed and killed. So, we need to capture that and say that in the course of exercises by foreign troops--- We know what our troops do. They must not only obey the law, but they must ensure that no unexploded missiles or ordinances are left in the field.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Letimalo has an amendment that we consider similar to the one of the Committee.

Mr. Letimalo: Mr. Temporary Deputy Chairman, Sir, I have further amendments.

The Temporary Deputy Chairman (Mr. Ethuro): We know that you have submitted to us and that is why the Chair is asking you that your amendments seem to be similar, for all purposes and intents, to the one proposed by the Committee. That is because if you look at “shall put in place mechanisms to protect the interests of the locals---” You have just added to say “the compensation of the local communities.”

Mr. Letimalo: Mr. Temporary Deputy Chairman, Sir, it may not be similar as such, but if you look at (c), the intention is that we have land which has been set aside and gazetted for military training. However, when Kenyan troops and the British Army conducted these

exercises, they go beyond the gazetted land. So, in the event that they want to use this community land, then they should negotiate and get the consent of the community or group ranches as they do with individual ranches in Laikipia. So, that is the input of the amendment.

Mr. Temporary Deputy Chairman, Sir, for (d) just as hon. Konchella has put it---

The Temporary Deputy Chairman (Mr. Ethuro): Order! Mr. Letimalo, we were just persuading to consider, but since you have maintained your ground, we will treat it as such. So, we will give you an opportunity to prosecute your amendments. In the meantime, we dispose of the one of the Committee first.

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

(Clause 37 as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Letimalo, now you can move your amendment.

Mr. Letimalo: Mr. Temporary Deputy Chairman, Sir, I want to propose further amendments. As I said, there is land that has been set aside and gazetted for military training exercises.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Mr. Letimalo, just read your amendment as it is because it is not in the Order Paper. Just read it as it is, then you can justify.

Mr. Letimalo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 37 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (b),

“(c) the operation of the Defence Forces, defending military personnel and their mission within the gazetted areas”.

(d) the compensation of local communities in the event of accident in areas, where the military is deployed or the operation of military personnel outside the gazetted areas.

So, the justification of this amendment is that military exercises should be conducted within the gazetted areas. But in the even that they want to use community land, they should negotiate with the community and get the consent unlike what is happening now. They are just using land to do their military training without the consent of the community. That is what we were discussing with the Minister the other time.

Mr. Temporary Deputy Chairman, part (d) of the amendment is backing what hon. Konchella suggested. When they conduct the military exercises, they must clear that area of ammunitions and other gadgets. They leave a lot of unexploded ammunition in that area. When residents are grazing their livestock, they come across strange ordinance which explode and injure them. We have had so many cases of people who have been killed. The Government does not pay their medical bills. It is less concerned with the plight of our people. So, we want them to compensate those people.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Hon. Members, let us be patient because some of these things are informed by our own situations. My situation may be different from yours.

(Question of the amendment proposed)

Ms. Karua: Mr. Temporary Chairman, Sir, I wish to support the amendment by hon. Letimalo. It will now obligate the Government, if it wishes to deploy either its own military or a foreign military to accommodate it in Kenya; they will have to bring the local community into focus to avoid the hardships communities in such areas have undergone.

With those few remarks, I beg to support.

Mr. Samoei: Mr. Temporary Deputy Chairman, Sir, I want to rise to support the amendments that have been raised by the hon. Letimalo. In my own constituency, a school going child was killed this year courtesy of military operations at the 9 Kenya Rifles in Moi Barracks in Eldoret.

Mr. Temporary Deputy Chairman, Sir, I think this amendment will now make it possible for communities that live around areas where this kind of exercises are undertaken to be compensated whenever such acts go beyond the gazetted areas. I, therefore, want to support emphatically the amendment that has been proposed by the hon. Letimalo.

Mr. Chachu: Mr. Temporary Deputy Chairman, Sir, I also do support the amendment by the hon. Letimalo.

Mr. Temporary Deputy Speaker, Sir, last week, a young herder in the constituency was killed by a grenade that was left behind almost 40 years ago. I think this amendment will go along in ensuring that Kenyans will be compensated. If their land is used, then they will have to be compensated by the State or by the military in a way that will be gainful to them.

I support the amendment.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, I want to confirm to the Members of this Committee that we very sympathetic to these situations. Indeed, only last week, I assured the House when I was answering a Question by the hon. Letimalo that we will take care and ensure that, in future, what has been happening does not happen.

I have had very extensive discussion with hon. Letimalo on this particular amendment. We have agreed with him on a manner in which we will improve it. Therefore, with your permission, I want to read what we have agreed as a way of improving his amendment. This relates to the agreement that we will make with the visiting forces; our Defence Forces or foreign military personnel, operating outside gazetted areas. That makes it tidier and I think he agrees.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Mr. Musila, just move your further amendment to (c).

The Assistant Minister, Ministry of State for Defence (Mr. Musila): So, Mr. Temporary Deputy Chairman, Sir, I want the Members of the Committee to realize that what we are doing with our discussion, with the Member is simply to better (c) by removing the star and putting conditions of operations of the Defence Forces. The way it is and then after personnel you put the word outside "outside gazetted areas". He said that he wants compensation or consultation if operation is done outside. So, if you say within, then there it contradicts. So, it should be outside. So, that is what we agreed with hon. Letimalo, which I ask him to confirm.

The Temporary Deputy Chairman (Mr. Ethuro): What about (d)?

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, on "(d)", we put a fullstop after the word "deployed", so that it reads:- "the compensation of local communities in the event of accidents in areas where the military is deployed."

We agreed that the compensation be done whether or not it is gazetted. So, if you put a fullstop after the word “deployed” then it is fully covered.

Mr. Temporary Deputy Speaker, Sir, I beg to submit.

The Temporary Deputy Chairman (Mr. Ethuro): The Assistant Minister is not helping the Chair. Hon. Musila, you know very well that we needed a copy of that, so that we can read together with you. But my understanding is that the further amendment to “(d)” is that we delete all the words after the word “deployed.”

On “(c)”, you insert the words “conditions of” at the very beginning between “the” and “operation.” Then, towards the end, you delete the words “and their mission within” and replace with the word “outside.” So, from our understanding, the further amendment should read:-

“the conditions of operation of the Defence Forces, the foreign military personnel outside gazetted areas.”

If that is clear, particularly to hon. Letimalo, then I will proceed with the further amendments.

(Mr. Letimalo stood up in his place)

Just nod; you do not need to speak, unless you have a serious point.

(Mr. Letimalo nodded)

(Question of the further amendment proposed)

Mr. Konchella: Mr. Temporary Deputy Chairman, Sir, the essence of exercise in the military sense is to test the accuracy and range of weapons. That is why they go outside the gazetted area. So, either way, the Government or whoever has to fence the gazetted area or compensate the people within and outside, because these are pastoralists. That is why I want this amendment to include the following:-

“All unexploded ordinance in the gazetted area must be cleared at the end of the exercise by the---

The Temporary Deputy Chairman (Mr. Ethuro): Order! Order, hon. Konchella! We are speaking to the further amendment. If you have a further amendment, you bring it to the attention of the House starting with the Table. So, let us speak to the further amendment to hon. Letimalo’s amendment by the Assistant Minister.

(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 37 as amended agreed)

(Clauses 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78,

79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91,
92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103,
104, 105, 106, 107, 108, 109, 110, 111, 112, 113,
114, 115, 116, 117, 118, 119, 120, 121, 122, 123,
124, 125, 126, 127, 128, 129, 130, 131, 132, 133,
134, 135, 136, 137, 138, 139, 140, 141, 142, 143,
144, 145, 146, 147, 148, 149, 150, 151, 152,
153, 154, 155, 156, 157, 158 and 159 agreed to)

Clause 160

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 160 of the Bill be amended by deleting sub-clauses (1), (2) and (3) and substituting therefor the following new sub-clauses-

160. (1) In the case of any proceedings the Courts Martial established under Article 169 of the Constitution shall consist of:

- (a) a Judge Advocate appointed under section 165 who shall be the presiding officer; and
- (b) at least five other members appointed by the Defence Court Martial Administrator if an officer is being tried; and
- (c) not less than three other members in any other case.

(2) The members of the Court Martial shall be officers so qualified and not so ineligible in accordance with section 164.

(3) At least one of the members provided for in subsection (1) shall be:

- (a) of equivalent rank as the accused person where the accused is an officer and;
- (b) the lowest ranking officer in the Defence Forces where the accused is a service member.

Mr. Temporary Deputy Chairman, Sir, again, this was an improvement on the drafting and it was proposed by the user. You can see that this section deals with court martials. This is a military even and, therefore, it was just meant to cure some of the areas that they may not have drafted properly in the Bill.

(Question of the amendment proposed)

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

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

(Clause 160 as amended agreed to)

(Clauses 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171 and 172 agreed to)

Clause 173

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, the Bill be amended in Clause 173 by deleting sub-clause (6) and substituting therefor the following new sub-clause-

(6) An accused charged before a court martial with an offence under Part VI may be convicted for another offence under Part VI where the evidence shows that the accused has committed that other offence.

(Power hitch)

(Question of the amendment proposed)

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

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

(Clause 173 as amended agreed to)

*(Clauses 174, 175, 176, 177, 178, 179, 180, 181, 182, 183,
184, 185, 186, 187, 188, 189, 190, 191 and 192 agreed to)*

*(Clauses 193, 194, 195, 196, 197, 198, 199, 200, 201, 202,
203, 204, 205, 206, 207, 208, 209, 210, 211, 212
and 213 agreed to)*

*(Clauses 214, 215, 216, 217, 218,
219 and 220 agreed to)*

Heading of Part XIII

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT the Bill be amended in the Heading of Part XIII by deleting the words "OF VEHICLES"

Mr. Temporary Deputy Chairman, instead of limiting the military to billeting and requisition of vehicles--- Other needs can arise. We, therefore, deleted "VEHICLES" so that it remains billeting and requisition.

(Question of the amendment proposed)

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

(Heading of Part XIII as amended agreed to)

(Clauses 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, and 240 agreed to)

(Clauses 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259 and 260 agreed to)

(Clauses 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275 and 276 agreed to)

Clause 277

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT the Bill be amended in Clause 277 by inserting the following words at the end of sub-clause (1)-

“commits an offence and shall be liable on conviction by a civil court to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year.”

This is meant to provide a specific punishment. As it is now, there is a bit of ambiguity in the way it is drafted in the Bill. So, we are just being specific.

(Question of the amendment proposed)

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

(Clause 277 as amended agreed to)

(Clause 278 agreed to)

Clause 279

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT the Bill be amended in Clause 279 by the words “or arrangement” appearing in paragraph (j).

This was an improvement on the drafting. There was nothing major.

(Question of the amendment proposed)

The Assistant Minister of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, it is just a small omission because the proposal as printed does not say what should be done. The word “deleting” is missing. It is just a typo. So, it is to amend Clause 279 by deleting the words.

The Temporary Deputy Chairman: Order, Assistant Minister! That is not a typo. It is a substantive thing whether it is deleting or inclusion. So, I will treat you as proposing a further amendment.

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

(Clause 279 as further amended agreed to)

(Clauses 280 and 281 agreed to)

Clause 282

Mr. Keynan: Mr. Temporary Deputy Chairman, I beg to move:-

THAT the Bill be amended in Clause 282 by deleting sub-clause (1) and substituting therefor the following new sub-clauses-

(1) The Kenyan civil courts shall have exclusive jurisdiction and primary right to try any member of a visiting force for any civil offence committed in contravention of any Kenyan law, customary international law, treaty or an agreement the Kenyan Government is party to.

(2) Despite subsection (1), a provision in a treaty or agreement to which the Kenyan Government is party to may confer exclusive and primary right to try any member of a visiting force to the authorities of that visiting force.

When we have visiting forces, before now, the assumption was that they are not subject to our own judicial jurisdiction. Therefore, this amendment will make them also subject to our laws.

(Question of the amendment proposed)

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

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

(Clause 282 as amended agreed to)

*(Clauses 283, 284, 285, 286, 287, 288, 289, 290, 291,
292, 293, 294, 295, 296, 297, 298, 299,
300 and 301 agreed to)*

Clause 302

Mr. Keynan: Mr. Temporary Deputy Chairman, I beg to move:-

THAT the Bill be amended in Clause 302 by inserting the words “within ninety days of the commencement of this Act” after the word “shall” appearing in sub-clause (2).

This is meant to do the timeline to the meetings of the Defence Council instead of just open ended.

(Question of the amendment proposed)

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

(Clause 302 as amended agreed to)

*(Clauses 303, 304, 305, 306, 307, 308, 309,
310, 311, 312, 313, 314 and 315 agreed to)*

New Clause 269A

Mr. Keynan: Mr. Temporary Deputy Chairman, I beg to move:-

THAT the Bill be amended by inserting the following new Clause immediately after Clause 269-

Prohibition of torture or cruel treatment	269A. (1) A member of the Defence Forces shall not subject any person to torture, cruel, inhuman or degrading treatment.
--	--

(2) A member of the Defence Forces who subjects a person to torture commits an offence and is liable on conviction to a fine not exceeding ten million shillings or imprisonment for a term not exceeding twenty five years or both.

(3) A member of the Defence Forces who subjects a person to cruel, inhuman or degrading treatment commits an offence and is liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding fifteen years or both.

(4) In this section—

“cruel, inhuman or degrading treatment or punishment” means a deliberate and aggravated treatment or punishment not amounting to torture, inflicted by a person in authority or the agent of the person in authority against a person under his or her custody, causing suffering, gross humiliation or debasement to the person; “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of—

(i) obtaining information or a confession from the person or from a third person;

(ii) punishing the person for an act which that person or a third person has committed or is suspected of having committed;

(iii) intimidating or coercing that person or a third person; or

(iv) for any reason based on discrimination of any kind,

when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

(Question of the New Clause 269A proposed)

(New Clause 269A read the First Time)

*(Question, that the New Clause 269A be read
a Second Time proposed)*

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, this is the first time that the new clause is appearing on the record because it was not part of the original Bill. I believe it is only fair for the House and for posterity to know why this new clause is being introduced into the Bill and thus the essence of it being read a Second Time. It may not be enough for the Chairman to say that the new clause be read a Second Time without facilitating the rationale, so that the Members can know that this was not in the Bill. It is being introduced for the first time and why, so that the Members can debate. Once it is passed at this point, it becomes part of the Bill and there are no amendments. So, it is only fair that, for posterity, we go through the procedures in the right way.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Kimunya! That was really uncalled for. We were implementing the procedures and your point should be to ask the Member to give the rationale. That is expected once we talked of a Second Reading. That is the expectation.

Mr. Keynan: The Minister can explain.

The Temporary Deputy Chairman (Mr. Ethuro): Members, the Member is right. I have proposed the question, which means that any Member can contribute either in explaining or justifying. But it is expected that the ones who are introducing the new clauses to explain to the rest of the House.

Ms. Karua: Mr. Temporary Deputy Chairman, I rise in support of this new clause. It is, indeed, in compliance with the Constitution and with our own and international human rights standard that no person will be subjected to cruel, degrading and inhuman treatment. This is making it part of the culture of our Defence Forces. When it is reduced into law, everybody coming in comes with the knowledge that you have to treat people with dignity. You have to respect their human rights and that in the course of your duties, you are not allowed to violate anybody's rights. This is a very progressive clause and I wish to congratulate the Mover.

I beg to support.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, I also join my colleague in supporting this new clause. It is, indeed, very instructive that is coming from the Committee. Indeed, in many old democracies, this issue is coming out now. It is very important that it comes out especially now that our Defence Forces are active in foreign countries, so that they uphold the values of our new Constitution. They should also uphold the respect that the members of the Defence Forces are expected to uphold. I support the Committee.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, we fully agreed to this new clause. As explained by hon. Karua, we do not want it to appear like the people are tortured and there is any inhuman treatment. Therefore, it is a modern force. This should be followed, not only when we are serving in Kenya, but even all over the world.

I beg to support.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaiserry): Mr. Temporary Deputy Chairman, I also support the new clause. This is a very progressive clause and I congratulate the Chairman of the Committee for bringing it. Being a retired Military officer, this is the Military of the 21st Century and we require it to follow the Constitution. Therefore, this is very important clause.

I beg to support.

(Question, that the New Clause 269A be read a Second Time, put and agreed to)

(The New Clause 269A was read a Second Time)

(Question, that the New Clause 269A be added to the Bill, put and agreed to)

First Schedule

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Oath for the Chief of the Defence Forces and Service Commanders appearing in the First Schedule of the Bill be amended by inserting the words “to the President as the Commander in Chief of the Kenya Defence Forces” immediately after the words “Republic of Kenya”.

Mr. Temporary Deputy Chairman, Sir, the military being a unit institution, the linkage between the armed forces and their Commander-in-Chief must be very clear. Therefore, as they take off, other than being loyal and taking oath to defend the Constitution, they must also demonstrate that there is a linkage and their loyalty to their boss who is the Commander-in-Chief, who is the President. So, we only provided that in addition to protecting the Constitution, they must also demonstrate that they have faith in the presidency.

(Question of the amendment proposed)

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

(First Schedule as amended agreed to)

(Second and Third Schedules agreed to)

Fourth Schedule

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting the Fourth Schedule.

This section has already been incorporated as part of Clause 173.

(Question of the amendment proposed)

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, we discussed that in the Committee and I agree that it should be deleted.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Assistant Minister, when you are in agreement, you nod and that will be fine with us.

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

(Fourth Schedule deleted)

Fifth Schedule

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Oath of Allegiance appearing in the Fifth Schedule of the Bill be amended by inserting the words “as the Commander in Chief of the Kenya Defence Forces” immediately after the word “President” appearing in paragraph (i).

Here, the only issue is about the role of the Commander-in-Chief. This is the lowest ranking officer with regard to the Commander-in-Chief. So, there has to be some loyalty to the Commander-in-Chief.

(Question of the amendment proposed)

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

(Fifth Schedule as amended agreed to)

(Sixth Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Kenya Defence Forces Bill, Bill No.35 of 2012 and its approval thereof with amendments subject to re-committal of Clause 28.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We have concluded that Bill and we will now be going to the Fourth Bill. The Chair will have some

changes and my colleague, hon. Joyce Laboso, will take you through the next Bill which is The Leadership and Integrity Bill, Bill No.33 of 2012.

*[The Temporary Deputy Chairman
(Mr. Ethuro) left the Chair]*

*[The Temporary Deputy Chairlady
(Dr. Laboso) took the Chair]*

THE LEADERSHIP AND INTEGRITY BILL

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we are now at the Committee Stage to consider The Leadership and Integrity Bill, Bill No.33 of 2012.

Clause 2

Mr. Baiya: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, clause 2 be amended in the definition of “authorized officer” by deleting the words “a body or institution” and substituting therefor the words “an authorized officer of a public entity or a public entity”.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, so that it is passed, could you explain the import or object of your amendment in a sentence?

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. I just need your direction on whether we will deal with Clause 1 later on because I have an amendment to it.

The Temporary Deputy Chairlady (Dr. Laboso): That clause is always dealt with at the end, hon. Millie. Mr. Baiya, just give a very brief explanation.

Mr. Baiya: Madam Temporary Deputy Chairlady, the purpose of the amendment is to clarify that the “officer” means an authorized officer of a public institution through which the commission can only act. So, it is really an editing and improvement of the definition of “authorized officer”.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I had an amendment to Clause 2(1) that has to do with authorized—

The Temporary Deputy Chairlady (Dr. Laboso): Mrs. Odhiambo-Mabona, we do not have your amendment and it was closed. We said at 2.30 p.m. we needed---

Mrs. Odhiambo-Mabona: I gave all my amendments at the same time and the others have already been passed in this House. In fact, I do not know if these ones have been circulated. The others have been circulated and we have been dealing with them. I have these ones. I have a series of them.

The Temporary Deputy Chairlady (Dr. Laboso): The others have already been dealt with in the other Bills. They are not before me. So, hold on, we will be guided. Even before we get that guidance, we want to dispose of, first of all, the Committee’s amendment.

So, any comment on the proposed amendment by the Committee before we go for any further amendments?

Mr. K. Kilonzo: On a point of order, Madam Temporary Deputy Chairlady. I just want a clarification now that Mrs. Odhiambo-Mabona has just said she has passed over her amendments. She says she is trying to locate them. I would like to know whether, indeed, before we move on to the Committee amendments, you will give us directions on her amendments. It is critical that we dispose of them.

The Temporary Deputy Chairlady (Dr. Laboso): Yes, I now have a copy, but I do not know if the hon. Members have copies. If they do not, then we need them circulated. Could we get enough copies for hon. Members for them to understand the amendments?

Hon. Members, let us dispose of the amendment by the Committee. We have been told it is a straightforward clarification.

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

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

The Temporary Deputy Chairlady (Dr. Laboso): Do we have a further amendment, Mrs. Odhiambo-Mabona?

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, actually I have it. I think it is because I have several amendments in most of the pieces of legislation. I had two amendments. I wish to drop the first one because it is similar to the committee's amendment.

