

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday 5th December, 2013

The House met at 2.30 p.m.

[Hon. Speaker (Mr. Muturi) in the Chair]

PRAYERS

MESSAGES

MESSAGE FROM SENATE ON REGULATIONS

Hon. Speaker: Hon. Members, Standing Order No.41 (4), relating to Messages from the Senate provides as follows: -

“41 (4) If a message is received from the Senate at a time when the House is in session, the Speaker shall report the message to the House at the first convenient opportunity after its receipt and in any event, not later than the next sitting day.”

In this regard, I wish to report that I have received two messages today, 5th December, 2013, from the Senate, vide a letter by the Speaker of the Senate. The first message relates to the Public Finance Management (*Uwezo* Fund Regulations), 2013. The Senate conveys the message that they have considered the Regulations with amendment and now seek the concurrence of the National Assembly on the same Regulations.

The second message relates to the National Honours Regulations, 2013. The Senate conveys the message that they have considered the Regulations and now seek the concurrence of the National Assembly on the same.

Hon. Members, pursuant to Standing Order No.145, I now direct that the Regulations be put down for the House Business Committee to allot time for consideration by the House at an opportune time.

Thank you.

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Joint Committee on Administration and National Security, Defence and Foreign Relations on the inquiry into the Westgate Terrorist Attack and other Terror Attacks in Mandera (North Eastern Region) and Kilifi (Coastal Region).

(By hon. Abongotum)

Report of the Parliamentary Select Committee on matters relating to *Khat*.

(By hon. Kajuju)

NOTICE OF MOTION

ADOPTION OF REPORT ON WESTGATE TERRORIST ATTACK

Hon. Abongotum: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Joint Committee on Administration and National Security and Defence and Foreign Relations on the Inquiry into the Westgate Terrorist Attack and other Terror Attacks in Mandera in North Eastern and Kilifi in the Coastal Region.

Hon. Sakaja: On a point of order, hon. Speaker. As a matter of procedure, I have seen this happen many times in the House. When Members are laying Papers on the Table they actually lay the Papers on the Chair. None has laid anything on the Table even symbolically before presenting it to the Clerks. Kindly advise: When a Paper is to be laid on the Table of the House is it just a statement or actually there should be physical demonstration of laying the Paper and then proceeding to---

Hon. Speaker: Hon. Sakaja, are you suggesting that the Members have not laid any Papers?

(The Speaker consulted with the Clerk-at-the-Table)

Hon. Sakaja, you may not be conversant with the former system where Members used to speak from the Dispatch Box. Now, since every Member has a microphone at the places where they sit, indeed, what they do is make the statement and rather than keep the Report on the small table, they present it to the Clerks-at-the-Table. Once it is received, there it is duly laid on the Table or tabled as the case may be. Indeed, the Reports are available.

Hon. Sakaja, you appear not to be persuaded.

Hon. Sakaja: Hon. Speaker, my reason for raising this really is that this House is a House of traditions and procedure. When you say that a Paper has been laid on the Table it is not just for semantics, rather it should be something symbolic that a Paper has been actually laid on the Table. I, however, take your guidance that---

Hon. Speaker: The documents are available. Indeed, I am sure that the phraseology "Clerks-at-the-Table" may also not be very common, but that is one of the things that with time people will get used to. "Clerks-at-the-Table" is that Table and the Reports, indeed, are there.

Hon. (Ms.) Kajuju.

ADOPTION OF REPORT ON *KHAT/MIRAA*

Hon. (Ms.) Kajuju: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Parliamentary Select Committee on all matters relating to *Khat/Miraa*, laid on the Table of the House today, Thursday 5th December, 2013.

PAPER LAID

Report of the Departmental Committee on Education, Research and Technology on a study tour to Rwanda.

(By hon. (Ms.) S.W. Chege)

Hon. Speaker, I urge hon. Members to read this Report. This is because we will be launching laptops in schools next year.

Hon. Speaker: Hon. Sabina Chege, this document was approved by the Deputy Speaker long ago, on 14th November, 2013. It means that you have denied your colleagues the chance to read it. You should have tabled it soon thereafter or you did not want your colleagues to read and understand your findings? Anyhow, it had been approved. I was wondering when I approved it, but I can see that it was approved by the Deputy Speaker on 14th November, 2013.

STATEMENTS

Hon. A.B. Duale: Hon. Speaker, pursuant to Standing Order No.44(1)(2), on behalf of the House Business Committee (HBC) I rise to give the Statement regarding the business of the House in the next few days as we proceed on December recess pursuant to Standing Order No.28.

The HBC met on Wednesday this week upon the rise of the House to give priority to the business of the House and take stock of the business that has been conducted by this House. I wish to notify Members that the HBC did not schedule any business for next week since this House will be proceeding on recess in respect of the calendar of the House unless otherwise decided by hon. Members this afternoon.

Hon. Speaker, Members are aware that this morning we considered the report of the Procedure and House Rules Committee amending the Standing Orders. This amendment has ensured that all Bills published or read a First Time do not lapse at the end of this Session. This is a remarkable direction by this House and will save a lot of time and resources for the House in the next Session.

I also wish to bring to the attention of the House the fact that we have received an informal request from the National Treasury to consider the Supplementary Budget. In view of the fact that the House has a very heavy task this afternoon and also it being the last sitting of this House as per the calendar gazetted, it is the consideration of the HBC that this business be considered in the next Session.

It is the feeling of the House Business Committee that this business be considered in the next Session, cognizant of the fact that by not considering the Supplementary Budget the Government will still remain stable in operation. I wish to take this early opportunity once again to thank Members, from both sides of the House for our vigour and consistence in our debating style. It is worth noting that parliamentary democracy in Kenya has grown a notch higher, where we objectively accept each other's contribution in opinions and matters of national interest. I also want to note that this House has considered a number of businesses in the form of Bills, Statements and Reports

emanating from Committees and individual Members are given priority by the House Business Committee in this Session.

The levels of our undivided support experienced in this House, especially on matters of national interest have clearly demonstrated our prowess in understanding the legislative needs and an undivided support for our country. I want to appreciate Committees and Members for your resilience, commitment, consistence and the good work despite the heavy workload before the Committees and this House. I wish to note that the Committees and Members have actually supplied business to this House. Allow me to congratulate you for an excellent job well done. Finally, the House Business Committee will meet again, on notice, to consider business for the House in the next Session, until otherwise agreed on this afternoon by the House. I now wish to lay the Statement on the Table of the House.

(Hon. Duale laid the document on the Table)

Hon. Speaker: It is just a Statement, I am sure there will be opportunity to do what I can see, hon. Jakoyo wants to do, much later. I am sure you will have an occasion to compliment him. Hon. Abongotum on a point of order!

Hon. Abongotum: Hon. Speaker, Sir, I want to thank the Leader of Majority Party for that Statement. But as Members of Parliament, it is in the public domain that the Constituencies Development Fund (CDF) disbursement has not been done, and we want when we proceed for our working holidays, to assist our people, implement and supervise projects. Is it possible to know the status, so that we just do not go empty handed to the villages?

Hon. Speaker: I can see that hon. Musyimi wants to respond

Hon. Musyimi: Yes, I do. And I thank you for giving me the opportunity. I just wish to mention to hon Member for Tiaty and this honourable House that we had a meeting with the Cabinet Secretary, Treasury as the Budget Committee two days ago. We did raise the issue of the urgency of this matter, releasing CDF funds to the constituencies soonest possible and certainly in a manner that makes it possible for the Members of this House to help especially the kids that will be going back to school in the month of January. So the National Treasury is seized of the matter. I have today sought to talk to Mr. Rotich, I believe he is travelling and I committed myself to make sure that I follow up the matter on behalf of this House this week, so that we get serious commitment and receive the money in our accounts as soon as it is possible. I thank you hon. Speaker Sir.

Hon. Speaker: Hon. Members, I do not think there are any serious matters that you want to raise --- I see hon. Karani.

Hon. Karani: Two weeks ago, I sought a Statement from the Chairman of the Committee on Agriculture and you ordered that I should be given the answer yesterday morning. Unfortunately, yesterday morning the Chairman of the Committee on Agriculture was not in and I fear that if this Statement is not given by the time we go for recess, it will be rendered irrelevant when we resume next year. So, I am kindly asking the Chairman to give me an answer, if it is possible.

Hon. Speaker: Chairman, hon. Abdi Noor.

Hon. Nooru: Thank you. I had the answer as from yesterday, but I never got an opportunity to respond to the Statement because it has not been put on the Order Paper, but with your guidance I can be able to respond.

Hon. Speaker: How long is it going to take?

Hon. Nooru: I have it hon. Speaker.

Hon. Speaker: How long hon. Noor?

Hon. Nooru: It is a five-page Statement.

Hon. Speaker: You know the key ingredient of that---

Hon. Nooru: Fine, I can summarize.

Hon. Speaker: Tuesday

Hon. Nooru: Then we can read it on Tuesday, because of the business of the House.

Hon. Speaker: There is an issue on veterinary doctors, what is the response? You can just read that bit then leave the rest.

Hon. Nooru: Then I can summarize, it is a long Statement. The issue of Dr. Peter Maina, the former Director of Veterinary Services is a long story. Dr. Maina was supposed to retire as early as 2008 however, his contract has been extended from time to time. Of course, in September he applied for an extension which was allowed by the Ministry and Public Service Commission. After the expiry of that, in December 2009 he applied for the second extension and in January 2010, again it was extended by one year. The third extension was turned down by the Permanent Secretary, Livestock Development. However, Dr. Maina appealed to the head of Public Service Commission, and he was allowed extension for two more years. Now, the two years are coming to an end on 31st December 2013, and Dr. Maina has proceeded on his leave awaiting his retirement. The Ministry has appointed an Acting Director of Veterinary Services to act in that capacity until the Public Service Commission advertises the post and recruits competitively.

Hon. Speaker: Hon. Noor, I think the Member's concern was that the Acting Director may not be able to sign some Gazette notice. I think that is the issue the Member was raising.

Hon. Nooru: There has not been deployment until we get the substantive Director of Veterinary Services. There is no otherwise, we have to get somebody who is competent and qualified who is going to act in that capacity and is going to compete along with others, when the post is advertised.

Hon. Karani: The purpose of asking for this Statement is because the current Director of Veterinary Services in Kenya is on contract. When you are on contract, your terms are very specific. I have a letter with me from the Permanent Secretary, Ministry of Agriculture in charge of livestock deploying the Director to Cabinet Secretary's Office as an advisor, a post that does not exist as per the Public Service Commission. The Principal Secretary has now appointed an acting director when the Government is paying for a full director on contract. The danger that is there right now is that we have had disease outbreaks in the country for the last two months. Those outbreaks, unless you have a substantive director, cannot be contained. An acting director cannot gazette for quarantine in the areas affected. We have Acting Director until 31st December who cannot sign any *Kenya Gazette*, so the country is now at risk of all the products coming from animals. Milk, meat, hides and other products have being banned from exportation

to countries in Europe, Asia and elsewhere because of this illegal appointment. That is my concern.

Hon. Nooru: Hon. Speaker, Sir, the issue of illegal appointment does not arise. The current Director has been an officer in this Ministry and he was appointed by the same Ministry. His contract is coming to an end on 31st December and the officer has to go on leave for 45 days before he leaves office. So, the issue is not whether he has been deployed or not deployed. We cannot leave the office vacant. The directors are in charge of that county and the veterinary officers can treat any disease outbreak.

Hon. Speaker: Is it the case that the Acting Director cannot issue gazette notices relating to matters of quarantine and such like things? Or, could the one who is on leave, pending retirement, still be given the gazette notices to sign since he is the substantive director?

Hon. Nooru: Hon. Speaker, Sir, quarantine is not a centralized matter that we have to wait for the Director of Veterinary Services to gazette it in a particular county or district. Quarantine is normally announced on the notice board by the Director of Veterinary Services in that particular county. Therefore, it is not a centralized matter.

Hon. Speaker: We cannot engage in debate unless the matter is sorted out in a Committee hearing. This is because we are ill equipped to begin the process of interrogating it. However, the issue that the Member has raised has been noted.

Hon. (Eng.) Mahamud: On a point of order, hon. Speaker, Sir. On Thursday 14th November, 2013, the Member for Nyali Constituency, Hon. Hezron Awiti, M.P., rose on the Floor of this House and requested the Chairperson of the Departmental Committee on Transport, Public Works and Housing to issue a Statement on the tendering and construction of Malaba-Mombasa Standard Gauge Railway.

Hon. Speaker, Sir, the Committee held meetings with the Cabinet Secretary and is in the process of compiling a report to be tabled in this House.

On Wednesday, 4th December, 2013, the Member for Narok South Constituency, Hon. ole Lemein rose on the Floor of the House and requested for a Statement from the Leader of the Majority Party on the construction of Malaba-Kampala-Kigali Standard Gauge Railway. However, the Chair referred the matter to the Public Investments Committee. At a glance, the matter raised by the Member is the same as the one contained in the Statement sought by Hon. Hezron Awiti, M.P., which the Departmental Committee on Transport, Public Works and Housing is seized of.

The Committee is at a loss because a lot of work has been done and it is, therefore, seeking for guidance on the way forward on the above situation where two Committees of the same House with distinct but interrelated mandates are tasked to consider a similar matter.

Hon. Speaker, Sir, I seek your guidance.

Hon. Speaker: Yes, hon. Simba Arati.

Hon. Simba: Thank you, hon. Speaker, Sir. I have risen in connection to what Hon. Kamama had asked earlier on, on the CDF. It is apparent or evident that since June, most of us have not had the CDF money released. This is the case and yet today there is an indication that this House will go on recess. How will we pay rent and workers who are working in the CDF offices? In the same spirit, I would like the Chairman to explain to the House how this matter is being handled.

Hon. Macharia: Thank you, hon. Speaker, Sir. I rise to make a follow up on a Statement that I had requested from hon. Asman Kamama's Departmental Committee about the state of the motorcycle industry. It has come to the attention of this country that motorcyclists are now being used as hitmen. I have not received the Statement since July. I would like to remind hon. Kamama that I am still waiting for that Statement.

Hon. Speaker, Sir, I, again, seek your indulgence that I ask a simple question to the Leader of Majority Party. We know that we are celebrating Kenya at 50. We have seen activities around Kasarani in Nairobi. What is the Government's plan for the people in the rural areas and villages to celebrate Kenya at 50?

Thank you very much.

Hon. Speaker: Hon. Members, I have taken the liberty to apply a rule that is not coded because of the business that is before the House. It is for that reason that I will not expect responses but allow Members to make interventions as they wish. As you know, Hon. Midiwo, this is the hour.

Yes, hon. Shebesh.

Hon. (Ms.) Shebesh: Thank you, hon. Speaker, Sir. I rise to seek a clarification from the Chair, Departmental Committee on Administration and National Security. I have seen that he has laid a Report on the Westgate investigations but I did not hear him give Notice of Motion for the debate on the same. I am wondering whether it is me who did not hear when the Notice of Motion was given.

Hon. Speaker: He gave Notice of Motion.

Hon. (Ms.) Shebesh: Thank you, hon. Speaker, Sir.

Hon. Kimaru: Thank you, Hon. Speaker, Sir. Two weeks ago, I sought a Statement on the security situation in Laikipia which still persists but I have not received any response. Some farms have been invaded and we have a situation that threatens to explode. We already have situations in Samburu and Isiolo that are uncontrollable now.

Farms have been invaded in parts of Laikipia and arms are being moved freely. I sought a Statement on what is being done by the respective Cabinet Secretary from the Departmental Committee on Administration and National Security and the Departmental Committee on Defence and Foreign Relations. It will be quite in order for us to get a response.

Hon. Speaker: It will not be done today. If you look at your Order Paper, you will see that there are no responses to Statements. This is deliberate. I have said that this is the hour I call "exhibition hour". Hon. Kamama, no responses will be given today. I will not allow that. We must transact the business which is listed on the Order Paper.

Hon. Kimaru: Hon. Speaker, Sir, we will have war there sooner or later.

Hon. Speaker: I invite you to speak to them and not to go to war. That is why you are a leader. Talk to them and tell them not to go to war.

(Laughter)

It will require this House to approve declaration of war.

Yes, hon. Aduma.

PERSONAL STATEMENT

THREATENING MESSAGES SENT TO HON. MEMBER

Hon. Owuor: Hon. Speaker, I rise on Standing Order No.84. With your indulgence I would like to thank the hon. Members of this House who have been with me during the trying moments which I have been undergoing since 7th November, 2013.

Sometime in July, I made a request for a Statement which I want to bring to your attention that has not been responded to by the Chairman of the Departmental Committee on Administration and National Security. When I made the request the Leader of the Majority Party made an undertaking that he would respond within two weeks. To date, I have not heard a response.

On 10th September, 2013 I indicated to this House that my life and that of my family was in danger because I had received threats, some of which were coming from certain Government officers and I named some of them. I am greatly concerned that we will be proceeding on recess and even after the incident on my parents I have continued to get messages threatening me and yet there has been no response.

I want to draw the attention of the House to the fact that what is happening in my constituency is organized crime. This is because on the date my parents were killed---

(Loud consultations)

Hon. Speaker, I would like to get the attention of the House, but there is a bit of interruption from around where I am speaking from by certain Members. I think this House needs to be treated with honour.

On the material day when I lost my parents, I discovered with dismay that the officer in charge of the police in that area had actually taken leave. When the County Commander and all other senior officers came to my home after the incident, this particular officer did not. He has never stepped into my home even during the time we were conducting the burial. While I was busy making arrangements for the burial, I discovered with dismay that one of the senior police officers in Kisumu was circulating messages that I was preparing a revenge attack – to attack the people who had possibly killed my parents. I recorded a statement with the police, but I have not seen any action yet.

However, that notwithstanding, I hope I will be fine and I hope we will be back in this House intact after recess. I really want to thank hon. Members because I know they were with me. They gave me support. I appreciate the indulgence that you gave the parliamentary team which came to attend the burial in Nyakach. I think we need to treat this House with honour. I said that there are some unscrupulous characters within my constituency who I believe are behind these crimes. Some of them are provided with even 10 policemen and yet they are not even public servants. We will need clarification on this. I have tried to reach the Inspector-General to raise some of these things, but his phone has always gone answered.

I want to thank all the Members who attended the burial. I want to thank you for the support and consideration that I got. I particularly want to thank Members of the Departmental Committee on Transport, Public Works and Housing and my Chairman, hon. Kamanda. This is because the support I got went beyond party lines. I want to assure hon. Members that I will be very strong. On my part, I would really not want to see

Kenya join the rank of failed states. I will continue to fight crime and I look forward to my colleagues helping me to fight the crime in Nyakach. It is manageable.

I had to leave my constituency this morning to come to attend this Sitting. Last night, about 500 metres away from my home there was an incident of stock theft. The animals were only recovered by vigilantes. The police are of no assistance and I believe something will be done. I believe the Chairman of the relevant Committee and the Leader of the Majority Party will take some action.

I thank you all.

Hon. Speaker: Hon. Members, as you know, hon. Aduma was making a Personal Statement under Standing Order No.84 and there is no debate that may follow.

(Resumption of Statement Requests)

Hon. Njenga: Hon. Speaker I had also sought a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology concerning the retired teachers from 1987 and before. The court awarded them some Kshs3 billion or Kshs4 billion. This was not done and I have not received any response despite the undertaking by the Chairperson to do so.

The other issue concerns Rea Vipingo and minority interests that lost a lot of money through the delisting from the Nairobi Stock Exchange and lack of response and guidance by the relevant authority. If this is not addressed by the Government and the relevant Departmental Committees, the majority poor of this country are going to lose a lot of money and recovery will be impossible.

On the other hand, teachers will be celebrating 50 years of our independence without being given their rights. I believe that the Chairperson should feel the weight of such a response and should have acted with speed. We do not have to celebrate 50 years of our independence with people who are crying because of being denied their rights. I seek that you indulge me in this matter so that it is addressed as soon as possible.

Hon. King'ola: Hon. Speaker, sometime in July I sought a Statement from the Chairman of the Departmental Committee on Transport, Public Works and Housing. I wanted to know when the Kenya Urban Roads Authority (KURA) was going to do the road in Athi River Town. I had indicated that Athi River Town is between the Nairobi-Mombasa Highway and Namanga Road. The road inside Athi River Town is about six kilometers. When the highways were being constructed by the Kenya National Highways Authority (KeNHA), all lorries and heavy trucks were directed to pass through Athi River Town. Today there is no road in Athi River; what we have are gullies. I happen to be the Member of Parliament of the most industrialized town in this country. There are 85 heavy machinery factories in Mavoko. All the lorries that access the factories pay fuel levy and other taxes to the Government. The residents of Athi River cannot access their homes because of poor roads. It is three months now.

Hon. Speaker, may I demand an immediate action so that these roads are done.

Hon. Speaker: Very well. It is good to make demands because it is important that you demand. You must demand. You are within your right.

Hon. Were: Hon. Speaker, yesterday in the afternoon hon. Limo of Kipkelion East rose on a point of order to find out the status of Moi Stadium, Kasarani and the

cause of change of name to “Safaricom Stadium.” I have received a Statement from the Ministry of Sports and in the Statement they have indicated that the Moi International Sports Centre, Kasarani has not been renamed. They have indicated that the two stadia that are inside the sports complex are the ones which have been renamed, that is, the football or soccer stadium and the gymnasium. However, the whole complex---

(Laughter)

It is not even really a matter of renaming. The complex which stands on 1,000 acres has various facilities.

They have indicated that the whole complex is Moi Sports Centre Kasarani, but within the complex, there are various amenities. There is even a hotel. The stadia and the gymnasium have not been having any names attached to them. I am reporting what we have received. This information was sent as a matter of urgency and this report has come to me in the afternoon. I have called them and told them that I wanted to receive the contract that was signed. Without the contract, we would not be able to confirm the information that they have given to us. I just wanted to give a brief because it was a matter of urgency and many Members showed a lot of interest. I did not want us to go on recess without this matter being addressed and informing the Members what I have been informed. There is a lot of information here, but basically, it is repeated information. They have said that the whole complex still bears the name of “Moi Sports Centre Kasarani.” What is named is what is inside, namely, the sports facility.

The Speaker told me to do it in two minutes and I think I have already done two minutes, but there is information that—

Hon. Speaker: You can table that.

Hon. Were: Hon. Speaker, Sir, I was just giving a summary of what has been given.

Hon. Speaker: You can table that. Members, I have already said that I allowed hon. Were, the Chair of the relevant Committee to read out for only two minutes. What he has is a long document, but for the interest of the Members, the document is going to be tabled so that at an appropriate time, then you can interrogate the authors of the document. There is no point of interrogating hon. David Were. Surely, I must come to his rescue. He cannot be interrogated surely. Hon. Were!

Hon. Were: Hon. Speaker, Sir, maybe just to inform the Members further, what has appeared in the newspapers as a figure of Kshs55 million as contract value that was signed by Safaricom is just part of the amount being paid, but Safaricom is going to spend another Kshs155 million in renovating the facility. This is the information I have and I am going to table the document. Further, as a Committee, we are going to investigate this matter, so that we can give a full report to the House.

Hon. Members: No! No!

Hon. Speaker: Very well. You have done very well, hon. Were. That information was sought only yesterday. He is not the Minister. Some of you are busy yelling “no”. Hon. Were is the Member for Matungu. He is not the Cabinet Secretary for whichever Ministry. He has promised that as a Committee, they are going to investigate the matter further. He did not have to say anything. Some of you may not be satisfied with what he

is saying, but that is what he was given. You must question the system. The issue was raised by hon. Limo yesterday.

Hon. Limo: On a point of order, hon. Speaker, Sir.

Hon. Speaker: Hon. Limo, there is no opportunity for debate. I have ruled that there is no debate, anyway. It does not matter whether you want to claim to be on a point of order, we must now proceed to do other business.

Members, it is important that from time to time, we appreciate that we only have one hour for the issue - exhibition. It is over now. Therefore, we must now go into business. Even in the previous system, Question Time was not business time. It was just exhibition time. Even now, Statements Hour is for the same purposes; to say, to be heard, to be seen and others. Say what you must say. Hon. Were has done what he could do within the circumstances. Hon. Limo, I know you are not satisfied and many of you are not satisfied, but hon. Were has tabled a document which you have an opportunity to critique and interrogate in the presence of the authors. The document is not authored by hon. Were. So, you will also help hon. Were and his Committee to go deeper into that matter of the renaming of the complex.

(Several hon. Members stood up along the gangway)

Members, I have two Communications. Those Members who are standing, take your seats, please, but do so quickly.

COMMUNICATION FROM THE CHAIR

Hon. Speaker: Hon. Members, there have been some concerns raised by Committees. Therefore, I need to make this Communication relating to mandates of the audit Committees and Departmental Committees.

CONFLICT OF MANDATES BETWEEN AUDIT AND DEPARTMENTAL COMMITTEES

Yesterday, during the Afternoon Sitting, the Member for Eldas, hon. Aden Keynan, sought the guidance of the Chair on matters related to apparent conflict of mandates between the Public Accounts Committee and the Public Investments Committee on one hand and the Departmental Committees as listed in the Second Schedule of the Standing Orders. You will recall that even though I promptly offered certain directions, I also promised to give further guidance on the matter. Indeed, this afternoon, hon. Mohamed Mahamud has raised a similar concern.

Prior to the request made in the House yesterday, several Chairpersons of Committees had approached me in my office and requested my guidance. From the submissions made by the Chairpersons, the alleged conflict of mandates has occasioned the carrying out of parallel inquiries by watchdog Committees on one hand and Departmental Committees on the other within State agencies. Having listened to the Chairpersons and indeed, other Members, I have been asked to give guidance on the following three matters:-

(i) Whether it is the Public Accounts Committee or the Public Investments Committee that ought to examine the reports of the Auditor-General and accounts of

statutory State agencies such as the Central Bank of Kenya and those established under the Roads Act among others such as the Kenya National Highways Authority, the Kenya Rural Roads Authority and the Kenya Urban Roads Authority;

(ii) Whether the appearance of State corporations' management before the PAC amounts to delving into the mandate of the PIC;

(iii) Whether the Departmental Committees ought to examine matters of financial or commercial affairs of State corporations such as those of procurement of goods and services.

Hon. Members, Standing Order No.205 provides for the establishment of the PAC and its mandate as "responsible for the examination of the accounts showing the appropriations of the sum voted by the House to meet the public expenditure".

On the other hand, on the functions of the PIC, let me draw your attention to the provisions of subsection (6) of the Standing Order No.206, which lists the functions of the PIC as:-

“(a) examine the reports and accounts of the public investments;

(b) examine the reports, if any, of the Auditor General on the public investments;
and

(c) examine in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.”

Hon. Members, as you are aware, following submission of audited accounts of Government Ministries before the National Assembly in accordance with the Public Audit Act, the reports containing the report of the Auditor-General stand referred to PAC for examination. It is possible that in the examination of accounts of a particular ministry, the Auditor-General in his report may raise reservations touching on expenditure made by a ministry and passed on to a State corporation under them. This is mostly the case for the accounts of such State departments as that of roads, which may refer to expenditure passed on to the roads agencies under the ministry.

In this regard, it is only fair that the Accounting Officer of that ministry is accompanied by officers of the State corporation when appearing before the Public Accounts Committee to answer to matters of those particular accounts. However, let me hasten to guide that at such moments, what the Public Accounts Committee would be examining will be the accounts of the concerned ministry, but not the accounts of the particular State corporation. Therefore the principal witness before the committee would be the Accounting Officer of the ministry and not the Chief Executive Officer of the State corporation.

The corporation may appear before the Public Investments Committee to answer to the specific questions of the accounts as audited under Section 12 of the Public Audit Act or the respective statutes under which corporations are established. The Public Accounts Committee has no mandate of examining accounts of State corporations as that is the mandate of the Public Investments Committee which examines audited accounts of State corporations. Indeed, the State Corporations Act, Cap. 446(15), provides that the Chief Executive Officer of a State corporation may be summoned by the Public Investments Committee to answer on behalf of the board, any question arising from a

report including a special report of the Auditor-General concerning the particular State corporation.

However, the Public Investments Committee has extended jurisdiction, this is so because of the provisions of Standing Order No.206 (6)(c), which provides that the Committee examines the reports, if any, of the Auditor-General on the public investments. In addition, the Committee is mandated to also examine in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices. The use of the words “public investments” refers to a State corporation as you find in the State Corporations Act Cap. 446(2), and also includes any other corporation, where the Government has made investments.