*(Mrs. Odhiambo-Mabona's proposed
amendment withdrawn)*

The second one is still on Clause 2(1)---

Mr. Baiya: Madam Temporary Deputy Chairlady, we do not have the benefit of the amendment by Mrs. Odhiambo-Mabona. Could they be circulated so that we can see them? We have not seen them. Therefore, we cannot really participate.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, even in the earlier Bills what we did when the documents had not been circulated, I moved by explaining in the long form. There are some hon. Members who have them and others do not have. I saw somebody who was circulating them. In the meantime, I can explain them because they are fairly simple. So, I can move it in the long form, so that we move on.

The first proposed amendment is largely similar to what the Committee has moved. So, I will drop it.

I beg to move:-

THAT, Clause 2(1) be amended in the definition of spouse by adding the words "or a person with which another has been in lawful cohabitation for a period of at least 12 months and are deemed by the general public as man and wife" at the end of the sentence.

Hon. Members: No!

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! You will have the opportunity to either pass or reject the amendment. So, we do not need all the drama in the House.

Mrs. Odhiambo-Mabona has moved her further amendment.

(Question of the further amendment proposed)

Mr. Chachu: Madam Temporary Deputy Chairlady, I oppose the amendment because we cannot legalize cohabitation.

Ms. Karua: Madam Temporary Deputy Chairlady, I am impressed by the amount of excitement the amendment is causing and I stand in support. Most marriages are common law marriages. So, it is very important that we broaden it to accommodate the African---

Hon. Members: Ahh!

Ms. Karua: Madam Temporary Deputy Chairlady, listen to the guys who are--- It is a nightmare to serial husbands. But otherwise, to those who have organized their affairs well, this clause is not a nightmare.

I beg to support.

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

The Temporary Deputy Chairlady Mrs. Odhiambo-Mabona, do you have a further amendment on Clause 2?

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I have a further amendment to Clause 2(2). Since the hon. Members have not received a copy of this amendment it reads as follows:-

I beg to move:-

THAT, Clause 2(2) be amended by inserting the following new paragraph at the end “until after the first elections under the Constitution, any appointments that are to be made by the President shall be done in accordance with Section 29(2) of the Sixth Schedule of the Constitution.”

The Temporary Deputy Chairlady (Dr. Laboso): Are you explaining any further, Mrs. Odhiambo-Mabona?

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I have already moved, and I was asked to explain the import of the amendment. My explanation is that, under the Constitution it is required that any appointment within the transition period must be done in consultation with the Prime Minister. That is as provided for under Section 29(2) of the Sixth Schedule of the Constitution.

(Question of the further amendment proposed)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Fred Kapondi, do you have comments?

Mr. Kapondi: Madam Temporary Deputy Chairlady, I think hon. Mabona is misleading the House in the sense that Section 29(2) talks about constitutional office holders. What she is

talking about here is any appointment. Going by past trend, it means that we are not going to move. So, I want to oppose.

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, I want to oppose the amendment purely for the reason that the hon. Member has given. This is already provided for in the Constitution. Why should we waste paper and ink to try and put it in this Bill?

So, I oppose.

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

(Clause 2 as amended agreed to)

(Clauses 3, 4, 5, 6, 7, 8 and 9 agreed to)

Clause 10

Mrs. Odhiambo Mabona: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 10 be amended by adding the following new clause (f) after Subclause (f) -

“not behave whether in public or official life, in private life or association with other persons in a manner that demeans the office of the office holder.”

Madam Temporary Deputy Chairlady, hon. Members are resisting issues that touch on their private life. They are saying that those issues are already provided for in the Constitution. A half of this Act is merely re-stating what is in the Constitution. So, there is no reason as to why we should re-state what is in the Constitution half-way, on issues of ethics, leadership and integrity and leave out some of them. If we want to re-state Article 75, we should not re-state halfway. We should re-state it fully. We must have integrity in both our public and private life.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Kiptanui, you have an intervention.

Mr. Kiptanui: Madam Temporary Deputy Chairlady, we have been discussing the amendments by hon. Millie Odhiambo. According to the list that we have here, it seems that the signature that has approved the amendments by hon. Millie Odhiambo is that of Millie. We need some clarification.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Kiptanui, as Millie stated earlier, we have received all her amendments. I do not know who has approved the ones for the earlier Bills. This is not the first set of amendments that she is introducing in the House. So, if she moved amendments to the earlier Bills, have you seen whether those ones were approved and they have got a signature, so that we do not change things mid-way? If we accepted the amendments for the earlier Bills, we shall continue in the same manner.

I can see that there are lots of requests for intervention. Hon. Githae, could you proceed?

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, for the sake of brevity, there is no point of repeating something which is already in the Constitution. Even more importantly, the only thing that is being added is “private”. How would you know

that I would be demeaning the office when I am in the bedroom? Therefore, I oppose the amendment. It is dangerous. We are opening an avenue for intimidation, belittling people and blackmail.

Therefore, I beg to oppose.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ruteere, make one comment. Hon. Members, remember that this is Third Reading. So, we do not want to debate the Bill afresh.

Mr. Ruteere: Madam Temporary Deputy Speaker, Sir, I think hon. Millie Odhiambo is asking for too much. When life is private, it is private. It cannot be public. So, let us not indulge in private affairs. Let whatever we do in our private lives remain private.

The Temporary Deputy Chairlady (Dr. Laboso): What is your intervention, Millie?

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, is the hon. Member in order to mislead the House that it is hon. Millie who is providing for the word “private” when even hon. Githae, who is a learned hon. Member, has confirmed that it is in the Constitution?

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we have had enough interventions. Let us have the last comment on this one from hon. Duale.

Mr. Duale: Madam Temporary Deputy Chairlady, we have agreed that Article 31 of the Constitution, under the Bill of Rights, talks about privacy. So, if the Constitution has provided for the protection of the privacy of every individual and his or her property, why should the House legislate on how you should behave in privacy?

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Were, what is your intervention?

Mr. Were: Madam Temporary Deputy Chairlady, Clause 10 of the Bill talks of performance of duties, and it runs up to subclause (d). So, I do not know how this amendment is going to fit into this clause.

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order! Order, hon. Members! Hon. Were, I am sorry, you have to repeat what you said. I did not get you.

Mr. Were: Madam Temporary Deputy Chairlady, Clause 10 of the Bill deals with performance of duties, and it only goes up to paragraph (d). So, I do not know how paragraph (f) comes, with regard to Clause 10. So, I think we are discussing the wrong clause.

The Temporary Deputy Chairlady (Dr. Laboso): The hon. Member stated that she was adding a new clause.

Mr. Were: Madam Temporary Deputy Chairlady, there is no paragraph (f) under Clause 10.

(Mr. Mbadi stood up in his place)

Temporary Deputy Chairlady (Dr. Laboso): What is your point of order, hon. Mbadi? Do not stand up. We are using technology. You do not have to stand to catch the eye of the Chair.

Mr. Mbadi: Madam Temporary Deputy Chairlady, you cannot have new paragraph (f) if there is no paragraph (e) under Clause 10. So, there must be a serious problem with this amendment because you cannot have (f) without having (e). I wonder whether the amendment of

hon. Millie passed through the Legal Department. We need to be told whether this amendment passed the Legal Department and the Office of the Speaker. We have procedures in this House.

The Temporary Deputy Chairlady (Dr. Laboso): Yes, we do have procedures. Hon. Millie, did you have your amendment checked and approved?

Mrs. Odhiambo-Mabona: Yes, I did, Madam Temporary Deputy Chairlady. The signature is that of the authority that approved the amendment.

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order! Order, hon. Members! In the interest of moving forward, I will put the Question.

What is your point of order, hon. Martha Karua?

Ms. Karua: On a point of order, Madam Temporary Deputy Chairlady. It is not fair that you lock us out of contributions. We know that it is the Committee Stage. We will be brief but do allow us a say. Very briefly, I just want to say the amendment is well grounded in Clause 75(1), but it is too general. The Constitution is in general terms. Legislation is supposed to be specific. So, if an amendment is desired in this area, it ought to be special and although well meaning, it fails because of being too general.

Mr. C. Kilonzo: On a point of order, Madam Temporary Deputy Chairlady. The issue which hon. Were has brought up is very crucial. You cannot propose to have an additional (f) when there is no (e). So, we cannot even move on it.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Member, I totally agree with you and we will not vote on this amendment because it is totally confusing. We will move on.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. You are setting a precedent where I want you to be fair. Once you make that ruling, it will stand for any and every amendment. That is because this is a typographical error and you have not given me a chance to explain whether the typographical error is on “d”. So, if it is a typographical error henceforth, then you should disallow it and I am okay. If hon. Members do not support, I am okay. You vote on it and exclude it. But misusing it on a typographical error, Chair, I am okay if you will refuse every other subsequent one on typographical error.

Mr. K. Kilonzo: On a serious point of order, Madam Temporary Deputy Chairlady. I have serious point of order on procedure. There is an issue which has been raised here severally and you cannot gloss over it. This is the issue of whether these amendments by hon. Millie Odhiambo have gone through the Committee. You have asked her and she has said that she is not the one who approved. So, you must get clear clarification from the Committee. Members of the Committee have said that these amendments have not gone through the Committee.

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. K. Kilonzo! Not all amendments have to go through the Committee. Private members can bring amendments. The only difference is that they need to be approved by the Speaker. That is all I was saying. Have they been approved by the Speaker or the Deputy Speaker? Hon. Millie is saying yes. So, what is the proof that they have passed through the Speaker, hon. Millie, so that we clear this matter? Give us proof that they have been approved by the Speaker or hon. Deputy Speaker, so that we clear the matter?

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, what I want to say is that I followed the rules of the House and did my amendments and took them to the relevant

places. As to whether I am supposed to stamp them myself or take a photo with the person approving them, that is not up to me.

Mr. Midiwo: On a point of order, Madam Temporary Deputy Chairlady. Let me just plead for calm. I think this is a simple thing. Whatever Mrs. Odhiambo-Mabona is proposing, we are opposing. I want to agree with her on the typo. I think she meant Clause 11. But now that we are at it, put it, we defeat and we move forward.

The Temporary Deputy Chairlady (Dr. Laboso): I think that is a compromise. So, instead of taking a long time arguing and yet you have the vote, let us do it as we normally do it democratically on the Floor of the House openly and we move on.

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

(Clause 10 agreed to)

(Clauses 11 and 12 agreed to)

Clause 13

Mr. Baiya: Madam Temporary Deputy Chairlady, I beg to move:-.

THAT, Clause 13 be amended-

(a) in Paragraph (i) of Sub-clause (1) by inserting the words “the Counter-Trafficking in Persons Act, 2010” immediately after the words “the Sexual Offences Act, 2006”;

(b) in Sub-clause (2) by deleting the word “Commission” appearing immediately after the words “submit to the” and substituting therefore the words “Independent Electoral and Boundaries Commission”;

(c) by inserting the following new Sub-clauses immediately after Sub-clause (2)-

(3) The Independent Electoral and Boundaries Commission shall forward a copy of a self-declaration form received under Sub-section (2) to the Ethics and Anti-Corruption Commission.

(4) The Ethics and Anti-Corruption Commission shall publish and publicize a list of persons who wish to be elected to a State office and who have criminal cases pending in court.

Part “a” relates to moral and ethical requirements to include among the requirements in (i) any offences under the Counter-Trafficking in Persons Act, 2010 which relate to trafficking in human persons. The other amendments relate to the submissions to IEBC, but the same be liable to be shared with EACC.

The Temporary Deputy Chairlady (Dr. Laboso): Can we dispense of the first one so that we are clearer on what we are amending? First of all, you are adding another Act.

Clause 13 (a)

Mr. Baiya: Yes, another Act to the Counter Trafficking in Persons Act as a ground of moral and ethical to standards to be met.

(Question of the amendment proposed)

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

The Temporary Deputy Chairlady (Dr. Laboso): We have further amendments on Clause 13. Hon. Ruto, where is your amendment? Clause 13(a) or 13(b)?

Mr. Ruto: Madam Temporary Deputy Chairlady, I am Delegate No.9. My amendment is on Sub-Clause 4 and we have not reached there. I think it is on “c”.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. Since we are going by order, I had a similar amendment as that of hon. Baiya. It has passed and so, I withdraw.

*(Mrs. Odhiambo-Mabona’s proposed
amendment withdrawn)*

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Baiya, let us go to the next one.

Clause 13(b)

Mr. Baiya: Madam Temporary Deputy Chairlady, the purpose of this amendment is to clarify which commission is meant there. We are clarifying that it is the IEBC, to avoid confusion with other commissions.

(Question of the amendment proposed)

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I think the Constitution is very clear that for purposes of leadership and integrity, the relevant body is the Ethics and Anti-Corruption Commission. If you look at Clause 56 of the Bill, this Commission takes care of the issues in the interim until the Independent Electoral and Boundaries Commission (IEBC) can do the work. That is already provided for in this Bill. The Constitution is clear in Articles 79 and 80 that Parliament shall legislate. The important thing is to first of all know that there is a linkage in this Bill to submission of these forms for purposes of elections. Look at Clause 56, which brings in the IEBC.

The Temporary Deputy Chairlady (Dr. Laboso): There is an intervention by the Chair of the Constitutional Implementation Oversight Committee (CIOC).

Mr. Abdikadir: Madam Temporary Deputy Chairlady, the amendment just clarifies. There are 15 commissions. So, the clarification is to make sure that there is no confusion. It just states that the Commission we are talking about here is the IEBC.

The Temporary Deputy Chairlady (Dr. Laboso): That is just a mere clarification.

Mr. Ruto: Madam Temporary Chairlady, the importance of carrying these amendments by the Committee is that we do not want the IEBC to start becoming partisan and start doing the work that ought to be done by the Ethics and Anti-Corruption Commission. So, we are simply saying that IEBC should not be allowed to do this because it might become dirty when it is supposed to be impartial and a clean entity. So, the position taken by Mr. Baiya is the correct one on that particular clause.

The Assistant Minister for Justice, National Cohesion and Constitution Affairs (Mr. Cheptumo): Madam Temporary Deputy Chairlady, if you read the Act, Section 2 about the definition of the “Commission”, it talks of the Ethics and Anti-Corruption Commission. So, it is so clear under the Act that the Commission referred to in that section is the Ethics and Anti-Corruption Commission.

The Temporary Deputy Chairlady (Dr. Laboso): I think that is exactly what the CIOC is amending. They are amending to say that they are not talking about the Ethics and Anti-Corruption Commission but about the IEBC. Hon. Members, in the interests of moving forward-- - I think you have ventilated on this, therefore, I will put the Question.

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

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

The Temporary Deputy Chairlady (Dr. Laboso): Is there a further amendment to the same Clause 13?

Clause 13 (c)

Mr. Baiya: Madam Temporary Deputy Chairlady, we are proposing to insert new subclauses immediately after Subclause (2), which are to be Subclauses (3) and (4) as shown on the Order Paper, page 3952. We are seeking to add Subclauses (3) and (4) after Clause 13(2).

The purpose of this is to actually provide that the IEBC, having received the document, shall forward a copy of the self-declaration form received under sub-clause 2 to the Ethics and Anti-Corruption Commission. Subclause (4) says that the Ethics and Anti-Corruption Commission shall publish and publicize a list of persons who wish to be elected into a State office but have criminal cases pending in court. That is the purpose of the amendment.

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! We are not going to communicate if all of us talk. Let us have one House and one debate.

(Question of the amendment proposed)

The Minister for Energy (Mr. Murungi): Madam Temporary Deputy Chairlady, I want to oppose these two amendments, Subclauses (3) and (4). We have no problem with self-declaration being filed with the IBEC to show compliance with Chapter Six of the Constitution. It is assumed that the candidates who will file the self-declarations will do so in good faith, and that there is no presumption of guilt on the part of the candidate. If you look at the way Subclauses (3) and (4) are framed, it is assumed that whatever you have filed attracts the Ethics and Anti-Corruption Commission because it is illegal--

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Murungi, can you allow Mr. Bett to intervene? He is your fellow Minister and he is on a point of order.

The Minister for Energy (Mr. Murungi): He wants to contribute. He does not know how to use the---

(Laughter)

The Minister for Roads (Mr. Bett): I am a bit amused that I am not able to use this machine, but I wanted to contribute.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, you pressed the wrong button.

Mr. Murungi, continue.

The Minister for Energy (Mr. Murungi): He has just confirmed what I said.

Madam Temporary Deputy Chairlady, if you look at Subclause (4), it says that the Ethics and Anti-Corruption Commission shall publish and publicize a list of persons who want to be elected to a State office, and who have criminal cases pending in court. This list will be published during the campaign. It is supposed to influence the voters to vote against you when you have not been proved guilty by any court. I think it is very unfair, unconstitutional and an illegal amendment. Therefore, I would like us to oppose it.

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, I want those Members who served in the former KANU regime, like Martha Karua to visualize this. If the ethics men had this power, the kind of trouble they could have put people in the Opposition is immense. They could have looked for falsified charges against you. When the campaign is going on, they will take them to the Kenya Broadcasting Corporation (KBC) or Citizen and tell people that certain people have court cases. During publication, there is no limit. They can even say that one should not be elected. So, what are we basically talking about? This is a bad law. You are innocent until proved guilty.

The Assistant Minister for Public Works (Mr. Kiunjuri): Madam Temporary Deputy Chairlady, it is important also to note that when we get to the campaigns, people are very malicious. Under the law, as it stands today, anybody can move to court, accuse you maliciously and all the cases will be published. There is no way you can stop your opponent from publishing false allegations and have them as their only campaign tool against you. So, this should be opposed. We should only make laws that can also be proved a year or two after, but not those which can be used maliciously against us.

Ms. Karua: Madam Temporary Deputy Chairlady, I rise in support of the amendment and I have no worry about the amendment, unlike my colleague, Mr. C. Kilonzo, I survived the KANU regime, I have survived the Coalition Government and I will continue to survive. I think all we should worry about is that there is due process. What this amendment is trying to do is this: When you do the self declaration - and remember it is you writing down about yourself - should you give false information, there is relevant commission that can enforce. What about if you own half of Nairobi and you do not disclose? If the self declaration is put in a drawer, it is of no effect. Today, in conclusion, we have the Public Officers Ethics Act. We do declarations under it; they are put in the drawer, nobody knows whether you just drew a lion and then put it inside; nobody knows what you have declared. This is for purposes of enforcement and I heard my colleague on the other side, Mr. Kimunya, say that, actually, the Constitution gives the mandate to Ethics and Anti-Corruption Commission (EACC). So what reason, therefore, would we have opposing this?

With those few remarks, I beg to support.

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I also want to support this amendment. I want to tell you the reasoning because, maybe, people do not understand. Without a doubt, if you have a court case in progress or a big case that was completed, it will be in public knowledge. The civil society will do no other business but make it public knowledge. I would rather be a candidate today that has been cleared by IEBC, but they have said that they are aware that I am currently in court for “a”, “b” or “c”, rather than my opponent or the civil society buying a full page in the newspaper and talking about that. This is not to victimize but rather, it is to show that IEBC can clear you even if you are in court, because that is what the Constitution allows.

Dr. Khalwale: Madam Temporary Deputy Chairlady, every day, we read newspapers and, sometimes, you come across a photograph where they have put a guy and said: “Public Notice. The following character is not allowed to transact any business on behalf the former company.” If we allow this amendment, it means that by putting that notice, you are basically telling the country that, that person is not allowed to transact any business now or in the future as a leader of this country.

(Applause)

I do not see the fear of people! Mr. Kenneth Matiba told us that in a free and fair election, people will always decide. Let the people become candidates and let Kenyans decide. In conclusion---

The Temporary Deputy Chairlady (Dr. Laboso): It is not debate, Dr. Khalwale!

Dr. Khalwale: Madam Temporary Deputy Chairlady, let me make this point. If we are not very careful by putting too many bottlenecks, what will happen is what happened in Kajiado North and Ndiwa. There will be so many little court processes going on that the election cannot be smooth. I oppose!

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, I stand to strongly oppose this amendment. What is going to happen - and you need to look at the campaign time - is to visualize now that this is campaign time. What is going to happen? Your opponents will be going with this list to say that you have court cases. I am even doubting the real reason; is it that they know some people are in court and so, that is why they are putting this here? This is not in good faith.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Minister, will you allow the Chair of the Committee on the CIOC to intervene.

Mr. Abdikadir: On a point of order, Madam Temporary Deputy Chairlady. We are in Committee Stage. We have had the other stages of the Bills. Why are we debating this? We are at Committee Stage!

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): I will now put the Question!

Mrs. Odhiambo-Mabona: On a point of order!

The Temporary Deputy Chairlady (Dr. Laboso): Order, Mrs. Odhiambo-Mabona!

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

(Mr. Mbadi consulted loudly)

The Temporary Deputy Chairlady (Dr. Laboso): We have to manage our time, Mr. Mbadi. We still have a further amendment.

Mr. Ruto: Madam Temporary Deputy Chairlady, my amendment was on the new Clause 4 which has now been defeated. Therefore, it is good.

The Temporary Deputy Chairlady (Dr. Laboso): So, we will drop your amendment because it has passed as a result of the other being defeated.