Indeed, this has been our practice since the establishment of the two Committees. As a matter of fact, the Public Accounts Committee is the oldest of our committees and exists in many other jurisdictions, even outside the Commonwealth. The Committee therefore enjoys an almost unfettered ranking, not just in our Parliament but also in those other jurisdictions where the Committee exists. Similarly, the Public Investments Committee was introduced in our committee system during the term of the Seventh Parliament. The Committee therefore enjoys ranking order close to that of the Public Accounts Committee. However, let me indicate from the outset that the ranking order, I have referred to, does not in anyway imply that these two Committees are superior to any other Committee of the House. It is nevertheless important that we recognize their place in our House and in the history of our young democracy. I, therefore, will not expect these two Committees to appear to be at conflict as to what matters fall under them, that has always been clear. That now in my view should settle the first and second questions raised.

Honourable Members, on the last question, relating to whether the Departmental Committees should opt to examine matters of financial or commercial affairs of State corporations such as those of procurement of goods and services, I wish to commence by drawing your attention to the provisions of Standing Order No.216(5), which lists the mandate of Departmental Committees as being:-

“(a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments.

(b) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;

(c) study and review all legislation referred to it;

(d) study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives.

(e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;

(f) to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and

(g) make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.”

Hon. Members, to make it clear the departments referred to under this sub-section are the State departments also known as ministries, and should not be confused with State corporations. It therefore follows that the mandate of the Departmental Committees is indeed very clear and distinct from that of PIC or PAC. We will not therefore expect the PAC or PIC to delve into such matters as review of pieces of legislation, vetting of appointments or matters of administration of ministries or State corporations. As a matter of fact, Standing Order No.206(7) which covers the Public Investments Committee, prevents that Committee from examining matters of day to day administration of State corporations.

I will therefore not expect the PAC or PIC to examine matters such as the process of hiring of Chief Executive Officers or staff of a State corporation because this is a matter of administration which is exclusive to Departmental Committees. I also will not expect a joint sitting of either PAC or PIC with a Departmental Committee as their mandates are very distinct. At the same time, allow me draw your attention to Standing Order No.206(6)(c), which allows the Public Investments Committee to also examine in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices. This relates to value for money, and such other specialized audits.

Honourable Members, this is where the matter of procurement of goods and services comes in as an exclusive expression. I would add that this is different from day to day administration. Should the Committee intend to examine matters of procurement, I would expect them to order a special audit from the Auditor General after being satisfied that the matter requires a special audit. As a matter of fact, that was the wisdom that had informed Parliament in the making of the previous National Audit Commission, in which the Chairs of PAC and PIC, sat as Members.

Honourable Members, I hope that this now settles this matters once and for all, but I may however give further guidance on related matters on a case by case basis, if anything arises that has not been addressed in this communication or one that the Liaison Committee does not address. Hon. Members who are standing out there can come in.

CONSTITUTIONALITY OF NATIONAL POLICE SERVICE COMMISSION (AMENDMENT) BILL 2013

Honourable Members, the next communication relates to the issue of constitutionality of the National Police Service Commission (Amendment) Bill 2013. You will recall that on 12th November, 2013, during the Second Reading of the National Police Service Commission (Amendment) Bill 2013, the Member for Ugunja, hon. James Opiyo Wandayi, rose on a point of order seeking the direction of the Chair as to whether the consideration of the Bill, by the House was constitutional.

In summary, hon. Wandayi, sought the guidance of the Chair as to whether clause 3 of the Bill that seeks to amend section 10 of the National Police Service Commission Act, so as to provide for the definition of “disciplinary control” envisaged under Article 246(3)(a) is contrary to Article 246(3)(b), that expressly gives the Police Service Commission the mandate to exercise disciplinary control or remove persons holding or acting in offices within the services. Since the Bill has been put down for Committee of

the whole House today, I wish to give the guidance sought by the hon. Member. Other hon. Members including hon. Ababu Namwamba, hon. David Ouma Ochieng and hon. Millie Odhiambo also sought the same clarifications.

Honourable Members, you will recall that the Chair undertook to rule on this matter before the House proceeds to consider the Bill at the Committee stage. Article 246(3) of the Constitution provides as follows:-

“The Commission shall-

(a) recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service;

(b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and

(c) perform any other functions prescribe by national legislation.”

Hon. Wandayi and other Members contend that there is nowhere in the Constitution, where this mandate is alluded to another body other than the National Police Service Commission, and that the proposed amendment is basically trying to weather down the powers of the National Police Service Commission, in contravention of the provision of Article 246 of the Constitution. However, Article 245 of the Constitution expresses a contrary spirit in the following words and I quote.

Article 245(4)

“The Cabinet Secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service (NPS), but no person may give a direction to the Inspector-General with respect to-

(a) the investigation of any particular offence or offences;

(b) the enforcement of the law against any particular person or persons; or

(c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.”

Hon. Members, Article 245 (4), therefore, contemplates the Inspector-General of police to exercise some powers in relation to the employment assignment, promotion, suspension or dismissal of any member of the National Police Service.

Further, Article 252 of the Constitution contemplates further legislation on the manner in which constitutional commissions perform their functions.

Article 252 provides as follows:-

“(1) Each commission and each holder of an independence office-

(a) may conduct investigations on its own initiative or on an a complaint made by a member of the public;

(b) has the powers necessary for reconciliation, mediation and negotiation;

(c) shall recruit its own staff;

(d) may perform any functions and exercise any powers prescribed by legislation in addition to the functions and powers conferred by this Constitution.”

Hon. Members, in this respect, the National Police Service Commission Act, 2013 has gone ahead at Section 10(2) to provide for the Commission to delegate to the concerned Inspector-General the recruitment, appointment and promotion of police officers under the rank of Sergeant.

The proposed Clause 3 of the Bill seeks to introduce a new subsection 10(4) into the Act whose principal aim is to clearly vest the development, formulation and prescription of disciplinary procedures and mechanism in the National Police Service Commission. The Commission fulfills its constitutional obligations through its officers and agents, and the Inspection-General is only one such officer for the fulfillment of the functions of the Commission.

Indeed, the hon. Member for Ugunja did, in his own remarks, say that the conscience of unconstitutionality is more in the National Police Service (Amendment) Bill, 2013 than in the National Police Service Commission (Amendment) Bill, 2013. It is my hope that when the National Police Service (Amendment) Bill 2013 comes up for the Second Reading or Committee of the whole House stage, hon. Members will have an opportunity to bring to the attention of the Chair which specific provisions they consider to be unconstitutional. At that point, the Chair will be at liberty to correct or even reject any clauses brought to his attention that infringe on the Constitution.

Hon. Members, I therefore, find nothing unconstitutional in Clause 3 of the Bill or any other clause, and direct that the NPSC (Amendment) Bill, 2013, proceeds to the Committee stage. However, I wish to thank hon. Wandayi and other hon. Members who have consistently brought this matter to my attention.

Thank you.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Hon. (Dr.) Shaban: Hon. Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order 30 (3) (a) this House resolves to extend its sitting hours until conclusion of the business appearing in today's Order Paper.

Hon. Speaker, Sir, if we look at Order No.10 we will see that there is a Committee of the whole House and it has several Bills which are under consideration. Actually, there are five Bills which need to be looked at today, although we have made a decision on one of them. But we need to actually work on these Bills until we conclude today's business.

I call upon hon. Jamleck Kamau to second this Motion.

Hon. Kamau: Hon. Speaker, Sir, I would wish to second this Motion. I would say that, if you look at today's Order Paper, it actually has a lot of business ahead of us, and I feel it is prudent for us to make sure that, perhaps, before we adjourn today we are able to finalize all the items that are contained in today's Order Paper.

Therefore, I second.

(Question proposed)

(Question put and agreed to)

BILLS

First Readings

THE NATIONAL FLAG, EMBLEMS
AND NAMES (AMENDMENT) BILL

(Senate Bill No.2 of 2013)

THE COUNTY GOVERNMENTS (AMENDMENT) BILL

(Senate Bill No.4 of 2013)

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

Hon. Speaker: Hon. Members, please, note that the County Governments (Amendment) Bill is the fourth Bill that the Senate is doing this year.

(Laughter)

So, the Bills have come in today for the National Assembly to consider.
Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Hon. Speaker (Mr. Muturi) left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Kajwang') in the Chair]*

THE MEDIA COUNCIL BILL

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, I invite you to sit down and compose yourselves. I do not expect any of you to walk out of the Chambers. Whips, I expect you to do your work. There is no reason as to why you should ask us to be in the Chamber and then during Committee everybody walks out. So, Leader of the Majority Coalition and Leader of the Minority Coalition, I expect hon. Members to be in the House. So, find out how you are going to keep them in the Chamber.

Hon. Members, this is the Committee of the whole House, which is convened to consider the Media Council Bill (National Assembly Bill No.20 of 2013). We shall now begin.

(Clauses 3 and 4 agreed to)

Clause 5

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Irungu Kang’ata, move your amendment on the clause.

Hon. Kang’ata: Hon. Temporary Deputy Chairman, I am supposed to start with Clause 2.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Kang’ata, Clause 2 will come much later. What do we have on Clause 5?

Hon. Kang’ata: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 5 be amended by deleting sub-clause (3).

This sub-clause indicates that the headquarters of the Media Council will be in Nairobi. In my opinion, we need not make the headquarters very static because we cannot foretell the future. The Council may decide to change its headquarters. So, let us give the Council liberty to establish its headquarters at any place it feels it is more convenient.

(Question of the amendment proposed)

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, hon. Rose Ogendo Nyamunga. Is she in the Chamber?

Yes, hon. Wamalwa Wakhungu.

Hon. Wakhungu: Hon. Temporary Deputy Chairman, I pressed the request button by mistake.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, hon. Jamleck Irungu Kamau.

Hon. Kamau: Hon. Temporary Deputy Chairman, I really do not understand the reason for the amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Kamau, he says that Nairobi should not necessarily be the place where the headquarters should be. It may be in Kisumu City or Mombasa City. According to him, there is no good reason as to why Nairobi should be the headquarters and, therefore, he does not see any good reason as to why Nairobi should be included in the legislation. That is his explanation.

Hon. Kamau: Hon. Temporary Deputy Chairman, it is important for us to have a clear indication as to where the headquarters is going to be because we do not want some headquarters placed somewhere in the countryside.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, you need to explain to us why you think Nairobi is the only place that can house a headquarters. Why can it not be Marsabit?

Hon. Kamau: Hon. Temporary Deputy Chairman, of course, Nairobi is the most central place where all the people can get the services of the Media Council.

Therefore, I oppose.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, hon. Wandayi.

Hon. Wandayi: Hon. Temporary Deputy Chairman, I also want to oppose the amendment because it is basically trying to split hairs. Nairobi is the hub of everything, including communication. It would be important for the legislation to specify where the headquarters of the Council is, so that members of the public are not left wondering

where to go when they have issues in respect of which they would like to approach the Council. So, I urge that we leave it that way.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, hon. ole Ntutu.

Hon. ole Ntutu: Hon. Temporary Deputy Chairman, I rise to support the proposed amendment because the headquarters of the Media Council does not have to be in Nairobi. We can have it anywhere. Anything can happen. It does not have to be Nairobi. It could be in Mombasa or Kisumu or anywhere else in this country. Let us not place it in one place.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, hon. Wetangula.

Hon. Wetangula: Hon. Temporary Deputy Chairman, I rise to oppose the amendment. I believe that there is need for us to be specific. It is important to indicate where the headquarters will be.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. I have heard the views of those opposing and those supporting.

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

(Clause 5 agreed to)

Clause 6

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 6(1) be amended by inserting the following new paragraph immediately after paragraph (e)—

“(ea) set standards, in consultation with the relevant training institutions, for professional education and training of journalists”.

The essence of this is to make sure that the Media Council will be able to set standards in consultation with the relevant training institutions for professional education and training of journalists. This is something that we actually engaged the Media Council in and they are actually the ones who came up with this amendment. I think the Committee had no issue with it.

(Question of the amendment proposed)

Hon. Dido: Hon. Temporary Deputy Chairman, I think when we say that we need standards, all institutions must have standards. I, therefore, beg to support the amendment.

Hon. Wambugu: Hon. Temporary Deputy Chairman, I also rise to support this amendment especially to do with the training of journalists. It is of very great concern to this country that you find some of our journalists who handle sensitive issues have not been able to get any training. If the Media Council can come up with a proper programme on how our journalists should be trained, I think it will be of great use to this country.

Hon. Kamau: Hon. Temporary Deputy Chairman, on the same clause, I have a further amendment and that is on Clause 6(b) of the Bill, although this amendment is to do with corrections on a spelling mistake.

The Temporary Deputy Chairman (Hon. Kajwang’): I do not see it on the Order Paper.

Hon. Kamau: I know it is not on the Order Paper. It is a further amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): No, it must relate to the one that you have shown us on the Order Paper.

Hon. Kamau: It is in Clause 6 but instead of saying media---

The Temporary Deputy Chairman (Hon. Kajwang’): Is it an inclusion or an addition?

Hon. Kamau: It is a typo.

The Temporary Deputy Chairman (Hon. Kajwang’): What is the nature of the typo?

Hon. Kamau: The nature of the typo is that it is written here “medio” instead of “media”.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. I will take that. That is okay.

Hon. Kamau: Thank you.

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

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

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

Hon. Kang’ata: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, clause 6(1) be amended by—

(a) inserting the following new paragraph immediately after paragraph (l)—

“(m) consider and approve applications for accreditation by educational institutions that seek to offer courses in journalism”;

(b) renumbering paragraph (m) as paragraph (n).

This is a new function that I am proposing we give to the new Council. The idea is that when you open up a school in journalism you need to do an application to this agency. They will come and check standards. They will see whether you have all the facilities that are required for you to be able to offer a course in journalism. This is going to raise standards of our educational institutions which are offering journalism. Presently, the Bill does not give power to the Council to check educational institutions which are considering establishing schools of journalism.

(Question of the amendment proposed)

Hon. Waiganjo: Hon. Temporary Deputy Chairman, I think it is an important amendment considering that we need to raise the standards of our institutions that train journalists. Now that we came up with Bills that appear to be penalizing journalists, it is

only fair that the institutions that train them are known. The new Council should be able to track their progress and see whether they have the necessary facilities, best teachers and best practices. So, I support the amendment by hon. Irungu Kang'ata.

Hon. Kiptanui: Hon. Temporary Deputy Chairman, I stand to oppose the amendment. Basically, if you go through the amendment which was proposed by the Chair of this Committee, it is taking care of the interests of hon. Irungu. In addition, the Media Council will not be giving out licences. Licences will be coming from other authorities and the examinations and approval of the curriculum are always done by the Ministry of Higher Education and not necessarily the Media Council of Kenya.

The Temporary Deputy Chairman (Hon. Kajwang'): Let us have a discussion on that. You may have not absorbed it properly. Hon. Jamleck said, "set standards, in consultation with the relevant training institutions, for professional education and training of journalists." Irungu Kang'ata is saying "consider and approve applications for accreditation." So, accreditation is very different from setting standards. He is only interested in how these institutions are accredited but the Chair is talking about content and curriculum. So, I think there is sense to it that hon. Kang'ata is a little different from what you are talking about. Hon. Wandayi.

Hon. Wandayi: Hon. Temporary Deputy Chairman, whereas I understand the philosophy behind hon. Kang'ata's proposed amendment, I am a little bit uncomfortable. This is because take for instance the universities which should be seeking to offer these courses, they go through a process by which their courses are approved by the Commission for Higher Education before they can go ahead and offer them. So, if we introduce again the requirement for this Media Council to be giving accreditation, it will be making the process very cumbersome for institutions and duplicating something which could have been very straightforward. So, I think we need to look at it even as we consider it. Otherwise, in its current form I oppose it.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, whereas I understand the import of hon. Irungu's proposed amendment, I think he has brought a very good amendment in the wrong Bill. The Bill that he should have brought it under should be the one that deals with universities. I think we passed it early this year because it gives that sole responsibility for education and higher institutions to do that. There is a body that is set to do what he is saying. So, I would have supported him but it is actually in the wrong Bill. So, I would encourage him to bring it in the correct Bill. Otherwise, it is a good amendment but in the wrong place. So, I oppose.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Kanga'ta, will you consider if a specific mandate has been given, for example, to higher education centres or institutions particularly we have in mind here the universities that are offering training in journalism? This is because we do not want to give another function which has already been given by legislation or that contradicts. So, if you find that they are contradictory you perhaps may propose another wording which does not conflict or which is not superfluous with what has already been given to an institution. Hon. Kang'ata.

Hon. Kang'ata: Hon. Temporary Deputy Chairman, to me this Media Council is what it is to journalism. So, therefore, I thought this is where we are supposed to deal with all matters relating to journalism. Take for instance the Council for Legal Education, it handles universities, colleges and everything. So, I thought with this entity, in a similar manner, it is going to handle universities, for instance the School of Journalism at the

University of Nairobi (UoN), Kenya Institute of Mass Communication (KIMC) at South B and so on. So, therefore, it is an all and encompassing entity. It is only dealing with issues to do with journalism. So, therefore, if I was for instance to do this amendment in the Universities Act, I would be out of order because the Universities Act is a specific Act that deals strictly with issues relating to universities. That body which is created by the Universities Act does not have power over colleges. Since the Media Council is the entity that is strictly dealing with issues to do with journalism, it should have all powers to deal with issues to do with educational institutions that want to offer journalism courses.

The Temporary Deputy Chairman (Hon. Kajwang’): Did you make a suggestion which makes this function special to this body? You see, we are not debating. We know that there is already a function, for example, higher education. Those are Acts of Parliaments and they are already accrediting their own things internally, so we do not want confusion. If you want yours here, fair enough, you have that right, but can you say words like “subject to any other written law,” so that you do not interfere with laws that you have set?

Hon. Kang’ata: I can add that phrase.

The Temporary Deputy Chairman (Hon. Kajwang’): So, can you express yourself in the HANSARD very fast. You are a seasoned lawyer, so you should not take too long in this.

Hon. Kang’ata: Therefore, I propose a further amendment that, “subject to any other written law, consider and approve application and accreditation to educational institutions that seek to offer courses in journalism.”

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Let me first of all put his further amendment, he has qualified that amendment and said “subject to any other written law.” That means, if there is already some other law prescribing, then that law will relate to that institution wherever it is.

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

(Clause 6 as amended agreed to)

Clause 7

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, Clause 7 be deleted.

When we sat with the Media Council, they were very clear that their mandate is not to resolve disputes. They wanted this clause to be transferred to the Media Complaints Commission. That is why we want to remove the entire clause and replace with “Media Complaints Commission.”

(Question of the amendment proposed)

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

(Clause 7 deleted)

Clause 8

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, clause 8 be amended—

(a) by deleting sub-clause (1) and substituting therefor the following new clause—

“(1) The Council shall consist of—

(a) a chairperson appointed in accordance with this section;

(b) one person nominated by the Cabinet Secretary;

(c) seven other members appointed in accordance with this section”.

(b) in sub-clause (3) by deleting the words “drawn from” and substituting therefor the words “nominated by”;

(c) in sub-clause (9), by—

(i) deleting the word “three” and substituting therefor the word “one”;

(ii) deleting the word “twelve” and substituting therefor the word “seven”;

(d) in sub-clause (1), by deleting the word “six” and substituting therefor the word “eight”;

(e) by deleting sub-clause (12) and substituting therefor the following new sub-clause—

“(12) Upon receipt of the notice of rejection under subsection (11), the selection panel shall select another person from the list of shortlisted applicants and submit his or her name to the Cabinet Secretary for appointment”.

There was a unanimous agreement that we add an extra person to be appointed by the Cabinet Secretary. That is why there will be a chairperson and one person nominated by the Cabinet Secretary and seven other Members, instead of six.

Under Clause (b), there was confusion with the word “drawn from”. They wanted a categorical statement, “nominated by” those organizations that were there. The changes in parts “(c)” and “(d)” are meant to bring parts “(a)” and “(b)” into line.

The Temporary Deputy Chairman (Hon. Kajwang’): You know you can go up to part “(e)”. Let us see how much of it we can take. There are sub-clauses (c) (d) and (e). You look over the page on page 610.

Hon. Kamau: As I was saying on part “(c)” the essence of deleting “three” and replacing therefore with “one,” is to make sure that one is forwarded. Instead of 12 people, seven will be forwarded. In part “(e)”, in case there is any rejection by the Cabinet Secretary, the selection panel should select another person from the list that they have shortlisted and then forward the same to the Cabinet Secretary. These amendments were agreed by the Media Council.

The Temporary Deputy Chairman (Hon. Kajwang’): Then, what do you want us to do with subsection 3(e) of the Bill? Look at the Bill.

Hon. Kamau: On this particular 3 (e), again after holding discussion with CIC yesterday morning, they were categorical that the selection panel has so many organizations that are dealing with media, and we agreed that we can remove one of the organizations, that is, the Kenya Correspondents Association and replace it therefore with the Inter-Religious Council.

The Temporary Deputy Chairman (Hon. Kajwang’): What is Inter-Religious Council?

Hon. Kamau: It is the body that is composed of all ethnic---

The Temporary Deputy Chairman (Hon. Kajwang’): Under what Act of Parliament?

Hon. Kamau: I cannot tell you of-head but I know it is there.

The Temporary Deputy Chairman (Hon. Kajwang’): I will have a problem with it. So, do you want to propose a deletion?

Hon. Kamau: I prefer to propose a deletion and replace it with---

The Temporary Deputy Chairman (Hon. Kajwang’): Well, I am not so sure it is an organization that is operating under an Act of Parliament. You cannot bring an organization which is not recognized by law and make legislation. If you have it, just point it to me, so that we move very fast.

Hon. Kamau: I can look at it, but in the meantime---

The Temporary Deputy Chairman (Hon. Kajwang’): We are about to pass this, and when we pass it, it will be water under the bridge.

Hon. Kamau: In that case, let us just delete that, so that we can be constitutional.

The Temporary Deputy Chairman (Hon. Kajwang’): We delete it?

Hon. Kamau: Yes

The Temporary Deputy Chairman (Hon. Kajwang’): Alright.

Hon. (Ms.) Odhiambo-Mabona, can the Member for Kisumu City move away from Member for Mbita.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chair, for protecting me from the Member for Kisumu. I would like the Chair of the Committee to really explain the import of the amendment because if he is removing the Kenya Correspondents Association and they have been pleading that even though they work a lot, they are usually disregarded and their voices are not heard, I do not know if that is what he is seeking to do. This is a Media Bill, and as much as I have no problem against the religious sector; really, we need to be fair. What is the need of leaving out people who have everything to do with the media?

The Temporary Deputy Chairman (Hon. Kajwang’): So, you are saying that, considering the relevant provision of the Constitution, having so many people coming from the media fraternity in a selection panel becomes unconstitutional. This is the advisory opinion of CIC. That is his justification.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, Sir, then he could perhaps refer us to the part of the Constitution that says that having people who come from the same profession is unconstitutional. I am not aware of any part of the Constitution that says that.

The Temporary Deputy Chairman (Hon. Kajwang’): Are we dealing with Article 34? What does that Article say? It says that it should be independent. What else does it say? Can the former Chair of the Constitutional Implementation Oversight Committee (CIOC) address us on that issue, whether by including too many people from the Council in the selection panel it will be unconstitutional, in view of Article 34?

Hon. Baiya: Hon. Temporary Deputy Chairman, Sir, I really do not think so. On the contrary, the requirement of the law is that there should be full participation and that independent interests are brought to bear on the input of the Media Council. So, I really do not see how unconstitutional that will be.

The Temporary Deputy Chairman (Hon. Kajwang’): The Chair of the Departmental Committee has spoken and because your justification was based on the unconstitutionality, I am inclined to hear you on the matter.

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, of course, there is absolutely nothing personal about Kenya Correspondents Association. This is exactly what the CIC advised us yesterday in our meeting. However, I have absolutely no problem even if it is withdrawn.

The Temporary Deputy Chairman (Hon. Kajwang’): Would you amend it yourself and withdraw that part of it which seeks to delete paragraph (e)?

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, in case it becomes unconstitutional later, let me just withdraw it.

The Temporary Deputy Chairman (Hon. Kajwang): That is all right.

*(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 8 as amended agreed to)

(Clauses 9, 10, 11, 12, 13 and 14 agreed to)

Clause 15

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, I beg to move: -
THAT, Clause 15 be amended—

(a) by deleting sub-clauses (2) and (3) and substituting therefor the following new sub-clauses—

“(2) A person desiring the removal of the chairperson or a member of the Board on any ground specified in subsection (1) may present a petition, in writing, to the National Assembly setting out the alleged facts constituting that ground.

(3) The National Assembly shall, within seven days, consider the complaint and if satisfied that it discloses a ground under subsection (1) submit the complaint together with its recommendations to the Cabinet Secretary”;

(b) in sub-clause (4), by inserting the words “made under subsection (3)” immediately after the word “recommendation”.

Hon. Temporary Deputy Chairman, Sir, this clause deals with the issue of how somebody can be removed from office. We found out that the Complaints Commission which is on Section 28 was where someone could send a petition to. This Commission is part and parcel of the Media Council. We agreed with the media owners that since they need independence, we amend this clause as per the Order Paper.

(Question of the amendment proposed)

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

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

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

(Clause 15 as amended agreed to)

(Clauses 16, 17, 18, 19, 20, 21, 22 and 23 agreed to)

Clause 24

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, I beg to move: - THAT, Clause 24 be amended in paragraph (a), by deleting the word “Parliament” and substituting therefor the words “National Assembly”.

Hon. Temporary Deputy Chairman, Sir, this is to clear the air. We just wanted to make sure that it is the National Assembly that is doing it. It is talking about such monies as may be allocated to the Council by Parliament. We want to make it clear that it is the National Assembly that is doing this.

(Question of the amendment proposed)

Hon. Oyugi: Thank you very much, hon. Temporary Deputy Chairman, Sir. In my opinion, this amendment is superfluous because the Constitution is very clear under Article No.95(4) on who appropriates money. So, you really do not need to specify it. Such kind of specification I think just raises unnecessary eyebrows. In my opinion, the Constitution already stipulates who appropriates money on behalf of the country. That is the National Assembly.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, Sir, in view of the fact that when you refer to Parliament lately it is construed sometimes to mean both Houses I think there is no harm in the amendment that the Chair has moved so that we are clear that it is not the Senate and the National Assembly but it is the National Assembly. I

think it is good for clarity for that to happen. The Constitution is clear, and I agree with hon. Neto, that the one who appropriates money--- Sometimes these kinds of omissions might get us into push and pull like what we have gotten into with the *Uwezo* Fund.

I support the Chair.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, but there is a distinction between allocation and appropriation. Division of revenue is not necessarily allocation. It is when you do the budget that you allocate on items. I think it is perfectly in order to specify which House has this function.

Hon. Baiya: On a point of order, hon. Temporary Deputy Chairman, Sir. I thought that it ought to be clear that when we use the word “Parliament” as used to happen before, it denoted the “National Assembly”. But now that we have two Houses, it is very important in legislation that we be clear whether we mean---

The Temporary Deputy Chairman (Hon. Kajwang’): That is exactly where the County Woman Representative, Homa Bay County, is coming from.

Hon. Baiya: Therefore, I support the rationale that it is not proper to use the word “Parliament” when in fact, you mean “National Assembly”.

The Temporary Deputy Chairman (Hon. Kajwang’): You are absolutely right.

*(Question, that the word 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)*

Hon. Kang’ata: Hon. Temporary Deputy Chairman, Sir, I would like to withdraw my proposed amendment to Clause 24. It can be retained as it is.

The Temporary Deputy Chairman (Hon. Kajwang’): Which page are you on hon. Kang’ata?

Hon. Kang’ata: Hon. Temporary Deputy Chairman, I had proposed an amendment to Clause 24. If you look at the Order Paper, one of my proposed amendments was in Clause 24.

The Temporary Deputy Chairman (Hon. Kajwang’): Do not talk in vacuum. Tell these people to understand what you are doing.

Hon. Kang’ata: I had proposed an amendment to Clause 24, that is, to delete paragraph (a) of that Clause. I hereby withdraw my proposed amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you, now I understand you.

(Proposed amendment by hon. Kang’ata withdrawn)

(Clause 24 as amended agreed to)

(Clauses 25, 26, and 27 agreed to)

Clause 28

Hon. Kamau: Hon. Temporary Deputy Chairman I beg to move: -
THAT, clause 28 be deleted and replaced with the following new clause—
Establishment
of the Complaints
Commission.

28. (1) There is established a Complaints Commission which shall consist of seven members appointed in accordance with this section.

(2) The provisions of section 8(2), (3), (4), (5), (6), (7) and (8) shall apply *mutatis mutandis* to the appointment of members of the Commission.

(3) After carrying out interviews, the selection panel shall select one person qualified to be appointed as chairperson and six persons qualified to be appointed as members of the Commission, and forward the names to the Cabinet Secretary.