(Mr. Ruto's proposed amendment withdrawn)

Mr. Midiwo: Madam Temporary Deputy Chair, I want to plead with you. Just like all of us need to be calm, we want to ask you to also just relax. That is because the clause that we have crossed over is the heart of public debate. There could have been---

(Loud consultations)

Give us a chance to express ourselves; we beg you! That is because many hon. Members here may want to wish it away, but they will not succeed because whatever you do, this issue---

An hon. Member: You are debating a closed matter.

Mr. Midiwo: Madam Temporary Deputy Chairlady, I am not. I am pleading with the Chair to give us a chance to express ourselves. That is all I am saying! You will wish it away but you will not succeed.

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! I believe that I have given quite enough intervention on both sides of the House and even different shades of opinion. We have a full programme here. I stand even guided by my substantive Speaker that you put it to the vote and let hon. Members decide. Is there any further amendment on Clause 13?

(Clause 13 as amended agreed to)

(Clauses 14, 15 and 16 agreed to)

Clause 17

Mr. Baiya: Madam Temporary Deputy Chairlady, I beg to move:-

THAT clause 17 be deleted and substituted with the following new clause-
17. A State officer shall not participate in a tender for the supply of goods or services to a public entity, but the holding of shares by a State officer in a company listed or quoted on a securities exchange shall not be construed as indirect tendering unless the State officer has a controlling or substantial interest in the company.

Madam Temporary Deputy Chairlady, the proposed amendment to Clause 17 does not exactly carry what the Committee wanted to amend. So, as a result, we wish to withdraw that amendment.

Hon. Members: No! How? Further amendment!

Mr. Baiya: Madam Temporary Deputy Chair, I do not wish to pursue that amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Are you speaking on your own behalf or on behalf of the Committee?

(Several hon. Members stood up in their places)

Order, hon. Members! You do not stand until you have been given the chance to stand.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Madam Temporary Deputy Chairlady, please, can we have some order in the House. It is too noisy and loud! We cannot even think properly.

The Temporary Deputy Chairlady (Dr. Laboso): Thank you, Ms. Ndeti. Hon. Members, you may be excited or emotional about this Bill but, nonetheless, let us debate it soberly. Let us give each other a chance to speak. Mr. Baiya, have you withdrawn this amendment? Is that what will go on record?

Hon. Chairman of the Committee, you have withdrawn this amendment. Therefore, you cannot have a further amendment on it.

Mr. Baiya, please, guide us on this.

Mr. Baiya: Madam Temporary Deputy Chairlady, the main problem we, as a Committee, had, was how to make an amendment or clarification on this section. As it is now, the proposed amendment is not really a further amendment. It is substantially the same. So, our attempt to move an amendment to this section flopped. Therefore, I do not want to make further amendment. I leave it at that as a matter of principle.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Karua, do you have some guidance you want to give? Your hand was up; you do not want to make any comment?

Ms. Karua: Madam Temporary Deputy Chairlady, this clause is necessary. We know that in all the corruption scandals, it is all about tendering and such like. So, we are trying to say let a State Officer and immediate family members, not participate----

Hon. Members: Ahaaaaa!

Ms. Karua: Madam Temporary Deputy Chairlady, Sir, I think by this time, we must have etiquette. The majority may have their way, but the minority must have their say. I have a right to stand here to agitate. I think I will go on for a while.

The Temporary Deputy Chairlady (Dr. Laboso): Order, Members! We really must give each other a chance to speak. I realize how emotive this subject is, but let us conduct ourselves with decorum.

Yes, you will have your say, but could you allow those with divergent views to express them?

Hon. Karua, please, conclude your contribution.

Ms. Karua: Madam Temporary Deputy Chairlady, I am actually glad that from the murmurs, you can tell what goes wrong where. This clause is necessary if we are to fight corruption and impunity. If we are to stop insider trading, we do not want people putting their children's name or their spouse's name to do insider trading. We are saying if you are a public officer, remain----

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Karua, we have got a technical problem. This amendment has not been proposed.

Could we give the Floor to the Chair of the Constitutional Implementation Commission (CIOC)? We cannot put the question because there are Members who want to contribute. But let us propose it, so that we allow more Members to debate.

Ms. Karua: To that extent then, I am moving this amendment as was proposed by the Committee.

The Temporary Deputy Chairman (Dr. Laboso): Allow the Chair of the Committee to move it and then you can now bring your contribution.

Okay, hon. Baiya.

Clause 17

Mr. Baiya: Madam Temporary Deputy Chairlady, in that respect, I move the amendment as it is on the Order Paper.

THAT clause 17 be deleted and substituted with the following new clause-

17. A State officer shall not participate in a tender for the supply of goods or services to a public entity, but the holding of shares by a State officer in a company listed or quoted on a securities exchange shall not be construed as indirect tendering unless the State officer has a controlling or substantial interest in the company.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Dr. Laboso): Now hon. Martha can conclude her contribution. You have no further contribution.

We have hon. William Samoei Ruto.

Mr. Samoei: Madam Temporary Deputy Chairlady, first, I did not think it was procedural for the Chair of the Committee to try and withdraw the amendment. Unless he puts before this House the resolution of the Committee that they actually want to withdraw this amendment, then completely, he is out of order.

Madam Temporary Chairlady, I think this amendment is welcome so that we stop insider trading in institutions of Government. I think those in charge of those institutions specifically should not trade with the institutions that they are in charge of. I think this amendment is well put.

The Temporary Deputy Chairlady (Dr. Laboso): You have a point of order, hon. Ruto

Mr. Ruto: Mr. Temporary Deputy Chairlady, Sir, I am aware of a further amendment filed by hon. Benjamin Langat and I would have wanted to support that particular amendment.

The Temporary Deputy Chairlady (Dr. Laboso): We want to execute this amendment and complete it and move on to the further amendment. That is what we are doing.

Mr. Ruto: Madam Temporary Chairlady, I want to say that I support this amendment. But there is need for a further amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Actually just for clarification, we cannot have an amendment which has not been seen and signed by the Speaker or Deputy Speaker.

Mr. Ruto: A further amendment to an amendment does not require----

The Temporary Deputy Chairlady (Dr. Laboso): No, only the Minister can move from the Floor---

Mr. Ruto: No, a further amendment to an amendment can even be done on the Floor. I can even do it now.

The Temporary Deputy Chairlady (Dr. Laboso): You are talking about an amendment that you do not even know, you have no knowledge about.

Mr. Mbadi: Madam Temporary Deputy Chairlady, I support this amendment and I want us to, first of all, look at the original wordings of the Bill. It says:

“A State Officer shall not directly or indirectly participate in a tender for the supply of goods or services to a public entity but the holding of shares by a public officer---

I want us to note the word “public”. Members of Parliament are not public officers. So, you are exempting other public officers, but leaving hon. Members.

We are State Officers by definition, but not public officers. I want propose that---

Mr. Abdikadir: Point of Information!

The Temporary Deputy Chairlady (Dr. Laboso): Do you want to be informed, hon. Mbadi, by the Chair of the CIOC.

Mbadi: No. I do not need the information.

The Temporary Deputy Chairlady (Dr. Laboso): Allow information from the Chair of CIOC.

Mr. Mbadi: No, I cannot allow. You cannot force me to allow him to inform me. I have refused. There is nothing I do not know.

The Temporary Deputy Chairlady (Dr. Laboso): Order, Mr. Mbadi.

Mr. Abdikadir: Madam Temporary Deputy Chairlady, the hon. Member is misleading the House because all State officers are also public officers. So, he should not mislead the House. All State officers are public officers.

The Temporary Deputy Chairlady (Dr. Laboso): Exactly, that is a fact. All State officers are public officers, but all public officers are not State Officers.

Hon. Mbadi, have you finished?

Mr. Mbadi: Now, you gave me information that I did not require. But the point I was trying to put across is that if you could allow further amendment on this amendment by hon. Benjamin, so that we dispose of it once and for all.

The Temporary Deputy Chairlady (Dr. Laboso): Okay, Members, that is the feeling of the House. Hon. Gumbo, you want to speak on this amendment or you want to speak on hon. Langat's amendment?

Eng. Gumbo: Madam Temporary Deputy Chairlady, I will like to wait for further amendment.

The Temporary Deputy Chairlady (Dr. Laboso): We need then to call upon hon. Langat to give the further amendment, so that we can dispose of it too.

Mr. Langat: Madam Temporary Deputy Chairlady, I wish to move that the amendment which is in the Order Paper be further amended by deleting the words after the word “public entity” The reason is that we must separate legal entities from the individuals.

The Temporary Deputy Chairlady (Dr. Laboso): Could you explain further so that Members are very clear on what is said? Just read the amendment and explain, so that Members are clear what they are debating on.

Mr. Langat: Madam Temporary Chairlady, the amendment which is already in circulation, is that the proposed amendment in the Order Paper be further amended by deleting all the words immediately after the words “public entity.”

The Temporary Deputy Chairlady (Dr. Laboso): Read what you are proposing.

Mr. Langat: Madam Temporary Chairlady, it is now going to read:-

“A State officer shall not participate in a tender for the supply of goods or services to a public entity.”

Madam Temporary Deputy Chairlady, all the words after that are deleted.

(Question of the further amendment proposed)

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, I stand to oppose the further amendment.

Madam Temporary Deputy Chairlady, the import of what hon. Langat is saying is--- For example, he is a farmer. So, it means that he cannot supply milk to the Kenya Co-operative Creameries (KCC) or a school because it is a public entity. That is what you are actually saying. This means that if you are a farmer and a State officer, then you cannot supply maize to the National Cereals and Produce Board (NCPB) or even sell your cows to the Kenya Meat Commission (KMC). That is basically what you are saying.

Madam Temporary Deputy Chairlady, I would rather that we have the amendment proposed by the Committee, because it is an improvement of what is already in the Bill. This is because the main problem was when you say “directly” or “indirectly---.” What do you mean by “indirectly?” How far do you go? So, the amendment proposed by the Committee, at least, removes that ambiguity of “indirectly.” This is only “you” as the State officer. So, I support the amendment by the Committee.

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order! Order, hon. Members! Let us listen to one another, please.

Maj-Gen. Nkaisserry!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Madam Temporary Deputy Chairlady, I totally oppose this amendment and propose that we delete the whole Clause.

Madam Temporary Deputy Chairlady, yesterday, I told this Committee exactly what hon. Githae has said. I told them that if I supply cattle to KMC, it means that if I want to be a Member of Parliament, then I should stop being a livestock farmer. Let us delete the whole Clause.

Mr. Konchella: Madam Temporary Deputy Chairlady, we are talking about tenders and then shares. Why do we not separate the issue of tenders and have another clause to deal with shares? Otherwise, I will recommend that we go by what Maj-Gen. Nkaisserry said, if we cannot separate.

Eng. Gumbo: Madam Temporary Deputy Chairlady, I fully support what Maj-Gen. Nkaisserry has said.

Madam Temporary Deputy Chairlady, my fear is that we are trying to turn this country into a communist State, which is wrong. People must do legitimate business. It is wrong because

in any kind of business, in any society, the biggest supplier of goods and services is the Government. This is a temporary job. We are here for five years. What are people supposed to do after they leave this place? Why are we criminalizing legitimate business? I am sorry to say that we seem to be outsourcing our core duty to people who are out there. Parliament is supposed to make laws which have to be realistic. Even in developed societies, it never happens like that. Why are we introducing into Kenya things that are alien?

Mr. Baiya: Madam Temporary Deputy Chairlady, I am very sure that hon. Members are aware that we are enacting this legislation, pursuant to the new Constitution. I am wondering whether it is in order for the hon. Member to mislead this House, against the very clear provisions of the Constitution. Section 75 of the Constitution talks about the conduct of State officers. It reads:-

“A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

(a) any conflict between personal interests and public or official duties;

(b) compromising any public or official interest in favour of a personal interest; or---

Madam Temporary Deputy Chairlady, further, Section 77(1) reads:-

“A full-time State officer shall not participate in any other gainful employment.”

Madam Temporary Deputy Chairlady, I am only bringing to life the provisions of the Constitution which we are supposed to legislate.

Madam Temporary Deputy Chairlady, Section 2 is on Supremacy of the Constitution.

Mr. Ruto: On a point of order, Madam Temporary Deputy Chairlady. What the Chairman is trying to show us has been taken care of by Clause 16. It is very clear that a State officer shall use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer’s official duties. So, Clause 16 is already enough and so, we should not allow Clause 17 to be part of this Bill.

Mr. Midiwo: Madam Temporary Deputy Chairlady, I want to support this Clause, but delete the words “State officer” and replaced them with “Public officer.”

Madam Temporary Deputy Chairlady, the issue of conflict of interest is the root cause of corruption in this country. We must make an attempt, as Parliament, as required by the Constitution, to try to minimize it. I do not think that what we are passing stops us from doing business. But it is criminalizing the rampant conflict of interest. Many people who do business with the Government have enriched themselves through conflict of interest. I think we have to accept it as Kenyans. Nothing stops you from owning a company and when you want to come here, stepping aside to do public service, and one day you shall go there.

Madam Temporary Deputy Chairlady, I beg to support.

Mr. Duale: Madam Temporary Deputy Chairlady, some of us want to protect our careers. We have professional careers that we do not want to forego. The Chairman of the Committee should differentiate these things. When you use your position, as a public officer, to get business from the same, conflict of interest comes there. However, where you are a member of a professional body and then you leave your colleagues and yet you bought a company so many years ago before coming to this House and you are told that if you want to become a Member of Parliament you close that company or kill your profession, that is--- I support the deletion of this Clause completely.

Mr. Kioni: Madam Temporary Deputy Chairlady, I want to support this Clause. Deleting this Clause is allowing---

The Temporary Deputy Chairlady (Dr. Laboso): Is it the Clause or the further amendment? Which one are you supporting?

Mr. Kioni: Madam Temporary Deputy Chairlady, both, but supporting the further amendment as proposed by hon. Midiwo, that is, deleting the words “State Officer”---

The Temporary Deputy Chairlady (Dr. Laboso): The one under discussion is the one by hon. Benjamin Langat. We have not proposed Midiwo’s yet.

Mr. Kioni: Madam Temporary Deputy Chairlady, then, I want to propose a further amendment to this amendment which I support. I will do it at the appropriate time.

The Temporary Deputy Chairlady (Dr. Laboso): Chairman of the Committee!

Mr. Abdikadir: Madam Temporary Deputy Chairlady, it is important for hon. Members to understand that we are talking only about State Officers. There are less than 500 such people in the country. We are talking about 500 people.

(Loud consultations)

Madam Temporary Deputy Chairlady, please, protect me from Members. We are also talking about public tenders. We are not talking about somebody taking 20 liters of milk to their nearest KCC. We are talking about public tenders!

The biggest problem with corruption in this country is people who are holding very high public office doing business with the Government, and this law will cover the time these individuals are in office. I am a lawyer myself. When you are in Parliament, why do you want to be a lawyer and a Member of Parliament at the same time? For the period when you are a State Officer---

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! Allow the Chairman to have his say. You will have the vote at the end, but allow him to explain why the Committee came up with that amendment.

Mr. Abdikadir: Madam Temporary Deputy Chairlady, this is a very important issue and it is attracting so much attention because it touches on the personal interest of Members. However, Members are supposed to legislate for the interest of the country and not for our personal interest.

When you are a professional and you are doing business, you have to decide. Do you want to be a State Officer or a businessman or businesswoman? If you are a judge – a judge is a State Officer – and you are going to be tendering for business--- How can you be a judge and tender for business at the same time? How can you be a legislator and tender for business at the same time? Decide whether you want to be a legislator or a judge! There are only 500 people we are talking about.

Dr. Kones: Madam Temporary Deputy Chairlady, first of all, I must say that I am not very sure whether that machine really picks everybody or you read some names which are so familiar there.

The Temporary Deputy Chairlady (Dr. Laboso): I have called your name, Julius Kones!

Dr. Kones: Madam Temporary Deputy Chairlady, I oppose the amendment by hon. Lang’at, but I must say that we must support the amendment by the Committee, but with certain

qualifications. I agree that we must change “State Officer” to “Public Officer”. The problem this country faces is that if we allow people who are in public offices to trade in those same entities they run, we run the risk of letting corruption be part of the system. Where we have put “a public entity”, then we must qualify that with “where that State officer or public officer works” and not just all public entities.

The Temporary Deputy Chair (Dr. Laboso): We are dealing with the amendment by hon. Langat. We are hearing that there is a further amendment, but I want to close debate on this one.

The Deputy Prime Minister (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I think we are going to an over kill. If you look at Clause 16, and I just want to specifically draw the Members to Clause 16(5), it says very clearly that:-

“(a) notwithstanding any directions to the contrary under sub-section 4, a State officer shall not influence the award of a contract to-

(a) himself or herself.

(b) the State officer’s spouse or child.

(c) a business associate or agent.

(d) a corporation, private company, partnership or other body in which the officer has a substantial or controlling interest”.

In (6), it goes further to describe what personal interest is. So, Clause 17 is an over kill. That is the basic thing because it is already taken care of in Clause 16.

Ms. Karua: Madam Temporary Deputy Chairlady, taking cue from where the Member has left, I oppose the clause because the original Committee’s amendment is saving the public officer from that position of conflict of interest, where we have to wait for you not to influence. We are stopping you from tendering. We are stopping you beforehand. We are telling you that you cannot have your cake and eat it. The amendment of hon. Langat is killing that. We are, therefore, saying “business as usual”. Scandals are made from officers being in positions of conflict. We are trying to stop that and that is what this legislation is all about.

Finally, even if the original Committee’s amendment does not pass, and I hope it does, you are not out of the woods. Even currently, remember how many people, sometimes with their children and friends, have been charged. There is the Public Officers Ethics Act and so, whoever is thinking that you can get crooked ways, the people of Kenya will still get you.

I beg to oppose the amendment.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, it is important for the House to appreciate that there is a very clear distinction between award of contracts and tendering. I want to give you the benefit of having negotiated this with the CIC. The inclusion of Clause 17 was not by mistake. It was by design. For example, if there is a tender for banking services, the Kenya Commercial Bank (KCB), the Barclays Bank and all these other banks will be tendering to provide banking services for the CDF. A Member of Parliament may hold shares in the KCB or the Co-operative Bank; minority shares that you bought and you do not know how to sell, but if we do not have this proviso as it is in 17, the KCB or the Co-operative Bank or the Barclays Bank could be excluded from tendering to provide financial services to the CDF on account that the Member of Parliament is a shareholder in Barclays Bank. That is why the proviso was put in Clause 17, that you cannot tender, but your holding of shares in a company that you do not have a minority should not disqualify that company from

tendering. That was the essence of Clause 17, which is very different from what was explained earlier.

It is important that we understand that Clause 17 has a legitimate role to play within this Bill and deleting it would be killing the entities where a Member has an interest in, however minute. They will be disqualified from participating in any tender with a public entity as long as a state officer has an interest in it. So, it is important that we understand that perspective and on that basis, I oppose hon. Langat's amendment. I have no problem with the Committee's amendment. I also have no problem with the way the Clause is in the Bill. However, we must remember that the essence is not just the emphasis that you cannot tender but it is also to free organizations where you, as a state officer, have a minority interest. It can tender without necessarily being disqualified.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we have almost 15 requests. We want to be fair to everybody. Do we put this to the vote or do you still want a few minutes to discuss?

Hon. Members: Let us discuss it!

The Temporary Deputy Chairlady (Dr. Laboso): Let us have hon. Hassan from Nairobi County!

Mr. Hassan: Thank you, Madam Temporary Deputy Chairlady. I would like to urge my colleagues to look at the general interest of our country. We have a history of corruption, mismanagement, looting of public organizations and, therefore, we should not be looking at legislating for the 220 Members of Parliament who are here. However, we are legislating for 40 million Kenyans and it will be very selfish and shortsighted if we are to drop Clause No.17. I support Clause No.17 to protect the Kenyan public and not the few privileged who are sitting here.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Thank you, Madam Temporary Deputy Chairlady. I rise to oppose the amendment of hon. Langat because it is already taken care of in Clause 16.

We are an African society and where we come from, we have many dependants. The more prominent you are in the society, the more everybody becomes your relative and the salary that you will earn will not be enough. If you are able, you can take a loan and invest in a business somewhere so that you can support the extended family, which is the nature of Africans. So, I propose that we delete Clause 17 because it has been taken care of by Clause 16.

Mr. Midiwo: On a point of order, Madam Temporary Deputy Chairlady. I think hon. Kimunya gave a well reasoned explanation. However, I want to say that even as we want to reject Clause 17, let us remember that we are not only talking about state officers because that has been taken care of by Clause 16.

I want to ask every hon. Members to picture what happens at the district level. All those road engineers have companies. The roads are bad in your constituency because these people are in charge of tendering. The public officers are in charge of tendering and they award all these works to their companies. This is where the problem is. It is not up here. Let us take this opportunity to sort out this mess because Clause 16 talks about state officers and we want to talk about public officers in Clause 17. So, I beg you. Let us take this opportunity to sort out this mess because it is for the good of our country.

The Assistant Minister for Industrialization (Mr. Muriithi): Madam Temporary Deputy Chairlady, the few years I have been on this God's good earth, I have worked in many

places. For example, in Canada, you could not be allowed to tender in your company. You were allowed to tender in other companies.

For the benefit of Mr. Midiwo, I was not working with Mr. Miguna Miguna. Later on, I worked in Australia, but I could not tender in my company. When we were working with the World Bank, we were not allowed to participate in tenders. Justice not only needs to be done, but it needs to be seen to be done.

I support the position taken by the Committee.

As I conclude, I want to remind hon. Members of the state of affairs in this country. We can pretend if we wish, but the fact is 30 per cent of our budgetary resources get lost in pilferage through corruption. I want to remind hon. Members that 30 per cent of Mr. Githae's budget is Kshs450 billion that goes to waste because of corruption. We must rise to the occasion even if making the right decision may hurt some of our individual interests.

I support.

Mr. Mbadi: Madam Temporary Deputy Chairlady, if this particular Clause 17 was restricted to a public or State officer not tendering in an institution where he or she is working, I would agree with it as it is in Clause 16. But you cannot tell me that public officers owning businesses in this country is the cause of corruption. Corruption is perpetuated by companies owned by *Wahindi's* and Chinese who are outside--- Corruption is caused by people who are looking for 10 per cent. It is not companies. So, the whole of this Clause 17---

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady!

Madam Temporary Deputy Chairlady, I was just wondering whether my intervention button is working. I have made many requests for points of order but it does not seem to be working.

My point of order is that hon. Mbadi has made a discriminatory remark, which I want to urge him to withdraw. We cannot discriminate against people by race.

Madam Temporary Deputy Chairlady, what I want to seek your guidance on is that, as we continue debating, when we come to the point of voting, you need to guide us very carefully. What is happening right now is that there are people who are purporting to bring amendments. Others are doing all manner of things. At this point, we do not know exactly what we are discussing.

Personally, I support the Committee's position. We cannot be influencing award of tenders, as state officers, because we are in exalted positions, and we will be intimidating people. So, give us direction, because there is Benjamin Langat's point. Hon. Shakeel has brought up an issue. So, give us direction.

That is my point of order.

The Temporary Deputy Chairlady (Dr. Laboso): The clear direction is that we are debating hon. Langat's amendment.

Hon. Members, I want to put the Question, so that we can decide whether we have a further amendment. We have been talking about public officers or state officers. Let us, first of all, dispose of the amendment by hon. Langat, which simply says that we go into the amendment up to "public entity". That is what is on the Table at the moment.

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

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, can we go back to the Committee's amendment?

Yes, hon. C. Onyancha!

Mr. C. Onyancha: Madam Temporary Deputy Chairlady, I thank you for giving me the opportunity to contribute on this issue. I hope that hon. Members can see the import of what hon. Kimunya has said, with respect to the amendment of the Committee. It is very important that we get the issue; that even if you have one share in a company, that company cannot trade with the Government. That is really the essence of the Committee's amendment.

I wish to urge hon. Members to accept the Committee's recommendation because if we do otherwise, we will ruin all our public companies in this country.

Thank you.

The Temporary Deputy Chairlady (Dr. Laboso): Committee Chairman, in order for hon. Members to understand what they are going to vote for, can you read out your amendment? It will help us to be clear as to what the Committee's recommendation is. There has been so much confusion. Hon. Members might have forgotten what the amendment was.

Mr. Baiya: Madam Temporary Deputy Chairlady, the amendment that we are proposing reads as follows:-

Clause 17

THAT, Clause 17 be deleted and substituted with the following new clause-

17. A State officer shall not participate in a tender for the supply of goods or services to a public entity, but the holding of shares by a State officer in a company listed or quoted on a securities exchange shall not be construed as indirect tendering unless the State officer has a controlling or substantial interest in the company."

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, you have heard the amendment of the Committee. I now put the Question.

Mr. C. Kilonzo: On a point of order, Madam Temporary Deputy Chairlady. We need to know and we are asking for the Chair's guidance on this. If hon. Members reject the amendment by the Committee, will the original amendment in the Bill remain?

The Temporary Deputy Chairlady (Dr. Laboso): If an amendment is rejected, it means it remains as it is.

Mrs. Shebesh: On a point of order, Madam Temporary Deputy Chairlady. My point of order is very simple and it is really not on this issue, but it is on a point of procedure. We are talking about very sensitive things in this House and tomorrow, the public will attack us and say: "It is always hon. Joyce Laboso sitting on that Chair". If what we are talking about here--- Let men be men enough and let us have either the substantive Speaker or the Deputy Speaker before we move anything here! Then tomorrow morning, we will come to this Parliament and then the substantive Speaker and the Deputy Speaker will reverse what has been passed while she is seated there for the last one hour. Madam Temporary Deputy Chairlady, I am giving you a warning as a woman. Do not sit on that Chair when the Speaker and Deputy Speaker are upstairs. This is a very sensitive issue. Tomorrow morning, it can be reversed like it has happened very many times.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Shebesh, thank you for the protection but I am telling you that I am up to the task. Let us continue. If it is to be reversed, then that is another matter. Can we continue?

Mr. C. Kilonzo: On a point of order, Madam Temporary Deputy Chairlady. Hon. Members are not clear on what I am bringing to your attention. What I have asked is very simple. If hon. Members shoot down this amendment by the Committee, will there be a Question put on the particular clause as it is? That is all I need to say. You can now respond.

The Temporary Deputy Chairlady (Dr. Laboso): Okay, hon. Members. Order, please. Let us not look like we are a confused House. It is very clear. Hon. Shebesh, thank you for your protection but I am up to the task. Can we continue! Let us just be clear. Already, the Committee has read the amendment and we will vote on the amendment. If it does not go through, we will vote to accept the original one as it is in the Bill.

(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 17 as amended agreed to)

Hon. Members: No! No! Division! Division!

(Several hon. Members stood up in their places)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, you have the numbers for a division. The division bell will be rung for eight minutes.

(The division bell was rung)

Could the Doors be closed now?

Hon. Members, let me just do a clarification. Could you put the Question on the screen?

(The Question of the Division was displayed on the screen)

The Question that we are voting on is that Clause 17 as amended be part of the Bill. It does not mean that we will delete Clause 17. If you want an amendment to be deleted, that is not the amendment. You will need another amendment to do so. So, it has to be clear in our minds.

Hon. Members, your vote will either be “yes” or “no”. If you vote “yes”, it will be part of the Bill. If you vote “no”, you do not want it to be part of the Bill. So, we have three options: “yes,” “no,” and “abstain.”

Just hold on one minute let us get clarification.

(Dr. Laboso consulted the Clerks-at-the Table)

“Yes” means you want it to be part of the Bill and “No” means that you do not want it to be part of the Bill and, therefore, we go back to the original in the Clause Bill. That is the correct interpretation. You will now vote by keying in “Yes” or “No” or “Abstain.” Is that clear to everyone?

Mr. Ruto: On a point of order, Madam Temporary Deputy Chairlady. I will try to explain the way most of us understand it. To the best of our knowledge, we had accepted the amendment as done by the Committee, but if you feel that the vote now is whether or not to accept it, we can accept the amendment as done by the Committee. But will you ask us, again, whether or not Clause 17 as amended should be part of the Bill? Is that the Question?

The Temporary Deputy Chairlady (Dr. Laboso): If the amendment is carried, there will be no further Question. If it is not, then we will resort back to the original. I think it is clear.

(Dr. Laboso consulted with the Clerks-at-the-Table)

(Loud consultations)

Order! Order, hon. Members! It is very clear how we proceed in Committee stage. Standing Order No.116 reads:

“The Clerk shall call severally each part of the Bill in the sequence prescribed in Standing Order 115 and if no amendment is proposed thereto or when all proposed amendments have been disposed of, the Chairperson shall propose the question “That, the (as amended) stand part of the Bill” and, when Members who wish to speak have spoken, the Chairperson shall put that question to the Committee for decision.”

So, if you say “Yes” that amendment passes. If you say “No” it means that Clause 17 remains as is in the Bill.

Hon. Members, let us vote so that we can continue. I, therefore, put the Question, that Clause 17 as amended be part of the Bill. You will vote “Yes”, “No” or “Abstain.” We are giving you three minutes to vote “Yes” if you want it to be part of the Bill; “No”, if you do not want it to be part of the Bill or “Abstain.”

(The hon. Members proceeded to vote)

The Temporary Deputy Chair (Dr. Laboso): Hon. Members, the three minutes are over and you can see the results on the screen, 75 Ayes, one abstention and 10 Noes. Therefore, the ayes have it.

DIVISION

(Question put and the House divided)

(Question carried by 75 votes to 10)

AYES: Messrs Bahari, Baiya, Bett, Chachu, Cheruityot, C. Kilonzo, Duale, Gaichuihie, Eng. Gumbo, Messrs Hassan, Githae, Haji, Kaino, Kajwang’, Kabogo, Prof. Kaloki, Messrs. Kathuri, Keynan, Kigen, Kimunya, Kioni, Kiplagat, Kombo, Konchella, Dr. Kones, Mrs. Kones,

Dr. Kosgei, Mr. ole Lankas, Mr. Letimalo, Ms Karua, Eng. Maina, Messrs. Magerer, Mbadi, Ms. Mathenge, Messrs. Magwanga, Mbai, Mbau, I.E. Mohammed, M. M. Muhamoud, Midiwo, Mureithi, Muriithi, Mututho, Mung'aro, Murungi, Musila, Mwaita, Mwatela, Mwanzo, Ms. Ndeti, Maj-Gen. Nkaissery, Messrs Njuguna, Nyamai, Nyambati, Ochieng' , Odhiambo, Mrs. Odhiambo-Mabona, Mr. Ojaamong, Onyancha, Prof. Olweny, Mr. Omollo, Dr. Otichilo, Messrs. Outa, Rai, Ruteere, Ruto, Sasura, Shakeel, Mrs. Shebesh, Prof. Sambili, Messrs. Samoei, Waititu, Wamalwa, Were, Yinda,

NOES: Messrs. D. Muoki, Kapondi, Keter, Mrs. Kilimo, Messrs. Koech, Lagat, Lang'at, Mrs. Leshomo, Messrs. Ngugi and Maj. Sugow

Abstention: Mr. Kiunjuri.

(Clause 17 as amended agreed to)

(Clause 18 agreed to)

The Temporary Deputy Chair (Dr. Laboso): Serjeant-at-Arms, you can draw back the bar now.

*[The Temporary Deputy Chairlady
(Dr. Laboso) left the Chair]*

*[The Temporary Deputy Chairman
(Prof. Kaloki) took the Chair]*

Clause 19

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT clause 19 be amended by inserting the following new sub-clause immediately after sub-clause (4)-

(5) This section shall apply to-

(a) a State officer; and

(b) a public officer.

The whole purpose of this Clause is to ensure that it is applicable to both State officers as well as public officers. It is to make that clarification.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I had an amendment in Clause 18.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Millie Odhiambo, we are on Clause 19.

Mrs. Odhiambo-Mabona: That is why I am raising the issue that you are moving to Clause 19 before dealing with Clause 18.

The Temporary Deputy Chairman (Prof. Kaloki): Sorry, hon. Millie Odhiambo. We are already on Clause 19. Could we get hon. Shakeel, proceed?

Hon. Shakeel, I will give you some time because the amendments are different. Let us first of all deal with the issue by hon. Njoroge Baiya. Is there any Member willing to speak?

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

Mr. Shakeel: Mr. Temporary Deputy Chairman, I beg to move:

THAT, clause 19 be amended by inserting the following new subclause immediately after subclause (4)—

“(5) Without prejudice to the foregoing provisions of this section, a State officer who fails to declare operation or control of a bank account outside Kenya commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years, or a fine not exceeding five million shillings, or both.”

The import of this amendment is that it prohibits opening and maintenance of foreign bank accounts by any State officer unless for compelling reasons they have applied and have been authorized to open and maintain such accounts. This Clause seeks to address the requirements of Article 76(2) in the Constitution.

(Question of the further amendment proposed)

Eng. Gumbo: Mr. Temporary Deputy Chairman, Sir, in my view, this proposal by hon. Shakeel is unnecessarily too stringent. It has to be clarified as to what happens to those who have dual citizenship. What does it mean to hold an account outside Kenya? He needs to qualify it.

The Temporary Deputy Chairman (Pro. Kaloki): Hon. Gumbo, just contribute on it, we will vote on it.

Eng. Gumbo: Mr. Temporary Deputy Chairman, Sir, the penalties as proposed are unnecessarily too stringent and the Mover of the amendment needs to lower the penalties.

Mr. Langat: Mr. Temporary Deputy Chairman, I also oppose the further amendment.

The Temporary Deputy Chairman (Pro. Kaloki): You are supposed to be on a point of order or some other intervention.

Mr. Langat: Mr. Temporary Deputy Chairman, Sir, that is what I am doing.

The Temporary Deputy Chairman (Pro. Kaloki): Are you on a point of order?

Mr. Langat: Mr. Temporary Deputy Chairman, Sir, I am contributing on the further amendment.

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, I rise to support the amendment by hon. Shakeel. The reason for this is that whereas hon. Gumbo is worried that the penalty is too stiff, it must be remembered that the people who open bank accounts outside the country do not open them with the balances in hundreds of thousands of Kenya Shillings. It is usually in millions of Dollars, Pounds and Euros. For this reason, I support that we make the penalty clear and stiff, so that potential thieves will be scared to use this particular route to loot public resources.

Eng. Gumbo: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is it in order for the Member for Ikolomani to brand anybody who owns a foreign account as a thief? I used to work in Tanzania and Uganda and I was doing legitimate business and in all those accounts, I

never had more than 5,000 US\$. Is it in order for him to call those who do legitimate businesses and have accounts in foreign countries thieves?

The Temporary Deputy Chairman (Pro. Kaloki): Dr. Khalwale, you need to clarify.

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, if the Member had cared to listen to me, I clearly said potential thieves. If he cares to remember, when he used to have those accounts, he was not a State officer.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Temporary Deputy Chairman, Sir, the amendment by hon. Shakeel is uncalled for. We have ambassadors in foreign lands and they hold accounts in those countries. We have students in foreign universities and they also hold accounts in those countries. Do we want to penalize these people? I oppose the amendment by hon. Shakeel.

Mr. Shakeel: On a point of order, Mr. Temporary Deputy Chairman, Sir. My brother has not read the amendment. For his sake, I would like to read the amendment. It reads that:-

“Without prejudice to foregoing provisions in this section, a State officer who fails to declare operation or control of a bank account outside Kenya commits an offence and shall on conviction be liable to imprisonment of a term not exceeding five years or a fine not exceeding Kshs5 million or both”.

So, it is the one who fails to declare. But those State officers who have accounts can declare.

Mr. Temporary Deputy Chairman, Sir, this clause states that state officers must declare. Let them declare and be accepted on that account.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, while I accept the need to penalize people who flout the law, if you look at all the penalties for observance or non-observance of this Act, you will find that they have been put properly within Clause 5. This is also included. So, what we are doing is mixing penalties with the performance or the observance of what needs to be done and what need not be done.

Clause 48 is one that we reserved. I think while looking at it, we said that there is already a penalty if you do not do what you are supposed to do within the law. So, if anything, we do not need this draconian law. I also want to bring it to your attention that when you talk about “who has not declared”, you are assuming that a state officer is only the Members of Parliament who are here. Let me give you a live example. Some of you may be having children learning or attending school in Uganda, and they may be under 16 and cannot open bank accounts in that country. So, you may open a bank account in the parent’s name who is a state officer. At one point or day when somebody wants to fix you, they will come and say that you have not declared the other account because your declaration perhaps has not reached there and then you will automatically find yourself in trouble. You have not put in the time limit. Who must declare and within what period? If you do not do it that way, you will be opening room for mischief. Remember that you are passing this law for yourselves and you will remember my wise advice one day.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, let us put this issue to rest. Let us move on to hon. Nderitu.

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, first of all, the penalties provided in Clauses 48 and 49 refer only to breach of Clause 20 which is about acting for foreigners.

I agree with this proposal. This is about if you have not declared. So, I accept and I do not think it is draconian. Let us do Kenya a favour and do the right thing.

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

(Clause 19 as amended agreed to)

The Temporary Deputy Chairman (Prof. Kaloki): I propose that Clauses 20 through 25 be part of the Bill.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Chairman, Sir. We did not vote on Mr. Shakeel's amendment. So, we cannot make it part of the Bill. We have to vote first on Mr. Shakeel's amendment.

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Mbadi, you are right.

(Clause 19 as further amended agreed to)

(Clauses 20, 21, 22, 23, 24 and 25 agreed to)

Clause 26

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, sub-clause (2) of clause 26 be deleted and substituted with the following new sub-clause-

(2) In this section, "gainful employment" means work that a person can pursue and perform for money or other form of compensation or remuneration which is inherently incompatible with the responsibilities of the State office or which results in the impairment of the judgment of the State officer in the execution of the functions of the State office or results in a conflict of interest in terms of section 16.

Mr. Temporary Deputy Chairman, Sir, the whole idea of this amendment is to clarify and give a definition on gainful employment for purposes of removing doubt as to the applicability of Section 26(1).

(Question of the amendment proposed)

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

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)
(Clause 26 as amended agreed to)*

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Shakeel, as you try to move your amendment, you should know that one is similar to Mr. Baiya's. Do you want to proceed?

Mr. Shakeel: It is different, Mr. Temporary Deputy Chairman, Sir.

(The Chair consulted the Clerks-at-the-Table)

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Shakeel, I have been advised by the Clerks-at-the-Table that the meaning is the same. So, since we have already carried the amendment by the Committee, would you want to withdraw yours?

Mr. Shakeel: Yes, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Prof. Kaloki): Very well. Hon. Shakeel has withdrawn his amendment.

(Proposed amendment by Mr. Shakeel withdrawn)

(Clause 26 as amended agreed to)

(Clause 27 agreed to)

Clause 28

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 28 be amended by deleting Sub-Clause 2.

This is because it limits the right of access to information in a manner that does not follow the constitutional provision on limitations.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Prof. Kaloki): We have a point of order from hon. Gumbo.

Eng. Gumbo: Mr. Temporary Deputy Chairman, Sir, earlier on, the Chair before you had ruled that Millie's amendments had not been approved. Is this one approved?

The Temporary Deputy Chairman (Prof. Kaloki): Let us not deal with that issue now. The amendment is properly before the House. The Chair is satisfied that we can deal with it.

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

(Clause 28 as amended agreed to)

*(Clauses 29, 30, 31, 32, 33, 34,
35, 36, 37, 38 and 39 agreed to)*

Clause 40

An hon. Member: Where is the amendment?

Mr. Ruto: The amendment was forwarded to the Office of the Clerk of the National Assembly. I am sure that it has already been circulated.

Mr. Temporary Deputy Chairman, Sir, Article 40---

The Temporary Deputy Chairman (Prof. Kaloki): Order, hon. Isaac Ruto! Where is that amendment?

Hon. Members: We have it!

The Temporary Deputy Chairman (Prof. Kaloki): Alright. Proceed, hon. Ruto.

Clause 40

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 40 of the Bill be amended-

(a) by deleting Sub-clauses (1) and (2)

(b) in Sub-clause 3 by inserting the word “relevant” immediately after the words “code issued by the”.

Mr. Temporary Deputy Chairman, Sir, Clause 40 actually purports that there will be certain administrative action which may be taken and which may bar certain persons from contesting. This is equivalent to vetting and in our view, the Constitution actually provides that a free and fair election is more or less enough to do the vetting for those who are going into elective office. If we retain Clause 40 as it is, then we should be ready to set up some administrative arrangements similar to the ones KANU used to have, where everybody had to be cleared from the ward up to the President’s level. I do not know who that person will be to administratively say: “Hon. Khalwale is not fit to go into an election.” I propose that we delete this administrative activity.

(Question of the amendment proposed)

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, I think that this amendment is regrettable and ought to be opposed. What really Clauses 40(1)(2) are doing is putting an obligation on any public entity to which one belongs professionally to forward the information to the relevant authority. If I am a lawyer and I have been dis-barred by the Law Society of Kenya (LSK), they should forward that information. You know, they are talking of a fair administrative procedure. So, if your professional body is not fair, you can go to court and challenge it. But if you are going to say that: “give us an accountant”, you are penalized by your organisation and we gloss over that, then we are putting the bar down on issues of integrity. I would, therefore, urge that we reject these two clauses. They are taking us back. We have already raised the bar by the initial amendments that we have passed. Let us not agree to go backwards. This is a terrible amendment.

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, if the provisions in this Clause could be as clear as hon. Karua has put it, I could not have minded the deletion. However, the way this Clause is framed or placed, it is terrible. We have asked questions in Parliament where we have seen police officers being dismissed for no reason. That can be treated as a fair administrative process because it is not defined what a fair administrative process is. If you are going to use such to bar someone from assuming a State office, you are not going to be fair to that person. I agree with the amendment. We cannot leave this thing as general as it is. Otherwise, we will be deciding elections in---

The Temporary Deputy Chairman (Prof. Kaloki): Order, hon. Mbadi! We are in the Committee Stage. Hon. Members, let us be brief. Hon. Githae!