(4) The Cabinet Secretary shall, within seven days of receipt of the names, by notice in the Gazette, appoint a chairperson and six members of the Commission.

(5) The Cabinet Secretary may, in writing, reject any nomination on reasonable grounds whereafter the Cabinet Secretary shall communicate the decision to the selection panel.

(6) Upon receipt of the notice of rejection under subsection (11), the selection panel shall select another person from the list of shortlisted applicants and submit his or her name to the Cabinet Secretary for appointment.

This is the clause that establishes the Complaints Commission. Indeed, in this particular clause, we are talking about the Complaints Commission being established by the Council itself. We thought it was not going to be as independent as possible. After negotiations with the media, we decided that the establishment of the Complaints Commission should actually mirror that of the Media Council. That is why we are saying that provisions of section 8(2), (3), (4), (5), (6), (7) and (8) shall apply *mutatis mutandis* to this particular section.

(Question of the amendment proposed)

Hon. Wandayi: I really have no issue with this, but as a matter of concern I see in part “(5)” the Cabinet Secretary being conferred with some powers to reject any nomination on what they are calling “reasonable grounds”. That is the difficulty I am getting here. If these grounds are not clearly spelt out then there is room for abuse of these powers conferred to the Cabinet Secretary. In any case, why would he reject the---

The Temporary Deputy Chairman (Hon. Kajwang’): Do you have a further amendment?

Hon. Wandayi: I have no further amendment. I am seeking your guidance on this matter. As it is, I would rather we delete this part “(5)” and then leave the Cabinet Secretary with no authority or option as to whether to reject or---

Hon. Kamau: Hon. Temporary Deputy Chairman, we went through all these issues including the possibility of the Cabinet Secretary rejecting names. The argument

was that the selection panel will submit names. It is only one person required for the position of Chairman. For the Media Council, we require seven names and not any other name. If any of those seven names have issues, say, constitutional issues to do with integrity then the Cabinet Secretary could point out that a name has issues and then the selection panel will forward another name. The Media Council was in total agreement with that.

Hon. Mati: Hon. Temporary Deputy Chairman, as a member of the Committee I would like to support what my Chairman has said. Initially, there was a proposal to have 13 names submitted to the Cabinet Secretary. We decided that, that would be subject to abuse because the Cabinet Secretary would have the privilege of choosing. Now that he or she has no role in terms of what name comes to his or her desk, we thought we could put it this way since it is the actual number of nominees that is submitted to them.

*(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

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, clause 30 be amended—

(a) in sub-clause (1), by deleting the words “by the Council”;

(b) by deleting sub-clause (2) and substituting therefor the following sub-clause—

“(2) In selecting persons for appointment as chairperson and members of the Commission, the selection panel shall ensure that equal opportunities are accorded to persons with disability and that not more than two-thirds of the members of the Commission are of the same gender”;

(c) in sub-clause (5), by deleting the expression “section 13(1)” and substituting therefor the expression “section 14(1)”;

(d) by deleting sub-clause (6) and substituting therefor the following sub-clause-

“(6) Whenever a vacancy occurs in the Commission, the Commission shall notify the Cabinet Secretary at once, who shall, as soon as reasonably practical, initiate the process of filling the vacancy in accordance with section 28 of this Act”.

Hon. Temporary Deputy Chairman, there was an omission or a mistake. This is because they are saying that these appointments will be made by the Council. It should not be by the Council, but by the selection panel. We are just replacing the word

“Council” with “selection panel”. It will then read thus: “In selecting persons for appointment as chairperson and members of the Commission, the selection panel shall ensure that equal opportunities are accorded to persons with disability and that not more than two-thirds of the members of the Commission are of the same gender.”

In sub-clause (5) it says that we delete the expression “Section 13(1)” and substitute therefor the expression “Section 14(1)”. That was basically an error because 13(1) as stipulated here has no reference whatsoever to how one can cease office. It can only be under 14(1). So, that was another error.

The Temporary Deputy Chairman (Hon. Kajwang’): How about sub-clause 6?

Hon. Kamau: Yes. Under Sub-clause 6, whenever a vacancy occurs in the Commission, the Commission shall notify the Cabinet Secretary at once; not the Council. This is because it is the Cabinet Secretary who starts the process of filling the position.

(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 30 as amended agreed to)

(Clause 31 agreed to)

Clause 32

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, clause 32 be amended—

(a) in paragraph (a) by inserting the words “on ethical issues” immediately after the words “intra media”;

(b) in paragraph (c) by inserting the words “in relation to this Act” immediately after the word “favour”.

Hon. Temporary Deputy Chairman, what we wanted to do under part “(a)” is to ensure that the functions of the Complaints Commission are on ethical issues. That is one of the complaints that media had, that is, the work of the Media Council. It is basically there to deal with issues to do with ethics. We wanted to make it clear that it is on ethical issues in relation to part “(a)”.

In relation to part “(b)” we wanted to ensure adherence to high standards of journalism as provided for in the code of conduct for the practice of journalism in Kenya in relation to this Act. This goes for part “(c)” as well.

The Temporary Deputy Chairman (Hon. Kajwang’): Sorry, hon. Kamau. Just help me out.

Hon. Kamau: Yes, let me help you. Let us start with part “(a)”. If you look at part “(a)” and you look at the Bill, it actually talks about mediate or adjudicate in disputes

between the Government and the media and between the public and the media and intra-media on ethical issues. There we are just adding the words “ethical issues”.

If you look at the second amendment which is in paragraph (c)---

The Temporary Deputy Chairman (Hon. Kajwang’): Okay, I have you now. That is right.

(Question of the amendment proposed)

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

(Clause 32 as amended agreed to)

(Clause 33 agreed to)

Clause 34

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, this is a New Clause that we wanted to put.

The Temporary Deputy Chairman (Hon. Kajwang’): No, you are on Clause 34. Leave the new clauses. We will come to it. I am sure you are on page 612 at the middle of the sheet.

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, I beg to move: -
THAT, Clause 34 be amended—

(a) in sub-clause (1) by inserting the words “in relation to this Act” immediately after the word “enterprise” in paragraph (a);

(b) by inserting the following new sub-clause immediately after sub-clause (8)—

“(9) The Commission may refer a complaint made under subsection (1) to the Communications and Multimedia Tribunal established under the Kenya Information and Communications Act, 1998, where the Commission determines that the complaint relates to a matter which falls within the mandate of the Tribunal”.

In sub-clause 1, it provides for any publication or code of conduct of a journalist in relation to this Act. Again, we wanted to make it very clear that somebody who is aggrieved can look into this Act.

In part “(b)”, we wanted to make sure that those complaints which are taken to the Media Complaints Commission and do not relate specifically to that Commission will be referred to the Tribunal. That is the reason we came up with the provision that the Commission may refer a complaint made under section 1 to the Communications and Multimedia Tribunal established under the Kenya Information and Communications Act. We just wanted to make it very clear that those issues relating to matters of the tribunal referred to the Commission are taken to it.

(Question of the amendment proposed)

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairman, Sir, as we go along in this Act, I notice that the general public are not being protected. This Act, to a larger extent, is just protecting the journalist all along. For instance, when you say in relation this Act, it assumes that if anybody has a complaint, he has first of all to understand the Act. Earlier, we had indicated that only on ethical issues. What about other issues that affect people? In my view, that addition “in relation to this Act”, if the Chair is agreeable, should be deleted.

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, indeed, that is correct. If you look at this Bill on the Second Schedule, it is very clear that there is the code of conduct in terms of what a journalist should or should not do. That is why we are saying that anybody aggrieved by whatever is contained in this Act, meaning basically the code of conduct, can result to going to the Complaints Commission. With respect to the amendment that had been done earlier, again, we are saying that any person who flouts this Act, because the Kenya Information and Communications Act also has similar provisions, can go there. We want to make sure that there is this Act and there is the Kenya Information and Communications Act. If you have issues with this particular Act, you go to the Complaints Commission and if you have issues with the Kenya Information and Communications Act, the tribunal is there for that.

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

(Clause 34 as amended agreed to)

(Clauses 35, 36 and 37 agreed to)

Clause 38

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, I beg to move: -
THAT, Clause 38 be amended in sub-clause (1), by inserting the words “belonging to a journalist” immediately after the word “material” appearing in paragraph (b).

On this clause, we had some issues with part “(b)”, which says: “The Complaints Commission or any of its panels may, after hearing the parties to a complaint –

- (a) order the return, repair or replacement of any equipment or material confiscated or destroyed”.

After negotiations and agreement with the Media Council, we thought it was important for us to restrict this to the journalists themselves. That is why we are talking about “order the return, repair or replacement of any material belonging to a journalist.” Again, under the Kenya Information and Communications Act we have media houses which are licensed by the Authority, which also have equipment. If they flout the regulations, then their issues would be dealt with under the Kenya Information and Communications Act.

(Question of the amendment proposed)

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairman, Sir, I will seek clarification just to understand this. If a journalist has a camera and the camera belongs to the employer who is the media house, then the destruction of that camera does not fall under here? Perhaps, if his shirt is torn, then that would apply here? Could I be made to understand?

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, we wanted to have a clear distinction because the Authority may confiscate equipment of a media house for the right reasons. If that happens, we do not have to have a situation where the Media Complaints Commission would be the authority to order for those things to be returned. That should be the work of the tribunal under the Authority. That is basically the reason.

The Temporary Deputy Chairman (Hon. Kajwang’): Why is this special to the individual journalist?

Hon. Kamau: You see, we are talking about two different dispute resolution areas. We are talking about the Complaints Commission, which is---

The Temporary Deputy Chairman (Hon. Kajwang’): So, why do you not give this function also to that tribunal so that it would deal with the media house and it does not deal with the individual journalist?

Hon. Kamau: The tribunal will be dealing with the media houses and the Media Commission---

The Temporary Deputy Chairman (Hon. Kajwang’): Is there a comparative function such as this to the tribunal in respect of media houses?

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, the tribunal also has its decisions. They can make any decisions. It is contained in the Kenya Information and Communications Bill.

The Temporary Deputy Chairman (Hon. Kajwang’): For example, if a journalist loses his camera, but the camera belongs to a media house, how would the media house seek to get back the camera?

Hon. Kamau: Not loses, if it is confiscated. If it belongs to the media house and it is confiscated by the Authority, then they would have to go to the tribunal.

The Temporary Deputy Chairman (Hon. Kajwang’): Does the tribunal have the jurisdiction to listen to the media house?

Hon. Kamau: Yes, it does.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Nyikal, that is clear now.

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

(Clause 38 as amended agreed to)

(Clauses 39, 40 and 41 agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Neto.

Hon. Oyugi: Hon. Temporary Deputy Chairman, indeed, I do have an intervention on Clause 38 and I am just wondering if that was overtaken by events. If you look at Clause 38(c), my understanding of what it reads, “make any directive and declaration on freedom of expression” that is slightly larger than the mandate of the Commission. My understanding of Article 24 of the Constitution is that a directive would be a limitation on fundamental freedoms and I do not think that is within the strengths or the powers that the Commission can have. The Constitution only anticipates that if at all there are going to be limitations on fundamental freedoms, that should only be done in accordance with the court of law and of course you really need to show reasons for that. So, a directive like this, in my opinion, would be a little bit dangerous.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): No, what they mean here is that the Complaints Commission may say, for example, that some Act is infringing on the freedom of expression. It may declare that some Act is in violation of principles of freedom of expression. It may also direct, for example, do this or that to satisfy the tenets of freedom of expression. You know under the Constitution now, anybody including you should be able to declare, even to your child, some of those freedoms contained in the Bill of Rights. So, it is not just for courts of law alone, anybody interpreting the Constitution should be able to declare some of these things. It is okay, but we had passed that clause and I want to appreciate you for bringing that to our attention.

Alright, we were on clauses 39, 40 and 41.

(Clauses 39, 40, and 41 agreed to)

Clause 42

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, clause 42 be amended—

- (a) by renumbering the existing provision as sub-clause (2);
- (b) by inserting the following new sub-clause immediately before the renumbered sub-clause (2)—

“(1) A person aggrieved by a decision of the Council may appeal to the Commission against that decision in such manner as may be prescribed”.

Hon. Temporary Deputy Chairman in Clause 42, we want to renumber the existing provision as sub-clause (2) and then introduce sub-clause (1), which states “(1) A person aggrieved by a decision of the Council may appeal to the Commission against that decision in such manner as may be prescribed”. What this means is that if the Council makes a decision of whatever nature and somebody is not happy about it, that person may actually go to the Complaints Commission for review of that decision.

The first amendment is the decision of the Council which can be appealed at the Commission, then the decision of the Commission which can be appealed at the High Court. That is the way we put it.

(Question of the amendment proposed)

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

(Clause 42 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Next clause!

Clause 43

The Temporary Deputy Chairman (Hon. Kajwang’): The Chair, Committee on Energy, Communication and Information.

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move: - THAT, clause 43 be amended by deleting the word “Council” and substituting therefor the word “Commission”.

This was actually a typo because when you look at it, it is meant to be dealing with the decisions of the Commission. If you read it, it says: “Where no application is made to challenge the decision of the Commission within thirty days of the date of the decision, the decision of the Council shall be final and binding to the parties.” That should not be Council but the decision of the Commission shall be final and binding. It is just replacing “Council” with “Commission”.

(Question of the amendment proposed)

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

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

(Clause 43 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Kang’ata!

Hon. Kang’ata: Thank you, hon. Temporary Deputy Chairman. I am proposing we amend Clause 46, by adding the following clauses immediately after Clause 46. 46A.

(1) An unqualified person---

The Temporary Deputy Chairman (Hon. Kajwang’): Are you addressing yourself to the new clause?

Hon. Kang’ata: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): No, we will get there, hold your horses. A little more patience will pay. Thank you.

(Clauses 44, 45, 46, 47, 48, 49, 50 and 51 agreed to)

New Clause 32(A)

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, the following new clause be inserted immediately after clause 32—

Powers of the Commission.

32A. The Commission shall have all the powers incidental to and necessary for the effective discharge of its functions under this Act and any other written law and shall—

(a) establish and maintain an internal mechanism for the resolution of disputes;

(b) prescribe procedures for determination of disputes relating to the media;

(c) receive, investigate and deal with complaints made against journalists and media enterprises;

(d) summon and receive information of evidence relating to any matter.

Hon. Temporary Deputy Chairman, in this clause we actually deleted “Powers of the Council”. We agreed with the Media Council that they did not have those powers and therefore the powers were for the Commission. This is just superimposing Clause 7 into this particular Clause 32(A), which will actually give the powers to the Commission.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

The Temporary Deputy Chairman (Hon. Kajwang’): Next new clause, hon. Kang’ata. I hope it helps you to appreciate how this procedure goes. We first finish with the amendments and then we come to the new clauses. You need to read the Standing Orders and this will be clear. Alright go on.

New Clause 46

Hon. Kang’ata: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, the following new clauses be inserted immediately after clause 46—

Unqualified

person acting as
journalist.

46A. (1) An unqualified person shall only practice journalism under a license, authority or consent given by a journalist.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding twenty-five thousand shillings or to imprisonment for a term not exceeding two years, or both.

Unaccredited
institutions.

46B. (1) An educational institution that is not accredited under this Act shall not offer or teach courses in journalism.

(2) An institution that offers or teaches courses in journalism contrary to subsection (1) commits an offence and the proprietor, director or manager of such institution shall be liable, on conviction, to a fine not exceeding twenty-five thousand shillings or to imprisonment for a term not exceeding two years, or both.

We do have several instances where you find a person who is not *per se* a journalist practising journalism. For instance, we are politicians and we do articles on newspapers. When you look at the definition of “journalism”, it appears even a politician who is doing an article in a newspaper may be deemed to be a journalist and may therefore be forced to be registered with the Media Council and probably to do other things under the new law, which we are proposing to enact. Therefore, taking into account that there are several instances where people who are not necessarily journalists may want to practise journalism, I have brought this new clause so that we can give those people a window to practise journalism. But then again, as they do that, they need to have consent from a person who is a journalist *per se*.

We have very popular people who may not probably be qualified to be journalists maybe because of their training or other considerations. Take for instance, presently the most listened to show in the afternoon is brought by people known as Bonoko and Mbusii. They are not people who may meet the criteria for a journalist but they are good and popular. Therefore, this new clause is opening that window, that if you are unqualified person you can practise journalism but then again you need to get consent from a journalist.

Therefore, I am of the view, we add this new clause.

The Temporary Deputy Chairman (Hon. Kajwang’): Alright, thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Irungu, your intention is very appealing but there are a few things to consider. For example, how is this consent or authority to be given? Is there a prescribed

form of this consent or authority, is it a verbal consent or authority and how is it endorsed, how is the person who is getting this, endorsing it into the licence or in the consent? Be thinking about it. Let us have other people who also want to contribute on this. Hon. Chanzu!

Hon. Chanzu: Thank you, hon. Temporary Deputy Chairman. In fact, you have just stated what I wanted to say. I wanted to find out how this can be enforced. We shall cut out people who are not able to take responsibility for their actions.

The Temporary Deputy Chairman (Hon. Kajwang’): I suggest to you that you should be trying to craft some language so that when we come back to you, we have solutions. Do not just enjoy the debate. As a seasoned lawyer you should be giving us solutions right now.

Hon. Dawood: Thank you, hon. Temporary Deputy Chairman, Sir. I think the licence and the authority may be the same, but consent is something different. Where the journalists will get the licence from is what I do not understand. I think the whole thing needs to be either dropped or rephrased.

The Temporary Deputy Chairman (Hon. Kajwang’): If you read the definition of a journalist, there is no need for a licence, in my view. I do not know whether there is some other legislation, but now he is proposing that whoever is now practising that art of journalism elsewhere and who is not recognized by the Council, should have some type of authority. This is where we are.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairman. Indeed, during my contribution to this Bill, I said that I was not very comfortable with the definition in the Bill. Perhaps, I would encourage my colleague to bring a further amendment because his amendment is good, but really it is just tidying it up, the way you have suggested. But for me, the way it is, as obtains in the Bill, I qualify to be a journalist.

The Temporary Deputy Chairman (Hon. Kajwang’): Can you help each other so that we go very fast on this?

Hon. Njagagua: Thank you, Temporary Deputy Chairman. Still on sub-clause 46, it states:

“An unqualified person shall only practise journalism under a licence, authority or consent given by a journalist.”

Are we saying that we are encouraging brokerage? Are we saying that a journalist shall give a licence to somebody to practise journalism? For example, a lawyer will give somebody who is not even qualified as a lawyer a certificate for that person to practise law? I do not think that clause is good.

The Temporary Deputy Chairman (Hon. Kajwang’): If I listened to his intentions, there are so many people who are writing all sorts of things and who seem to be in that general replica of journalists and he says that he does not want to hurt their livelihoods. So, he wants them also to do what they do but, then he is saying if they do that, it should be some apprenticeship; something attached to a journalist.

Hon. Njagagua: Indeed, hon. Temporary Deputy Chairman, that is why we are saying that if they have to--- Anybody who writes articles on the newspapers, either for a fee or for free, would qualify to be a journalist. Therefore, we need to think of a better way of retaining that clause or doing away with it all together.

Hon. (Ms.) Kiptui: Thank you, hon. Temporary Deputy Chairman. I want to inform my learned friend that there are times when people who may not necessarily be journalists can do the work of a journalist. I am a living example. I used to run a legal programme on radio for a long time. What the rule states is that people of that kind should also be regulated because they are there.

The Temporary Deputy Chairman (Hon. Kajwang’): So, the trouble here is how do you regulate them?

Hon. (Ms.) Kiptui: They should also be responsible or they should follow the rules.

The Temporary Deputy Chairman (Hon. Kajwang’): How do you bring this within the rules?

Hon. (Ms.) Kiptui: Through the language that we are going to coin.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us hear from hon. Benjamin Kipkirui Langat.

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I think he had very good intentions. But I do not know what we can do; maybe, we should say a licence be given by the media house itself. Like the *Standard* or the *Nation* media houses. Something of that sort, but to say that they be licensed by individual journalists, I do not know how it can work.

The amendment is good but it needs to come out in a way that whoever issues a licence or authority should be some recognized organization.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. The reason I have given hon. Members time to ventilate on this matter is---- Hon. Member for Homa Bay, I thought you dropped your contribution.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, there must have been a technical problem, I did not actually drop my contribution.

While listening to hon. Kang’ata’s intention, are we saying that if I put anything on the newspaper, including a paid-up advertisement I will need permission from someone? I think journalism is a field and journalists are professionals. The definition that I see in the amendments that have been brought is that a journalist is the only person who is recognized as such by the Council upon fulfillment of a certain criteria.

Hon. Temporary Chairman, Sir, because that definition has already been brought, I do not see why an unqualified person will have business practising journalism. There is space within the field for opinion pieces; which is your opinion and the media house gives you consent to use their space to put your own opinion. That should not necessarily be considered that you are unqualified journalist. So, I think he has thought in the right direction, but I do not think that the amendment as it is actually addresses the issue that is being thought about.

The issue he is thinking about needs a lot of consultations. I think if we introduce it, we need to do it with the Committee having consulted sufficiently.

The Temporary Deputy Chairman (Hon. Kajwang’): The reason why we have dwelt with this even when we are pressed with time is because you intend to create a penalty. I am not ready to create a penalty for a Kenyan, until I understand how that Kenyan will be liable. Secondly, already these media houses are taking responsibilities for what appears in the Press. So, perhaps, the media will ensure or will take responsibility on behalf of that fellow who writes. Actually, he runs the danger that the

media will disown the person because he is on his own and so whatever he puts there, may not necessarily be the media's position and in that case, he will be exposing himself very dangerously. Therefore, we are saying all these to persuade you to withdraw this amendment, if you are persuaded. But if you still want us to amend, I will put the Question.

Should I put the Question or do you want to withdraw it, hon. Kang'ata?

Hon. Kang'ata: Hon. Temporary Deputy Chairman, I am withdrawing it but I have just one point. Let us assume that the amendment is dropped, the fear that my colleague pointed out will become a reality. For instance, you are not a journalist *per se*.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Kang'ata, if you really think that the amendment should be in the statute, you should go and think about it. By February, you can bring it back as amendment to the legislation, if you really think that it should be in the statute.

Hon. Kang'ata: Hon. Temporary Deputy Chairman, I drop it.

(Proposed amendment to New Clause 46A by hon. Kang'ata dropped)

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much. Next amendment!

Hon. Kang'ata: Hon. Temporary Deputy Chairman, we have already approved a new clause, which is giving power to the Media Council to accredit institutions. So, the question that begs an answer is what happens to institutions that are not accredited under the law. I am, therefore, of the view that we make it an offence for anyone to operate an educational institution that is not accredited and provide for a penalty. If we leave it open, the new clause that we have just introduced to this Bill will not be of any use.

That is my position.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, hon. ole Metito.

Hon. Katoo: Hon. Temporary Deputy Chairman, I wanted to convince my colleague on the amendment but he already appears to have been convinced.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, hon. Jackson Kiplagat Kiptanui.

Hon. Kiptanui: Hon. Temporary Deputy Chairman, as much as I think the hon. Member has a very good intention, the amendment seeks to provide for penalties for institutions that will offer courses that will not have been approved by the Media Council. We have the Commission for Higher Education, which normally approves courses to be offered by universities and middle-level colleges. So, we need to re-look at this amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Who accredits institutions to offer courses in journalism?

Hon. Kiptanui: Hon. Temporary Deputy Chairman, it is the Commission for Higher Education.

The Temporary Deputy Chairman (Hon. Kajwang'): The hon. Member is basically saying that anybody else who is not accredited by the Commission for Higher Education commits an offence.

Hon. Kiptanui: Hon. Temporary Deputy Chairman, the amendment says "an educational institution that is not accredited under this Act---"

The Temporary Deputy Chairman (Hon. Kajwang’): Is there any accreditation under this Act?

Hon. Kiptanui: No, there is not.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us go step by step.

Hon. Irungu Kang’ata, which clauses of the Bill deal with accreditation?

Hon. Kang’ata: Hon. Temporary Deputy Chairman, we amended the Bill just a few minutes ago. We just added new sub-clause (6)(m).

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Kang’ata, do you remember that it was qualified with the words “---subject to any other written law, consider and approve applications for accreditation”? You have a good intention but can you word it within those lines, so that it can be taken care of? Simply, qualify it to any other existing Act quickly and then we proceed. We do not have a lot of time today.

Hon. Kang’ata: Hon. Temporary Deputy Chairman, I propose to add immediately before the expression “an educational institution”, the words “subject to other written laws”.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Kang’ata, make the amendment clearer. Can the senior lawyer over there help you in putting the words into your mouth?

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, what is required is just a simple amendment to the proposed amendment to say “subject to any written law, an educational institution that is not accredited---”

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, hon. Sakaja.

Hon. Sakaja: Hon. Temporary Deputy Chairman, the intention of hon. Kang’ata is noble and very clear but we need to be sure that we protect those institutions that already have charters, and which are already allowed to conduct such training. So, I will propose a further amendment by inserting the words “save for a university granted a charter”.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Sakaja, there could be other institutions which are not universities. As a matter of fact, it is the Commission for Higher Education which accredits institutions.

Hon. Sakaja: Hon. Temporary Deputy Chairman, we can say “save for an institution of higher education that has been granted a charter under law”. This is because we also have very many colleges in town that might be offering quack training. So, we need to provide for such eventuality.

Hon. Kamau: Hon. Temporary Deputy Chairman, we can refine that proposal by saying “an educational institution that is not accredited shall not offer or teach courses in journalism”. It is that simple.

The Temporary Deputy Chairman (Hon. Kajwang’): Whether under this Act or any other Act.

Hon. Kamau: Yes, we can say: “Whether under this Act or any other Act, an education institution that is no accredited shall not offer or teach courses in journalism.”

The Temporary Deputy Chairman (Hon. Kajwang’): Is that okay with you, hon. Kang’ata?

Hon. Kang’ata: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kang’ata): Departmental Committee Chairman, can you go on record as proposing a further amendment to hon. Kang’ata’s

amendment? Does that change the intention, Leader of Majority Party? Can I hear the lawyers?

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, we have agreed with hon. Kang'ata on the wording. Since there is amendment to Clause 6---

The Temporary Deputy Chairman (Hon. Kajwang'): No, it is New Clause 46.

Hon. Chepkong'a: No, it is Clause 6. There is an amendment to that clause on educational accreditation. We have agreed that it reads as follows: "Subject to Clause 6, an educational institution that is not accredited under this Act, shall not offer or teach courses in journalism." This is because we have already provided for educational institutions under Clause 6 of the Bill. Why we were saying that is because we wanted to take into consideration the Commission for Higher Education accreditation. There is already an institution which does accreditation.

The Temporary Deputy Chairman (Hon. Kajwang'): Can I hear the Leader of Majority Party?

Hon. A.B. Duale: Hon. Speaker, all of us are going the same direction. The University of Nairobi, for example, teaches journalism by the mere fact that it is given a charter. So, we can say "save for a university or any other institution of higher learning that has been granted a charter", so that we carry both the universities and other institutions. The element of university must come in.

The Temporary Deputy Chairman (Hon. Kajwang'): No, I do not think so. I am more persuaded to go by the way the Departmental Committee Chairman proposed.

Hon. A.B. Duale: Are you proposing what is already there? We want to do a further amendment to the amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): The thing is that it is not just the University of Nairobi that teaches journalism. Journalism is being taught by so many other institutions and it is not just because an institution has a charter. So, legislation needs not to be specific as you are trying to propose. What we want to ensure here, if we are carrying the spirit of hon. Kang'ata, is that anybody who is not accredited either through this Act or through whichever law should not practise or offer to teach courses in journalism. So, the Departmental Committee Chairman has proposed very clear words: "An educational institution that is not accredited under any written law shall not offer or teach courses in journalism." There are Acts of Parliament controlling universities.

Hon. Sakaja: Hon. Temporary Deputy Chairman, I am just saying that a charter is different from an accreditation. If we pass this amendment as it is, the University of Nairobi, the Daystar University and other institutions will have to look for accreditations. So, we need to put the word "charter" in the amendment because it is very different from accreditation.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. I get you and I think the acceptable wording here is just like---

Hon. Kamau: Yes, hon. Temporary Deputy Chairman. Maybe we can just twist it a little bit.

The Temporary Deputy Chairman (Hon. Kajwang'): Put that "charter" in it. Just say "under any written law or charter".

Hon. Kamau: It will be: "An educational institution that is not accredited or chartered under any written law shall not teach or offer courses in journalism."

The Temporary Deputy Chairman (Hon. Kajwang’): Can we have the language? When you say “chartered” you mean something different. It is not chartered. The noun and verb are two different things. So, it should be: “An educational institution that is not accredited under any written law or charter shall not offer or teach courses in journalism.” Is that okay?