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I stand to support the amendments proposed by hon. Isaac Ruto. This is a very dangerous Clause as it is now. It is subject to abuse. It can be abused. It has been abused in the past and it will be abused in the future. Even coming to the professionals, the fact that you have failed to be a doctor---

Mr. Baiya: On a point of order, Mr. Temporary Deputy Chairman, Sir. I want to know from Mr. Githae whether it is in order for him to come and start supporting an amendment to a clause when the Bill came from the Cabinet. There is the doctrine of collective responsibility. Can we know what we shall be supporting or not. This is indiscipline of the highest order.

The Minister for Finance (Mr. Githae): You can improve on this law. This is an improvement by Mr. Isaac Ruto. It may have escaped the Cabinet but this is an improvement. There is nobody with a monopoly of knowledge.

What I was saying is that the fact that you are not a good doctor does not mean you cannot make a very good Member of Parliament. So, we should not rule against you that; since you are a bad doctor, you cannot become a good Member of Parliament. We have seen lawyers here who are terrible but when they are in this House they are brilliant.

Mr. Kabogo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I have been sitting here wanting to contribute but I have not been seen for the last three hours. Either I am part of this game or not. I could leave. I have been shouting here “point of order” all the time!

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Kabogo, you are not on the screen but I want to give you time to contribute.

Proceed.

Mr. Kabogo: Mr. Temporary Deputy Chairman, Sir, it is unfortunate that sometimes the way we behave; anyway, I want to say that we are here to make laws that are clear, and not to push laws that have a lot of ambiguity. When you talk about a state office after a fair administrative process, what is the measure of that “fair administrative process”? I stand to strongly support.

The Temporary Deputy Chairman (Prof. Kaloki): Let me take one more, Mr. Murungi, and then I will put the Question.

The Minister for Energy (Mr. Murungi): Thank you, Mr. Temporary Deputy Chairman, Sir. On the reading of this particular clause, that a person is not eligible for election or appointment if, after a fair administrative process, the court or any entity finds that you have not contravened the Constitution or this Act on matters relating to ethics and integrity---. So, you can be barred from standing for elections even if you have not contravened the Constitution, or even if you have not contravened this Act on matters of ethics and integrity, because a certain body says you have broken their own internal rules. I think it is a very dangerous provision, and we need to support the amendment by Mr. Ruto.

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

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

(Clause 40 as amended agreed to)

(Clause 41 agreed to)

Clause 42

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 42 be amended by deleting Sub-clause (8) and substituting therefor the following new subclause—

“(8) The Commission shall prescribe disciplinary mechanisms and procedures to be followed in the event of contravention of the Code, and those mechanisms and procedures shall comply with Article 47 of the Constitution or any other applicable written law for the time being in force.”

The import of the amendment is to provide for a manner in which disciplinary action may be taken against a State officer who is found to be in breach of the code. The responsible commission has no power under the Constitution to take disciplinary action against a State officer. It is supposed to refer the matter to a body or person who is vested with the power to discipline the officer. So, the amendment is to delete Clause 42 (8) and substitute it with the proposal on the Order Paper.

(Question of the amendment proposed)

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

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

(Clause 42 as amended agreed to)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Prof. Kaloki): Mrs. Odhiambo-Mabona, do you have a serious point of order?

Mrs. Odhiambo-Mabona: Yes, Mr. Temporary Deputy Chairman, Sir. It is not serious, I just wanted to bring to your attention that I have been trying to tell you that I had an amendment, but you have not been giving me attention. Nonetheless, I wish to withdraw it because we have a tendency in this country – we have a theory – of stepping aside which is vague and we do not know what it is by law. So, I wanted us to make it legal, but I withdraw.

The Temporary Deputy Chairman (Prof. Kaloki): Thank you!

(Clauses 43, 44, 44 and 46 agreed to)

Clause 47

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move that Clause 47 be deleted because it violates Article 35 of the Constitution---

(Loud consultations)

Mr. Temporary Deputy Chairman, Sir, could you, please, protect me because Members---
The Temporary Deputy Chairman (Prof. Kaloki): Hon. Midiwo, could we have one House?

Members, please, let us listen to hon. Millie Odhiambo.

Mrs. Odhiambo- Mabona: Mr. Temporary Deputy Chairman, Sir, whereas I can see the intention is really to regulate that, in employment you should not be divulging information because--- the Constitution is very clear on this. When you are limiting information, there is a way you do it under the law. So, I move that we delete clause 47.

(Question of the amendment proposed)

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, I stand to support the amendment by hon. Millie. This is because even we have the Witness Protection law which envisages a situation whereby Kenyans are free to give out information. So, if an earlier statute is attempting to allow Kenyans to give information, especially on issues as serious as corruption, we should not have a clause here that is blocking a Kenyan from disclosing information that will help us to have a better a country.

I support.

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, this amendment is very important. You will recall that we are enjoined by the Constitution to make a freedom of information Act. Any justifiable exceptions will come under that Act after we properly analyze it. But a blanket condemnation and a very heavy penalty of Kshs5 million, this is taking us to the dark era. I support the amendment.

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, the Constitution allows Kenyans to access real information. Therefore, I fully support this very timely amendment.

The Temporary Deputy Chairman (Prof. Kaloki): Members, just be brief, we will go to hon. David Mwaniki Ngugi.

Mr. Ngugi: Mr. Temporary Deputy Chairman, Sir, the way this clause is takes away the right of whistle blowers. So, I support the amendment as proposed.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I think it is important that we specialize as far as law making is concerned. If we put little issues about freedom of information in all the Acts, we will create confusion. Since we have a Bill coming to the House on the freedom of information as set out in the Constitution, let us handle these issues of freedom of information in that law when it comes to this House, and not handle a little bit in this Bill, then a little bit in the next one. Instead, we should deal with it in that particular specialized Bill.

The Assistant Minister for Education (Mr. Mwatela): I am in agreement, Mr. Temporary Deputy Chairman, Sir.

The Minister for Transport (Mr. Kimunya): Mr, Temporary Deputy Chairman, Sir, I oppose this amendment and I want Members to bear with me as I explain why. This refers to corruption offences. This is describing an offence under a clause that had already been allowed or disallowed earlier. If you look at 28(2), it was already saying:

“Subject to Article 33 and 35 of the Constitution, a State Officer shall give advice to anyone using information---“

Hon. Members: It was deleted!

The Minister for Transport (Mr. Kimunya): Was it deleted? Clause 28(2) was not carried.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Kimunya, do you want to continue?

The Minister for Transport (Mr. Kimunya): Just bear with me. The import of this was to avoid collusion; that public officers who have some information may give such information to

specific people to win tenders because it is only them who have it. When you are saying you want to fight corruption and you want to also allow insider dealings for specific people, is that not corruption? This was the import of this law. It just appears that we want to blow hot and cold at the same time.

Mr. Chachu: Mr. Temporary Deputy Speaker, Sir, I oppose this amendment.

Mr. Temporary Deputy Speaker, Sir, those who have access to privileged information when they are working for the State should bear responsibility for that information. People can use that information in a way that can actually even destabilize this nation. For instance, if somebody was in charge of Internal Security or even Intelligence, once they retire they use that information as they wish. There is no penalty. I do not think that, that is very responsible.

Mr. Temporary Deputy Speaker, Sir, I oppose the amendment.

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, what hon. Kimunya was talking about is already taken care of elsewhere in this Act. It is very clear that you are not supposed to interfere or influence tender. We had already passed that in the earlier clauses. So, we cannot limit freedom and criminalize whistle-blowing. If what hon. Kimunya is saying is what he wanted done, they would have framed it differently. We want specific legislation. Do not make it general to an extent that it muzzles.

Ms. Leshomo: Asante sana, Bw. Naibu Mwenyekiti wa Muda. Hakuna kitu cha muhimu kama kuweka siri. Ukipeana siri utakuwa umeiuza nchi. Siri ni kitu cha maana sana. Kwa mfano, saa hii tuko na Linah. Tukikosana naye, kesho naweza kusema kila kitu kumuhusu kwa sababu tumekosana. Ningeomba hiyo siri iwekwe.

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

(Clause 47 deleted)

(Clauses 48, 49, 50, 51 and 52 agreed to)

Clause 53

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Chairman, Sir. The amendment that hon. Millie wants to move is Clause 53(3). We do not have Clause 53(3). We have Clause 53(2). I wonder where hon. Millie has gotten it.

The Temporary Deputy Chairman (Prof. Kaloki): I think that, that is a typo. Hon. Millie, do you want to correct that, so that we can go with the correct version of it?

Mrs. Odhiambo-Mabona: I want to thank Mr. Mbadi. I was actually going to move by saying that it is 52, not 53.

The Temporary Deputy Chairman (Prof. Kaloki): Mrs. Millie Odhiambo-Mabona, where are you?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I was going to correct that it is 52 not 53.

The Temporary Deputy Chairman (Prof. Kaloki): But Mrs. Millie Odhiambo-Mabona, you know the procedures of the House; we cannot go back to 52.

Mrs. Odhiambo-Mabona: That is okay, Mr. Temporary Deputy Chairman, Sir. I was just tidying it up, so that we can know which commissions will be appointed. However, if you have passed it, that is okay with me.

The Temporary Deputy Speaker (Prof. Kaloki): Just go to your amendment at clause 53.

Mrs. Odhiambo-Mabona: I am Sorry.

Hon. Members: She has withdrawn. She has withdrawn.

The Temporary Deputy Speaker (Prof. Kaloki): Ooh! So, you have withdrawn it?

Mrs. Odhiambo-Mabona: I cannot withdraw it, because you have passed it. It was overtaken by events.

(Clause 53 agreed to)

(Clauses 54, 55 and 56 agreed to)

New Part IVA

New Clause 45A

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Part immediately after Part IV:-

PART IVA – DECLARATION OF INCOME, ASSETS AND LIABILITIES

Declaration **45A.** (1) Every State officer shall submit to the Commission a declaration of income, assets and liabilities-

- (a) before they are elected or appointed into office;
- (b) within thirty days of being appointed or elected and sworn-in as a State officer;
- (c) annually, on the first day of November in each year; and
- (d) within thirty days of ceasing to be a State officer.

(2) A declaration shall be made by a State officer in respect of-

- (a) the State officer;
- (b) the State officer's spouse;
- (c) the State officer's dependants who are under the age of eighteen years;

and

- (d) any property held in trust for the State officer.

(3) The declaration shall be in the prescribed form.

(4) The declaration may be submitted as a hard or soft copy or in any other prescribed format.

(5) Where a soft copy of a declaration is submitted, it shall be considered valid if it bears a unique identification feature which can sufficiently identify the State officer making the declaration.

(6) A public entity may obtain from the Commission a copy of a declaration made by a State officer for whom it is the authorized body for purposes of satisfying itself of the integrity and ethical standards maintained by the State officer.

Mr. Temporary Deputy Speaker, Sir, the purpose of this section basically is to bring back to the Bill the procedure for declaration of income, assets and liabilities. This procedure had already been brought into the Leadership and Integrity Bill, but had been removed at the Cabinet level. It is important that we bring it back to ensure that those seeking public offices will be regularly declaring wealth as part of their responsibility to transparency, and also with a view to ensuring that they live up to the standards of the new Constitution with regard to integrity.

(Question of the new clause proposed)

(New clause read for the First Time)

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

Mr. Kabogo: Mr. Temporary Deputy Chairman, Sir, I would want to move a further amendment to the amendment to Clause 45A (2) (b) by removing it. It is where it says, “the State officer’s spouse”. Our Constitution is such that it gives every person their own rights. When you tell me to declare what my spouse owns, she may as well refuse to tell me what she owns. It is my proposal to further amend that amendment by removing Subclause (2)(b).

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, allow us to consult here for a minute. We are trying to get hon. Kabogo’s further amendment to this Clause 45A. We want to determine whether we should deal with hon. Baiya’s amendment first.

(The Temporary Deputy Chairman consulted with the Clerks-at-the-Table)

Hon. Members, I want to deal with New Clause 45A first as moved by hon. Baiya.

(The Temporary Deputy Chairman consulted with the Clerks-at-the-Table)

Hon. Kimunya, since I am guided here by the Clerk, let us deal with it before we go to Kabogo’s amendment. There is a mix-up.

Before I put the Question, since I had already proposed this New Clause 45A, let us deal with it. Let us have some contributions, say, two of them.

Hon. Members: Put the Question!

The Temporary Deputy Chairman (Prof. Kaloki): Let us get a senior Clerk here to advise the Chair.

(The Temporary Deputy Chairman consulted with the Clerks-at-the-Table)

Very well, let us get two contributions on this particular New Clause 45A. Mr. Kimunya!

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I stand to oppose the inclusion of the reading of the New Clause 45A and, indeed, the entire New Part for a second reading. I am not just opposing for the sake of it.

This matter was removed in a deliberation with all the stakeholders, including the CIC, the Kenya Law Reform Commission, and the Cabinet on the understanding that the whole issue of the declaration of income is already included within the Public Officer Ethics Act which has not been repealed and which has been intertwined with this Bill. We are saying that the Public Officer Ethics Act is an integral part of this code. So, whatever is already contained within the Public Officer Ethics Act becomes automatically part of this Leadership and Integrity Bill.

Declarations of income are already covered. There are those that are already in place. There are already issues in terms of when they go on. For purposes of consistency, you only maintain the declarations in one law and when the two are harmonized, you will distinguish what State officers do and what public officers do, but noting for clarity that every State officer is a public officer. By already including within public officers, you are now capturing the declaration that we are doing now, which will have a transitional point into the future. What we are doing here now is creating a situation and there will be a lacuna.

So, it is important that we explain because an issue has arisen here that the Cabinet removed without the benefit of knowing why it was removed.

Mr. Shakeel: On a point of order, Mr. Temporary Deputy Chairman, Sir. It was passed earlier that a Member has one minute to say something and not to give us a lecture on why they watered down the Bill.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Kimunya, please, you must conclude now. Hon. Shakeel is right.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, my reaction was that it has been stated that this was removed by the Cabinet and unless the House has the rationale as to why it was removed, we might be creating an impression that it was just removed arbitrarily. It was removed because it is already included within the public officer Ethics Act, which is an integral part of this Bill.

Mr. Duale: Mr. Temporary Deputy Chairman, Sir, in 2003, we passed the Public Officer Ethics Act. This Clause 45A is basically doing the same. Under the Public Officer Ethics Act, there are Commissions that perform this role. The Parliamentary Service Commission is doing that. The Judicial Service Commission and the Public Service Commission will do that. It is duplication and I do not see the reason. Any body, including the Anti-Corruption Commission can go to these commissions to get the relevant information that they need on an individual. So, I do not think we should do this.

Mr. Wambugu: Mr. Temporary Deputy Chairman, Sir, I wish to strongly oppose the inclusion of this clause into the Bill. If you get through 45A(2)(b) and the others that follow, they totally interfere with the rights of our spouses. It is the husband who is required to declare other people's properties. Clause 45A(2)(b) indicates that somebody needs to declare the nominee's dependants. Sometimes, anybody who is above 18 years of age in this country is considered a grown up and I do not see any good reason as to why the nominee should interfere with the affairs of his dependants. I, therefore, wish to oppose.

The Assistant Minister for Education (Mr. Mwatela): Mr. Temporary Deputy Chairman, Sir, I have a problem with the issue of 45A(2)(b) in particular. You are compelling an individual to divulge information to another person and there is no law that binds him.

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, I want to support this new addition. The question I am asking myself, as I hear the opposition is, if any of these people became head of State, to what use do they want to put that opportunity? Surely, the law is not attempting to tell you that you must remain poor. The Minister must also accept that under the Ethics and Anti-Corruption Act, we have provided for lifestyle audit. So, if we are recognizing that we must audit lifestyles to know what is happening to leaders, what is wrong with us putting it here? Finally, it is amazing how people go to public offices and within two years, their lifestyles have changed and they have bought helicopters. We want to stop this, but if you get your money fairly through your businesses or whatever it is, nobody will follow you. You have nothing to fear.

I support the addition.

The Minister for Energy (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I was the Minister for Justice, National Cohesion and Constitutional Affairs when we introduced the Public Officer Ethics Act in 2003 and there was a lot of debate. The matters covered by the proposed amendment; declaration of income, assets and liabilities is adequately covered in the Public Officer Ethics Act. As we are speaking now, Members of Parliament are required to be filling forms with the Speaker after every two years. The intention of this is to show how much you earned when you came to Parliament and what you now have. It would be possible when issues arise to get the declaration forms opened so that they can see whether you have unduly enriched yourself.

We do not need this amendment because it is adequately covered in the Public Officer Ethics Act.

Ms. Karua: Thank you, Mr. Temporary Deputy Chairman, Sir. For the same reason that my colleague on the other side is asking for the clause to be deleted, I actually say that we need this clause. After the passing of the 2003 Public Officer Ethics Act, we omitted to put a clause for making public the declaration of wealth. It failed to put a mechanism for tracking an individual's wealth. That is the lacuna addressed by the Constitution and which we are now addressing in this law, unless we want corruption to continue. The Kenya Anti-corruption Commission was unable to get anywhere with the scandals that came up because the declarations were secret. This is the law to make those declarations public so that we can catch anybody milking a cow that is not his.

Mrs. Shebesh: Mr. Temporary Deputy Chairman, Sir, I listened to hon. Kimunya and got amused. It is true that the law is there. However, what if we are not satisfied with it? Is it not our work, if we have an opportunity to put it here to, to put it? Lecturing us will not stop us from stopping more corruption. More corruption has happened during the time of the "Grand Collusion Government" than even in 2003 when we put this Act in place. That means that it is not effective. We will emphasize and re-emphasize it.

Therefore, I support.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I rise to oppose this amendment. The Cabinet, in its wisdom, looked at this and realized that this was not workable. All this information is under the Ethics and Anti-Corruption Act. You should provide information after you have been elected.

This is what will happen. Your opponents, once they know that you have zero, will start asking: What kind of a presidential candidate is this? When others see you with some property---

Hon. Members: Haaaa!

(Laughter)

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, if what is provided for here is the same as what is in the Public Officer Ethics Act and it does not conflict with that Act, there is nothing wrong. Let us pass it as it is. I was just looking at New Clause 45B(3) which says:-

“The commission may publish the contents or a summary of the contents of declarations filed in accordance with this section for all elected State officers once they assume office.”

The Temporary Deputy Chairman (Prof. Kaloki): Order, Mr. Mbadi. Are you getting ahead of the Bill? Do not move ahead of the Bill.

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, if today Ms. Karua is elected President, I would like to know as a Kenyan what she has so that after a while, I should know whether she has been stealing from me or she has not been stealing; or milking a cow which is not hers, but my cow. This provision is perfectly in order. It should not be interfered with.

I support.

(Question, that New Clause 45A be read a Second Time, put negatived)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Chairman, Sir. My point of order is just that because of the new technology where we now use all these flashy things, when we are very vehemently opposed like I was and I have not spoken to it, I will not go on record. Therefore, I want it to be very clear that I was with the ones who have lost.

The Temporary Deputy Chairman (Prof. Kaloki): Order, Mrs. Odhiambo-Mabona. That is not a point of order.

Mr. Shakeel, you had an amendment for that New Clause 45A which is similar to Mr. Baiya's, would you wish to withdraw it now?

Mr. Shakeel: No. It is not similar. I do not wish to withdraw it.

The Temporary Deputy Chairman (Prof. Kaloki): Order, Mr. Shakeel. I cannot give you the Floor. I am directed that your amendment is similar to that one of Mr. Baiya and we cannot---

Mr. Shakeel: No! It is not similar!

The Temporary Deputy Chairman (Prof. Kaloki): I have been advised---

Mr. Shakeel: I have the right to move my amendment!

The Temporary Deputy Chairman (Prof. Kaloki): I am advised that it has collapsed.

Mr. Shakeel: How can it collapse? I have a right!

The Temporary Deputy Chairman (Prof. Kaloki): Let us just make sure that you are procedural.

Mr. Shakeel: I demand for you to tell me in which way the amendments are similar.

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Shakeel, I will give you time.

Mr. Shakeel: Could you tell me how they are similar?

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Shakeel, put off your microphone. I will give you time. Let me consult. If it turns out that the amendment has collapsed, that will be the position. So, give me a minute.

(The Chair consulted the Clerks-at-the-Table)

Hon. Shakeel, the content of the amendment by hon. Baiya, which was carried, is similar to the content of your amendment. So, we cannot proceed with your amendment. So, the honourable thing for you to do is to withdraw it. If you do not withdraw, I will rule on it.

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I do not wish to withdraw the amendment, and I challenge you to tell me where my amendment is similar to that of hon. Baiya.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, on declaration of income, assets and liabilities, hon. Baiya's amendment goes as follows:-

“PART IVA – DECLARATIONS OF INCOME,
ASSETS AND LIABILITIES

Declaration

45A. (1) Every State officer shall submit to the Commission a declaration of income, assets and liabilities-

- (a) before they are elected or appointed into office;
- (b) within thirty days of being appointed or elected and sworn-in as a State officer;
- (c) annually, on the first day of November in each year; and; and,
- (d) within thirty days of ceasing to be a State officer---“

Hon. Shakeel's amendment, similarly, goes as follows:-

“PART IVA – DECLARATIONS OF INCOME,
ASSETS AND LIABILITIES

Declaration

45A. (1) Every State officer shall submit to the Commission a declaration of income, assets and liabilities-

- (a) before they are elected or appointed into office;
- (b) within thirty days of being appointed or elected and sworn-in as a State officer---“

Hon. Members, as you continue reading the two amendments together, you will appreciate that they are similar.

(Loud consultations)

The Temporary Deputy Chairman (Prof. Kaloki): Order, hon. Members! I will give you time but, first, let us see what our Standing Orders say about such scenario.

An hon. Member: (Off record)

The Temporary Deputy Chairman (Prof. Kaloki): Order, hon. Members! Give me time. I am dealing with the challenge from hon. Shakeel. I am doing this for him. Listen to what Standing Order 116(3) says.

Standing Order No.116(3) states:-

“No amendment shall be moved which is inconsistent with any part of the Bill already agreed or any decision already made by the Committee. The chairperson may at any time during the debate of a proposed amendment withdraw it from the consideration of the Committee if, in the opinion of the

chairperson, the debate has shown that the amendment contravenes this paragraph.”

That is what I am doing. So, hon. Members, I will make the decision, which is that hon. Baiya’s amendment is the same as hon. Shakeel’s. The Clerks-at-the-Table have determined that, and we cannot deal with it. There is no difference.

(Hon. Shakeel stood up in his place)

The Temporary Deputy Chairman (Prof. Kaloki): Order, hon. Shakeel! Do not give yourself permission. Please, resume your seat.

The Minister for Finance (Mr. Githae): On a point of order, Mr. Temporarily Deputy Chairman, Sir. In fact, my point of order is that you had already made a ruling and the matter is closed and it has been overtaken by events. Let us move on to the next issue.

Mr. Mututho: On a point of order, Mr. Temporary Deputy Chairman, Sir. My point of order is very simple. You have heard the hon. Member challenge you and even admit he challenged you. If we are going to conduct this as the august House, let it be. If we are going to conduct it outside like a *kamukunji*, we do it but no one is allowed to challenge the Chair.

Hon. Members: No, we can challenge him.

The Temporary Deputy Chairman (Prof. Kaloki): Anyway, I took time to explain the difference and I read all the submissions and the Standing Orders. Let us now move to the next clause.

New Clause 45(b)

The Temporary Deputy Chairman (Prof. Kaloki): Order! Hon. Members, since the Clerk has called the clause, let me propose it first. I will propose that Clause 45(b) be now read a second time. Hon. Njoroge Baiya!

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, in view of the outcome in Clause 45A, it does not make much sense to proceed to Clause 45B. Therefore, I am withdrawing Clause 45B.

(Mr. Baiya’s proposed Clause 45B withdrawn)

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, all these new clauses were based on Mr. Baiya’s amendments. Since he has withdrawn Clause 45B and the House made a decision on Clause 45A, and since Mr. Shakeel’s amendment was dependent on Mr. Baiya’s amendment, then I think he needs to withdraw his.

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I wish to execute it. I do not wish to withdraw my amendment.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, we are facing some technicalities here. We shall be able to deal with Mr. Shakeel’s issue.

(Prof. Kaloki consulted the Clerks-at-the Table)

Mr. Shakeel, I think you can move your amendment since we have not voted for it and then we shall be able to decide. Let us allow him move it.

New Clause

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting New Clause 45B.

Declaration by 45B. (1) A person nominated for election to a nominee for State office shall submit to the elective posts.

Commission a declaration for himself or herself, his or her spouse and his or her dependants under the age of eighteen years.

(2) The Commission shall issue such document as may be prescribed by the Commission as evidence of submission of the declaration to the nominees who have complied with this section.

(3) The Commission may publish the contents or a summary of the contents of a declaration filed in accordance with this section, for all elected candidates and appointed State officers after they assume office.

(Question of the New Clause 45B proposed)

(New Clause 45B read the First Time)

*(Question, that the New Clause 45B
be read a Second Time proposed)*

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, cumbersome as it might look or appear, let this be on record, if for nothing else, for the fact that today we are mourning the hon. Martin Shikuku. When Mr. Shikuku lived, he hoped that this would one day be part of our laws.

Public officers would make it public what they brought into the office and what they left the office having acquired. Let it be on record.

Mr. Langat: Mr. Temporary Deputy Chairman, Sir, I oppose the proposal because we are asking those who are supposed to be elected to declare assets of others who are very far away.

Mr. Hassan: Mr. Temporary Deputy Chairman, Sir, I support. This is the norm all over the world. We are not an island; we are a country that wants to be the best in the world to compete equally and we need to be able to show that we are above board. There is nothing wrong in declaring your assets in public. Then, when you leave office, you also account for what you have earned and then the public can measure whether you have earned it honestly or whether you have looted your country.

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, this particular clause can stand on its own. It says: "A person nominated for election to a State office shall submit to the Commission a declaration in respect of himself or herself, the nominee's spouse and the nominee's dependants who are under the age of eighteen years. It is a beautiful legislation. If you want to seek an elective position, you need to tell Kenyans - through the Commission - what is it that you have. That way, we can look at you. What is it that you do not have? If you have chicken, tell us. If

you have high rise buildings, tell us. That way, we will know that we are electing a rich fellow. We do not want to see people who have been elected---

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Mbadi, you have made our point! You have done well.

Eng. Maina: Mr. Temporary Deputy Chairman, Sir, I think, first of all, you are on the Chair. You gave a ruling with the authority vested in you. You said that the Chair has the power to say an amendment can be thrown away at this stage, and you went nearly there. Having said that, and since you allowed this thing to go on, the point is---

The Temporary Deputy Chairman (Prof. Kaloki): Order, Eng. Maina! The Chair did not conclude that matter. We consulted and I allowed the Mover, Mr. Shakeel, to proceed with it. So, just make your contribution.

Eng. Maina: Okay then, Mr. Temporary Deputy Chairman, Sir. But I want to go on record that I think this matter should have ended earlier. Having said that, I think we are starting to get into hypothetical situations which will not serve this country anywhere. This clause and these amendments, to me, are not serving any purpose. That is because in our Constitution, one of the things that make you not eligible for leadership is insolvency. Therefore, are we assuming that we are looking for insolvent people to lead this country or what are we doing? Therefore, I actually find the amendment by Mr. Shakeel -

The Temporary Deputy Chairman (Prof. Kaloki): Eng. Maina, you have already made your point.

Eng. Maina: After Mr. Njoroge had already withdrawn his amendment - to be superfluous and I oppose.

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, I just want to begin by saying that only the guilty are afraid. This clause is just saying: "Let us know what you have and we will trace whatever else you acquire to see whether you have been milking our cow or you bought your own cow." All I am saying is that unless we pass this clause, those used to milking other people's cows in the night and especially the cows of Kenyans, will continue drinking the milk to the detriment and health of the rest. So, I support this clause.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I support the amendment because contrary to what hon. Minister Njeru Githae thinks, it is important to declare even if you have nothing to declare. Some of us have nothing and we are very proud with our nothing. We can declare our nothing. Kenyans must know that you have nothing. That "nothing" you got it right. We are not bankrupt, but we have nothing. There is a difference between bankruptcy and nothingness.

Mr. Temporary Deputy Chairman, Sir, I support. We cannot be milking Kenyans. We must declare what we have or what we do not have.

The Temporary Deputy Chairlady (Prof. Kaloki): Very good. We go to hon. Kimunya.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I think this House and this Committee cannot apply different standards for different State officers. This House has just made a decision that for purposes of those to be elected, Clause 45(A) has been removed. You cannot apply different standards for those to be nominated into Parliament. I think it is important that we understand what we are doing. Clause 45(B) is talking about declaration by nominees for elective post not for those who are seeking election, which has already been explained in Clause 45(A). So, it is very important that we appreciate the fact that having agreed for elected MPs, you do not need to declare. You cannot then say for those to be nominated---

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Kimunya, you have made your point. I want hon. Githae to be the last there.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I seek your guidance. I have looked at these amendments, Clause 45(b), (c), and all the others. In my view, this is why I am seeking your guidance. Once Clause 45(A) collapsed, all the others followed suit.

Hon. Members: No!

The Minister for Finance (Mr. Githae): Unless you do it for the sake of record and wasting of time, we should actually be on the other business now. They are the same.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Githae, let just put the question. Since we will be able to vote, let us just vote.

The Assistant Minister for Industrialization (Mr. Muriithi): On a point of order, Mr. Temporary Deputy Chairman, Sir. It is on the same point of order about guidance.

As you give us guidance on this question, is a nominee for elective position a State officer? As we belabour this point Clause 45(A), Clause 45(B) deals with nominees for elective positions.

Mr. Temporary Deputy Chairman, Sir, I hope you establish the correct position because I do not think nominees for elective positions are not State officers. They are yet to be State or public officers. So, for the hon. Member to say that since Clause 45(A) collapsed, then Clause 45(B) also collapses, I think is not the correct position.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Nderitu, the nominees that you are asking about will be nominated to perform state functions. So, they will be considered in that particular category. They are performing just like any other State officer if they have been nominated to serve. So, they will be treated the same.

Hon. Members, I will now put the question.

(Question, that the New Clause 45B be read a Second Time, put and negatived)

(Several hon. Members stood up in their places)

Hon. Members, you have no numbers. Hon. Millie-Odhiambo, I know you wish that you had the numbers. Hon. Shebesh, you know that the number is supposed to be 20 and you do not have 20. Let us move on.

New Clause 45C

(Hon. Shebesh had an altercation with Mr. Bett)

The Temporary Deputy Chairman (Prof. Kaloki): Order, hon. Members! Hon. Shebesh, you know that you are an hon. Member of Parliament. I do not want to deal with that matter. You know that we are not supposed to be calling each other with tribal connotations. I really heard that and do not want to deal with it. Hon. Minister, I think as a good gesture, let us just deal with it. Hon. Shebesh is remorseful about that.

Hon. Baiya, do you want to deal with New Clause 45C or you want to withdraw?

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, in view of the previous ones, I am also withdrawing this one.

(Mr. Baiya's proposed amendment withdrawn)

The Temporary Deputy Chairman (Prof. Kaloki): Since he has withdrawn, let us listen to hon. Shakeel.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I wish to withdraw my amendment to New Clause 45C.

(Mr. Shakeel's proposed amendment withdrawn)

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Shakeel has withdrawn New Clause 45C. Hon. Shakeel, the question is: How will you treat clauses 45D, 45E, 45F, 45G and 45H?

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I withdrew Clause 45D and 45E, but not Clause 45G because we have new items under it. So, I withdraw Clauses 45D, 45E and 45F.

The Temporary Deputy Chairman (Prof. Kaloki): What about Clause 45H?

Mr. Shakeel: On 45H---

The Temporary Deputy Chairman (Prof. Kaloki): It is okay; we will come to that when we get there.

Hon. Members, Mr. Shakeel has withdrawn the amendments to Clauses 45C, 45D, 45E and 45F. Mr. Baiya, are you in agreement?

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I am also withdrawing Clause 45C---

The Assistant Minister for Industrialization (Mr. Muriithi): On a point of order, Mr. Temporary Deputy Chairman, Sir. The guidance I am seeking is that when the chairperson of a Committee proposes amendments, is he doing that in his individual capacity or in his capacity as the chair? Is the chairman in order? Is he withdrawing as a Member of Parliament or as the chair of the Committee? Are these proposed amendments, amendments of the Committee on Justice and Legal Affairs or they are amendments of the hon. Member?

Mr. Temporary Deputy Chairman, Sir, could you protect me from Mr. Kimunya?

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Muriithi, I have protected you. I have heard you. Can I rule on that? You have done well.

Mr. Baiya is the chair. He is representing the Committee, and he is here also as a Member of Parliament. So, there is communication from that Committee that he withdraws these amendments. That is what Mr. Baiya has done. Mr. Shakeel has also withdrawn his intended amendments.

Mr. Baiya, I was asking you whether you are in agreement that you are also withdrawing those clauses. Put that on record.

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, on the concern of Mr. Muriithi, the Committee is actually here and we are in consultation all along. Therefore, I am withdrawing the intended amendments to clauses 45C, 45D, 45E and 45F on behalf of the Committee.

The Temporary Deputy Chairman (Prof. Kaloki): Okay; Let us stop there. Those clauses have been withdrawn.

*(Proposed amendments to Clauses 45C, 45D,
45E and 45F withdrawn)*

Now we go to New Clause 45G.

New Clause 45G

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT the Bill be amended by inserting the following new clause:-

Access to
declarations,
custody of
declarations
of information.

Clause 45G. (1) The Commission shall facilitate access by any member and retention of the public to the contents of a declaration or clarification made by a State officer.

(2) Subject to subsection (1), a person shall make a written request to the Commission stating the information that person is seeking and reason why that person is seeking that information.

(3) Any public entity seeking access to the information contained in a declaration made by a State officer, for purposes of discharging its mandate, shall be deemed to have satisfied the conditions set out in subsection (2).

(4) Prior to the Commission making an affirmative decision under this section, it shall grant the opportunity to the affected State officer to make representations on the matter.

(5) The Commission shall keep a register of the requests made.

(Question of the new clause proposed)

(New clause read the First Time)

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

Mr. Temporary Deputy Chairman, Sir, this is more comprehensive compared to the one that has come from the chair, specifically Clause 45G (3) and 45G (4).

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, this particular clause talks about the Commission facilitating access to any information which the Member has declared. So, you can imagine that gangsters will be queuing there with funny reasons so that they can access this information and come and harass you and even kidnap you. Is this the kind of Government we want that will be facilitating criminals to attack people?

The Temporary Deputy Chairman (Prof. Kaloki): I just wanted to pick three additional contributions. Hon. William Ruto!

Mr. Samoei: Mr. Temporary Deputy Chairman, I think in all fairness, you have a responsibility as the Chair to help us manage the time of this Parliament. Surely, if every other section of New Clause 45 has been deleted, where does Clause 45G stand? Which declaration of a State officer when the declaration itself has been removed? I think you should be able to make a ruling that the rest should not bother us. We should save time!

The Temporary Deputy Chairman (Prof. Kaloki): The mover of this particular amendment, hon. Shakeel, wished to move this amendment. It is your responsibility to either pass it or not pass it. So, that is what we are doing.

Hon. Members, can I put the Question?

Hon. Members: Yes!

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

New Clause 45H

Mr. Shakeel: Mr. Temporary Deputy Chairman, you have asked me whether I wish to move the amendment to New Clause 45H, I will take the reasoning of my brother only in respect of 45H. We drop 45H. I think the other ones are still going to be---

(Loud consultations)

The Temporary Deputy Chairman (Prof. Kaloki): Again, you are the mover and so we must give you time and the Floor and listen to you.

The other mover was hon. Baiya. Are you also supporting hon. Shakeel, so that we can put that to rest?

Mr. Baiya: Yes, Mr. Temporary Deputy Chairman. I am also withdrawing New Clause 45H.

The Temporary Deputy Chairman (Prof. Kaloki): Very good. There is an agreement from the Committee and hon. Shakeel. So, it has been withdrawn.

(Proposed amendment New Clause 45H withdrawn)

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I am not withdrawing that one. So, I am moving it to be part of the Bill.

The Temporary Deputy Chairman (Prof. Kaloki): Could you explain a little bit the rationale for it? Why do you want it to be there?

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, it is basically binding the Commission to keep its information confidential and secret. It is there. It also makes it an offence if such information is divulged. This is Clause 45I.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Baiya, you have done well.

(Question, that the New Clause 45I be read a Second Time proposed)

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, June Work said that she is going to speak the truth even if that shall be her end, so be it. Therefore, thank you for allowing me to contribute. The whole point of what we are doing--

The Minister for Transport (Mr. Kimunya): This is Clause 45I.

The Assistant Minister for Industrialization (Mr. Muriithi): I am at Clause 45I. Mr. Temporary Deputy Chairman, Sir, please, protect me from Amos who keeps threatening here that we should not oppose. For record purposes, the Deputy Leader of Government Business---

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Muriithi, hon. Kimunya is helping you to stay focused. Just proceed.

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, I stand guided by your wisdom. I agree that we should information confidential, but I also want to state that this august House, in all fairness, must rise and do better.

(Loud consultations)

The Temporary Deputy Chairman (Prof. Kaloki): Let us give him some time!

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, the minority must have their say.

An. hon. Member: Say it!

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, I have said it and I want to say it again that we should not pretend that there is no corruption in this country. Let us not pretend that we do not have things to fix. I want to stand very firmly and say that we should do better.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Kimunya, you have something burning? Proceed!

An. Hon. Member: Why Kimunya all the time?

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the clause we are debating is going exactly against Clause 47 that we deleted. Clause 47 provided that anyone who divulges information will be jailed. What we are trying to bring back here through this Clause 45I is exactly what we have deleted. So, this clause should not even be here because we have already made a decision on it. That is the correct position.

The Temporary Deputy Chairman (Prof. Kaloki): Order! You have made your point!

Mr. Kioni: On a point of order, Mr. Temporary Deputy Chairman, Sir. I am just asking that you give us some leadership. We are wasting time on this clause that has already been dealt with. That came out very well from hon. Samoei. Without that leadership, we will be here tomorrow.

The Temporary Deputy Chairman (Prof. Kaloki): Members, there is something the Chair cannot do; when I have six requests from six Members that we have to deal with and then others are saying that they have to speak. We will get hon. Kabogo and then hon. Hassan and then we close.

Mr. Kabogo: Mr. Temporary Deputy Chairman, Sir, we have talked about this endlessly. This is a simple matter and it cannot stand anywhere with all the others which have been deleted. In any event, this is against Article 35 of the Constitution which provides for the right to get information and now we are saying that it is secret. We have dealt with this matter. May I ask you to put the question?

The Temporary Deputy Chairman (Prof. Kaloki): You have done well. The last one is hon. Hassan and then we move on.

Mr. Hassan: Thank you, Mr. Temporary Deputy Speaker, Sir. First of all, I wanted to raise a point of order because the Chair of the Committee said that he had consulted the Members of the Committee. I am a Member of that Committee and I have not been consulted on the deletion.

The Temporary Deputy Chairman (Prof. Kaloki): Could you make your contributions?

Mr. Hassan: Mr. Temporary Deputy Chairman, Sir, I would like us to give an opportunity to the House to either accept or reject the new clause.

*(Question, that the New Clause 45(I) be read a
Second Time, put and negatived)*

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I beg to move:-

Abuse of
office in the
enforcement
of this Act.

45L. (1) Any officer of the Commission or a public entity who knowingly and maliciously does any act amounting to abuse or misuse of office to the prejudice of any person in the enforcement of Chapter Six of the Constitution, this Act or regulations made thereunder commits an offence.

(2) Any person convicted under subsection (1) shall not—

(a) hold a State office; or

(b) hold any other public office for ten years.

(3) A person shall not enable, aide, abet, counsel, conspire or be an accessory to the commission of an offence under sub-section (1).

(4) A person who commits an offence under this section shall, upon conviction, be liable to imprisonment for a term not exceeding five years, or a fine not exceeding five million shillings, or both.

By coincidence, it is also Clause 45(i) but it is totally different from the one we have just dispensed. As detailed in the Order Paper, it covers unexplained income or assets. It is covered very well in the Order Paper.

(Question of the New Clause 45(I) proposed)

(New Clause 45(I) read the First Time)

(Question that the New Clause 45(I) be

read a Second Time proposed)

*(Question, that the New Clause 45(I) be read
a Second Time, put and negatived)*

New Clause 45J

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, in view of the fact that the rest of the provisions have not been accepted, I withdraw the new clause.

(New Clause 45J withdrawn)

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Shakeel also had an amendment of the same nature. Let us hear what he will do with it.

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, my amendment is different from the one that Mr. Baiya had proposed. The amendment New Clause 45J is in respect of notification or failure to declare.

I have worked with Mr. Kimunya and Mr. Githae for a long time. They have said this declaration is covered under the Public Ethics Act. If it is covered under that Act, we are saying we have failed to declare----

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Shakeel, let me help you. New Clause 45J reads as follows:-

Where a State officer has failed to submit a declaration or a clarification under this part, the Commission, in appropriate cases, shall notify the relevant public entity or the authorised officer.

So, Mr. Shakeel, I think you know what to do now. It is very clear not unless you want me to read it again. Do you want to continue with it or do you want to withdraw?

Mr. Shakeel: I would like to continue, so that you can reject it.

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Shakeel, we have dealt with all those others being deleted.

*(Question, that New Clause 45J be
read a Second Time, put and negatived)*

New Clause 45K

*(Question, that New Clause 45K be
read a Second Time, proposed)*

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

Special
responsibilities
of the
Commission.
No. 22 of 2011

45K. In addition to the functions of the
Commission under section 11 of the Ethics
and Anti-Corruption Commission Act, 2011
the Commission shall—

- (a) provide the declaration forms free of charge to

any person;

- (b) receive and retain custody of declarations made by State officers;
- (c) ensure compliance with and enforce the provisions on declarations under this Act;
- (d) receive and investigate complaints of failure to make declarations and where appropriate refer the matter to the authorised officer;
- (e) require a person to make a clarification as provided for under section 45F;
- (f) make administrative procedures as provided for under section 45N;
- (g) require a person to make an *ad hoc* declaration as provided for under section 45E;
- (h) subject to the Constitution and any other written law, require any public entity or a person holding a public office to disclose any information in connection with a matter under investigation by the Commission;
- (i) inform and educate State officers on the need to make declarations under this Act;
- (j) establish and maintain a data bank on the particulars of each State officer; and
- (k) perform any other functions and duties necessary for the effective administration and implementation of this Act and any other written law.