Hon. Kamau: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): So, Irungu, can you go on HANSARD as proposing a further amendment very quickly?

Hon. Kang’ata: Thank you, hon. Temporary Deputy Chairman. I propose a further amendment to read as follows---

The Temporary Deputy Chairman (Hon. Kajwang’): Remove the words “under this Act” and replace them. Go that direction very quickly.

Hon. Kang’ata: I propose that we remove the words “under this Act” and we insert the words “or any written law or charter shall not offer or teach courses in journalism.”

The Temporary Deputy Chairman (Hon. Kajwang): Okay. Thank you very much. I will now propose the Question.

(Question of the amendment proposed)

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

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

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

(The new clause was read a Second Time)

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

(First Schedule agreed to)

Second Schedule

Hon. Kang’ata: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, the Second Schedule be amended—

- (a) by deleting paragraph 15;
- (b) in paragraph 18, by deleting subparagraph (3);
- (c) by deleting paragraph 21;
- (d) in paragraph 22, by deleting subparagraph (3);
- (e) by deleting paragraph 23.

It is my opinion that this Second Schedule is infringing on the independence and freedom of the Press in various ways. There are several instances in this Schedule in my own opinion where the freedom of the editor, the freedom of speech and also the right of the public to know have been infringed on and may therefore be running counter to the Constitution. For instance, I am of the view we delete paragraph 15(4). It provides that “Things concerning a person’s home, family, religion, tribe, health, sexuality, personal life and private affairs are covered by the concept of privacy except where these impinge upon the public.”

I fear that this clause will be used to gag the media and, therefore, media freedom will be lost if this clause is not deleted. This is because the burden of proving is on the media instead of it being on the person who is complaining. So, therefore, I fear that if this clause passes, we may have a situation where the freedom of the media is restricted. We should leave this one to the editors. That is my own opinion. It is them to decide which issues cover the realm of privacy but we should not provide it in an Act of Parliament. That is making it too static.

The Temporary Deputy Chairman (Hon. Kajwang’): And paragraph 18?

Hon. Kang’ata: Under paragraph 18, I draw the attention of the House to Clause 3. It is saying: “Journalists shall not buy or sell, directly or through nominees or agents shares or securities and other market instruments about which they intend to write in the near future”. Number one, I doubt how this can be enforced. Number two, we may also be unfair to the journalists who are doing business articles because they may therefore not buy shares or trade in securities, which is unfair in my own opinion to such journalists.

The Temporary Deputy Chairman (Hon. Kajwang’): What about paragraph 21?

Hon. Kang’ata: Paragraph 21 provides that: “The media shall not identify victims of sexual assault or publish material likely to contribute to such identification. Such publication does not serve any legitimate journalistic or public need and may bring social opprobrium to the victims and social embarrassment to their relations, family, friends, community, religious order and to the institutions to which they belong.”

Number one, this is poor drafting. I think in an Act of Parliament you do not provide for a reason. You just provide the rule. As to the reason, that one is something that is usually debated here in Parliament.

Number two, I know of several instances where we have seen victims of sexual assault going on air to publicize themselves. The idea probably is to bring shame to the perpetrators. The idea is also to raise awareness on issues relating to sexual offences. We know of a wife of a professor who was purportedly assaulted. She went live on air. So, if we were to provide for this one, we shall be gagging the media who may want to highlight these issues. I think even today I saw something on *Citizen Television* of a victim of a certain assault, if I am not wrong.

The Temporary Deputy Chairman (Hon. Kajwang’): Could you please go to paragraph 22(3) also?

Hon. Kang’ata: It states: “Pictures of grief, disaster and those that embarrass and promote sexism shall be discouraged.” We all know that this country has on several occasions had instances of grief. So, therefore when you tell the media that it shall not probably highlight such stories, we are surely gagging the freedom of the media.

The Temporary Deputy Chairman (Hon. Kajwang’): And lastly paragraph 23?

Hon. Kang'ata: This one provides: "The media shall generally avoid identifying relatives or friends of persons convicted or accused of crime unless the reference to them is necessary for the full, fair and accurate reporting of the crime and legal proceedings."

Again, it is my opinion that we are intruding too much into the editorial right and freedom of deciding which matters should come from the media or not.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, unless I am not getting the hon. Member correctly, the only amendment I am persuaded to support is in relation to paragraph 18. If you look at the one he is referring to, instance of sexual abuse, the issues of sexual abuse are not entertaining news. They are very traumatic issues. I do not know why you would want the media to highlight a victim of sexual abuse while, indeed, there are laws that provide that protection, like the Sexual Violence Act. I am also bringing before this House the Victims Protection Bill that seeks to protect victims of crime generally.

However, if you are giving an umbrella for the media to sometime report the way I see, even though the Children Act provides against reporting on children especially involved in crime, I do not think it is correct. I will only support the Member in relation to paragraph 18. Therefore, I call on the Chair because I support one and I do not support the others, if it will be in order that you put a Question on each paragraph so that we can vote.

The Temporary Deputy Chairman (Hon. Kajwang'): Most obliged.

Hon. (Ms.) Odhiambo-Mabona: Thank you.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, Hon. Samuel Chepkong'a.

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman, Sir. In developed democracies, it is always preferred and wise not to carry pictures of the victims because they are already traumatized. You are really traumatizing these people if you show their pictures.

With regard to issues of disaster, I am sure you may have noted when the *Daily Nation* carried a picture of a lady who was badly injured during the Westgate attack, it retracted the following day and apologized because that was not the best picture to carry on a headline. That is the sort of thing that we are saying in paragraph 22 of the Second Schedule, that pictures that traumatize should not be carried. Although my very good friend, Hon. Kang'ata is seeking to protect that, we also want to support journalists to report without any hindrance. However, we should be sensitive to our cultures and children. This is because if you show pictures of violence on television, because we watch news with the children, you will imprint in children violence. These are the sort of things that we do not want. So, we do not support this amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): What we will do with this piece of amendment is to move bit by bit. Hon. Chair, one last word on this.

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, I agree that you can move bit by bit but I think it is important for me to say that throughout the discussions that we had with the media fraternity, they had absolutely no issues with the Second Schedule. They were clear on it and I will---

The Temporary Deputy Chairman (Hon. Kajwang’): Well, because you may have not brought to their attention the issues that hon. Kang’ata is raising now.

Yes, hon. Sakaja.

Hon. Sakaja: Thank you, hon. Temporary Deputy Chairman, Sir. I rise to oppose these amendments. I am not sure whether you want us to discuss them one by one but maybe very briefly.

The Temporary Deputy Chairman (Hon. Kajwang’): We want to discuss them once you are through. I will put the Question to each amendment and then we will be done.

Hon. Sakaja: Hon. Temporary Deputy Chairman, Sir, then I can give my opinion.

The Temporary Deputy Chairman (Hon. Kajwang’): Very quickly and in a few sentences because I am pressed with time today. I need to push---

Hon. Sakaja: Hon. Temporary Deputy Chairman, Sir, if you look at paragraph 15, you will see that it is like one of the highlights of this Bill because it talks about professionalism in journalism; that journalists shall stick to issues. It actually provides for what is in the Constitution in terms of the right to privacy; that it shall be the right of the people to know. I think this is a good part of the Bill and we should not touch it.

If you look at paragraph 18, you will see that the Member wants to delete subparagraph (3). This paragraph talks about journalists using financial information that they have been able to get in the course of their work for their own benefit.

If you look at the Capital Markets Authority Act that we passed here, you will see insider trading. If you delete the provision that the hon. Member proposes that we delete, you will be encouraging insider trading because journalists can get information from these companies on what will happen, trade and deal on that. This is especially in the money market.

Hon. Millie has expressed herself on paragraph 21. Currently, when the media shows pictures of victims of sexual abuse, they usually pixilate the face or the person faces the other direction. Really, that is the right of privacy of that person who has gone through such traumatic experience. I see no need to delete such a provision. Finally, paragraph 23 says that the media shall generally avoid identifying relatives or friends of persons convicted or accused of crime. Relevance to them is necessary for the full, fair and accurate reporting. This is clearly protection of the rights of those relatives which is enshrined in the Constitution.

So, I oppose these amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Let us start with paragraph (a) on deletion of paragraph 15.

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

Hold on, on paragraph 21 a bit. From his contributions I got something which we need to look at. The words “such publications do not serve---” This is not legislative language but details. There are qualifications they explain, of course, but are not legislative language. So, can we put the full stop after the word “identification” and remove those words? Could hon. Sakaja propose this?

Hon. Sakaja: Hon. Temporary Deputy Chairman, Sir, first, we can listen to the Chair because he is saying that this is the code of conduct.

I beg to move: -

THAT, paragraph 21 of the Second Schedule be amended by deleting the words in the third line after the word “identification”.

So, it will read “The media shall not identify victims of sexual assault or publish material likely to contribute to such identification.” The explanation should either be in a memorandum or--- The rest of that is an explanation.

(Question of the amendment proposed)

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, my argument was that this is just a code of conduct.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, but a code of conduct must be prescriptive or say what you can do and what you cannot do without very many words explaining it. Whoever wants to prosecute, you can now get those words and explain. This is the problem that we are having.

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, I do not have many problems with this because the first sentence clearly explains what it is all about. I did not see the need---

The Temporary Deputy Chairman (Hon. Kajwang’): I am just having a mind of a legislator here. That is the problem I am having.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairman, Sir. I would like to request that you guide us because I have heard Hon. Sakaja move a further amendment which I support. However, I am just wondering in terms of procedure, which amendment is on the Floor that is---

The Temporary Deputy Chairman (Hon. Kajwang’): The amendment which is on the Floor is paragraph 21 and we are on the further amendment by Hon. Sakaja. He is further amending what hon. Irungu Kang’ata gave by removing this sentence beginning “such publications” up to “they belong”.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, Sir, I am wondering because Hon. Irungu’s amendment is a deletion. So, how can you bring a further amendment to a deletion?

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Mbita, you are absolutely right. We can talk about the amendment if it is not deleted. So, you are right. So, let me put the Question.

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

Hon. Sakaja: Thank you, hon. Temporary Deputy Chairman, Sir. I also thank hon. Members for defeating that amendment.

I beg to move: -

THAT, paragraph 21 of the Second Schedule be amended by deleting the words in the second sentence.

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

Hon. Kang'ata: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, the Second Schedule be amended—
(e) by deleting paragraph 23.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Now, hold on. On paragraph 23, can we clean up that legislation? I think it should say, "The media shall not identify relatives". That is so that we are very positive.

Hon. Sakaja, can I hear you on this? Hon. Irungu Kang'ata.

Hon. Kang'ata: Let me talk on that. The proposed amendments, I think, will be worse.

The Temporary Deputy Chairman (Hon. Kajwang'): No, we have not even proposed it, so how can it be worse.

Hon. Sakaja, you are speaking to paragraph 23 with regard to the language there.

Hon. Sakaja: Hon. Temporary Deputy Chairman, if you look at it there is no way to measure generality in the media's avoidance of publishing. So, I would like to propose an amendment that the word "generally" be deleted in the first sentence of Paragraph 23 of the Second Schedule.

The Temporary Deputy Chairman (Hon. Kajwang'): The words "generally avoid identifying" and replace them with the words "not identify".

Hon. Sakaja: Yes. So that it will read "The media shall not identify relatives or friends". So, my proposed amendment is that in the first line of Paragraph 23, the words "generally avoid and identifying" be deleted and be replaced with the words "not identify".

(Question of the amendment proposed)

Hon. Kang'ata: Hon. Temporary Deputy Chairman, let me oppose that 100 per cent in this sense. Journalists who practise at Milimani Law Court take photographs. You will find an accused person mobbed by relatives and a journalist taking photographs. The new amendment means that such photographs cannot be published---

The Temporary Deputy Chairman (Hon. Kajwang'): Can I just stop you. You have not read the last phrase of that paragraph. It says: "---unless the reference to them is necessary for the full, fair and accurate reporting of the crime." So, if they have to photograph somebody and if by carrying that photo work it will lead to accurate reporting of the crime or proceedings, they are free to do so.

Hon. Kang'ata: In my opinion, we should leave that to what we call "editorial freedom". You see---

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. David Ochieng.

Hon. Ochieng: Hon. Temporary Deputy Chairman, on this I want to agree with my friend hon. Kang'ata. These are basically guidelines. Sometimes in practice when

journalists report crime, they do it in order that people may know the kind of person being charged. That is why we are saying---

(Loud consultations)

Hon. Temporary Deputy Chairman, could you, please, tell Sakaja to---

The Temporary Deputy Chairman (Hon. Kajwang’): No, I do not know why you are listening to him. I do not hear him.

Hon. Ochieng: He is punching me in the air.

The Temporary Deputy Chairman (Hon. Kajwang’): I did not see the blows through the air.

(Laughter)

Hon. Ochieng: So, hon. Temporary Deputy Chairman, I wish that Paragraph 23 remains the way it is so that journalists have the latitude. If an MP is being charged, or the wife is charged let the public know. Why do you want---

The Temporary Deputy Chairman (Hon. Kajwang’): But hon. Ochieng, have you addressed yourself to the last phrase of that paragraph?

Hon. Ochieng: Yes, I have.

The Temporary Deputy Chairman (Hon. Kajwang’): Does it not speak to the same thing you are talking about?

Hon. Ochieng: And that is why we want to give them the latitude by saying “generally avoid”. When you say “not” then you are really consuming these journalists.

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, certainly I am in two parallel camps with hon. Ochieng. Of course, he cannot receive flying kisses from where he is from hon. Sakaja. Does he have capacity to give anyway?

On a serious note hon. Temporary Deputy Chairman, the reason why we are substituting “not” is to make it clear. How can you measure “generally avoid”? This is not a legal language. It is an everyday language that is used in the street. It is not a language that is used in courts. The language that is used in courts is “not” and not “generally”. How would the courts then measure that?

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

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

(Second Schedule as amended agreed to)

Clause 2

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, clause 2 be amended by deleting the definition of “journalist” and substituting therefor the following new definition—

“journalist” means any person who is recognised as such by the Council upon fulfillment of a criteria set by the Council.”

Clause 2 deals with definitions. We just wanted to make sure that it is clear who a journalist actually is as per the wishes of the Media Council. We agreed with them that a journalist should be any person recognized as such by the Council upon fulfillment or criteria set by the Council. We are okay with that amendment and so is the Media Council. I, therefore, appeal to my colleagues to support that.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: On a point of order!

The Temporary Deputy Chairman (Hon. Kajwang’): Can I have a discussion instead of a point of order?

Hon. (Ms.) Odhiambo-Mabona: Then I will put my point of order within the issue of discussion. Whereas I do not strongly oppose what the hon. Member has suggested, I wish he had provided stronger standards and qualifications like the one hon. Irungu Kang’ata is suggesting. What I wanted to raise, given that he is also bringing an amendment, I do not know whether his amendment will then negate--- I want us to be careful about how we are going to deal with that.

The Temporary Deputy Chairman (Hon. Kajwang’): I hear you. There are two amendments here and you have seen them on the Order Paper. There is one by the Chairman of the Departmental Committee and then another by hon. Kang’ata. The view that the Chairman takes is this: That the first one defines who the journalist is while the second one adds qualification to what a journalist should have. So, we begin with the one that defines who a journalist is. If it is carried, then hon. Kang’ata can prosecute his, which is insertion. If his is not carried, still we go back to the Bill. I hope the Bill has a definition of a journalist and we will still debate what hon. Kang’ata has. I had proposed that.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, Sir, maybe I should discuss it when hon. Kang’ata’s amendment comes. I think that the journalist as defined by the Chair’s definition gives more room. You do not want to start putting qualifications of diplomas and degrees and whatever else. The Council should now have space to---

The Temporary Deputy Chairman (Hon. Kajwang’): Can we discuss it in isolation? Can we discuss hon. Kamau’s definition in isolation before we go to what hon. Kang’ata has? I fear that, that may poison the debate and may be unfair to hon. Kang’ata.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, Sir, I am discussing it in isolation.

The Temporary Deputy Chairman (Hon. Kajwang’): We need to protect hon. Kang’ata. I fear that, that discussion may unnecessarily poison the minds when we come to hon. Kang’ata’s proposal.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, Sir, I am saying that I support this definition. I am a great supporter of self regulation of the media and that we should allow the Council to define certain standards, so that not everything is written in fine print. That is why I support the definition because we are saying that there is going to be a person recognised by the Council and has fulfilled a criteria set by the Council. So, we have given that to the Council.

(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)

Hon. Kang'ata: Hon. Temporary Deputy Chairman, Sir, I withdraw my amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much. It is hereby withdrawn. Congratulate him for me.

(Proposed amendment by hon. Kang'ata withdrawn)

(Clause 2 as amended agreed to)

(Clause 1 agreed to)

Title

Hon. Kamau: Hon. Temporary Deputy Chairman, Sir, after consultations, we agreed to withdraw that amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you. It is so dropped.

(Proposed amendment by hon. Kamau dropped)

(Title agreed to)

Members, I want to thank you for being patient and discussing very carefully the Media Council Bill that we have just considered. Do I hear that we should report progress?

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its consideration of the Media Council Bill, National Assembly Bill No.20 of 2013 and its approval thereof with amendments.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, I am sure you have seen several other businesses on the Order Paper that we must deal with, but this is one of those which are constitutional Bills that must be done within a specific time. Therefore, in the Speaker's opinion, it should be dealt with and completed and then we can embark on the rest also this evening and complete them.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

CONSIDERATION OF REPORT AND THIRD READING

THE MEDIA COUNCIL BILL

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Media Council Bill, National Assembly Bill No.20 of 2013, and approved the same with amendments.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said report.

Hon. Kang’ata seconded.

(Question proposed)

(Question put and agreed to)

Hon. Kamau: Hon. Temporary Deputy Speaker, I beg to move that the Media Council Bill, National Assembly Bill No.20 of 2013, be now read the Third Time.

Hon. Kang’ata seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I can confirm that we have the requisite number. Therefore, I will go ahead and put the Question.

(Question put and agreed to)

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

POINT OF ORDER

SEQUENCE OF PROCEEDINGS IN THE HOUSE

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): What is your point of order, hon. Chepkong'a?

Hon. Chepkong'a: I rise on a point of order on a very important matter. As you are aware, I rise pursuant to Standing Order 83 as read together with Standing Order No. 40 on the sequence of proceedings in the House. I am aware that the business is supposed to be disposed of in accordance with Standing Order No. 40(2).

Hon. Temporary Deputy Speaker, Sir, as you are aware the Vetting of Judges and Magistrates (Amendment) Bill was approved this morning. I am seeking your direction and guidance in light of the fact that this particular amendment has timelines. If we do not pass it before 31st December, the Vetting Board will collapse and we will lose all the gains that we have made as a country.

As you are aware, under the Sixth Schedule, Paragraph 23, it behoves this House to come up with a legislation to ensure that all judges and magistrates are vetted. As we stand right now, we have over 300 magistrates who have not been vetted. Therefore, the situation will become extremely tenuous.

Secondly, as you know, this House approved three foreign judges so that they can proceed with the work of vetting. What we are seeking is purely a Procedural Motion so that we can go into other business and the rest will not be affected because of the Motion that we passed this morning.

As you are aware, we have time to debate the rest of the business some other time.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chepkong'a, I am told that this had been brought to the attention of the Speaker, and a Motion was brought to extend the sitting of the House so that all the Bills listed in Committee of the whole House will be completed by the end of the Sitting of today. Therefore, because we are already headed to the Committee of the whole House, procedurally, we have already started following the Bills as they have been indicated. I believe we will still reach the Vetting of Judges and Magistrates Bill, Committee of the whole House.

The other Committee considerations are very short. I am told this had already been brought to the attention of the Speaker and he chose that we use the sequence that had been clearly outlined in the Order Paper. Hon. Chepkong'a, you know that the matter had been brought to the attention of the Speaker. Therefore, I cannot overrule what the Speaker has already decided and has been put on the Order Paper. We have already extended time. In fact, if we went to the Committee of the whole House now, we will reach there faster. Let us go to the Committee of the whole House.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

*[The Temporary Deputy Speaker
(hon. (Ms.) Shebesh) left the Chair]*

IN THE COMMITTEE

[The Temporary Deputy Chairman

(Hon. Kajwang' took the Chair)

THE INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, this is the Committee of the whole House convened to consider the Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill, National Assembly, Bill No.6 of 2013.

Clause 3

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, clause 3 be amended—

(a) in paragraph (b), by—
(i) inserting the words “and the Insurance Regulatory Authority” immediately before the word “prescribe” appearing in the proposed new subsection (1A);

(ii) inserting the following new subsection immediately after the proposed new Sub-section (1A)—

“(1B) The maximum percentage of the sum specified in section 5(b) and prescribed in the Schedule under this Act shall be inclusive of the medical expenses on the judgment or claim”;

(b) by inserting the following new paragraphs immediately after paragraph (b)—

“(c) in subsection (2), by deleting the words “fourteen days” appearing in paragraph (a) and substituting therefor the words “thirty days”;

(d) in subsection (3), by deleting the words “delivered to the insurer” and substituting therefor the words “duly served upon the insurer together with a disclosure under oath of all the documents intended to be used to prove the claim whether in or out of court”;

(e) by inserting the following new subsections immediately after subsection (3)—

(3A) No judgment or claim shall be payable by an insurer unless the judgment debtor or claimant had, before determination of liability, subjected themselves to medical examination by a certified medical practitioner in a level four and above hospital or its equivalent or specialist of the insurer's choice.

(3B) An insurer shall have a right to obtain or verify information from the institution which issued the documents intended to be used to prove the claim and this right shall be enforceable before any sum or judgment is satisfied by the insurer;

(f) by inserting the following subsection immediately after subsection (4)—

(4A) Notwithstanding any other provision under this Act or any other written law, any person who willfully presents false or inaccurate

information to the insurer or any court of competent jurisdiction with the intention of benefiting under this Act through—

(a) falsification and alteration of treatment documents and records;

(b) exaggeration of injuries or degree of incapacitation;

(c) falsification and alteration of police documents and records;

(d) falsification and alteration of identification documents and records, commits an offence and upon conviction, in addition to the applicable penalty, the claim or judgment the subject matter of the false or inaccurate information shall not be payable by the insurer”.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Temporary Deputy Chairman. I wish to seek your guidance and direction on this matter.

First of all, I want to apologize that for the last few days, I have actually been hospitalized; unfortunately, I did not have an opportunity to look at this Bill. Having looked at this Bill now, I have come to realize that the proposed amendments by this Committee are very unconstitutional. I know that this matter was referred to the Departmental Committee on Finance, Planning and Trade. But largely the amendments---

The Temporary Deputy Chairman (Hon. Kajwang’): Can we deal with it after it has been proposed.

Hon. (Ms.) Odhiambo-Mabona: Okay, thank you.

Hon. Langat: Thank you very much, hon. Temporary Deputy Chairman.

First of all, I want to say that this is a very short Bill which sought to introduce what is called structured compensation in the event of motor vehicle accidents. The maximum that has been fixed is Kshs3 million. What this Bill seeks to do is to apportion different parts of the body. This is because the Kshs3 million has already been fixed by the principal Act, Section (5).

The amendments that I seek to introduce as per the Order Paper seeks to ensure that---

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Langat, we have the Order Paper with us and we have read it. Therefore, is there anything else you want to bring to our attention?

Hon. Langat: I think I will just leave it at that.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairman. I was on my feet seeking your guidance and direction on this matter. What these amendments by the Committee seek to do is, in a very big way, limit the practice in law on issues of insurance as pertains to motor vehicle third party risks. The Chair is aware of what the Constitution provides in the issue of participation. I am sure the Law Society of Kenya has not been consulted and it is manifestly wrong that we will be bringing amendments that drastically affect the operation of a profession, without their input.

Hon. Temporary Deputy Chairman, I seek your direction that this Bill and the proposed amendments, if the Chair is agreeable, we step them down so that we get further consultations over this matter.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman of the Departmental Committee on Finance, Planning and Trade, did you subject this Bill to public participation?

Hon. Langat: I think the hon. Member is only worried about---

The Temporary Deputy Chairman (Hon. Kajwang’): Did you subject this to public participation?

Hon. (Ms.) Odhiambo-Mabona: The Law Society of Kenya was not involved.

Hon. Langat: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. And your Committee received memoranda?

Hon. Langat: Yes, for those who were interested.

The Temporary Deputy Chairman (Hon. Kajwang’): Was it published in the newspapers and some public systems?

Hon. Langat: Not necessarily, hon. Temporary Deputy Chairman, but all those who submitted memoranda received it.

The Temporary Deputy Chairman (Hon. Kajwang’): Besides, with a lot of respect, hon. Member for Mbita, the basic consumer of this information may not be the lawyers. The lawyers happen to litigate on this matter. I think the basic consumers are the people who take insurance risks, who are you and I who drive out in those roads. Those are the primary consumers of this Bill.

(Several hon. Members rose in their places)

No, we do not want discussion on this matter. I am not bringing discussion on this matter. Hon. Baiya.

Hon. Baiya: Thank you, hon. Temporary Deputy Chairman. With due respect, I am really not going against your ruling but you will appreciate that the proposed amendments are being introduced at the third stage. This means that they were not in the original Bill as published. The fact that amendments are being introduced at the third stage of the Bill means that the most substantive amendments to the insurance law are being introduced at the third stage. We are concerned because one of the principles enshrined in Article 10 of the Constitution is public participation, and not introducing amendments at last stage of a Bill.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Baiya, are you saying that this Bill did not come for the Second Reading?

Hon. Baiya: Hon. Temporary Deputy Chairman, I am saying that these amendments were introduced during the Committee stage. They were not contained in the original Bill. That is where the concern lies. If you look at the implications, in terms of its impact on Kenyans’ fundamental right to compensation, you will appreciate that it is being capped at Kshs3 million. If a Kenyan gets involved in an accident and sustains a fracture, the claim, including medical expenses, do not add up to Kshs3 million. We have just considered the Wildlife Compensation Bill. We fixed the compensation for death of a person occasioned by a wild animal at about Kshs5 million. So, what is the rationale for us to fix the maximum compensation for deaths arising from accidents at Kshs3 million?

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Baiya, I asked the Departmental Committee Chairman whether there was public participation and he said

there was. He added that, as a Committee, they had received memoranda from the public. I want to trust the Chairman, until you give me information to the contrary that will cause me not to trust the Chairman on this matter. Can I have somebody who has pointed evidence that will make me not to trust the Chairman of the Departmental Committee? That is what we should be discussing.

Yes, hon. Kang'ata.

(Hon. Langat stood up in his place)

Just sit down, Committee Chairman. There is nothing to defend in this matter. We just want to put the facts straight and move on.

Yes, hon. Irungu.

Hon. Kang'ata: Hon. Temporary Deputy Chairman, the Chairman of the relevant Departmental Committee has admitted that he did not place a notice. Therefore, the Law Society of Kenya was not involved. Probably, the members of the public did not sufficiently respond to those issues. In so far as members of the public were not notified of the proposed changes, in my opinion, these are too radical changes for us to entertain at this stage.

Secondly, we need to inform hon. Members on what we are objecting to. What we are objecting to is that if we pass these changes, if you are involved in an accident, or you have a bill that exists---

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Kang'ata, you cannot prosecute the amendments before we finish with this issue. Do not be heard on the amendments themselves.

Yes, hon. Sakaja.

Hon. Sakaja: Hon. Temporary Deputy Chairman, I am a Member of the Committee on Finance, Planning and Trade. I want to attest that, indeed, the Committee did what it could to ensure as much public participation as possible. One or two public bodies having not come to the Committee cannot stop legislation from going on. If you listened to the submissions by the hon. Members, they said that these amendments have come during the Third Reading of the Bill. We have just disposed of another Bill, which had amendments during the Third Reading. It seems like it is the feeling of most hon. Members that we do not have that maximum. As we go through the amendment, we can defeat it or amend it further.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Sakaja, what were the tools that were used? My reading of "public participation" is in Article 118 of the Constitution, which says that Parliament shall conduct its business in an open manner; that Parliament shall facilitate public participation, and that you must not exclude the public. So, the question here would be: "What was the tool that you used to ensure that there was public participation?" The Constitution does not say that you must publish these things on newspapers. So, the issue is what tool you used for public participation.

Hon. Langat: Hon. Temporary Deputy Chairman, I want to answer the question but there is procedure that ought to be followed. Let us proceed to the amendments. Let hon. Members discuss them---

The Temporary Deputy Chairman (Hon. Kajwang'): Order, Departmental Committee Chairman, there is a point of order that has been brought to my attention on

the constitutionality or otherwise of the proposed amendments. I have to deal with it. I am trying to find out whether it is unconstitutional or not. So, you can answer us very quickly. Let us know the tools that were used for public participation.