(Question, that New Clause 45K be read a Second Time, put and negatived)

New Clause 45 L

(Question, that New Clause 45L be

read a Second Time, proposed)

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

45L. (1) Any officer of the Commission or a public entity who knowingly and maliciously does any act amounting to abuse or misuse of office to the prejudice of any person in the enforcement of Chapter Six of the Constitution, this Act or regulations made there under commits an offence.

(2) Any person convicted under subsection (1) shall not—

- (c) hold a State office; or
- (d) hold any other public office for ten years.

(3) A person shall not enable, aide, abet, counsel, conspire or be an accessory to the commission of an offence under sub-section (1).

(4) A person who commits an offence under this section shall, upon conviction, be liable to imprisonment for a term not exceeding five years, or a fine not exceeding five million shillings, or both.

*(Question, that New Clause 45L be
read a Second Time, put and negatived)*

New Clause 45M

*(Question, that New Clause 45M be
read a Second Time proposed)*

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

45M. (1) Subject to the Constitution or any other written law, every officer of a public entity or the Commission shall ensure that confidential or secret information or documents entrusted to his or her care are adequately protected from improper or inadvertent disclosure.

(2) Any officer who contravenes subsection (1) commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding one year, or a fine not exceeding one million shillings, or both.

(3) Subject to Article 35 of the Constitution, the Commission shall keep information relating to an investigation confidential unless such non-disclosure shall be prejudicial to public interest.

*(Question, that New Clause 45M be
read a Second Time, put and negatived)*

New Clause 45N

Administrative
procedures.

45N. (1) The Commission shall make administrative procedures for the implementation of this Part.
(2) The administrative procedures shall be established and published in the Gazette within ninety days after the commencement of this Act.

(Question of the New Clause 45N proposed)

(New clause read the First Time)

*(Question, that the New Clause 45N be
read a Second Time, proposed)*

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, let us hear a point of order from hon. Keter. What is your point of order?

Mr. Keter: Mr. Temporary Deputy Chairman, Sir, thank you for, finally, giving me the chance. It has been long since the time I requested for a chance. Even when we were in the Old Chamber, you would always keep me at the tail.

Having said so---

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Keter, you have to be positive. We are trying to do some business here, and the Chair is for everybody. So, you do not have to make some comments.

Mr. Keter: Mr. Temporary Deputy Chairman, Sir, my comments will stand, because you are indecisive in making some decisions. So, on my question---

The Temporary Deputy Chairman (Prof. Kaloki): Order! Order! Hon. Keter, move out of the Chamber!

Mr. Keter: Mr. Temporary Deputy Chairman, Sir, that is what you wanted to do. I will do so.

The Temporary Deputy Chairman (Prof. Kaloki): Please, move out. We want to do some business here. Just withdraw from the Chamber. I am being lenient to you. You are excluded from the Chamber for the rest of the day.

(Mr. Keter withdrew from the Chamber)

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, I will now put the question, which is that new clause 45N be read a second time.

*(Question, that the New Clause 45N be read
a Second Time, put and negatived)*

New Clause 45O

Offences

45O. (1) A person who—

relating
to declarations.

(a) submits a declaration or clarification, which contains information that he or she knows or ought to know is false or misleading; or

(b) maliciously destroys information collected under this Part, commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

(2) Where a person—

(a) fails to submit a declaration or submit a clarification as required under this Part; or

(b) is late in submitting a declaration or a clarification, commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

(3) Subsection (2) shall not apply unless the person—

(a) has been given notice of not less than thirty days to explain such failure to submit or lateness in making a declaration or clarification; and,

(b) has not provided sufficient reason for such failure to make the declaration or clarification.

(Question of the New Clause 450 proposed)

(New Clause 450 read the First Time)

*(Question, that the New Clause 450 be
read a Second Time proposed)*

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I withdraw this particular new clause.

The Temporary Deputy Chairman (Prof. Kaloki): Very well. New Clause 450 has been withdrawn.

(Proposed New Clause 450 withdrawn)

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, just for clarification and the record, all the clauses that we have either withdrawn or have been defeated are not going to be part of the Bill.

New Clause 50A

NEW CLAUSES

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the following new clauses be inserted in Part VI immediately before clause 51—

Certificate of compliance
With Chapter Six of the
Constitution for persons
seeking Appointment
to State office.

50A. (1) Any person seeking an appointment to a State office may, at any time before the appointment date, apply to the Commission for a certificate of compliance with Chapter Six of the Constitution.

(2) Upon receipt of an application under subsection (1), the Commission shall invite the public and public entities to make representations on whether the applicant complies with Chapter Six of the Constitution and this Act.

(3) The Commission shall require the National Intelligence Service, the National Police Service, the Kenya Revenue Authority and the Higher Education Loans Board, and any other public entity, to give any relevant information on the compliance by the applicant with Chapter Six of the Constitution and this Act.

(4) The Commission shall determine compliance of the applicant and in determining the applicant's compliance, the Commission shall consider—

(a) the information received under subsections (2) and (3);

(b) compliance with Chapter Six of the Constitution and this Act;

(c) the information contained in the declaration on income, assets and liabilities under Part IVA.

(5) In determining compliance by an applicant under subsection (4), the Commission shall assess an applicant's compliance through the use of criteria it will have developed and published.

(6) Upon determination of an applicant's compliance, the Commission shall issue a certificate of compliance or non-compliance for all or part of the provisions of this Act, before the election or appointive date.

(7) Where the Commission issues a certificate under subsection (6) confirming that a particular State officer or a candidate for appointment to a State office is non-compliant with one or all of the provisions of Chapter Six of the Constitution or this Act, that State officer or applicant shall not be eligible for appointment to a State or public office.

(8) A certificate of compliance issued under this section shall be valid for one year from the date of issuance.

(9) The Commission shall notify the recruiting or appointing body of the compliance or non-compliance of an applicant within seven days of issuing the certificate or before the appointment date.

(10) In addition to the information received from the bodies listed under subsection (3), the recruiting or appointing body or any person may take into account information about the past record of a candidate for appointment to a State office, for purposes of ensuring that all applicants are complaint with Chapter Six of the Constitution.

(11) Any person dissatisfied with the decision of the Commission may apply for review within fourteen days from the date of the decision, and the review by the Commission shall take place within thirty days from the date the application for review was made.

(12) Any person dissatisfied with the decision of the Commission may appeal to the High Court and the Court shall issue a decision within thirty days from the date of the appeal.

(13) The Commission shall make regulations for the better carrying out of the provisions of this section.

(Question of the New Clause 50A proposed)

(New Clause 50A read the First Time)

(Question, that the New Clause 50A be read a Second Time proposed)

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I wish to withdraw this particular clause.

(Mr. Shakeel's proposed New Clause 50A withdrawn)

New Clause 50B

Protection of
Informants and
Witnesses.

50B. (1) A person who assists or provides information to a State organ or public body or the Commission or any other law enforcement agency-

(a) shall be protected and his or her identity shall not be disclosed; and,

(b) shall not have any action or proceeding, including a disciplinary action, instituted or maintained against him or her in respect of such assistance or information.

(2) Subsection (1) shall not apply with respect to a statement made by a person who did not believe it to be true.

(3) A person who, in good faith, gives information to a State organ or public body or the Commission or any other law enforcement agency or assists any of such bodies in the exercise of their functions shall not be punished for any misdeed resulting from giving that information.

(Question of the New Clause 50B proposed)

(New Clause 50B read the First Time)

(Question, that the New Clause 50B be read a Second Time proposed)

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I do not wish to withdraw this clause. I wish to have it supported and included in the Bill. It is for the protection of informers and witnesses. I feel that it is very important. Even though the other ones have been defeated, I think this one is very important. It will help people like those who have questions on Anglo-Leasing and other issues.

Thank you very much.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, this information is already in the Witness Protection Act. Therefore, we do not need it. However, we are saying that we must fight corruption, which is exactly what we are doing today. We want this message to go out to everybody in the Republic of Kenya; that, from now on, Parliament will not tolerate any form of corruption.

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, I wish to support the amendment. My imagination shows me that many people are advancing with buckets to milk cows that do not belong to them. This clause is necessary and I support.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, for purposes of emphasis - though I know there is provision under the Witness Protection Act and I support it, it is very good that we need to protect people who give us information. As hon. Martha has said, those are the ones who will come with buckets to milk cows that are not theirs.

Mrs. Shebesh: On a point of order, Mr. Temporary Deputy Chairman, Sir. I rise on a point of order to apologise to this House, to you and my colleagues because if there is one thing that I do not accept, it is branding people by tribes. We may have gotten overboard and excited. I would like to apologise publicly and say that I would never want to insult hon. Franklin Bett.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Shebesh, you are always honourable and that is very good.

The Minister for Roads (Mr. Bett): Mr. Temporary Deputy Chairman, I take it with a clean heart. I accept the apology from hon. Shebesh and I did not think it was her actually.

The Temporary Deputy Speaker (Prof. Kaloki): Very well. All of you are honourable and thank you, hon. Bett.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Tempraory Deputy Chairman, Sir, I just wish to say that we had considered this during our Committee meeting and we had thought it would be provided for. But since it emphasises further protection, it is harmless completely and we wish to support it.

Mr. Kabogo: On a point of order, Mr. Tempraory Deputy Chairman, Sir. My point of order is simple. There has been reference to milking of cows and I do not seem to understand which cows need to be milked. So, could we be told?

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Martha Karua, could you explain this issue of cows?

Ms. Karua: Mr. Tempraory Deputy Chairman, Sir, I am surprised that you can take a point of order past the time. That is because unless an hon. Member rises then, it is an invalid point of order. But I will go on and explain. Those who steal from the public; those who corrupt or engage in dubious means reap where they never sowed. These are the people with buckets, having no cows but advancing to “milk” the public resources. I can see the udder of public resources which is ready and there are people advancing with buckets but no cows.

(Laughter)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, let us rest the matter there. I think hon. Martha Karua has explained that very well.

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

(First Schedule agreed to)

(Second Schedule agreed to)

New Schedule

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT the following new Schedule be inserted immediately after the Second Schedule-

Third Schedule

DECLARATION OF INCOME, ASSETS AND LIABILITIES

Part I Information on State officer

|1.) Personal Information *(Please tick (√) where appropriate)*

Declaration Status					
	<input type="checkbox"/> Initial	<input type="checkbox"/> Annual	<input type="checkbox"/> Final		
Name of State Officer (Self)					
Surname		First Name		Other Names	
ID No.	Employee	PIN	Passport No.		Expiry Date of Passport
Birth Information					
Date of birth		Place of Birth		Nationality	
County	Home District / City/Urban area	Constituency	Ward/ Estate	Location/ Road	Sub-location/ House No.
Sex		Marital Status			
Male <input type="checkbox"/>	Fem <input type="checkbox"/>	Married <input type="checkbox"/>	Single <input type="checkbox"/>	Other _____	
Address					
Postal address	Residence(Estate/Location)	Telephone contacts	E-mail address	Other addresses	
Employment Information					
Name of employer	Job Group/Grade/Scale	Date of first appointment		Date of present appointment	
Designation	Position			Rank	
Work Station	District			County	
Nature of employment					
Constitutional <input type="checkbox"/>	Permanent <input type="checkbox"/>	Temporary <input type="checkbox"/>	Contractual <input type="checkbox"/>	Other (specify)	

2.) Information on spouse(s)

	Surname	First name	Other names	ID No.	PIN	Occupation

3.) Particulars of dependent children under the age of 18 years

	Surname	First name	Other names	Date of Birth

Part II

Income, Assets and Liabilities

(1) Income

This includes but is not limited to-

- (a) General Income;
- (b) Business Income (e.g. from companies, partnerships etc)

Type of income	Self	Spouse(s)	Dependent(s)	Total (Kshs.).

(2) Financial assets

These include but are not limited to-

- (a) Cash in Banks and Financial Institutions
- (b) Bonds, Stock and Shares(including shares in cooperatives, private and public companies)

	Name and Branch of bank/Financial Institution /	Account Name/ CDSC account/ Share Certificate/Sacco	Account Number/ CDSC account/ Share Certificate/Sacco	Balance as at the beginning of statement period	Balance as at statement date

	Organization in which held	Membership number	Membership number.	(Kshs.) /No. of Shares/ Acquisition value (Kshs.)	(Kshs.)/ Current Market value (Kshs.)
Self					
Spouse(s)					
Dependent(s)					

a) Foreign bank accounts

Account name.	Account number	Type of account	Name of the bank or financial institution;	Physical and postal and addresses of the bank or financial institution	Outstanding amount as at statement date	Country where the account is held	Purpose for which the account is maintained	Date account was opened	Account balance as of the statement date of the year of declaration.

b) Movable and Immovable assets.

These include but are not limited to-

- (i) Houses, Land, Leasehold interests, Buildings;
- (ii) Motor vehicles, plant and machinery, water vessels, generating plant, aircraft;
- (iii) Other assets (e.g. assorted household goods, pets, artifacts and other works of art).

	Location				Acquisition Details			
	Description e.g. acreage, g, Make/Type, Capacity/ Size	Identification-particulars e.g. LR. No. Registration Number, serial number.	Location of asset	District/ County/ Country	Date Acquired	Means of acquisition (gift, purchase, mortgage, inheritance etc)	Value at acquisition (Kshs.)	Current market price (Kshs.)
Self								
Spouse(s)								

Dependent(s)							

c) Debtors

	Nature of debt (money, stock in shop etc)	Name of debtor	Nationality of debtor	Date incurred	Outstanding amount as at statement date Current market price (Kshs.)
Self					
Spouse(s)					
Dependent(s)					

(d) Intellectual property

	Description	Certificate No./Registration No./Identifying No.(where applicable)	Approximate value Current market price (Kshs.)
Self			

Spouse(s)			
Dependent(s)			

2.) Liabilities

These include but are not limited to-

- a.) Liabilities in banks / financial institutions (Business loans, personal loans, overdraft, mortgage, SACCO loans, etc)
- b.) Other Liabilities (rent, levies, school fees, license fees, utility bills etc)
- c.) Donations and charitable contributions

	Description	Creditor name and address	Date incurred	Nationality of creditor	Location of security	Amount advanced (Gross value of credit) (Kshs.)	Outstanding amount as at statement date Current market price (Kshs.)
Self							
Spouse(s)							
Dependent(s)							

Part III: Additional Information

Give any other information you may consider relevant and useful to your declaration

.....
.....
.....

Part IV: Declaration

I,, solemnly declare that the information I have given above is true, complete and correct to the best of my knowledge.

Date:

Signature of State officer:

FOR OFFICIAL USE

1. Date of declaration :

2. Date of receipt of declaration :

3. Action taken :

(a) Acknowledgement Slip issued:

(b) Filed :

(c) Sent for verification / clarification:
.....
.....

(d) Comments
.....
.....
.....

Name of Receiving Officer

Signature

DECLARATION OF INCOME, ASSETS AND LIABILITIES

ACKNOWLEDGEMENT SLIP

Name of responsible Commission.....

Name of State officer.....

Personal/ Employee No :

Address :

Date of submission :

Comments :
.....
.....
.....

Name

For: (The Commission)

Signature :

Date :

This relates to declaration of income, assets and liabilities and it is on page 3954 of the Order Paper. It is elaborate and contains information that is very relevant.

The Temporary Deputy Chairman (Prof. Kaloki): All right. That is a proposed amendment from Mr. Baiya.

(Question of the new schedule proposed)

(New schedule read the First Time)

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

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, I agree with Mr. Baiya that this Schedule is a bit elaborate; therefore, it serves the good purpose. Therefore, I support it. You will notice that in the self-declaration form, you are asked a question such as “Have you ever been denied a visa?” This new schedule adds value and that is why we should support it, as opposed to the one where an administrative decision by some person may be taken.

I support.

The Minister for Finance (Mr. Githae) Mr. Temporary Deputy Chairman, Sir, since we removed Section 45(a), there is nothing to declare. But what I want to say is this: I want to warn those people who have no cows not to milk other peoples’ cows. Those with buckets should not get them. That is what we are saying. The time for milking cows is over. The time for people

who come with buckets is over. Go and look for your own cow. Go and milk your own cow. Do not milk the Kenyan cow. I support!

Ms. Leshoomo: Bw. Naibu Mwenyekiti wa Muda, ningependa kusema kwamba ng'ombe wana wenyewe. Hakuna haja ya kuongea juu ya ng'ombe hapa na huna ng'ombe. Kuna wenye ng'ombe.

(Laughter)

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, indeed, for the record, we have already passed the Second Schedule. This is the Third Schedule which was intended to bring into force the declaration on Clause 45. This is not a replacement of what we have already passed. So, this is overtaken by events. However, having said that, let me also say that now that we are talking about the milking of the cows, this is an attempt to milk where there is not even a cow. I also wish to ask that people desist from even waiting for people to milk and they take away that milk themselves.

Ms. Karua: Bw. Naibu Mwenyekiti wa Muda, nimesikia dadangu akiongea juu ya ng'ombe na nikakumbuka wakati alikuwa rafiki wangu wa karibu, alichoniletea ni mbuzi peke yake. Hakuwa na ng'ombe yeye mwenyewe.

(Laughter)

Aliniambia ng'ombe ni wa Leshoomo mwenyewe. Lakini nataka kumuuliza: Hujajua kuna ng'ombe wa Wakenya anaitwa Anglo Leasing na alikamuliwa na watu wengi? Kuna ng'ombe wengi. Siwezi nikataja wote. Tujihadhari. Tusisimame hapa kuwaunga mkono wenye kununua ndoo na ng'ombe hawana. Wanakata yule ng'ombe mguu na wanaendelea kukamua ilihali mwenye ng'ombe ana kwashiokor.

The Assistant Minister for Industrialization (Mr. Muriithi): Bw. Naibu Mwenyekiti wa Muda, nataka kumpasha habari Ms. Karua kwamba mimi natoka Laikipia na nina ng'ombe. Sitaki hao ng'ombe wakamuliwe na jirani. Nataka kuongeza kwamba wakati mimi Mkenya nimelipa ushuru, hao ni ng'ombe wangu na sitaki Mkenya mwingine achukue ushuru wangu, akapora na kujifanya tajiri. Hiyo ni kukamua ng'ombe wangu na ni kunigandamiza mimi ambaye nimelipa kodi.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, could we vote on this? Let us hear delegate No.9.

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, is it in order for hon. Members who have been fed on stolen milk to keep on talking about it, for example, hon. Muriithi and hon. Karua?

The Temporary Deputy Chairman (Prof. Kaloki): Order! Hon. Ruto, you must withdraw that remark. Hon. Ruto, you are talking about an issue which is very dangerous.

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, I withdraw the names, but it is a fact that there are hon. Members here who have been feeding on stolen milk.

Ms. Karua: Like yourself and you know that!

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

(Title agreed to)

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Odhiambo-Mabona, proceed.

Mrs. Odhiambo-Mabona: I want to thank hon. Jakoyo for appreciating that I have a new hair style.

Mr. C. Kilonzo: Which cow did you milk?

Mrs. Odhiambo-Mobana: Mr. Temporary Deputy Chairman, Sir, you must protect me from hon. C. Kilonzo who is asking me which cow I milked.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. C. Kilonzo, we have already dealt with that issue.

Clause 1

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I do not have a cow neither have I taken anybody's fish. Where I am married, we do not milk cows, we milk fish still.

I beg to move:-

THAT Clause 1 be amended by adding the words "and shall come into operation upon" and further delete the word "signature" and insert in place thereof the words "assent by the President".

The import of this amendment is that the Bill does not have a date upon which it will come into operation. We may just pass it and then it goes to the shelves to gather dust. So, I move that it comes into operation upon assent by the President.

(Question of the amendment proposed)

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I support the amendment as proposed by hon. Odhiambo-Mabona.

*(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 I as amended agreed to)

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, we have completed all the amendments dealing with The Leadership and Integrity Bill.

Mr. Minister, now you have the Floor as a matter of procedure.

REPORT

THE LEADERSHIP AND INTEGRITY BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Committee doth report

to the House its consideration of The Leadership and Integrity Bill and its approval thereof with amendments.

Mr. C. Kilonzo: On a point of order, Mr. Temporary Deputy Chairman, Sir. Just to make sure that we are moving together, I do not know at what stage the Minister was going to be told that we want two particular clauses to be recommitted. That is Clauses 16 and 17. His report should be on condition that those two clauses are recommitted.

The Temporary Deputy Chairman (Prof. Kaloki): That is very correct. Minister if you can come here, we can get that done properly for you. Just bring that document, so that we can have it done right.

(Mr. Wamalwa approached the Chair)

Mr. Ruto: On a point of order, Mr. Temporary Deputy Chairman, Sir. The Minister has just moved that the Committee reports to the House. I only want to amend, that the Motion by the Minister---

The Temporary Deputy Chairman (Prof. Kaloki): Actually, hon. Ruto, we are trying to get it right. He is going to read it again.

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, I want to move an amendment to that Motion.