Hon. Langat: Hon. Temporary Deputy Chairman, we received memoranda and called the stakeholders who wanted to appear before the Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. That is enough.

Hon. Members, the Member for Mbita rose in her place to contest the constitutionality or otherwise of the propositions brought by the Chair, citing Article 118, particularly Sub-article 1(b); that there was no public participation. I put a direct question to the Departmental Committee Chairman as to whether there was public participation, and he said that they invited memoranda and received information from members of the public. In accordance with parliamentary practice, without any other evidence to the contrary, I must believe and trust the Departmental Committee Chair that what he says is true until proven to the contrary. Therefore, I rule that there was sufficient public participation. Therefore, to that extent, these amendments are not unconstitutional. Therefore, let us proceed and debate the amendments.

Yes, hon. David Kangogo Bowen.

Hon. Bowen: Hon. Temporary Deputy Chairman, the question that I wanted to ask the Departmental Committee Chairman has been answered.

The Temporary Deputy Chairman (Hon. Kajwang’): That matter has been disposed of. The amendment has been proposed. Can you proceed and debate it?

Hon. Bowen: Hon. Temporary Deputy Chairman, I just wanted to ask for clarification but my concerns have been addressed.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you.

Yes, hon. Alice Muthoni Wahome.

Hon. (Ms.) Wahome: Hon. Temporary Deputy Chairman, I just wanted to make an intervention before you made your ruling.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much.

Yes, hon. Peter Opondo Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Chairman, mine will be on Clause 3(e), when we get there.

The Temporary Deputy Chairman (Hon. Kajwang’): We are not yet there. We are still going piece by piece. Departmental Committee Chairman, did you cover the whole of that amendment in Clause 3?

Hon. Langat: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): So, hon. Kaluma, you are free to discuss the amendment to Clause 3.

Hon. Kaluma: Hon. Temporary Deputy Chairman, the proposal in Clause 3(e) is a very dangerous one. I would request that really the Chair considers having it withdrawn or deleted. We know accidents happen everywhere across the country. When you require that a person upon being injured, even where there is evidence, has to subject himself to a certified medical practitioner in a level four hospital and not any other hospital, you need to understand that for most of these people, it is costly. Two, these facilities are never available across the country.

Hon. Temporary Deputy Chairman, in my own Homa Bay County, I do not know what level our best hospital is but we are very far below. I would request that this is an amendment that we should reject, if not amended.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Hon. Patrick Makau King’ola.

Hon. King’ola: Sorry, hon. Temporary Deputy Chairman. I had intervened at that time when I wanted to support my Chairman.

The Temporary Deputy Chairman (Hon. Kajwang): All right. Hon. David Gikaria.

Hon. Gikaria: Thank you, hon. Temporary Deputy Chairman. I think what hon. Kaluma has just indicated on part 3(e) is true. It is punitive. The word that is used there is “shall”.

“No judgment or claim shall be payable by an insurer unless the judgment debtor or claimant had, before determination of liability, subjected themselves to medical examination by a certified medical practitioner in a level four and above hospital or its equivalent or specialist of the insurer’s choice.”. That is wrong.

I think this is very dangerous, as hon. Kaluma has put it and we need to repeal it by either deleting it. It is still difficult for them to go to level four hospitals. Others cannot even afford to meet medical bills for level four hospitals. So, I agree with hon. Kaluma.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I want to agree with hon. Kaluma and suggest a further amendment.

THAT, Clause 3(e) be amended by putting a full stop after the word “practitioner” and deleting all the words thereafter up to the word “choice”.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay. Just hold on before you do that. That is her further amendment. So, let us take that first of all. Let us deal with it.

(Question of the amendment proposed)

Hon. Midiwo: Hon. Temporary Deputy Chairman, I rise to support hon. Amina’s further amendment because I was going to propose that we do away with that clause, but I want to believe that the improvement by hon. Amina makes this better. Persons who are injured anywhere, as long as they can walk into a dispensary, should be allowed to get a note explaining the extent of the injury. So, I want to support that.

The Temporary Deputy Chairman (Hon. Kajwang’): Let me put the Question.

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

The Temporary Deputy Chairman (Hon. Kajwang’): Now, let us come back to hon. Langat’s amendment but hon. Member for Mbita, you are now on a point of order. Let us hear you.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairman. I want to raise a point of order and then also bring an amendment. My point of order really is that Clause 3 has been passed and we have not disposed of Clause 2.

The Temporary Deputy Chairman (Hon. Kajwang’): No. Clause 2 is usually the last one before we go to Clause 1.

Hon. (Ms.) Odhiambo-Mabona: Okay. Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): And what is your further amendment?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, my amendment is in relation to Clause 3B that we delete the words: “any sum or judgment is satisfied by the insurer” which is the last line and instead replace the words “judgment is passed” after the words “enforceable before any”. The proposed amendment is saying that once the court has given you a judgment, the insurer can decide to go against the court judgment. He can go and prove whether your documents are valid after a judgment. So, the insurer is becoming more powerful than the courts. So, that is why I am suggesting an amendment that once the court gives you a decision, the insurer should not interfere. They should only interfere before. The Chair has actually seen what I am saying so that it should be enforceable before any judgment is passed.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Therefore, it reads that “this right shall be enforceable before any judgment is passed.” That is right.

(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)

Hon. Members: On a point of order, hon. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Hon. Kajwang’): So, let us go back to the amendment. There is nothing which is out of order. So, let us not take too long on points of order.

Could all the Members who have further amendments to this clause go and crowd the Chair there and propose them so that they come together because we do not have time for this? We want to do them together.

An hon. Member: Mine is a deletion!

The Temporary Deputy Chairman (Hon. Kajwang’): It is all right. Whichever deletion you have, can you go and caucus there so that one person can address me on everything that you have put together because we do not want to waste time on this? Yes, hon. Baiya.

Hon Baiya: Hon. Temporary Deputy Chairman, Sir, I propose that Clause 3(a)(ii) which reads that “The maximum percentage of the sum specified in section 5(b) and

prescribed in the Schedule under this Act shall be inclusive of the medical expenses on the judgment or claim”, be deleted completely.

The Temporary Deputy Chairman (Hon. Kajwang’): You want to delete the entire amendment?

Hon. Baiya: Yes, hon. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Hon. Kajwang’): I am afraid you cannot do that under the Standing Orders. This is because you will negate the intention of that amendment.

Hon. Baiya: Hon. Temporary Deputy Chairman, Sir, I am proposing this because even if you look at the proposed amendment, you will find that it is unconstitutional.

The Temporary Deputy Chairman (Hon. Kajwang’): Hold on, Hon. Baiya. I am not worried about constitutionality because you will take that in the arguments to support it or refuse it. However, I am saying that under the Standing Orders, you cannot move a further amendment which negates the original intent of the first amendment. So, here I am dealing with a technicality. If you want to make it your own amendment, that is fine. It is also fine if you want to make it your discussion but you cannot move a further amendment which negates what the original proposer had in mind.

(Loud consultations)

Order, hon. Members! Members from the left came and made a lot of noise on the right. I thought I was helping so that we do not waste time on this. Hon. Chair, did these people help you?

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, they confused me further. I want to encourage hon. Baiya---

The Temporary Deputy Chairman (Hon. Kajwang’): No, I have done away with Hon. Baiya. Hon. Chair, help me preserve time. I have already told Hon. Baiya that he cannot do that. So, let us move on to the next one. Who else has an amendment?

(Several hon. Members stood up in their places)

Could everybody sit down? This includes the Chief Whip of the Minority Party who is involved animatedly in a consultation. Well, he will never hear. Could that Member know that I want him to sit down? He is the Whip of the Majority Party and that is why he is unable to hear.

Yes, hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Chairman, Sir, I am proposing a complete deletion of the amendments proposed as 3(e) under (3A) and (3B). I am proposing that the entire (3A) under Clause 3(e) be deleted.

The Temporary Deputy Chairman (Hon. Kajwang’): Again, I am afraid that you cannot do that. If you look at your Standing Orders, you will see that you cannot move a further amendment which negates the original intention of the person who moved that amendment. It is fine if you want to have your amendment, but it cannot be a further amendment.

Hon. Kaluma: Hon. Temporary Deputy Chairman, Sir, there is a constitutional---

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, it can be unconstitutional but it will be the reason for you to be persuaded or not to be persuaded by a particular amendment. However, it cannot be a further amendment.

Hon. Kaluma: Hon. Temporary Deputy Chairman, Sir, at what level do we then contribute on the amendments so that we can persuade hon. Members to reject it?

The Temporary Deputy Chairman (Hon. Kajwang’): We are going there right now. I just want to pick all the further amendments first and then we get into discussion. Who else has a further amendment?

Yes, hon. Ochieng.

Hon. Ochieng: Hon. Temporary Deputy Chairman, Sir, following your ruling, I would like to withdraw my further amendment. However, I had a constitutional issue to raise on this.

(Proposed further amendment by hon. Ochieng withdrawn)

The Temporary Deputy Chairman (Hon. Kajwang’): I will allow you to do that but it will be in the discussion of those amendments.

Hon. Ochieng: But it goes to the very root---

The Temporary Deputy Chairman (Hon. Kajwang’): Which is fine. You will persuade the House that it goes to the very root of that amendment. Is there anybody else with a further amendment on this?

Yes, hon. Gichigi.

Hon. Gichigi: Hon. Temporary Deputy Chairman, Sir, on this clause that is making it mandatory that an injured person is subjected to a medical examination at the request of the insurer--- It should read: -

“No judgment or claim shall be payable by an insurer unless the judgment debtor or claimant had, before determination of liability---” I want to insert there “at the request of the insurer”. Let us not make it the burden of the claimant where the insurer has not made that request.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, I find nothing wrong with that. That is his further amendment. Let us just deal with it. So, we have a further amendment that Subsection (3A) be further amended as proposed by Hon. Gichigi to include the words “at the request of the insurer” between the word “liability” and “subjected”

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

Lawyers seem to be having too many amendments here. Did you interface with this Committee? Have you declared your interests because you are some of the first gainers of this?

Yes, hon. Sakaja.

Hon. Sakaja: Thank you, hon. Temporary Deputy Chairman, Sir. I have a further amendment. I seek to further amend section (3B). The amendment by hon. Millie was good but so as to prevent a situation where the insurer delays unduly the payment of the

claim, I would like to amend (3B) by inserting the words “provided that such verification is done within a month after the word “insurer”.

The insurer must finish verification within one month so that someone does not stay long saying that they are still verifying and they do so for years and yet the claimant is suffering. That is my proposed amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Verification---

Hon. Sakaja: Provided that such verification be done within a month. It can be a month of the claim or a month of the judgment.

The Temporary Deputy Chairman (Hon. Kajwang’): Within one month of what?

Hon. Sakaja: Claim or judgment.

The Temporary Deputy Chairman (Hon. Kajwang’): Of the claim or judgment whichever is earlier.

Hon. Sakaja: Yes, whichever is earlier.

The Temporary Deputy Chairman (Hon. Kajwang’): So, what are your words?

(Loud consultations)

Hon. Members, you need to understand that every Member has a right to make a further amendment. If he makes a further amendment that you do not agree with, allow him first of all to make it. It will be proposed, discussed and then you will either negate or support it. We will then have less noise in the Chamber.

There is a further amendment to Clause (3B) by inserting the following words “provided that such verification is done within one month”.

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

Hon. (Ms.) Odhiambo-Mabona: On a point of order.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member from Meru, I can see your name here. So, please, just press that button and relax. Go ahead Member for Nyeri.

Hon. (Ms.) Kajuju: It is Meru.

The Temporary Deputy Chairman (Hon. Kajwang’): I am sorry. It is Meru. It is because you are sitting next to--- All of you seem to be giving a statement which I think I like. Okay, go on.

(Laughter)

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Chairman, I went with them to Meru and they partook of the *miraa* and that is why they look the way they look.

I propose an amendment to Clause 3(1)(a) on Page 616. I propose under 1(a) that there should be a period within which---

The Temporary Deputy Chairman (Hon. Kajwang’): Sorry, where are you?

Hon. (Ms.) Kajuju: On Page 616.

The Temporary Deputy Chairman (Hon. Kajwang’): Have we reached there? No, we have not reached there yet.

Hon. (Ms.) Kajuju: I will propose my amendment when we get there.

Hon. Waweru: Hon. Temporary Deputy Speaker, pursuant to Standing Order No.90 it is important for the two hon. Members who have suggested some amendments to declare their interest in this subject.

The Temporary Deputy Chairman (Hon. Kajwang’): Which further amendments are you referring to? Do not name a Member; just tell me those amendments that have been suggested.

Hon. Waweru: Yes, there was Kang’ata who had---

The Temporary Deputy Chairman (Hon. Kajwang’): Order, hon. Waweru. Do not name a Member until we have reached that stage of naming a Member. Tell me the areas which---

Hon. Waweru: Hon. Temporary Deputy Chairman there are quite a number of them and I think it is important for Members to declare their interest in this issue.

The Temporary Deputy Chairman (Hon. Kajwang’): Fortunately, the only further amendments which we have and which we have carried, one of them was from the hon. Member for Mbita, hon. Sakaja and hon. Ms. Amina Abdalla. Are those the Members you are referring to?

Hon. Waweru: The first Member, yes.

The Temporary Deputy Chairman (Hon. Kajwang’): Do you know that what you have just discussed, unless it is well substantiated can lead you to get out of the Chamber?

(Laughter)

Hon. Waweru: Hon. Temporary Deputy Chairman, I stand guided, but I think it is important for us to---

The Temporary Deputy Chairman (Hon. Kajwang’): Could you, please, withdraw that claim so that we move on.

Hon. Waweru: Okay, I withdraw. Thank you very much.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Njagagua.

Hon. Njagagua: Hon. Temporary Deputy Chairman, mine is on 3(A). It says “No judgment or claim shall be payable by an insurer unless the judgment debtor and the claimant---” I suggest that we delete the word “debtor”. Why should we involve him in a medical examination; it is the claimant. The person who is claiming is alleging or claiming that he had injuries. Why should we expose the debtor to an examination? I propose that we delete the word “debtor”

The Temporary Deputy Chairman (Hon. Kajwang’): For the benefit of the Members, who is a judgment debtor?

Hon. Njagagua: I would imagine that a judgment debtor is the person against whom the claim is made. So, if somebody files a suit against you then you are the judgment debtor. The claimant is the person who is claiming. So, why should we---

The Temporary Deputy Chairman (Hon. Kajwang’): How about when it is on subrogation? Are you familiar with that? I know that you are familiar with that. If, for

example, the claim here is a second litigation on subrogation rights by the insurance, does the judgment debtor also not have a claim to make?

Hon. Njagagua: I do not think so, in my opinion.

The Temporary Deputy Chairman (Hon. Kajwang’): So, what is the substance of your further amendment?

Hon. Njagagua: I am proposing that we delete the word “debtor” so that they are not exposed to examination before judgment is made.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, there is a further amendment by hon. Charles Muriuki that we remove the word “debtor” appearing on the second line---

Hon. Njagagua: We remove the word “judgment debtor” and leave the word “claimant”

The Temporary Deputy Chairman (Hon. Kajwang’): Let me propose that there is further amendment by hon. Charles Njagagua to remove the words “judgment debtor” so that the sentence will read: “No judgment or claim shall be payable by the insurer unless the claimant had---” Chairman of the Departmental Committee, how does that sit with you?

Hon. Langat: I do not know why the bother. The judgment debtor is the person who the court has given a judgment. If you remove the word “debtor” only it does not add any value.

The Temporary Deputy Chairman (Hon. Kajwang’): Let me take a few interventions from seasoned litigators. Let me start with Alice Wahome. Help us here. There is just that part to clarify.

Hon. (Ms.) Wahome: Hon. Temporary Deputy Chairman, Sir, I would leave the words “judgment debtor”. Looking at the entire provision, if you read it separately, it may have a different meaning, but if you read it within that clause, the judgment debtor is the one who has secured a judgment in court and they need to---

Hon. Members: No, no.

Hon. (Ms.) Wahome: Yes. If you leave out that, then the entire provision will be left hanging. We could replace it by saying “a decree holder”. We could maybe propose to put a “decree holder” because it is not ambiguous.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, you can replace it with a decree holder, but I think this is speaking to the fact that the two people, namely, the defendant and the plaintiff should have presented themselves for medical examination. This is what this is talking about. It is post judgment, that is why they are talking about judgment, but I think it should be a decree---

Hon. (Ms.) Wahome: A decree holder.

The Temporary Deputy Chairman (Hon. Kajwang’): But a decree holder is also the claimant. This provision is talking about the two people; both the plaintiff and the defendant, must have presented themselves for medical examination. This is what I understood it to be.

Hon. (Ms.) Wahome: Not both the plaintiff and the defendant.

The Temporary Deputy Chairman (Hon. Kajwang’): Let me also hear from this other side also. Thank you very much, hon. Alice. We have really benefitted from that.

Hon. Kaluma: Hon. Temporary Deputy Chairman, Sir, and Members, the judgment debtor in the context of what we are dealing with is the insurance firm. The

person in whose favour judgment is delivered, the plaintiff is called the judgment creditor or the decree holder after the decree is issued pursuant to judgment. So, you cannot have both the claimant and the insurance, which invariably is a firm, going for medical examination. The judgment debtor is the insurance firm in this case or the owner of vehicle.

The Temporary Deputy Chairman (Hon. Kajwang’): The owner of the vehicle cannot be the same as the insurance. There is an insurance company.

Hon. Kaluma: Hon. Temporary Deputy Chairman, Sir, I meant that initially, you would sue the owner of the vehicle and after you have judgment, you go for a declaratory suit against the insurance firm under the policy. Therefore, the claimant; the plaintiff, is the judgment creditor.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya, can you help me out of this mud? I want people to help me out of here. Do not dig me down. Everybody else is wondering why we are wasting precious time discussing these terminologies.

Hon. Ochieng: Hon. Temporary Deputy Chairman, Sir, this is the reason I wanted to raise my point earlier. We will all agree that the presentation or at least, the presence of a medical examination report is very important in determining any claim. That is why I wanted to ask, as we go forward and discuss what we are discussing, whether we should be talking about the insurer counterchecking the report or the judgment or claimant making the claim after taking the examination. If we decide this, then we will not have this discussion, because what we are saying now, if you allow me, is that a person can actually present a claim and a judgment be made without a medical report. What kind of judgment will you be making without that report? That is why we are putting the cart before the horse. If we agree that what we are trying to address here is very important, the report should be made before the judgment is made. You do not want to decide at the time of payment, but at the time of determining whether the claim is payable. That is why we are having this argument.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you, but you have not helped because that is possible. You can have what is called summary judgments. There are judgments under the---

Hon. Ochieng’: But you will need that document to make that summary judgment.

Hon. Members: No, no.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. I will make a decision which is that I will put the Question that---

Hon. Members: No, no.

The Temporary Deputy Chairman (Hon. Kajwang’): No, no. Let me put the Question on the further amendment requested by hon. Charles Njagagua that Clause (3A) be further amended by removing the words “judgment debtor or”.

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

Can we press on? I want to put the Question on the entire clause.

Hon. Chair, on page 616, are we still on that?

Hon. Ochieng: On a point of order, hon. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Ochieng, you see, you can only rise on a point of order.

Hon. Ochieng: Hon. Temporary Deputy Chairman, Sir, we are looking at Clause 3, but we did not have any particular order. I have issues with the current part “(d)”. We are not using any particular order.

Hon. Temporary Deputy Chairman (Hon. Kajwang’): The part “(d)” is on which page?

Hon. Ochieng: It is on page 615.

The Temporary Deputy Chairman (Hon. Kajwang’): What is the problem with 3(d)?

Hon. Ochieng: Hon. Temporary Deputy Chairman, Sir, the problem is that not every process of claiming from insurance is a legal process. What we are putting here and what we are trying to do as a country, is trying to make things easier for our citizens. That is why we are saying that if we are going to claim, if you do not have a lawyer, you can deliver the documents to the insurance firm through a claim. However, in part “(d)”, they are introducing another bureaucracy that now says that we remove the requirement that a citizen can take documents to an insurer.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Ochieng, are you therefore, proposing a deletion or a further amendment?

Hon. Ochieng: I am proposing a deletion.

The Temporary Deputy Chairman (Hon. Kajwang’): Deletion of what?

Hon. Ochieng: Deletion of the proposed amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): I am afraid, what you can do are the following: - You can make all the further amendments that you want, but you cannot purport to negate what the original proposer did. You must do that by an amendment.

Hon. Ochieng: Hon. Temporary Deputy Chairman, Sir, in that case, I will be pleading with the Members that the process of claim for insurance, and this is very important---

The Temporary Deputy Chairman (Hon. Kajwang’): Can you listen to that because---

Hon. Ochieng: If you allow me---

The Temporary Deputy Chairman (Hon. Kajwang’): Order! We still have the rest of the night to be here, I am sure. However, I am sure most of us would want to go earlier. So, if we get co-operation, we will go a little faster and earlier. Hon. Ochieng is now persuading you to accept or not accept his further amendment. Can you do that?

Hon. Ochieng: Hon. Temporary Deputy Chairman, Sir, I heard a Member talking about having interest and so on but insurance claims are not only for lawyers to make. Insurance claims to insurers should be made by anybody and that is why as a Parliament, we must make sure that the claim is very easy to go through. By the Committee introducing a longer process by saying that a person who wants to make that claim must duly serve the insurer, these are things that are very difficult to come by and I have been persuading the Members here to reject this proposal.

Hon. Kang’ata: Hon. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you so much. But hon. Kang’ata, you cannot speak on behalf of other Members and you cannot be the mouth piece through which other hon. Members speak. Every hon. Member here has a mouth and they represent constituencies.

Hon. Wambugu: Hon. Temporary Deputy Chairman, it is a short amendment and it is not going to change anything. The section reads: “(IB) The maximum percentage of the sum specified in section 5(b) and prescribed in the Schedule under this Act shall be inclusive of the medical expenses on the judgment or claim”. My worry is---

The Temporary Deputy Chairman (Hon. Kajwang’): No, just propose your amendment.

Hon. Wambugu: I propose that the new amendment reads, “The maximum percentage of the sum specified in section 5(b) and prescribed in the Schedule under this Act shall not include the medical expenses on the judgment or claim.”

The Temporary Deputy Chairman (Hon. Kajwang’): Again, that is negating the Chair’s proposal. It is the opposite of what the Chair had proposed. Therefore, an amendment such as that is not allowed within the Standing Orders.

Hon. Sakaja, do you want to help hon. Wambugu?

Hon. Sakaja: I want to give information.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Give the information.

Hon. Sakaja: I propose that we delete the word “maximum” so that it remains as “percentage”. Then delete the word “inclusive of” and replace it with “shall include but not limited to medical expenses on the judgment or claim”. That is the proposed amendment.

Therefore, it will read as follows: “The percentage of the sum specified in section 5(b) and prescribed in the Schedule under this Act shall include but not limited to the medical expenses on the judgment or claim.”

That is my proposed amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): That sounds reasonable. But where is this percentage? Hon. Chair of the Committee, can you help me, I am trying to find section 5(b)?

Hon. Kaluma: It should be in the original document; in the Act itself.

The Temporary Deputy Chairman (Hon. Kajwang’): That is okay. Hon, Sakaja and hon. Wambugu, having put this to question, it will be very difficult to go back on it. This is because we have actually put it to question. In the text, it appears and opening it up, we will have to employ a lot of tactics that will not get us there. Therefore, I am not inclined to recommit anything. I will plead with you that if you find it so unconceivable; you please prefer an amendment to the amendment when it is done.

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Order, hon. Members! What seems to be the problem? Can I get the consensus built again? Order! Even when you say Noes or Ayes, at the end of the day, you are a Member of National Assembly legislating for the whole country. So, do not be excited that you are bringing down a section or building it. This is because at the end of the day, you and I will need an insurance, will you not? Therefore, we need to be very reasonable and contain ourselves throughout this debate. Yes, you may have a position, but it will not always be that your position must be the best position. You may want to allow others also to have their

position heard. Where is the big problem? Let me start from hon. Member for Mbita. Hon. Odhiambo-Mabona, one sentence please. You can re-log, we will come back to you. Let me go to the hon. Member for Homa Bay.

Hon. Kaluma: Hon. Chair and hon. Members, on Clause 3(a) and (e), there is a very big problem. We are saying that no judgment or claim shall be payable by the insurer unless the claimant had, before determination of liability, subjected themselves to medical examination. At this time, judgment is already delivered.

The Temporary Deputy Chairman (Hon. Kajwang’): Unfortunately, to be heard on the same matter you spoke on and that we ruled on and then there was a further amendment to it, and we have come to conclusion---

Hon. Ochieng: Hon. Temporary Deputy Chairman, I agree with that but my issue was that, in view of the fact that we had different submissions on section 3, I think we could have done 3(a), (b), and (c). So, that we do a guillotine than go through each clause like that.

The Temporary Deputy Chairman (Hon. Kajwang’): Alright, hon. Member for Mbita Constituency.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I had two brief issues. One is just what hon. David Ochieng has touched on. That where you have agreements on some and on others, it is really unfair because some of us will be saying no because there is one---

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. I have heard you.

Hon. (Ms.) Odhiambo-Mabona: Then the second issue is that, sometimes when we raise points of order especially at this hour, we are just not being stubborn or being a nuisance. I wanted to point out that for instance, the further amendment that hon. Sakaja brought to my amendment; even though I agree with the spirit, he did the exact opposite of what he was saying. So, sometimes it is good to listen to us so that we agree on issues as a House.

The Temporary Deputy Chairman (Hon. Kajwang’): Alright. I have conceded and this is what we will do. We are on paragraph (b) (ii), that Clause 3 be amended as proposed on the Order Paper by the Chair of the relevant Committee.

(Question of the amendment proposed)

Hon. Gichigi: Thank you, hon. Temporary Deputy Chairman. On page 615, my interpretation of the wording “(1B) The maximum percentage of the sum specified in section 5(b) and prescribed in the Schedule under this Act shall be inclusive of the medical expenses on the judgment or claim” is that---

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Gichigi, can you just tell us what you want us to do with it?

Hon. Gichigi: Hon. Temporary Deputy Chairman, this amendment means that a person who is injured and incurs medical expenses amounting to, say, Kshs10 million or Kshs15 million, his compensation will be limited to Kshs3 million. This is a very bad clause, which we must reject.

The Temporary Deputy Chairman (Hon. Kajwang’): So, do you have a further amendment to that particular amendment or do you want us to do away with it?

Hon. Gichigi: Hon. Temporary Deputy Chairman, I propose that we deal with the amendment that hon. Sakaja has brought.

The Temporary Deputy Chairman (Hon. Kajwang’): Which is the removal of the word “maximum” and insertion of the words “not limited to” after the word “inclusive”?

(Loud consultations)

Order! Order, hon. Members! Can I hear hon. Sakaja on this one?

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Kang’ata, if you do that again, it will be easier and faster for us to proceed without you in the Chamber. It will be easier to deal with you outside the Chamber.

Hon. Sakaja: Hon. Temporary Deputy Chairman, just give me a minute to explain my amendment. The bone of contention is---

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Sakaja, just move your further amendment, so that we can deal with it.

Hon. Sakaja: Hon. Temporary Deputy Chairman, there is a misunderstanding on it. We are doing what everybody wants. There is a limit in 5(d), which we want to deal with. The first thing that I have with the amendment is to remove the word “maximum” so that it just talks about a percentage. We are not limiting it to include medical expenses on the claim. So, whatever percentage it is, when we go to 5(d), we will deal with it. We will remove it.

The Temporary Deputy Chairman (Hon. Kajwang’): So, can you read your further amendment on record?

Hon. Sakaja: Hon. Temporary Deputy Chairman, my further amendment on 1(B) is to delete the word “maximum” so as to read “subject to the percentage of the sum specified in Section 5(b) and prescribed in the Schedule under this Act shall include but not be limited to”, meaning that it is open.

The Temporary Deputy Chairman (Hon. Kajwang’): Just a minute! You are deleting the word “maximum” and including the words “shall be inclusive but not limited to”

Hon. Sakaja: “the medical expenses on judgment or claims”, so that we do not negative what the Committee has proposed.

The Temporary Deputy Chairman (Hon. Kajwang’): Departmental Committee Chair, do you have a problem with the specific amendment proposed by hon. Sakaja?

Hon. Langat: Hon. Temporary Deputy Chairman, on the issue of limitation to Kshs3 million, I want to refer hon. Members to the principal Act, Cap.405. If you look at the principal Act, you will see that it actually caps the amount at Kshs3 million. So, the sum of Kshs3 million is not in the amendment Bill. It comes from the principal Act as it exists today. If I may just refer to Section 5, it says that “provided that a policy in terms of this section shall not be required to cover---” This is talking about liability of any sums in excess of Kshs3 million arising out of a claim by one person. In other words, insurance companies cannot issue policies that exceed Kshs3 million. So, I have no problem with the amendment by hon. Sakaja. I just want to inform hon. Members that the sum of Kshs3 million already exists in the principal Act.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, I now put the Question that Clause 3 be further amended as proposed by the Chairman of the Departmental Committee and as further amended by hon. Sakaja – by removing the word “maximum” before the word “percentage” and also removing the words “be inclusive” and substituting therefor “include but not limited”.

*(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)*

Hon. Members, let us go to part (b) of the amendment, on sub-section (c) and sub-section (d). Let us start with the one on subsection (2).

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

Let us move to the amendment on sub-section (3).

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

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

Let us move to part “(e)” of the amendment.

Hon. Members, I put the Question that Clause 3 be amended by inserting a new sub-section (3A) as proposed by the Chair of the Departmental Committee and as further amended by hon. Amina Abdalla, hon. Millie Odhiambo and hon. Charles Njagagua.

*(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)*

Hon. Members, let us move to the second new sub-section (3).

I put the Question that Clause 3 be amended by including new sub-section (3B) as proposed by the Chair of the Departmental Committee and as further amended by the Member for Mbita and hon. Johnson Sakaja.

*(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)

Hon. Members, let us move to the amendment on new paragraph (4A).

I put the Question that Clause 3 be further amended at sub-section (4) by including (4A) as proposed by the Chair on the Order Paper.

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

(Clause 3 as amended agreed to)

Clause 4

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, the old schedule be deleted and replaced with the following
schedule: -

SCHEDULE

STRUCTURED COMPENSATION LIABILITY SCHEDULE

DEGREE OF DISABLEMENT		COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
A	DEATH AS A RESULT OF AN ACCIDENT	
	1. Adult	(10-100) based on the following computation =Multiplier (yrs) * Multiplicand (earnings) *12 months *Dependency Ratio.
	2. Minor (ages 0-5 yrs)	10
	3. Minor (age 5-12 yrs)	15
	4. Minor (age 12-18 yrs)	20 or the formula in 1 above (where applicable) whichever is higher.

B	BLINDNESS			
1.	Total			100
2.	Partial			
	(a)	Acuity 1/20		75
	(b)	Acuity 1/10 – 1/20		70
3.	Narrowed Field of Vision			
	(a)	Affecting one eye		
		(i)	30-10 degrees from focal point	1 – 5
		(ii)	Less 10 degrees from focal point	5 – 15
	(b)	Affecting both eyes		
		(i)	30-10 degrees from focal point	10 – 50
		(ii)	Less 10 degrees from focal point	50 – 60
	(c)	Paracentral scotoma		
		(i)	Affecting one eye	5 – 15
		(ii)	Affecting both eyes	15 – 30
4.	Hemi-anopsia (with central vision)			15 – 25
	(a)	Homonymous right or left		5 – 10
	(b)	Nasal		50 – 60
	(c)	Bitemporal		5 – 10
	(d)	Upper		10 – 30
	(e)	Lower		5 – 10
	(f)	Upper Quadrant		10 – 30
	(g)	Lower Quadrant		5 – 10
5.	Double Vision (diplopia)			5 – 10

	(a)	Affecting upper field of vision		10 – 20
	(b)	Affecting lower field of vision		10 – 20
6.		Aphakia (loss of lens) – bilateral		25
7.		Aphakia (loss of lens) – unilateral		20
8.		Ectropion ,entropion, lagophthalmos		0 -5
C INJURY (GENERAL)				
1.		Bilateral shoulder luxation		10
2.		Unilateral shoulder luxation		5
3.		Chewing impairment		
	(a)	Mild		2 – 10
	(b)	Moderate		10 – 15
	(c)	Severe		15 – 25
4.		Severe, painful functional impairment of vertebral column		90
5.		Quadriplegia (all limbs)		100
6.		Severe lung impairment		50
7.		Severe kidney impairment		
	(a)	One kidney		50
	(b)	Both kidneys		75
8.		Impairment of memory or ability to concentrate		40
9.		Post traumatic epilepsy		
	(a)	One seizure yearly		10 -15
	(b)	Two seizures yearly		15 – 30
	(c)	More than two seizures yearly		30 – 50

	10	Severe psycho-organic syndrome (Loss of speech)			75
	11	(a)	Loss of arm at shoulder (by amputation or paralysis) (consider hand dominance)	Right	65
		(b)	Loss of arm at shoulder (by amputation or paralysis) (consider hand dominance)	Left	60
	12	(a)	Loss of arm at elbow (by amputation or paralysis) (consider hand dominance)	Right	50
		(b)	Loss of arm at elbow (by amputation or paralysis) (consider hand dominance)	Left	50
	13	Loss of arm between shoulder and elbow (consider hand dominance)			50
	14	(a)	Loss of hand at wrist (by amputation or paralysis) (consider hand dominance)	Right	50
		(b)	Loss of hand at wrist (by amputation or paralysis) (consider hand dominance)	Left	40
	15	Loss of arm between wrist and elbow (consider hand dominance)			50
	16	Loss of four fingers and thumb of one hand (by amputation or ankylosis) (consider hand dominance)			60
	17	Loss of four fingers (by amputation or paralysis or ankylosis)			40
	18	Loss of thumb (consider hand dominance)			
		(a)	One phalanx		5
		(b)	Both phalanges	Right	25

			“ “	Left	10
	19	Loss of index finger			
		(a)	One phalanx		5
		(b)	Two phalanges		10
		(c)	Three phalanges		10
	20	Loss of middle finger			
		(a)	One phalanx		2
		(b)	Two phalanges		4
		(c)	Three phalanges		6
	21	Loss of ring finger			
		(a)	One phalanx		2
		(b)	Two phalanges		4
		(c)	Three phalanges		4
	22	Loss of little finger			
		(a)	One phalanx		1
		(b)	Two phalanges		2
		(c)	Three phalanges		3
	23	Loss of toes			
		(a)	All		15
		(b)	Great, both phalanges		5
		(c)	Great, one phalanx		2
		(d)	Smaller toes, each		1
	24	Loss of eye			
		(a)	Eye off		30
		(b)	Lens damage		30
	25	Ears, loss of hearing and associated defects			

	(a)	Hearing loss, one ear		15
	(b)	Hearing loss, both ears		50
	(c)	Unilateral hyperacusis		0 – 12
	(d)	Bilateral hyperacusis		10 – 15
	(e)	Subjective noise in the ears		1 – 2
	(f)	Loss of one ear		10
	(g)	Vertigo (dizziness, rotating feeling, unsteadiness)		2 – 10
26	Monoparesis (Monoplegia)			
	(a)	Right upper limb		50
	(b)	Left upper limb		25
	(c)	Lower limb		50
27	Hemiparesis			
	(a)	Spastic hemiplegia		10 – 50
	(b)	Flaccid hemiplegia without urinary/fecal incontinence		50 – 80
	(c)	Flaccid hemiplegia with urinary and/or fecal incontinence		80 – 90
28	Paraparesis			100
29	Post-traumatic neurosis			10 – 20
30	Post-traumatic dementia			75
31	Loss of voice			
	(a)	Dysphonia		0 – 10
	(b)	Aphonia		25
32	Nose and mouth			
	(a)	Defects in smell detection		

		(i)	Hyposmia or anosmia		2 – 5
		(ii)	Nasal defects leading to breathing difficulties		2 – 4
		(iii)	Loss of Nose		30
		(b)	Teeth loss (not replaced)		
		(i)	Incisor		1
		(ii)	Premolar		1 – 1.5
		(iii)	Canine and molars		2
		(iv)	Total loss of all teeth		30
		(v)	Loss of pulp vitality of a tooth		1
		(c)	Tongue loss (total or partial)		0 – 10
		(d)	Total permanent unilateral facial nerve paralysis		25
		(e)	Partial unilateral facial paralysis		10
		(f)	Injury to the trigeminal nerve and its branches		
		(i)	Inferior orbital		2 – 4
		(ii)	Lower dental nerve		2 – 4
		(iii)	Lingual nerve		2 – 4
		(g)	Scalp injury – aesthetic damage		1 – 5
	33	Joints			
		(a)	Aggravation of previous arthritis		2 – 5
		(b)	Segmentary neuralgia with slight ligament or bone lesions stiffness (without neuro-sensory complications of:-		
		(i)	Cervical column		5 – 15
		(ii)	Dorsal (thoracic) column		5 – 10
		(iii)	Lumber column		5 – 15

		(c)	Fracture/dislocation of cervical vertebra with stiffness		15 – 20
		(d)	Fracture/stiffness of thoracic/lumber vertebra		10 – 15
		(e)	Ankylosis (fusion of two bones across a joint space)		
		(i)	Shoulder joint	Right	30
			“	Left	25
		(ii)	Elbow joint	Right	20
			“	Left	15
		(iii)	Wrist Joint	Right	25
			“	Left	15
		(iv)	Hand (all joints)	Right	50
			“	Left	25
		(f)	Joint stiffness – average stiffness		
		(i)	Shoulder joint	Right	15
			“	Left	10
		(ii)	Elbow joint	Right	10
			“	Left	5
		(iii)	Wrist Joint	Right	15
			“	Left	10
		(iv)	Hand (all joints)	Right	25
			“	Left	10
		(g)	Paralysis of various nerves of upper limb		
		(i)	Radial nerve (consider hand dominance)	Right	50
			“	Left	25

		(ii)	Circumflex nerve	Right	25
			“	Left	10
		(iii)	Musculocutaneous	Right	10
			“	Left	8
		(iv)	Subscapular	Right	8
			“	Left	6
		(v)	Median nerve (at arm)	Right	30
			“	Left	25
		(vi)	Median nerve (at wrist)	Right	15
			“	Left	10
		(viii)	Cubital nerve (at arm)	Right	25
			“	Left	20
		(viii)	Cubital nerve (at wrist)	Right	15
			“	Left	10
34	Limbs				
	(a)	Lower limb shortening			
		-	Less than 3 cm		0 – 2
		-	3 – 6 cm		2 – 8
		-	6 – 10 cm		8 – 15
	(b)	Total loss by amputation or paralysis			
		(i)	At hip		60
		(ii)	At thigh		58
		(iii)	At knee		50
		(iv)	At leg		45
		(v)	At ankle		30
	(c)	Tarsometatarsal			

		(i)	All toes		15
		(ii)	Great toes		5
		(d)	Ankylosis (fusion in anatomical position)		
		(i)	At the hip		50
		(ii)	At the knee		30
		(iii)	At the ankle		20
		(iv)	At the toes		10
		(e)	Stiffness (loss of full range of movement at joint)		
		(i)	At the hip		25
		(ii)	At the knee		10
		(iii)	At the ankle		4
		(iv)	At the toes		2
		(f)	Articular (Joint) instability		
		(i)	At the hip (hip dislocation)		30 – 35
		(ii)	At the knee		
		-	Loose ligaments (well corrected to allow normal activity)		2 – 5
		-	Loose ligaments (but hampering some activities even after correction)		5 – 10
		-	Loose ligaments hampering walking		10 – 20
		(g)	Heel instability		
		(i)	In form of diastasis without clinical impact		0 – 4
		(ii)	Causing recurrent sprains		4 – 10
		(iii)	Hampering walking		10 – 12

		(h)	Paralysis of nerves of lower limb		
		(i)	Sciatic nerve		20 – 30
		(ii)	Popliteal nerve (back of knee)		10 – 20
		(iii)	Femoral nerve (thigh)		30 – 50
		(iv)	Sciatic neuralgia (pains)		10 – 20
		(i)	Total prosthesis of the Hip		10 – 15
		(j)	Anthrodesis of the knee		2 – 5
		(k)	Patellectomy		3
		(l)	Meniscus injury		
		(i)	Without operation		10 – 15
		(ii)	After operation		5
		(m)	Special care of the foot		
		(i)	Some pain while walking – normal or slightly reduced movement		0 – 2
		(ii)	Sporadic pain, moderate limitations of movement some claudication: but foot stable		2 – 5
		(iii)	Pain while walking (subsides on rest); some claudication; limiting walking; circulatory disorders		5 – 10
		(iv)	Ankylosis of tibio-tarsal joint at a functional position		10
		(v)	Severe pains of the foot equines deformity; moderate trophic disorders; limited walking using a walking stick.		10 – 25

		(vi)	Sharp pains on walking or standing; severe stiffness, equinism; trophic disorders requiring two walking sticks or crutches		25 – 30
		(vii)	Sharp pains of the foot interfering with sleep ankylosis at critical position or sever deformity: walking on crutches		30 – 35
		(viii)	Severe pains (continuous); severe deformity; impossible to stand unless on crutches		35 – 40
	35	The Pelvis			
		(a)	Pubic symphysis separation or sacro-iliac separation		5 – 10
		(b)	Post injury coccydinia with a fracture detected by radiography		2 – 5
		(c)	Obturator neuralgia		2 – 5
	36	Respiratory Injuries			
		(a)	Slight respiratory insufficiency (dyspnoea occurring during great strain)		0 – 5
		(b)	Moderate respiratory insufficiency (dyspnoea during moderate strain)		5 – 20
		(c)	Considerable respiratory insufficiency (dyspnoea during normal activities)		20 – 50
		(d)	Dyspnoea at rest		50 – 100
	37.	Circulatory Injuries			
		(a)	No cardiac insufficiency (subjects leads a normal life but treatment necessary)		0 – 10

		(b)	Mild cardiac insufficiency (treatment necessary – disorders occur during exertion but subject leads a normal life)		10- 20
		(c)	Moderate cardiac insufficiency (Constant treatment necessary, exertion to be avoided, daily life is interrupted)		20 – 50
		(d)	Aortic prosthesis		20
		(e)	Valvular prosthesis		25
		(f)	Severe Cardiac Insufficiency (treatment needed, rest mandatory, daily activities severely disrupted)		50
	38	Alimentary system and abdominal organs			
		(a)	Biliary hepatic system		
		(i)	Minor disorders without ascites, jaundice or esophageal varices		0 – 10
		(ii)	Marked liver disorders shown by laboratory tests but without nutritional or general disorders ascites jaundice or oesophageal varices		10 – 20
		(iii)	Nutritional/general disorders present e.g. ascites, hemorrhages, e.g. from oesophageal varices hepatic coma, recurrent obstructive jaundice		20 – 60
		(iv)	Progressive liver failure ascites jaundice haemorrhage, hepatic coma and nutritional		60 – 100

				disorders		
		(b)	The spleen – splenectomy			10
		(c)	Abdominal wall - hernia			5 – 10
		(d)	Stomach, Small intestines and Pancreas			
		(i)	No operation after effects – normal weight maintained without special diet or treatment			0 – 5
		(ii)	Uptake (absorption) disorders leading to weight loss (less than 10% weight loss)			5 – 15
		(iii)	Weight loss (due to uptake disorder) in range of 10-20% average body weight; electrolyte imbalance			15 – 30
		(iv)	Weight loss: diarrhea x4 - x6 daily; abdominal cramps, steatorrhea electrolyte imbalance			30 – 50
		(v)	Weight loss more than 20% anaemia hypoproteinaemia			50 – 60
		(e)	The Colon			
		(i)	No functional disorder normal body weight and activity			0 – 5
		(ii)	Weight disorder – moderate pains, but no nutritional disorders			5 – 10
		(iii)	Uptake disorders sporadic abdominal pains anemia weight loss – diet and treatment necessary			10 – 30
		(iv)	Permanent uptake disorders: pains, general disorders – diet			30 – 50

				and treatment necessary		
			(v)	Colostomy done		
			-	Descending colon		50 – 60
			-	Transverse colon		30 – 40
			-	Ascending colon		20 – 30
		(f)	The kidneys and urinary system			
			(i)	Severe nephrotic syndrome and hypertension		50 – 60
			(ii)	Renalcolic, with respect to number of attacks		0 – 20
			(iii)	Renal atrophy (total kidney loss)		10
			(iv)	Nephrectomy (kidney removal)		10
			(v)	Partial atrophy, normal life		0- 10
			(vi)	Renal insufficiency		
			-	Normal life, minor insufficiency - creatinine clearance 80-100ml/min		5 – 10
			-	Normal life on treatment creatinine clearance 40-80ml/min: high blood pressure		10 – 20
			-	Creatinine clearance 15-40 ml/min		20 – 50
			(vii)	Chronic cystitis		5 – 20
			(viii)	Urinary retention		
			-	Mild (weekly catheter)		10 – 15
			-	Moderate (catheter several time a week)		15 – 20
			-	Severe (indwelling catheter)		20 – 40

		(ix)	Cystostomy done		40
		(x)	Urethral stricture requiring manual dilatation (no renal infection)		5 -10
		(xi)	Urethral stricture requiring frequent dilatation (no renal infection)		15 – 40
		(g)	Genital system and reproductive organs		
		(i)	Mechanical failure in sexual relations		30 – 40
		(ii)	Loss of ovary or testicle (but subject to the next item)		5
		(iii)	Bilateral castration or sterility while functionally healthy		30 – 40
	39	Special conditions			
		(a)	Mild pain/disfiguration (Soft tissue Injuries/blunt trauma, minor cuts & lacerations, bruises)		2
		(b)	Moderate pain/disfiguration(Deep cuts& lacerations, frictional burns		10
		(c)	Severe pain/disfiguration(severe degloving requiring skin graft, very severe burns)		50
	40	General			
		Except where otherwise expressly provided, the following conditions shall apply to all assessments in this schedule;-			
		(a)	Combination of two or more categories of injuries or disablement		Percentage for the most severe or dominant injury

The Temporary Deputy Chairman (Hon. Kajwang’): The Chair is deleting the schedule that used to appear and replacing it with a whole new schedule that has been structured and it appears on page 617 containing all those things.

(Question of the amendment proposed)

Hon. Kang'ata: Members, I am kindly pleading with you to reject this schedule. It is not a scientific schedule and you cannot quantify the damage caused to your body. Presently, we have what is called case law. Judges have been applying case law and over the years it has been a very objective way of assessing damages to the body of a person. When you bring this one, you do away with that system.

Another reason why I am pleading with you Members to reject this amendment is because the Court of Appeal has discussed this issue for a very long time. The Court of Appeal has set a law, as we speak, that you cannot provide for schedules when it comes to injuries to a person. Kindly note this is not for the interest of lawyers *per se*. It is for the interest of the larger members of the public. It is our mothers, sisters and our children who suffer injuries. So, therefore, we should not look at it in terms of a lawyer benefiting. In actual sense, in any event, most of the people who go to lawyers seeking these services happen to be the poor of the poorest – those who cannot give a lawyer instruction fees. So, therefore, when you come up with this amendment, it is going to disfavor the poor majority.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you. Hon. Kajuju.

Hon. (Ms.) Kajuju: Thank you, hon. Temporary Deputy Chairman. I rise to oppose this schedule as presented by the Committee. For the years we have been in practice, judges and magistrates have had the discretion to assess, with the help of doctors, the percentage of any harm suffered by a victim of a road accident. You will appreciate that there are different types of injuries that are suffered by victims as a result of a road accident. There are permanent injuries; there are minor injuries and there are soft tissue injuries. It is very dangerous if we move as legislators and legislate for the courts in as far as their discretion is concerned.

Hon. Temporary Deputy Chairman, it is proper that we leave the determination of the damages to be awarded in as far as injuries are concerned to the courts. Otherwise, if we move and accept this schedule, we will be making a fatal mistake and really prejudicing the victims. If you may look at number 40 on the schedule, you will find where it reads "General". It says: "Except where otherwise expressly provided, the following conditions shall apply to all assessments in this schedule: -

(a) Combination of two or more categories of injuries or disablement. Percentage for the most severe or dominant injury".

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you. You have made your case. Chair, did you have legal advice on this particular issue?

Hon. Langat: Hon. Temporary Deputy Chairman, I want to say that this Bill was published somewhere in June and Members had the opportunity---

The Temporary Deputy Chairman (Hon. Kajwang'): No. My question is: Did you have legal advice on this?

Hon. Langat: Hon. Temporary Deputy Chairman, let me say this: The schedule is already in the main amendment Bill.

The Temporary Deputy Chairman (Hon. Kajwang'): No, during your Committee proceedings, did you have legal advice on this particular schedule?

Hon. Langat: We had consultations with the stakeholders to improve---

The Temporary Deputy Chairman (Hon. Kajwang'): Did these stakeholders include lawyers?

Hon. Langat: Hon. Temporary Deputy Chairman, when we propose amendments we take them to the Legal Department. That is the procedure in the House.

The Temporary Deputy Chairman (Hon. Kajwang’): No, I am not talking about our legal staff. I am saying the kind of public participation you had because you received memoranda. Did you get legal advice on this?

Hon. Langat: Hon. Temporary Deputy Chairman, I am not aware that there is a provision in our Committee that we have to have legal advisors.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Millie Odhiambo.

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

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Hon. ole Kenta.

Hon. ole Kenta: Thank you, hon. Temporary Deputy Chairman. I would also like to voice my objection to this schedule. This is because let us be practical. The courts have the discretion to decide compensation on damages to victims. This can affect us and the moment we just do things for the sake of a few people - that is the insurance companies - it becomes very dangerous. I look at this law as a lawyer and I believe it was done by the insurance companies. We should not fall into their trap. We should think about the bigger population of this country. Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Priscilla.

Hon. (Ms.) Kanyua: Thank you, hon. Temporary Deputy Chairman. Fortunately, for law there is always one hand and the other hand. So, I stand to speak for the other hand. I think that this list would be very useful. We are in a country where insurance companies cannot even operate. They are closing every other day. This is because many ambulance chasers ask for indeterminable rates of compensation. I think it is important that the law has a guideline. I do not think that any judge is bound not to consider any other factors by this list but it is important that Parliament passes laws for everybody. Even as we sit here to debate, the law is for insurance companies and also victims.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. I will hear from somebody I have not heard from in a long time. Charles Gumini Gimose. That may be his maiden speech, so do not interrupt him.

(Laughter)

Hon. Gimose: I do not think so, hon. Temporary Deputy Chairman. I have spoken in this Parliament before in your absence, when you were in London or yonder countries. I want to be very categorical on this one. I will not support this schedule. It is ambiguous, incongruous and ignoble. It has no basis because it has not taken into account the issue of inflation. We are aware that insurance companies take a long time to pay

claims. The only language they understand is to get a judgment in the manner in which the practice is today.

Two, the Chairman of the Committee has put out very strict rules and if we follow them, I do not think there will be any problem with an insurance company or the claims awarded. I will object to this kind of schedule.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Chair, can I have your word on this? This will be your last contribution.

Hon. Langat: Hon. Temporary Deputy Chairman, I am proposing an amendment to a schedule which is in the original amendment Bill. I am actually trying to make it better because even if we refuse this, we will go back to the original Bill.

The Temporary Deputy Chairman (Hon. Kajwang’): This schedule is not in the principal Act but you now propose to amend it in the Bill. If the amendments do not go through, then we revert back to what is in the Bill. So, that is what hon. Members should be contributing to.

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I urge hon. Members that this is very good for the common *mwananchi*.

Hon. Members: No! No!

Hon. Langat: Hon. Members, even if you do not want to listen, I am saying that this is where the common *mwananchi* will know how much he will be compensated if he loses a limb. For a very long time, our people have suffered in the hands of a few people because they do not know how much they have been compensated. Therefore, they lose. This is an opportunity for our people to know how much they will be paid, and therefore, there will be no fraud from the lawyers anymore.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chair, I wish you could just put your points without increasing the tone of the Assembly. I want to put these two questions but you need to know that if this amendment is defeated you go back to the Bill and it becomes the law. You need to find out whether the Bill is better than what you are talking about because you have not preferred any amendments that we will fall back on if the amendment proposed by the Committee is taken care of or is not taken care of. I need to guide you like that as you vote.

Hon. Members: On a point of order, hon. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Hon. Kajwang’): There is nothing out of order. Let me listen to the further amendment.

Hon. Sakaja: Hon. Temporary Deputy Chairman, Sir, I have a further amendment to the Schedule bearing in mind the fact that if we delete it, we revert back to the original Bill. My further amendment is that we delete the words “three million” and replace them with the words “ten million”. This is in the first paragraph, third column of the Schedule. It should say as percentage of a maximum of ten million.

The Temporary Deputy Chairman (Hon. Kajwang’): That further amendment is perfectly in order.

Hon. Members, I propose the Question that the amendment by the Chair of the Departmental Committee proposed on the Schedule be further amended by deleting the words “three” and substituting therefore the word “ten” so as to read “compensation as percentage of the maximum of ten million provided by the Act”.

(Question of the further amendment proposed)

Hon. Members: No! No!

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members we do not want to belabour the point. So, I put the Question that the amendment proposed by the Chair of the Departmental Committee be further amended as proposed by hon. Sakaja.

(Loud consultations)

Order! Order, hon. Members! If you talk as I respond, how will you ever get to know what I am saying? Can everybody, including the Member for Mbita, freeze?

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, there is a further amendment---

Hon. Members, if you do not keep order, I will start throwing people out, so that you can know that we need to move on.

We are voting on a further amendment in which hon. Sakaja is proposing to change “three million” to “ten million”. I am proposing that you make a decision by voting. Therefore, I put the Question that the amendment by the Departmental Committee Chairperson be further amended as proposed by hon. Sakaja by changing “three million” to “ten million”.

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

Hon. Members, I now put the Question that the amendment to the Schedule as proposed by the Departmental Committee Chairman be part of 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)*

(Schedule as amended agreed to)

New Clauses

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, the following new clauses be inserted immediately after clause

3—

Amendment of

section 12 of

Cap. 405.

3A. The Insurance (Motor Vehicle Third Party Risks) Act is amended in section 12 by inserting the following new subsections immediately after subsection (1)—

“(1A) The insurer shall, upon being served with the statutory notice and documents, admit or deny liability for the claim or judgment by a notice in writing to the person or persons presenting the claim or judgment.

(1B) The claimant or judgment debtor or his representative shall upon receipt of the admission of liability allow the insurer a period of not more than sixty days to settle the claim or judgment out of court and both the insurer and the claimant or judgment debtor or his representative commit to arbitration or mediation during that period before resorting to court”.

Amendment of section

17 of Cap.405

3B. The Insurance (Motor Vehicle Third Party Risks) Act is amended in section 17 by—

(a) deleting the words “five thousand shillings” and substituting therefor the words “five hundred thousand shillings”;

(b) deleting the words “three months” and substituting therefor the words “one year”;

(d) deleting the words “for which no other penalty is specifically provided”.

Hon. Temporary Deputy Chairman, we are getting timelines on when to pay. We are saying that the insurance companies shall confirm to the claimant by written notice. The insurance company should pay within 60 days of receiving the claim.

Hon. Temporary Deputy Chairman, Section 3B is to do with penalties. The amendment seeks to amend Section 17 of the principal Act. It says that any person who is guilty of an offence under this Act or any laws made thereunder and any person who contravenes any provisions of this Act or any of the rules made thereunder shall be liable to a fine not exceeding five thousand shillings. So, we are amending that figure from five thousand to five hundred thousand. That is what the Committee agreed on.

(Question of the new clauses proposed)

(New clauses read the First Time)

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

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

(The new clauses were read a Second Time)

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

Clause 2

Hon. Lang'at: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, Clause 2 be amended by inserting the following new definitions in their proper alphabetical sequence—

“dependency” means that part or portion of the deceased’s earnings that he or she spent on maintenance or financial support of his or her dependants or in the case of a person who was not in employment, reasonably anticipated earnings;

“earnings” means revenue gained from labour or services and includes the income or money or other form of payment that one receives from employment, business or occupation or in the absence of documentary evidence of such revenue, the applicable minimum wage under the Labour Relations Act, 2007 or the determination of the reasonable income, whichever is higher;

“judgment” means a determination of the right to compensation and the sums payable taking into consideration the circumstances of the cause of action and categories of injury or disablement defined in the Schedule to this Act;

“multiplier” means the number of years a dependant would reasonably have been expected to receive financial support from the deceased person.

This is just to introduce new regulations based on my schedule which has now been approved.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I wish to propose an amendment to the definition of “judgment”. If you noticed, on Page 615, “judgment” means a determination of the right to compensation and the sums payable taking into consideration the circumstances of the cause of action and categories of injuries or disablement as defined in the Schedule to this Act.”

For me, this definition by this Act gives a different meaning to judgment other than the judgment as given by court. So, I would like to propose that you just provide judgment to mean “a determination of the right to compensation and the sums payable.” You then delete every other word after that.