The Temporary Deputy Chairman (Prof. Kaloki): I will give you time.

*(Mr. Wamalwa consulted with the Chair
and the Clerks-at-the-Table)*

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, the Minister for Justice, National Cohesion and Constitutional Affairs, will read that one more time. Hon. Wamalwa, you have the Floor now!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Leadership and Integrity Bill and its approval thereof, subject to the recommittal of Clauses 16 and 17 to the Committee of the whole House.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, I think that you are now satisfied. Hon. Ruto, are you satisfied?

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, I think the Motion by the Minister has taken care of my proposed amendment. I wanted to amend his Motion to include the recommittal of Clauses 16 and 17. I second.

(Question proposed)

The Temporary Deputy Chairman (Prof. Kaloki): Let us hear the Chair of the CIOC.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, could we confirm who sought the recommittal and who approved it? Is it approved by either the Speaker or Deputy Speaker and has it been sought in writing?

The Temporary Deputy Chairman (Prof. Kaloki): Chairman, the Chair here has already approved that Clauses 16 and 17 be recommitted to the Committee of the whole House.

It is already approved here by the Chair. That was sought by Mr. C. Kilonzo and Mr. Baiya. I think now that is settled.

Hon. Members, let us make some progress.

(Question put and agreed to)

PROGRESS REPORTED

THE LEADERSHIP AND INTEGRITY BILL

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report progress to the House and seeks leave to meet again--

The Temporary Deputy Chairman (Prof. Kaloki): Order, Mr. Kimunya. I will give you time. Hon. Members, let us listen. Let us have some order first; that way we will all be listening to Mr. Kimunya who is reporting of progress.

Proceed, Mr. Kimunya.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to report that the Committee of the whole House is considering the Leadership and Integrity Bill and has instructed me to report progress and seek leave to sit again tomorrow.

Mr. Temporary Deputy Chairman, Sir, as you will notice we are supposed to be sitting until midnight. We still have two Bills that we have not started debating. Since we cannot quite predict at this point whether we will finish by midnight or not, and at midnight we have to rise, it is important that we go back to the House to seek leave, so that in the event that we do not finish today, we can sit tomorrow to finish because we have the constitutional deadline. That is why we need to interrupt the sitting of the Committee of the whole House to go to the House to get its authority to sit again tomorrow.

I beg to move.

(Question proposed)

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Chairman, Sir. Whereas I would have no problem with what the Minister is saying, we note with a lot of sadness--- Indeed, this august House should register its lack of thanks to the Government. On a day when we are deliberating on the most debated Bill in the country on the issue of integrity, it is only five Ministers out of 42 Ministers, who are in the House. Some of them were appointed yesterday. What is worse, even the Attorney-General of the Republic of Kenya is not in the House! What is worse is that the substantive Speaker of the National Assembly, hon. Kenneth Marende has not bothered to midwife this very serious process. We are feeling the pain alone.

The Temporary Deputy Chairman (Prof. Kaloki): Order, hon. Dr. Khalwale! There is one point which I want to make clear to you. The Chair of the Committee of the whole House is not the Speaker. It can be the Deputy Speaker or Members of the Speaker's Panel. Actually, in all these proceedings the Speaker himself is in communication – he is in the loop. So, hon. Dr. Khalwale, let us not draw the name of the Speaker to what we are discussing. This particular issue is well handled by the Deputy Speaker and Members of the Speaker's Panel.

I will allow you just 30 seconds, Dr. Khalwale. There is no debate on this matter.

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, I thank you. I have all the respect for all the Members of this House and I hope that some of the big ones here have some respect for us the small ones. Thank you for the correction on the presence of the substantive Speaker in the Assembly today.

Mr. Temporary Deputy Chairman, Sir, we are being dragged into debate tomorrow. That the taxpayer will now spend more money on this process tomorrow, it is a reason for us to say that this Grand Coalition Government has never been interested in implementing the new Constitution. It will be a shame for any one of them to want to be President for purposes of leading this country in implementing the new Constitution. We feel pain and we are saying no, this is not the way we are going to develop Kenya.

The Temporary Deputy Chairman (Prof. Kaloki): I think hon. Dr. Khalwale has ventilated now.

(Loud consultations)

Hon. Members, we do not allow debate at this particular stage.

(Question put and agreed to)

(The House resumed)

(Mr. Deputy Speaker in the Chair)

REPORTS

THE ASSUMPTION OF THE OFFICE OF THE PRESIDENT BILL

THE PETITIONS TO PARLIAMENT (PROCEDURE) BILL

THE KENYA DEFENCE FORCES BILL

Mr. Deputy Speaker: Order, hon. Members! I will ask hon. Prof. Kaloki to report progress.

Prof. Kaloki: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the four Bills and seeks leave to sit again tomorrow.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Minister, move agreement with the Report! You will get to that. Do not worry. I know where your fear is. We will have the right procedure. Hon. Kimunya, you should proceed because you are the one who has been seized on this.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Reports.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa) seconded.

(Question proposed)

Ms. Karua: Mr. Deputy Speaker, Sir, you may check from the records, but I do not remember any Motion being moved to allow us to sit tomorrow. At this stage when we are adjourning, I am just wondering whether it is time for such a Motion to be moved or whether we have really been caught up by time. I seek your direction on the issue.

Mr. Deputy Speaker: The direction is that we will dispose of what we are doing right now in terms of reporting progress. We have had a Procedural Motion initially for the House to sit until midnight. We still have 26 more minutes and that Motion will be moved.

(Question put and agreed to)

PROCEDURAL MOTION

SPECIAL SITTING ON FRIDAY 24TH AUGUST, 2012

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order No.20(1), this House resolves to hold a sitting on Friday 24th August, 2012, commencing at 9.00 a.m. to 12.30 p.m., in order to conclude the considerations of the constitutional Bills appearing in today's Order Paper.

When we moved to extend our sitting yesterday and indeed, today, we gave an indication that in the event that we are unable to complete the business because of the volume of the work and the interest shown by the Members today, we will be appealing to the Members to come tomorrow, so that we can conclude all these debates and have the Bills ready and for processing for assent before 27th August, which happens to be next Monday. I believe that it is in this spirit that we are now appealing to the Members that we agree to have a special sitting tomorrow which will then facilitate the completion of the two Bills and of all the works that we have done this afternoon in the Committee of the whole House, which still has to be reported in the House.

With those words, I beg to move and ask hon. Wamalwa to second.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa) seconded.

(Question proposed)

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I rise to support this Procedural Motion. If there is one Parliament that has sacrificed and gone out of its way to fulfill its constitutional mandate, it is this Parliament. If there is one Parliament that has sat late in order to fulfill its mandate, it is this Parliament. I am saying that Members of the Tenth Parliament have done a commendable job. So, let us complete that job by fulfilling all we are required to do under the new Constitution.

I beg to support.

Ms. Karua: Thank you, Mr. Deputy Speaker, Sir. I have actually gone through the Standing Orders and I noticed that Standing Order No.21 is on Adjournment Motion at the end of sitting day. However, the actual Standing Order which regulates the actual days we may sit is Standing Order No.20 which says that unless the Speaker, for the convenience of the House

otherwise directs, the House shall meet at 9.00 a.m. on Wednesday and at 2.30 p.m. on Tuesday, Wednesday and Thursday but more than one sitting may be directed during the same day.

The Minister, while moving the Procedural Motion cited Standing Order No.21 which is for adjournment. The HANSARD can bear me correct. I will stand to be corrected by the HANSARD.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Do not engage hon. Karua on your side interventions.

Ms. Karua: Mr. Deputy Speaker, Sir, this is the “bucket theory” continuing.

(Laughter)

I am, therefore, saying that if, indeed, my colleague on the other side cited Standing Order No.20(1) and if the Motion had not been approved by 6.30 p.m. today, and at the very latest by 7.00 p.m., it cannot be brought later than that according to this Standing Order. I am looking at this and I am seeing Standing Order No.20(2) where it says, if it is an allotted day, at 7.00 p.m. On any other day, it should be at 6.30 p.m. or at 12.30 p.m. It does not specify for 11.30 at night.

Mr. Deputy Speaker, Sir, we need guidance and we need to obey the Standing Orders. If the Government was caught napping on the job and did not request for extension, then, unfortunately, we have to go to Tuesday, 28th.

I seek your direction.

Hon. Members: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! The hon. Karua is seeking direction from the Chair and not from hon. Kimunya. The Chair will give direction. Hon. Members, the Procedural Motion that was moved was moved under Standing Order No.20(1) . It says:

“Unless the Speaker, for the convenience of the House, otherwise directs, the the House shall meet at 9.00 a.m. on Wednesday and 2.30 p.m. on Tuesday, Wednesday and Thursday, but more than one sitting may be directed during the same day.”

The Chair has approved the Procedural Motion on this for the House to sit on Friday morning. For the urgency and need which you have all cited, the Chair is an *ex-officio* member of the House Business Committee. This was business that was clearly agreed on and transacted at the House Business Committee.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, just one minute. Of course the Minister for Finance has heaped a lot of praises on the Tenth Parliament, but if there is one Government which is not keen on implementing the Constitution, it is this one. It is also not keen on delivering a new Constitution. The Bill which is coming to this House tomorrow will require a lot of time. So, when he talks about 12.30 p.m., I wonder whether he knows how much time will be required. So, I would have expected the Government – maybe I am expecting too much - to have brought the Procedural Motion saying “until the end of business” so that we do not waste tomorrow’s time by bringing another Motion to extend time. I plead with the Government, really think about amending this Procedural Motion.

Mr. Ruto: Mr. Deputy Speaker, Sir, although I wish to agree with the Minister about the fact that we need to sit tomorrow--- It is really shocking that this same Government can pretend

to congratulate us for agreeing to sit long hours. They had promised us in April that they would give us the Bills by the end of June. They waited until there are only two weeks. Now, instead of even apologizing to us they keep on smiling.

I wish the first President of this country would have passed over the baton; these Ministers should have been caned by President Kibaki for bringing the Bills too late. They make hon. Members sit until midnight. Now they want us again to have a sitting on Friday. We should censure this Government. They are really a disaster, especially this purported Leader of Government Business.

With those few remarks, I nevertheless beg to support.

Mr. Abdikadir: Mr. Deputy Speaker, Sir, as the chairman of the CIOC, I am really frustrated with the Executive as far as the implementation of the Constitution is concerned. These Bills have to be enacted by Monday. That deadline was set two years ago. So, the Executive had two years to prepare these Bills, but they brought them last week. So, they had a two year period, but they waited until the last two weeks.

An hon. Member: They were sleeping on the job.

Mr. Abdikadir: No! They were not sleeping on the job. They intended for this to happen, so that we do not have enough time to interrogate these Bills. Some of these Bills have very critical issues that require serious input from Members of Parliament. Many of the Members of Parliament here are reading these Bills for the first time tonight because they were not there. These Bills were published last week because the time for publication was shortened.

Tomorrow, again, we do not expect to be told that time is up and we have to increase it. We are praised like little children on the last minute. So, really we take serious exception to the Minister of Finance's remarks. We do not want his praises. We want them to do their work so that we can do ours. The implementation of the Constitution is serious business.

Mr. Deputy Speaker, Sir, the single most important action this Executive has done in the last five years is the promulgation of the new Constitution and they are taking it so lightly. In June, we called for a *Kamukunji* on this matter. We pleaded with them to fast-track these Bills. A month ago, I wrote to the Leader of Government Business and the Prime Minister alerting them that we have no more time. Now this late in the day, we have to bend over backwards, shorten time, sit at midnight and sit on Friday morning. It is not fair. We need from the Chair very stern action as far as the Executive is concerned before this Motion is approved.

Mr. Midiwo: Mr. Deputy Speaker, Sir, I will be brief. I just want to emphasize that the Leader of Government Business considers the request by Mr. C. Kilonzo so that we do not come here and waste time over extensions. From 9.00 a.m. to 12.30 p.m. is not enough for us to scrutinize the two Bills, recommend and do all these things. Let him say "by close of business".

Since there has been a lot of reluctance to bring these Bills for debate, I was thinking as a way of punishment we amend the commencement time from 9.00 a.m. to 12.01 a.m. on 24th August, 2012, then we continue to sit. We do not want to go anywhere. I live far. By the time I get to my house, it will be time to come back here. Why can we not just adjourn at midnight for ten minutes and we begin our session, so that they also feel the pain we have been feeling here when they do not show up here? That would be a good thing to do so that we get this thing over with. When we are working here, we are busy milking cows using those buckets. Who told you that all of us do not want milk? We all want milk, except that some of us want honest milk. So, please, let us sit here and continue working until conclusion of business on the Order Paper.

With those remarks, I support.

Mr. Ngugi: Mr. Deputy Speaker, Sir, while I support this Motion, I want to say that we never learn. Every time there is a deadline, this House has to sit for extended hours. We have to sit for extra days. This is not the first time we are doing this. It is not the second or third time either. I do not know when we will ever learn.

I do not want to see the Chairman of CIOC complaining. It is high time that the CIOC told the Kenyan public that something needs to be done, because this is a reflection of lack of will to implement the Constitution.

Mr. Deputy Speaker, Sir, there are lots of Bills on devolution that are yet to be brought to Parliament. We are waiting for them. They will land on my Committee two days before we can bring a report to the House. I would wish that we learnt, so that we can do justice to the people of this country.

With those remarks, I beg to support.

Mr. Deputy Speaker: Yes, hon. Nkaisserry!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I support the Motion.

In doing so, I want to tell my colleagues on the other side of the House that they should not try to micro-manage the Government. I would, especially, like to remind hon. Khalwale that I came here before him today, and I am still here; because I am patriotic. I want us to meet the constitutional deadline for passing these Bills into law. That is why we are requesting extension of the sitting days for this House.

Mr. Deputy Speaker, Sir, I am a Member of the CIOC. I am one of the persons who have been pushing the Government to bring the Bills to Parliament.

An hon. Member: Which Government? Are you not part of it!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I mean the specific Ministries. We come here and blame the Government, forgetting that every time the Leader of Government Business moves a Motion for Adjournment, it is because hon. Members have sought it, so that they can go home. Why have you not demanded that we complete the legislative business of these Bills before proceeding for recess?

Therefore, we cannot allow the Backbenchers to micro-manage the Government.

An hon. Member:---(off record).

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): I am talking! Do not talk to me! Just listen to what I am saying!

(Laughter)

Mr. Deputy Speaker: Order! Order! Hon. Nkaisserry, conclude your remarks. Do not engage your fellow hon. Members. Address the Chair.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, what I am saying is that the Minister did the right thing, so that we can beat the deadline of 27th August, 2012. That is very important.

With those remarks, I beg to support.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, I am very happy to see you. We have been asking for the Speakers we had voted for in this House, because there is a “Leader of Government Business” here, who really interferes with that desk when you are not here. When you and the substantive Speaker are here, he cannot even dare pass here. His name is Amos Kimunya.

(Laughter)

Mr. Deputy Speaker, Sir, I do not blame this Government, because it is fighting succession battles. Those in the Government are not talking to each other. We are, today, witnessing a Government that has civil servants in it who are engaged in politics; a Government that is creating projects; a Government that is sabotaging heirs apparent; and a Government that is trying to bring in votes from blocks. There is no way we can work with the Government when we can all see what is happening.

This House needs to be given the strength to do its work, because the Government is already in a campaign mode. It is now all about who is going to “finish” who, and it is not between two parties. It is amongst Members of the Cabinet, and especially those who think that they can become President and those who think they can be close to the future President of this country. So, let us not blame a Government that has already gone into campaign. Let us tell Kenyans the truth.

Thank you.

Mr. Deputy Speaker: Yes, hon. Ekwe Ethuro.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I have been unusually quiet because I thought this Government running this late, needed all the time to prosecute this business. But I also want to support the Motion but in doing so, I want to go on record. The Deputy Leader of Government Business and the Minister for Justice, National Cohesion and Constitutional Affairs who are providing leadership on this particular day should ensure that tomorrow, we are not going to get another Adjournment Motion to discuss matters that should have been determined two years ago.

Mr. Deputy Speaker, Sir, indeed, I was about to give hon. Shebesh some information on what is happening on this side of Government. Like the other day, hon. Kilonzo said that when it is the Prime Minister’s Time, the other wing is fully present. But now, when it is hon. Kimunya’s time representing the Party of National Unity (PNU) without a driver, now it is the other wing that is not there.

(Laughter)

I can confirm that, that other wing of the Prime Minister is busy in my constituency campaigning instead of coming here to help the Government to prosecute some of these Bills.

I support.

Mr. Kioni: Mr. Temporary Deputy Chairman, Sir, I want to join my colleagues in supporting this Motion. I would like to say with certainty that we will see the Deputy Leader of Government Business seeking for a further adjournment or extension of time tomorrow. That is because yesterday, we had contributions from the hon. Member. I sit in the Committee on Defence and Foreign Relations and we considered this Bill. Hon. Member had such useful contributions yesterday. We only hope that you had time to translate them to amendments. However, here we are with the so called “bucket carriers” now. We cannot quite account for where the other half of “bucket carriers” is this late in the night.

(Laughter)

Actually, this is serious business. We are talking of very serious issues and you can see the Backbenchers are all here. But as hon. Bonny noted, even behind you, they are not here. They

are the ones who have delayed us for two years and they cannot even be kind enough to sit with us through the night. They just want to go and continue milking even in the night.

(Laughter)

Mr. Deputy Speaker, Sir, we have one more crucial thing left – and I can see the Minister for Justice, National Cohesion and Constitutional Affairs here - waiting to run out and look for votes tomorrow. We still have a constitutional amendment that deals with the issue of gender. You wonder when we going to deal with it at this rate. The bells that we hear from you is when you are attending burials---

Mr. Deputy Speaker: Conclude hon. Kioni! You have one minute.

Mr. Kioni: Mr. Deputy Speaker, Sir, the only minute I have is for the Minister for Justice, National Cohesion and Constitutional Affairs. It is good that when they go to those funerals, they get women on board. But where you can make it happen is here. Spend more time here and less time out there. Honestly, this is very frustrating for us and we would want to see some improvement from your end.

Mr. Samoei: Mr. Deputy Speaker, Sir, I rise to support this Motion. I would really want to persuade this House to listen to the wisdom of Mr. Midiwo. We are better off taking another one and a half hours or two hours immediately after midnight than going home and then making another trip to here tomorrow. I think it is prudent for us to deal with these Bills now. In any case, trying to defend the record of the Government is really an exercise in futility. It is obvious that the Government has performed way below par in terms of managing their affairs, so that we can implement the Constitution, pass legislation and move forward. I do not think anybody should waste their time trying to defend a dismal record. Let us just accept it and move forward. Now that we are here, why can we not just finish this business?

The time for a presidential candidate is very precious. As we sit here, our competitors are all over the place, but we have made that particular choice and sacrificed because we believe this is also important. Let us not stretch it beyond here. Let us just finish this business and move on.\

Mr. Deputy Speaker: Mr. Bahari, please just take one minute.

Mr. Bahari: Mr. Deputy Speaker, Sir, I just want to say that time to lament in Parliament is over. It is time for the Chairman of the CIOC to make a proposal on how to deal with this Government, which does not listen. As soon as he does that, we will be ready to back him.

Dr. Khalwale: Mr. Deputy Speaker, Sir, the High Court of Kenya, when it made a decision on the date of the next election, gave the Grand Coalition Government options to either go up to 4th March next year or dissolve the Government. Now that they are so completely unable--- Why can the Prime Minister and the President not dissolve the Government, so that we sort out these things once and for all?

Mr. Deputy Speaker, Sir, you sit in the House Business Committee and you remember that you instructed the Leader of Government Business that they take a decision and the Leader of Government Business tells the House how we are going to progress. They have not taken advantage of that. I propose that we sit from one minute after midnight and also use that opportunity to name the Leader of Government Business because he did not do what the House instructed him to do.

Mr. Deputy Speaker: Ms. Ndeti, you have a half minute. Log in please.

The Assistant Minister for Sports and Youth Affairs (Ms. Ndeti): Mr. Deputy Speaker, Sir, I have already logged in; I am a computer scientist by profession. I stand to

support this Motion. Being in the Government, I want to assure Members of Parliament that the Government does not take you for granted. I also want to tell you that we have come so far, and it is time we all came together and tried to implement the Constitution and stop complaining. Let us all work together.

Mr. Deputy Speaker: Order hon. Members! Dr. Khalwale, and all the other hon. Members who are in the House Business Committee, you know very well that the Speaker is just an ex-officio Member of the House Business Committee. The House Business Committee is the one which determines the business to be transacted and how it has to be transacted. The House Business Committee sat and estimated that the business can be completed tonight, that is by 10.00 p.m. It is only later that this was extended to 12.00 midnight and you cannot sit from 1.00 a.m. without the House Business Committee sitting and agreeing on the business to be transacted. So, you will have to have an ad hoc meeting, or a meeting of the House Business Committee, for you to take into consideration the possibility that this business might not be fully transacted tomorrow morning.

Having said that, I will now put the Question.

(Question put and agreed to)

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time to adjourn the House and the House is, therefore, adjourned until tomorrow, Friday, 24th August, 2012 at 9.00 a.m.

The House rose at 12.00 p.m.