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

Hon. Muchai: Hon. Temporary Deputy Chairman, Sir, I just wanted to point out something on Clause 2 where the definition of the word “earnings” is given. The relevant law is the Labour Institutions Act, 2007, and not the Labour Relations Act, 2007. That is the relevant law.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. On the powers conferred upon me as the Chair of the Committee of the whole House, I hereby

give a direction that that Act be changed from Labour Relations Act 2007 to Labour Institutions Act, 2007.

Thank you very much, hon. Members, for what appeared to be short, but became very long discussion. Do I hear that the Committee should report?

Hon. Muchai: Hon. Temporary Deputy Chairman, Sir, may I further propose that rather than mentioning the Act by name, we say “under the relevant labour law”.

The Temporary Deputy Chairman (Hon. Kajwang’): No, that one now is an amendment. I do not have authority over that. That is an amendment, which you as debaters, have authority over when you debate.

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

(Clause 2 as amended agreed to)

(Clause 1 agreed to)

(Title agreed to)

Do I hear that the Committee should report progress? Members, we now step into the Truth, Justice and Reconciliation (Amendment) Bill 2013. We are considering the Truth, Justice and Reconciliation (Amendment) Bill, 2013.

Order, hon. Mwaura! Hon. Members, I have been informed that there are new developments for which the approval of this House has been sought this evening as they are urgent since they relate to internal security. In this regard, the Speaker has requested that we consider the Bills in the Committee of the whole House, up to Item (iv); the Kenya Heroes Bill, 2013, and thereafter report progress to the House.

Members, this will give us an opportunity to formally receive and hear the contents of the requests that I have alluded to.

(Applause)

The Speaker also requested me to inform you that all items contained in today’s Order Paper up to Order No.14 will still be considered as you had resolved earlier in the afternoon today.

THE TRUTH, JUSTICE AND RECONCILIATION BILL

We are, therefore, now considering the Truth, Justice and Reconciliation (Amendment) Bill, National Assembly Bill No.22 of 2013.

Members, you have realized that you are stronger than the digitals and machines of this world, that although you are still strong and alert, our digitals are not as strong and alert. Therefore, I will request people to be orderly because we will be using the Dispatch Box as the area of addressing the House. Let us start.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Temporary, Deputy Chairman, Sir. I was rising because hon. Zuleikha had raised a concern that she had amendments, but she informs me that she has noticed it is on Clause 4.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, I am concerned that you are talking on behalf of a Member who has a mouth and is entitled to speak. Why are you talking on behalf of others?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, Sir, because I understand that when I came in for the first time as a nominated Member, sometimes the House can be a bit intimidating. Sometimes we raise our issues way after time. So, it is just about helping my fellow colleague.

The Temporary Deputy Chairman (Hon. Kajwang’): But the institution that protects Members is the Chair not the Member for Mbita.

(Laughter)

(Clause 2 agreed to)

Clause 3

Hon. Chepkong’a, go to the Dispatch Box? Serjeant-At-Arms, can you come here at once.

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, Sir, I beg to move: -

THAT, Clause 3 be deleted and replaced with the following new clause—

Amendment of section 48
of No.6 of 2008.

3. The principal Act is amended in section 48—

(a) in subsection (4), by inserting the words “for consideration” immediately after the word Parliament;

(b) by inserting the following new subsection immediately after subsection (4)—

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

We are proposing that Section 48 of the parent Act be amended by including the words “for consideration” immediately after the word “Parliament” appearing in subsection (4). We are making a further amendment to make it clear. There was a misnomer and it was indicated that Parliament will consider, but it is not Parliament, it is the National Assembly. That the word “Parliament” be deleted and replaced with the words “National Assembly”.

The Temporary Deputy Chairman (Hon. Kajwang’): Let me first start with the third amendment. Can you stand at the Dispatch Box? I still need to hear. Are you moving the amendment as per the Order Paper?

Hon. Chepkong’a: Yes, I am moving the amendment as per the Order Paper.

The Temporary Deputy Chairman (Hon. Kajwang’): So, is your plea to move it in the amended form?

Hon. Chepkong’a: Yes, with a further amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Which is to delete the word “Parliament “and substitute thereof “National Assembly”?”

Hon. Chepkong’a: That is correct, hon. Temporary Deputy Chairman, Sir.

(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 (Hon. Kajwang’): Let us go to Sub-section 5.

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, Sir, I wish to withdraw subsection (5) because it contradicts the Constitution.

The Temporary Deputy Chairman (Hon. Kajwang’): Sub-section (5); is that what you are referring to?

Hon. Chepkong’a: Yes, I withdraw that proposed subsection (5).

The Temporary Deputy Chairman (Hon. Kajwang’): The Chair of the Committee intends to withdraw Subsection (5). You find it on page 627 and it reads: “In considering the report pursuant to subsection (4), Parliament shall not interfere with the context, text, form and substance of the report”. That is what the Mover is withdrawing.

(Proposed amendment by hon. Chepkong’a withdrawn)

Hon. Wandayi, come to the Dispatch Box.

Hon. Wandayi: Hon. Temporary Deputy Chairman, Sir, I have got a serious problem with what is happening here. You will remember that during the Second Reading, I raised serious issues with these amendments and it has now come to pass. Indeed, I have been vindicated. This Part (5) was brought in to sugarcoat the mischief that was inherent in the proposed amendment under Part (3). If you are now giving Parliament the opportunity and room to open debate on the report and do whatever it feels like without the caveat which was placed under part (5), you are saying that the work which this Commission did is in vain. Therefore, this withdrawal is mischievous. I, therefore suggest that you give us room to introduce further amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you, Member for Marakwet East.

Hon. Bowen: Hon. Temporary Deputy Chairman, Sir, I support the withdrawal of subsection (5). If you see the report, this Commission was given the mandate to investigate historical injustices. However, if you go deeper into the report, you will find that even in my own constituency of Marakwet East where 67 people were killed, they are not indicated in the report. Therefore, I support the deletion, so that we can also include the historical injustices which were done in Marakwet East, in the report.

The Temporary Deputy Chairman (Hon. Kajwang’): I am looking at my right. Hon. Waiganjo, can you come to the Dispatch Box?

Hon. Waiganjo: Hon. Temporary Deputy Chairman, Sir, I support the deletion. This report is in Parliament. We cannot consider this report and pass it as a conveyor belt while we know that there were people who were given an opportunity to appear before this Commission and there were others who were denied the opportunity. There are people who were named and they feel that they were not given a chance or an opportunity to appear before the Commission.

Parliament cannot be expected to debate the report and then pass it without interfering with it. I support the deletion by the Chairman of the Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us hear from the Leader of Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, Sir, the Truth, Justice and Reconciliation Commission (TJRC) Act is a creation of this House. The formation of the TJRC was approved by this House. The compensation that they are talking about must pass through this House, whether it was too little or much. We must consider that.

Finally and procedurally, an amendment has been withdrawn by the Chair. The Chair needs to explain to us; now that the amendment has been withdrawn, what needs to be done next? If a Member wants to amend, he can only do so to an existing amendment. Now that this has been withdrawn, why do you want to do a further amendment?

Secondly, the amendments ought to be on the Order Paper. So, you need to make a ruling given that the Chair has withdrawn his amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Hon. Member for Suna East.

Hon. Nuh: Thank you so much, hon. Temporary Deputy Chairman. With regard to this amendment that is being withdrawn, the Committee in its deliberation decided that the amendment should be put on the Floor of the House. What interest does the Chairman of the Committee have on this matter so as to withdraw the amendment? We cannot allow the Report of the TJRC to be mutilated in this Parliament. This is mutilation of that report. The Chairman must declare his interest in this. How can the Chairman alone withdraw an amendment of the Committee?

The Temporary Deputy Chairman (Hon. Kajwang’): Alright, thank you.

(Several hon. Members stood in their places)

Order! Order, hon. Members! Order! First of all, the rule of engagement is that you will proceed on the premise that the Chair is intellectually capable of appreciating issues before the House, and that the Chair is able to make an informed decision. I am able to understand where the House is coming from by ventilations. So, refrain from teaching the Chair what to do.

Hon. Chair of the Committee, the hon. Member from Suna East has made an allegation here, can you respond to it on the microphone.

Hon. Chepkong’a: Thank you, hon. Temporary Deputy Chairman. The hon. Member for Suna East is a good friend of mine. Of course, the allegation is frivolous. The Chair has no interest at all in the report. The Chair is for Justice and Legal Affairs Committee. When a matter is inconsistent with the Constitution, you cannot gag Parliament from discussing what it is supposed to discuss.

Article 117 of the Constitution is clear. Therefore, you cannot come and say that you are gagging Parliament from discussing anything in this House.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. The hon. Member from Homa Bay County.

Hon. (Ms.) Nyasuna: Thank you, hon. Temporary Deputy Chairman. Really, it is a sad evening because the Committee took a lot of time to come up with this amendment that the Chair has just unilaterally withdrawn. I would like to move a further amendment to the amendment that was moved by the Chair of the Committee which is that: -

“In consideration----

(Loud consultation)

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Order! Whatever it is that she says, she has a right to be heard. I want to hear her.

Please, proceed.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, this is a House of precedents. I have stayed in this House for many Committees of the whole House. I know that there were instances when amendments were withdrawn and further amendments introduced on amendments.

An hon. Member:*(off-record)*

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, if the hon. Member looks at previous HANSARD Reports, he will see. Even the Clerks-at-the-Table can bring copies of previous HANSARD Reports.

The Temporary Deputy Chairman (Hon. Kajwang’): Can you proceed without--

--

Hon. (Ms.) Nyasuna: I am moving a further amendment, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Which is what?

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, my further amendment is: “In considering the report pursuant to subsection (4), Parliament shall not interfere with the context, text, form and substance of the report.”

In 2007/2008 and since independence, this country has gone through many atrocities. Families in this country are mourning. They have not settled. They have not rested their loved ones. Maybe, some of us here have not lost our loved ones in the circumstances that other families have lost their loved ones. Maybe, that is why we can sit here tonight and say that we want to alter the TJRC Report. This is a report of a Commission that sat for long hours and for many days, using public resources. This House now wants to alter the Report.

(Loud consultations)

Hon. Temporary Deputy Chairman, just allow me to move this amendment. I am moving the amendment and making my point.

The Temporary Deputy Chairman (Hon. Kajwang’): Are you through with your submission, hon. Member?

Hon. (Ms.) Nyasuna: Not yet.

The Temporary Deputy Chairman (Hon. Kajwang’): Can you take the next five seconds to do so?

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, in the next five seconds, I want to say that history will judge the Members of this House harshly if we ignore the widows, orphans and everybody else who is waiting for justice by altering this Report to remove the names of a few people from it. If they are guilty, they are guilty. Let them clear their names.

The Temporary Deputy Chairman (Hon. Kajwang’): Alright, thank you.

(Loud consultations)

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I call upon hon. Jakoyo Midiwo to second.

The Temporary Deputy Chairman (Hon. Kajwang’): Can you second that amendment, hon. Jakoyo Midiwo?

Hon. Kamau: It does not require seconding!

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Order!

Hon. Midiwo: Jamleck, relax. You will have your chance. It is amendment. So, it can be seconded. The Mover has asked me to second the amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Proceed, hon. Jakoyo Midiwo.

Hon. Midiwo: Hon. Temporary Deputy Chairman, I rise to second the amendment.

Let me plead with my friend, Jamleck, and the rest of my colleagues. Of all the mistakes that we have made in this country, this is the worst one for the Jubilee Coalition.

(Loud consultations)

Hon. Temporary Deputy Chairman, I want to tell them why they are jittery. It is because you do not want to face the reality. Unless we look into historical injustices in this country, we shall never have a nation. Unless we think that even if one of us is affected, he can never be the millions of members of the Kikuyu community who are suffering without land in the Rift Valley region; he can never be the people of Mombasa---

The Temporary Deputy Chairman (Hon. Kajwang’): Alright, thank you. Can you resume your seat?

Hon. Midiwo: Hon. Temporary Deputy Chairman, these people must help us to help this country because they are the ones who are suffering.

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Order, Deputy Leader of Minority Party.

Hon. Midiwo: Hon. Temporary Deputy Chairman, whether they now pretend or they do not pretend, it will never work for them. People are dying because of land. You know that Kenyans have died. Why are you avoiding the problem?

(Loud consultations)

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Order! I order you to sit down immediately, hon. Midiwo!

(Hon. Midiwo resumed his seat)

Hon. Member, it is in the Committee stage but when the Chair is on his feet please freeze. Let us accept two things, that this is the National Assembly. Hon. Member for Gem, let us accept that this is the National Assembly. It is getting to eight o’clock and I am sure your children are glued to the television watching why you are late and you are not at home at this time. You cannot explain that by shouting and catcalling. You must be able to legislate. However, we will do things according to the Constitution and the law. This is how we will proceed; I want to propose that Article 124 establishes each House of Parliament including proceedings of its committees. It says for avoidance of doubt that: “Each Parliament may establish committees, and shall make standing orders for the orderly conduct of its proceedings, including the proceedings of its committees.”

Then subsection (2) is about joint committees consisting of Members of both Houses. Under subsection (3), the proceedings of either House are not invalid just because of a vacancy and so forth. Sub-section (4) continues to say:

“When a House of Parliament considers any appointment for which its approval is required under the Constitution or an Act of Parliament –

- (a) the appointment shall be considered by a committee of the relevant House;
- (b) the committee’s recommendation shall be tabled in the House for approval; and
- (c) the proceedings of the committee and the House shall be in public.”

In my considered opinion, the Constitution is very clear on the position of committee proceedings in a presidential system of Government. It really bothers me if a committee has sat down and made recommendations, laid Papers in the House for which recommendations have been made and a Chair or a Member rises in his place to negate that which the committee has made in the recommendations. It bothers me as the Chair that whereas the Constitution has placed the committee as a constitutional value in the proceedings of the National Assembly, in a presidential system, the National Assembly must have an opportunity to express itself and to hold the committee proceedings as part of its custody. Whether the Standing Orders state otherwise or do not speak to it, the Constitution itself is supreme and we will protect it. However, I do not want to express my view over whether this section or that section should be included or not because that is not my role. So, for fairness I will allow that, that Question be proposed and discussed and disposed of in the normal manner of doing things in this House, which is votes. I, therefore, propose the Question. First of all, I propose that Clause 3 be further amended by including the words “In considering the report pursuant to subsection (4), Parliament shall not interfere with the context, text, form and substance of the report.”

(Question of the further amendment proposed)

Hon. Kamau: Hon. Temporary Deputy Chairman, I really do not understand why we should be going this direction. With all due respect to you as the Chair, there was a withdrawal of an amendment, which amendment had been proposed by the Chair of the

Committee? He is the one who spoke here. The Committee cannot speak on behalf of the Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Jamleck, I have ruled on that, unless you want to--- You cannot change it.

Hon. Kamau: Yes. My only concern here is that we might be setting a real bad precedent, very bad practice for the future. In the previous committee sittings, indeed, I did withdraw some amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): I hope that when you withdrew, you were withdrawing it with the support of committee members. If you can express yourself that you did it as a person, I think as expressed in the Constitution---

Hon. Kamau: Chair, let me finish.

The Temporary Deputy Chairman (Hon. Kajwang’): Order!

Hon. Kamau: How do I explain myself? I withdrew, of course, with the support of the Committee. I had consulted them. There is absolutely no question that was asked to the Chair, that is me, on whether the other Members had agreed. But that notwithstanding, I only want to appeal to you, Chair, let us follow the procedures and the rules of the House.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. Hon. Makali

(Loud consultation)

Hon. Mulu: I want to support that amendment, and I want the HANSARD to be checked. I did say in this House that my fear is when this report comes to this House, the House is likely to change its content. That is why I am saying we should not allow a situation whereby after the Commission has taken a lot of time and spent enormous resources, we change the content of the report. It is bad practice for a chairman of a committee to come here and withdraw a report that has been prepared by the Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): Alright, sit down. Order, hon. Ichung’wah.

(Loud consultations)

Hon. Ichung’wah: Hon. Temporary Deputy Chairman, please let the hon. Members know that I am not intimidated by shouting. I wanted to say, as much as the Chair of the Committee had moved to withdraw the amendments, and we are guided by your---

The Temporary Deputy Chairman (Hon. Kajwang’): You cannot talk about that, please, talk about the amendment as it is. That is now water under the bridge.

Hon. Ichung’wah: I was only agreeing with you, that you have every right to guide the House on matters of Constitution. However, as much as the amendment can come as was proposed in the Committee, I wanted to ask whether I would be in order to request--- As you said, our children are waiting for us at home, and indeed my two very young children are waiting for me. I would like to request that you put the Question and we just vote, either we support or not support the amendment. The machine will be put to work.

The Temporary Deputy Chairman (Hon. Kajwang’): Now, hon. Member for Seme.

Hon. (Dr.) Nyikal: When I supported this Bill, I said that it is reasonable that when a committee has done something, it should come before this House. But when I ended I said, but that should not be used to sanitize the report. Everybody who is here is entitled to their opinion. Some of you may not have seen what happened in this country that brought this report to us. When people died in Naivasha, Nakuru, Eldoret and Kisumu I was there. We wanted peace, so we put up a committee. We cannot come here today and say that we want to change the report. A Member said that some of the people who were summoned did not show up. The Committee itself took time---

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Thank you. Well said.

(Members stood up)

Everybody sit down! This is National Assembly in Committee of the whole House stage. We are not debating anything here; we are just amending legislation so that it goes for Third Reading. The Chair was trying to get more intervention from you, so that I can feel the mood of the House, and I have done that.

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

Hon. Members: Division! Division!

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Everybody sit down! Hon. Member for Ugenya, sit down! Hon. Members, I have been advised by the Clerk-at-the-table that you have raised sufficient number for a division. I, therefore, order that the Division Bell to be rung for 10 minutes.

(The Division Bell was rung)

Order, hon. Members! Hon. Members on the gangways can you, please, sit down. These two ladies looking at me sit down. Let us have order in the House, Members.

(Hon. Members resumed their seats)

Thank you so much for restoring order and there was no order which--- Nothing was out of order.

(Laughter)

That was the process of consultation and that is National Assembly at its best. Hon. Members, I want to order that the Bar be drawn. In the next few seconds, I will give you directives on how we will vote. That is so ordered.

(Loud consultations)

Order, hon. Members! First of all, I want to let you know that we have a table manual which is in line with the Speaker's Guide on Electronic Voting and which is now part of our parliamentary practice. I want to refer you to Page 5 of the manual. I want to be clear first of all that the electronic system is working, that it is perfect and it will work to the satisfaction of every Member in the Assembly. This is how we will go.

After the Division Bell has rung as it has, I will give you 90 seconds to log in. Do not log in until I tell you so. Right now, remove your cards from those slots. Do not raise your hands. I will give you 90 seconds to log in. After that is done in another 60 seconds, I will allow you to vote. Again, do not vote until I tell you so. After you have logged in, I will let you know when you can now vote for a period of 60 seconds.

Are there some Members without cards?

Hon. Members: Yes.

The Temporary Deputy Chairman (Hon. Kajwang'): Order! The Speaker has expressed himself on this matter.

(Loud consultations)

Please, give me time to speak. The Speaker has expressed himself on that matter, that if you fail to carry your card with you in the Chamber, I am sorry, you will not be able to exercise your vote. I am sorry.

Members, it is now time to log in. You have 90 seconds. The question is that Clause 3 be amended as proposed by the Member for Homa Bay, Gladys Wanga. The system is now counting to know how many we are in the Chamber. In the short while, it will show in the screens how many Members are in this Chamber.

Members, you can now log into the system. You have logged in, but in a short while, we want to see from the screens how many we are. We want to see from the screens how many Members are in the Chamber. In a short while, that will be on the screens. There you go. Members, it is now time to vote. You have 60 seconds.

Hon. Members: No, no, no!

DIVISION

(Question put and the House Divided)

(Question negated by 64 votes to 36)

Order, Members! On my left, order! This is the result of the voting. The Noes are 64 and the Ayes are 36.

AYES: Messrs. Aden, Bosire, Chea, Ms. Chidzuga, Messrs. Diriyee, Ganya, J.O. Omondi, Ms. Juma, Messrs. Kaluma, Keynan, Kisoi, Ms. Lay, Messrs. Magwanga, Makenga, Midiwo, Mlolwa, Mulu, Mungaro, Mustafa, Mwadime, Mwamkale, Mwaura, Nuh, Ms. Nyasuna, Messrs. (Dr.) Nyikal, Ochieng', Ms. Odhiambo-Mabona, Messrs. Olum, (Dr.) Otuoma, Oyugi, Saney, Simba, Temporary Card 6, Wandayi, Wangamati and Wetangula.

NOES: Messrs. Abdinoor, Baiya, Barua, Bett, Bitok, Bowen, Chege, Chepkong'a, Ms. S.W. Chege, Messrs. Dido, A.B. Duale, Farah, Gichigi, Gikaria, Gimose, Ichung'wa, Kahangara, Ms. Kajuju, Messrs. Kamau, Kangara, Ms. Kanyua, Messrs. Karithi, Kariuki Ndegwa, Katoo, ole Kenta, Kimaru, Kiptanui, Ms. Kiptui, Mr. Kipyegon, Ms. Korere, Messrs. Langat, Lessonet, Limo, Lomunokol, Lomwa, M'uthari, Ms. Machira, Messrs. Manga, Masadia, Ms. Mbugua, Messrs. Melly, Muchai, Ms. Munene, Messrs. Mwaita, Mwangi, Nakara, Ndiritu, Ms. Ng'ang'a, Messrs. Ngunjiri, Njagagua, Ms. B.N. Nyaga, Messrs. J.M. Nyaga, Rop, Sakaja, Ms. Seneta, Mr. Serut, Ms. Shebesh, Mr. Shinali, Ms. Sunjeev, Ms. Wahome, Messrs. Waiganjo, Wambugu, Waweru and Were.

Therefore, the Noes, have it.

(Applause)

(Several Members stood up in their places)

Order, Members! Sit down! Can everybody sit down! At the end of the day, it is the Speaker who recognises the votes. First of all, I want to explain to you what we are voting for. We have passed the clause, but we must commit it to the Act.

(Loud consultations)

Order! We have negatived the amendment as proposed by hon. Member for Homa Bay, but we are now voting on the entire clause as amended by hon. Chepkong'a. I put the Question that Clause 3 as amended be part of 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 3 as amended agreed to)

Hon. Members: *No, no, no!*

Clause 4

Hon. (Ms.) Juma: Hon Temporary Deputy Chairman, Sir, I beg to move: -
THAT, Clause 4 be deleted.

If we want national cohesion and integration to succeed in this country, we cannot allow some of these proposed amendments to pass through. This is why I move that Clause 4 be deleted.

(Question of the amendment proposed)

Hon. Oyugi: Hon. Temporary Deputy Chairman, Sir, first, I support the amendment by hon. Zuleikha. It is good to state that I am a Member of the Justice and Legal Affairs Committee and I have always believed that in that Committee, we did things in good faith. What I have seen today is a little bit interesting. We debated things, agreed as a Committee that we will move an amendment that would move the country forward. However, for my Chair today to engage in the acts that he engaged in, it leaves me very shocked as to whether as a country we are hoping to get anywhere. The reason for the Truth, Justice and Reconciliation Commission is to put Kenya together. We are not doing anyone a favour by amending ---

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member, Order! We are in Committee; you just make one or two observations about something. You do not get into debate.

Hon. Oyugi: Thank you, hon. Temporary Deputy Chairman. Let me just summarize. The TJRC is supposed to reconcile Kenyans and regardless of the recommendations that are in the report, we should have used the content of the report as a starting process to move the country forward. But to come and mutilate parts of the report is a disappointment and I do support the amendments by hon. Zuleikha.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Muchai.

Hon. Muchai: Thank you, hon. Temporary Deputy Chairman. I rise to oppose this amendment in as far as Kenya is concerned. It has long healed and there could not have been a better time to demonstrate this than in the just concluded general elections, where we had a peaceful election and peaceful transition. To propose that the Cabinet Secretary should not put in place a mechanism that will monitor the implementation of the report---

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Hon. Members, I now put the Question that Clause 4 be deleted as proposed by hon. Zuleikha Hassan Juma.

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

(Hon. Members stood in their place)

Order! Order, sit down. Hon. Zuleikha, Order! Member for Mbita, sit down, everybody sit down and resume your seats. Member for Langata, sit down, and the hon. Member beside you, please resume your seat. I have been advised by the Clerk-at-the-Table that you have the numbers to force a division. I, therefore, order that the Division Bell be rung for 10 minutes.

(The Division Bell was rung)

Order! Order, hon. Members! I now order that the Division Bell stops ringing and the Bar be drawn. You are now conversant with the electronic voting manual and you know

the drill. You will have 90 seconds to log in when I say so. The Question is that Clause 4 be deleted. Please now log in.

I hope you know that when you press the button twice, it is the last press that you make that counts in the vote. I hope you know that. If you do it twice, or three times, or even four times; it is the last one that counts on the vote that you make. All right, hon. Members, you may now vote. Hold on, do not touch the console that shows the hon. Members present. Order, hon. Members! We now have the results of the voting.

DIVISION

(Question put and the House divided)

(Question negatived by 63 votes to 38)

AYES: Messrs. Aden, Bosire, Chea, Ms. Chidzuga, Messrs. Diriye, M.D. Duale, Ganya, Ms. Juma, Messrs. Kaluma, Keynan, King'ola, Kisoi, Koyi, Ms. Lay, Messrs. Maanzo, Magwanga, Makenga, Midiwo, Mlolwa, Mulu, Mustafa, Mungaro, Mwadime, Mwamkale, Mwaura, Ms. Nyasuna; (Dr.) Nyongesa; Mr. Nuh; (Dr.) Nyikal; Mr. Ochieng', Ms. Odhiambo-Mabona, Messrs. Olum, J.O. Omondi, Oyugi, Simba, Ramadhani, Wangamati and Wandayi.

NOES: Messrs. Abongotum, Baiya, Barua, J.K. Bett, Bitok, Bowen, J.N. Chege, Ms. S.W. Chege; Messrs. Chepkong'a, Dido, Gichigi, Gikaria, Gimose, Ichung'wah, Kahangara, Ms. Kajuju, Messrs. Kamau, Kangara, Kang'ata, Ms. Kanyua, Messrs. Kariuki Ndegwa, Katoo, ole Kenta, Kimaru, Ms. Kiptui, Mr. Kipyegon, Ms. Korere, Messrs. Lagat, Langat, Lessonet, Lentoimaga, Limo, Lomunokol, Lomwa, Melly, M'uthari, Ms. Machira, Messrs. Manga, Masadia, Ms. Mbugua, Mr. Muchai, Ms. Munene, Messrs. Mwaita, Mwangi, Nakara, Ndiritu, Ms. Ng'ang'a; Messrs. Ngunjiri, Njagagua, Ms. B.N. Nyaga, Messrs. J.M. Nyaga, Rop, Sakaja, Ms. Seneta, Mr. Serut, Ms. Shebesh, Mr. Shinali, Ms. Sunjeev, Ms. Wahome, Messrs. Waiganjo, Wambugu, Waweru and Were.

The Noes have it.

Clause 5

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, Section 50 of the parent Act, of the Truth, Justice and Reconciliation Act of 2008 states as follows---

The Temporary Deputy Chairman (Hon. Kajwang'): Can you move your amendment as it appears on the Order Paper?

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, Clause 5 be deleted.

The reasons for this are that---

(Question of the amendment proposed)

Hon. Temporary Deputy Chairman, the current Act, the Truth, Justice and Reconciliation Act of 2008, Section 50 originally states:

“The Minister shall report to the National Assembly within three months of receipt of the report of the Commission, and twice a year thereafter, as to the implementation of the Commission’s recommendations.”

The amendment that has been proposed speaks about the commencement of the implementation under Section 49(3) of the proposed amendment. I would like to say that the report was received in May and three months from that time is August. So, by now it should have been implemented. So, I want to support this amendment because of that.

Thank you.

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

(Clause 1 agreed to)

(Title agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, I want to thank you for your very informative discussion. Do I hear a motion that we report progress in consideration of Order appearing at (ii) and (iii)?

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Truth, Justice and Reconciliation (Amendment) Bill (National Assembly Bill No.22 of 2013) and its approval thereof with amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): Before I put the Question, I want to let you know that in the event that I put the Question and the Question is positive, the order appearing as (iv) and (v) will be considered later subject to the decision of the House.

(Question proposed)

(Question put and agreed to)

Hon. Members, do I hear a Motion to report the Insurance (Motor Vehicle Third Party Risks (Amendment) Bill)?

Hon. Chepkong’a: Thank you, Chairman. I beg to move the Committee doth report to the House its consideration of the Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill (National Assembly Bill No.6 of 2013) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Hon. Speaker (Mr. Muturi) in the Chair]

Hon. Speaker: Hon. Members, I am glad that we are all awake. We begin by reporting.

**REPORTS, CONSIDERATION OF
REPORTS AND THIRD READINGS**

THE INSURANCE (MOTOR VEHICLE THIRD
PARTY RISKS (AMENDMENT) BILL

Hon. Kajwang’: Hon. Speaker, Sir, I beg to report that a Committee of the whole House has considered the Insurance (Motor Vehicle Third Party Risks (Amendment) Bill (National Assembly Bill No.6 of 2013) and approved the same with amendments.

Hon. Langat: Hon. Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. Muchai seconded.

(Question proposed)

(Question put and agreed to)

Hon. Langat: Hon. Speaker, I beg to move that the Insurance (Motor Vehicle Third Party Risks (Amendment) Bill (National Assembly Bill No.6 of 2013) be now read a Third Time.

Hon. Limo seconded.

Question proposed)

Hon. Kaluma: Hon. Speaker, I rise to oppose the Bill being read a Third Time. What we have achieved as National Assembly, which I find very serious in this Bill, are two things. Under Clause 3(a), we made a requirement that before a Kenyan, who has had an accident, goes to a court of law he has first to go for arbitration or mediation. We know the cost of arbitration and mediation. We know how corrupt the processes of arbitration in particular have been. Two, as I end, in Clause 3(e), we are essentially saying that despite there being a judgment, a party who has gone through litigation with the owner of the motor vehicle, has to prove his claim before the insurer pays, without even the judgment being set aside. I was going to raise those two issues and urge hon. Members to consider disagreeing with this Bill. I oppose.

(Question put and agreed to)

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

THE TRUTH, JUSTICE AND RECONCILIATION (AMENDMENT) BILL

Hon. Kajwang’: Hon. Speaker, Sir, I beg to report that a Committee of the whole House has considered the Truth, Justice and Reconciliation (Amendment) Bill, (National Assembly Bill No.22 of 2013) and approved the same with amendments.

Hon. Chepkong’a: Hon. Speaker, I beg to move that this House doth agree with the Committee in the said report.

Hon. (Ms.) Mbalu: seconded.

(Question proposed)

(Question put and agreed to)

Hon. Chepkong’a: Hon. Speaker, I beg to move that the Truth, Justice and Reconciliation (Amendment) Bill, (National Assembly Bill No.22 of 2013) be now read the Third Time.

Hon. (Ms.) Kajuju seconded.

(Question proposed)

Hon. Member: Hon. Speaker, I rise to oppose the Third Reading of this particular amendment Bill. This is a very sad day for this country. Kenyans have spent so much money to support this Commission to go through what it went through for so many years. It came before this Parliament and was given extension of time so that it would finish their report. However, what we have done this evening is to allow this House to have the capacity to undo all that was done by that Commission for all these years.

This country knows who the murderers are. This country knows who has killed who during the clashes in every election. We know; Kenyans know. So, whatever this House does, whether we remove whoever is named in that report, the country knows and that is why I oppose. Let Kenyans know that however much we try to hide the truth, it will come out.

Thank you, hon. Speaker.

(Question put and agreed to)

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

Hon. Speaker: Hon. Members, before I read a Communication that I have, I will reorganize the Order of business briefly by skipping the business appearing on the Order Paper as No.10(iv) of Committee of the whole House, being the Kenya Heroes Bill, (National Assembly Bill No.30 of 2013) and (v) The National Police Service Commission (Amendment) Bill, (National Assembly Bill No.17 of 2013) temporarily and proceed to business appearing on the Order Paper as business Order No.11, a Procedural Motion.

Next Order.

PROCEDURAL MOTION

EXEMPTION OF BUSINESS FROM PROVISIONS OF STANDING ORDER 127

Hon. Chepkong'a: Hon. Speaker, I beg to move the following Procedural Motion: -

THAT, pursuant to the provisions of Standing Order 256, this House resolves to exempt the Vetting of Judges and Magistrates (Amendment) Bill (National Assembly Bill No. 44 of 2013) from the provisions of Standing Order 127.

The reason why we are seeking this exemption is because the amendment itself has been proposed and agreed upon between the Vetting Board and the Committee. So, it is not necessary again for it to be considered a second time by the Committee. I ask the Leader of the Majority Party to second. Thank you.

Hon. A.B. Duale seconded.

(Question proposed)

(Question put and agreed to)

THE KENYA HEROES BILL

Hon. Speaker: Leader of Majority Party.

Hon. A.B. Duale: Sorry, hon. Speaker. I have too many things. So, I had to be very careful. I want to withdraw the Heroes Bill at least for this Session so that it comes back in the next Session. This is because it is not a very urgent Bill.

Hon. Speaker: Well, it is being removed from today's Order Paper. That is the correct position. So, it is not to be considered by the Committee of the whole House today and it is accordingly so ordered.

(The Kenya Heroes Bill deferred)

COMMUNICATION FROM THE CHAIR

DEPLOYMENT OF KENYA DEFENCE FORCES TO MARSABIT,
SAMBURU, POKOT AND TURKANA COUNTIES

Hon. Speaker: Hon. Members, I have a Communication to make. This Communication relates to a matter that this House had occasion to express itself in the course of the day today. It relates to the deployment of the Kenya Defence Forces (KDF).

Hon. Members, this evening, I have received a request from the Office of the President seeking approval of the National Assembly for assistance by the KDF to restore peace and security in Marsabit, Samburu, Pokot and Turkana counties pursuant to the provisions of Article 241(3)(c) of the Constitution. This matter requires the decision of this House.

It is on this basis that I will allow the Leader of Majority Party to give Notice of Motion for the House to deliberate on this matter and decide appropriately. I will also ask the Leader of the Majority Party to move a Motion under Standing Order No.30(1) for the

House to direct another sitting day today. Before we do that, Hon. Members, I direct that the item appearing under Order No.10(v) of consideration of the National Police Service Commission (Amendment) Bill, (National Assembly Bill No.17 of 2013) will be considered today under Order No.14 and will precede the Vetting of Judges and Magistrates (Amendment) Bill, (National Assembly Bill No.44 of 2013).

In the meantime, hon. Members, I want to reiterate your resolution earlier this afternoon where you resolved that all business will be considered before we enter into that new day.

In this regard, I also request that we finish the business up to Order No.14 before 10.00 p.m. today so that we can enter into another sitting day to consider the request in accordance with Article 241(3)(c) of the Constitution.

I thank you.

Yes, the Leader of Majority Party.

NOTICE OF MOTION

DEPLOYMENT OF KENYA DEFENCE FORCES TO MARSABIT, SAMBURU, POKOT AND TURKANA COUNTIES

Hon. A.B. Duale: Hon. Speaker, Sir, I beg to give notice of the following Motion: -

THAT, pursuant to Article 241(3)(c) of the Constitution, this House approves the deployment of the Kenya Defence Forces for the purposes of restoring peace and security including averting further loss of lives and destruction of property in Marsabit, Samburu, Pokot and Turkana counties of the Republic of Kenya.

MOTIONS

SECOND SITTING OF THE HOUSE

Hon. A.B. Duale: Hon. Hon. Speaker, Sir, I beg to move the following Motion: -

THAT, pursuant to the provisions of Standing Order 30, this House directs a sitting to be held today upon the conclusion of business appearing in the Order Paper.

I request hon. Jamleck Kamau to second the Motion.

Hon. Kamau: Hon. Speaker, Sir, I second the Motion.

(Question proposed)

(Question put and agreed to)

Hon. Speaker: Hon. Members, we will now move on to Order No.12.

APPROVAL OF NOMINEES TO PARLIAMENTARY SERVICE COMMISSION

THAT, Pursuant to Article 127(2)(d) of the Constitution, this House adopts the Report of the Parliamentary Service Commission and approves the appointment of Ms. Jennifer Nafula Barassa and the Hon. (Dr.) Abdullahi Ibrahim Ali as Members of the Parliamentary Service Commission.

(Hon. Keynan on 8.10.2013)

(Resumption of Debate interrupted on 8.10.2013)

Hon. Speaker: Hon. James Opiyo Wandayi was contributing and he had a balance of four minutes.

Hon. Wandayi: Hon. Speaker, Sir, without much ado, I support this Motion.

Hon. Midiwo: Thank you, hon. Speaker, Sir. I rise to support the Motion. I realize that this Motion came before the House. I want to plead with Members, particularly Members from the CORD side, one of the nominees is from this side. I plead with hon. Members to support this.

The Chair told us that it makes good sense and it is an honour that if we bring a name here, we should as a Committee be the first one to support it. We cannot bring our own name, then come and oppose it. We cannot begin to discuss the merits and demerits of choosing that candidate. This is a Kenyan who is qualified. For those of us who come from western Kenya, we must---

(Hon. Keynan crossed the Bar without bowing to the Chair)

Hon. Speaker: Hon. Keynan, you are walking as if you are in a different place.

(Laughter)

I appreciate that the hour could be confusing.

Hon. Midiwo: Hon. Speaker, Sir, you also know that age is also catching up with him. He has been here for about 30 years. You can forgive hon. Keynan. I just want to support this Motion. We have other issues on the Order Paper which we need to go through as agreed so that we do not have to waste time on personal issues. I know there are one or two other Members who have issues with this particular nominee. We have spoken to some of them and I think they are non-issues and the country must move forward. The Commission must be constituted. It is in the interest of Members of this House that we have a full operational Commission under your chairmanship.

Hon. Speaker, Sir, therefore, I support this Motion and request our Members to support it.

Hon. Speaker: Hon. Members, this Motion had been debated for more than one hour the last time it came. The Mover of this Motion is all over. In the interest of time and acceding to---

(Hon. Keynan stood up in his place)

Hon. Keynan, it has never been done that way. You cannot just walk there and then say that you are ready to do something. Hon. Member, there is some very urgent matter that you need to deal with.

Hon. Lessonet: Hon. Speaker, I stand to support this Motion and more so to support the names of these two nominees. They are viable candidates. They deserve the positions. I say so because of the position I hold as Chairman of the National Assembly Select Committee on CDF and the nominee is the Chairperson to the CDF Board. I can confirm to the hon. Members that I have known Madam Jennifer Barassa from the last Parliament when she was the Chairperson of the CDF Board. Now that she still chairs the CDF Board, I can confirm to hon. Members that she is up to the task.

(Loud consultations)

She is not opposed to CDF. She supports CDF. I would like to request my colleagues that we approve this nominee and let us approve both nominees.

With those remarks I beg to support.

Hon. (Dr.) Otuoma: Hon. Speaker, I stand to support this Motion. As I speak, I want to plead with this House that the lady, Jennifer Barassa, if you look at what the Parliamentary Service Commission is supposed to do and look at what Jennifer has been doing with these Members of Parliament for the last five years, despite all the challenges that we have had, she is a human being, we agree, but I want to plead that she went through all that was required and she was found to be qualified.

Hon. Speaker, she has worked with Members of Parliament for the last five years and not a single Member has brought any Motion here or any dispute here about what lady Jennifer has been doing with CDF. It is just fair that we give her a chance and consideration. Like any other Kenyan, we cannot expect 100 per cent perfection. I think she has handled CDF up to this point so well. I plead with hon Members that she is a fine Kenyan. This is a fine mother. She is a qualified Kenyan. I want to plead with you that we give her an opportunity to serve us in that capacity of a Commissioner.

I support the Motion.

(Loud consultations)

Hon. Kamau: Hon. Speaker, I rise on a point of order under Standing Order No.96 which states, "A Member who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move "THAT, the debate be now adjourned".

Hon. Speaker, the reason I am doing this is because when I look at these two names and for purposes of clarity, I heard hon. Jakoyo say that one is from CORD and the other one from Jubilee. I supposedly do not understand how we came up with these names. Personally, I do not know. Therefore, I would rather that we postpone this debate to another day so that we can allow further consultations on this.

(Applause)

Hon. Kamama will second.

Hon. Abongotum: Hon. Speaker, I beg to second the proposal for adjournment. There is what we call historicity. You draw a history at your own peril, let me tell you. There are people who came here lobbying for their names to be approved by this House. When we did that, in good faith, they let us down and we are in this quagmire because of them. Hon. Oloo Aringo actually deserted us and we died for him. Secondly, Madam Serem did the same. About Madam Barassa, I want to tell you two things.

Right now, most hon. Members have over 60 cases in court because of her. We are spending millions because of failure of leadership. Let us have somebody from the CORD but let me tell you, bring this lady as a Commissioner and you will regret. We have about four years.

I second and, please, let us return that name and come up with a name even from the village.

(Loud consultations)

Hon. Speaker: Hon. Members, in the interest of time, I will propose the Question.

(Question proposed)

Hon. King'ola: Hon. Speaker, Sir, I stand to support the Motion. Since morning, these Members have been here. Most of the laws that have been passed in this House have been passed in a hurry. One of them relates to the Standing Orders where some Members of the Tenth Parliament enacted the new Standing Orders in a hurry. Some of them already are in the Senate and they passed them thinking that the Senate will be the Upper House. Now, Senate is the Lower House of senior Members by age. These Members are very tired. I support the Chairman's proposal that we postpone this debate. February is not far. Members have the Christmas holidays. They also have their constituents. So, I support that this House adjourns debate until February.

Hon. Ababu: Hon. Speaker, Sir, it is perfectly in order for an hon. Member to seek the debate on any matter to be adjourned. It is, indeed, within the rules of the House. However, I hope that this adjournment is not motivated merely because we want to use an opportunity or the extra time as an opportunity to deliberately stand in the way of a proposal to a particular position. I want to plead with this House that we have had countless opportunities to vet names, debate and approve names or reject names for whatever reasons. Many times, we have had issues with some names proposed here; a whole Cabinet Secretary was saved on the Floor of this House after it was demonstrated that having her approved and given the opportunity to serve this country was in good faith. It was in line with the affirmative measures promoting the fair gender and also reaching out to sections of society that have not ordinarily had opportunity to serve this country.

I want to plead with this House that we have put this matter in the freezer for inordinately long time. It is not the second time that this matter is coming to this House. In the wisdom of those who have looked at the applicants for this position, I am reliably informed that over 300 Kenyans of eminent qualifications applied for this position. These two Kenyans, hon. Ibrahim Ali and Madam Jeniffer Nafula Barassa went through a very

rigorous process of evaluation and vetting before these names came here. I can appreciate if this lady has perhaps conducted herself in a manner that has not pleased Members in one way or other, but the yardstick that must be applied in determining her suitability for this position is whether she is qualified and whether she can perform her duties. I want to plead with the Members, let us apply the reasonable standards we applied to Madam Kandie, when we approved her on the Floor of this House, when we acted in good faith and said that in the best interest of many factors, we give her the opportunity. Today, Madam Kandie, despite reservations that Members had in this House, is now serving this country impeccably well.

I want to plead with the House to offer Madam Jeniffer Barassa the opportunity. In fact, after you have approved her name, invite her to a *Kamkunji*, hon. Members and express your misgivings and concerns to her, so that she can serve you better. No man, no woman is an angel. I want to plead that we should not adjourn debate. We should proceed and conclude this debate and approve these names. I oppose this Motion.

(Question put and agreed to)

(Several Members stood up in their places)

Hon. Speaker: Hon. Members, nobody is being ordered to sit. Those who want to stand still are entitled to do so. We wanted to confirm whether you have the numbers. I am informed reliably that you are 31 Members. So, you meet the threshold.

So, ring the Division Bell for five minutes for the convenience of the House. Only five minutes.

(The Division Bell was rung)

Order! Order, hon. Members! Resume your seats! Hon. Members in the middle here, resume your seats. I direct that the Bar be drawn. I am sure having done what we have done in the last few hours, you may not require any guidance on what you are supposed to do. But because it is part of the requirements, have the 90 seconds to log in. Thereafter, there will be 60 seconds to vote. I hope our technical people are awake. If you have logged in, you may now vote. For those who do not have cards as usual, like hon. Ababu Namwamba---

Hon. Member: Spoilt votes!

Hon. Speaker: It cannot be a spoilt vote. It is a no vote. That marks the end of voting. Hon. Members, of course, you know of the various processes that are going to happen. Before I do them, I now wish to declare results of the voting.

DIVISION

(Question put and the House divided)

(Question carried by 78 votes to 31)

AYES: Messrs. Abdinoor, Abongotum, Aden, Baiya, Barua, J.K. Bett, Bitok, Bosire, Bowen, Chea, Ms. S.W. Chege, Messrs. Chepkong'a, Chumel, Dido, A.B. Duale, Gethenji, Gichigi, Gikaria, Huka, Ichung'wah, Kahangara, Ms. Kajuju, Messrs. Kamau, Kangara, Kang'ata, Kanini Kega, Karithi, Kariuki Ndegwa, Katoo, ole Kenta, Kimaru, Kiptanui, Ms. Kiptui, Mr. Kipyegon, Ms. Korere, Messrs. Koyi, Lagat, Langat, Lati, Ms. Lay, Messrs. Lentoimaga, Limo, Lomunokol, Lomwa, Mlolwa, M'uthari, Ms. Machira, Mr. Manga, Ms. Mbugua, Mr. Muchai, Ms. Munene, Messrs. Mwadime, Mwaita, Mwamkale, Mwangi, Nakara, Ndiritu, Ms. Ng'ang'a, Messrs. Ngunjiri, Njagagua, Nooru, Ms. B.N. Nyaga, Messrs. J.M. Nyaga, Oyoo, Ramadhani, Rop, Sakaja, Ms. Seneta, Mr. Serut, Ms. Shebesh, Mr. Shinali, Ms. Sunjeev, Ms. Wahome, Messrs. Waiganjo, Wambugu, Wangamati, Waweru and Were.

NOES: Ms. Abdalla, Messrs. Diriye, Farah, Ganya, Gimose, Ms. Juma, Messrs. Kajwang', Kaluma, Keynan, Lessonet, Magwanga, Masadia, Makenga, Midiwo, Mulu, Mungaro, Mwaura, Ms. Nyasuna, Messrs. (Prof.) Nyikal, (Dr.) Nyongesa, Ochieng', Ms. Odhiambo-Mabona, Messrs. Olum, J.O. Omondi, G.W. Omondi, Opiyo, Oyugi, Simba, Temporary Card 6, Messrs. Wakhungu and Wandayi.

The total number of hon. Members who voted is 109. The Noes are 31 and the Ayes 78.

(Debate on Motion adjourned)

Hon. Members, we will now go to the business appearing as Order number 13. But before we do so, I wish to make this announcement.

In light of the Motion moved by the Leader of Majority Party directing that there be another Sitting today, this Sitting will proceed up to 11.15 p.m. or such time that you may finish the business appearing on the Order Paper. If by 11.15 p.m. you will not have concluded the business appearing on the Order Paper, the House will adjourn for five minutes to resume at 11.20 p.m. for the second Sitting as we have resolved, which will be the third Sitting for the day.

I hope that is understood so that at some point the House may have to report progress, if we will not have finished the business, particularly in the Committee of the whole House.

Next Order!

BILL

Second Reading

THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL

Hon. Chepkong'a: Thank you, hon. Speaker, Sir. I wish to move that the Vetting of Judges and Magistrates (Amendment) Bill, (National Assembly Bill No.44 of 2013) be now read a Second Time.

As I had just mentioned, I will be very brief in the interest of time. This is because I know hon. Members are quite tired. As I stated earlier, pursuant to paragraph 23 (1) of the Sixth Schedule of the Constitution, it is required that the National Assembly passes

legislation to enact an Act of Parliament that will operationalise the vetting of judges and magistrates so that we can comply with the new Constitution.

This is an amendment which has been sponsored by the Departmental Committee on Justice and Legal Affairs. We are seeking that the term of the vetting board be extended by two years, to lapse on 31st December, 2015, so as to allow the Board to complete the vetting of the 300 magistrates that are still remaining. That way, we will have complied with the new Constitution. Hon. Members are aware that this House approved the appointment of three foreign judges to join the Board. This was as a result of the delay in approving the same by the previous Parliament.

Therefore, we are seeking that this House approves this amendment, so that we can operationalise the vetting process. I wish to request hon. Peter Kaluma, the Member for Homa Bay, to second the Motion.

Hon. Kaluma: Hon. Speaker, the vetting of all judicial officers who were serving before the new Constitution was passed is a mandatory constitutional requirement. As hon. Members know, the persons who are serving as judges have been vetted. All persons serving as magistrates, including those who have been promoted to the level of judges, have not been vetted. It is necessary that the process comes to an end. It has been torturous for those who are not yet vetted. I would pray, as I second the Motion, that we pass this Motion to enable the vetting process, which is a constitutional process, to proceed.

With those remarks, I beg to second.

(Question proposed)

Hon. Members: Put the Question! Put the Question!

Hon. Speaker: Hon. Members, I can see requests by several hon. Members.

Hon. Members: Put the Question!

Hon. Speaker: Hon. Makali, I can see that your name is here. Please, say what you must say.

Hon. Mulu: Hon. Speaker, I will be very brief because I know that hon. Members are hungry.

I rise to support the Motion, remembering that this amendment was part of the Statute Law (Miscellaneous Amendments) Bill. It is important that we now approve this Bill, so that the exercise can be completed, having started a long time ago.

Since I can see some hon. Members sending some signals to me, I beg to support.

Hon. Speaker: Hon. Members, is it the mood of the House that the Mover be called upon to reply?

Hon. Members: Yes!

(Question, that the Mover be called upon to reply, put and agreed to)

Hon. Chepkong'a: Hon. Speaker, I would like to thank the hon. Members for supporting this amendment Bill.

Thank you.

(Question put and agreed to)

Hon. Speaker: Hon. Members, according to the Order Paper, we are now moving into Committee of the whole House. I am directing that the Vetting of Judges and Magistrates (Amendment) Bill (National Assembly Bill No.44 of 2013) be the first to be dealt with in the Committee of the whole House. Thereafter, the National Police Service Commission (Amendment) Bill (National Assembly Bill No.17 of 2013) will follow. So, the House now goes into the Committee of the whole House to transact business in that order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Hon. Speaker (Mr. Muturi) left the Chair]

IN THE COMMITTEE

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

THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, this is the National Assembly convening into a Committee of the whole House to consider the Vetting of Judges and Magistrates (Amendment) Bill, 2013.

(Clause 3 agreed to)

Clause 4

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, Clause 4(c) (iii) be deleted.

What the amendment is seeking to do is extending the life of the Vetting Board. The Act says that the term of the Board lapses on 31st December, 2015. What we are saying in this amendment is that they must conclude all matters by 31st December, 2015. There is no extension.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, indeed, I have just received the Bill and I am noticing that we are at sea. I had wanted to bring an amendment to part "(b)". I wanted us to substitute "2015" for "2014". The reason why I wanted that is because whenever---

The Temporary Deputy Chairman (Hon. Kajwang’): Sorry, hon. Member. We are considering Clause 4(3) of the Bill which is to the effect of including that new paragraph.

Hon. (Ms.) Odhiambo-Mabona: Yes, hon. Temporary Deputy Chairman. I was just indicating that because I have just seen the Bill, I wanted to bring an amendment to part “(b)”. Indeed, in the Statute Law (Miscellaneous Amendments) Bill, I had brought an amendment to reduce it from 2015 to 2014 but because I have got the Bill, let it pass. Otherwise, I think it is reversing reforms when we give commissions very specific timelines like full time jobs when what they need to do is vet. How can you be vetting people for more than five years? What are they vetting?

The Temporary Deputy Chairman (Hon. Kajwang’): This is the direction we will take. I sympathise with you honestly, hon. Member because there has not been any practicable time by which Members are able to have submitted amendments in written form and notified the Speaker accordingly. So, you do not need to shy off. When we come to that, if you choose you will still prefer an amendment. I think I will be inclined to allow you to move your amendment but for now we are considering part “(c)”. So, let us discuss it first of all. I will come there because I will be putting the Question on the entire section.

Hon. (Ms.) Odhiambo-Mabona: Hon Temporary Deputy Chairman, I had wanted that we move from 2015 to 2014.

The Temporary Deputy Chairman (Hon. Kajwang’): Are you proposing a further amendment?

Hon. (Ms.) Odhiambo-Mabona: Yes, that is in 4(b)(2) by deleting the expression “2013” and substituting that with the expression “2014”. The reason I am suggesting that is because this body is not beginning to sit. They have been sitting. So, this is really a continuation. The practice is likely to be that come again that 2015, they will be asking for extension. I used to sit in the Justice Committee and we had already granted them an extension. So, really they are not going to enable us have the reforms that we want in the Judiciary if we are going to be locking stations. If we move them to 2014, and that time we think that actually they have done a good job but they do not have the time, then it also gives Parliament back that authority to then evaluate their work. If we deem it fit, we will then extend, but if we give them a blanket one, they will vet for life.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you.

(Question of the amendment proposed)

Hon. Kaluma: Hon. Members, I plead with you to oppose the amendment. It has taken over two years for only judges to be vetted. We are now dealing with magistrates and it is a matter affecting the livelihoods of our people. It is not a matter that you want to be rushed. Remember, any decision that Board makes has very shattering consequences on the life of a person. So, I was going to pray that instead of being in the business every year of extending the time we give the Board two years at once and they conclude the process. I beg to oppose.

The Temporary Deputy Chairman (Hon. Kajwang’): Let me hear somebody to my right who is not in the Committee. Amina Abdalla.

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I want to oppose that amendment by hon. Millie. I agree that we have given this Vetting Board an extension when her and I were in the Legal Affairs Committee of the last Parliament, but the reality is that time we did not realise the appeal processes that the judges subjected this Vetting Board to. So, I would urge the Members to oppose the amendment. Let us give them a final one and having passed the amendment by the Chair, we will not give them an extension.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I am sure my good friend, hon. Millie Odhiambo, is doing that with very good intentions. In fact, you remember in our Committee we wanted to give them up to 2014 but they gave us a timetable of 300 magistrates and they gave us the time it will take to vet them. We realized that it is not a mechanical issue. We are dealing with the livelihoods of people and some people will have to appeal and if they have to apply for review, you must give them time. If you are going to sack somebody, surely someone must go the full hog to be satisfied. So, I would ask my good friend to drop it because the problem again is that the delay was occasioned by the approval of the three foreign judges. As you know, there were safety nets that were built into this law. It would not operate without the foreign judges.

The Temporary Deputy Chairman (Hon. Kajwang'): Point well made.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I am very reasonable. I am persuaded to drop it.

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

The Temporary Deputy Chairman (Hon. Kajwang'): Now, that it is dropped, there will be no further amendment. I, therefore, put the Question.

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

(Clause 4 as amended agreed to)

Clause 2

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move: -
THAT Clause 2 be deleted.

We have difficulties with Clause 2. It is difficult for the Vetting Board to go to court to obtain an order for them to get information from people. Again, this is a difficult job of getting information, particularly with regard to maybe corruption issues. So, requesting the Vetting Board to get a court order would be a hard task. So, we are proposing that this be deleted so that they carry out their duties as they have been doing before.

The Temporary Deputy Speaker (Hon. Kajwang'): All right. You have heard that he is proposing the deletion of Clause 2.

(Question of the amendment proposed)

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

(Clause 1 agreed to)

(Title agreed to)

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman, Sir. I beg to move that the Committee doth report to the House its consideration of the Truth, Justice and Reconciliation (Amendment) Bill, (National Assembly Bill No.22 of 2013) and its approval thereof with amendments.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Chair, I have been reminded that the HANSARD has not caught up with you. Could you please express yourself again? Do you want us to vet you?

(Laughter)

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman, Sir. You know, of course, the sugar level has gone low. Even in terms of thinking, we are constrained. I had two papers.

I beg to move that the Committee doth report to the House its consideration of the Vetting of Judges and Magistrates (Amendment) Bill, National Assembly Bill No.44 of 2013 and its approval thereof with amendments.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, before I put the Question, I should let you know that we will not go to the House in session but we will proceed to the next agenda which appears to be (v) on the Order Paper.

(Question proposed)

(Question put and agreed to)

*[The Temporary Deputy Chairman
(Hon. Kajwang') left the Chair]*

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

THE NATIONAL POLICE SERVICE
COMMISSION (AMENDMENT) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we are now considering the National Police Service Commission (Amendment) Bill, (National Assembly Bill No.17 of 2013).

Hon. Members, the amendment by hon. Millie on Clause 3 is not on the Order Paper but it has been approved by the Speaker and circulated. If hon. Millie's proposal

goes through, the amendments by hon. Chepkong'a, Hon. Agoi and Hon. Bowen will be dropped.

Go ahead hon. Millie.

Clause 3

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, I be to move: -

THAT, Clause 3 be amended in sub-clause (3)-

- (a) by deleting paragraph (a)
- (b) by deleting paragraph (c)
- (c) by deleting paragraph (d)
- (d) by deleting paragraph (e)
- (e) by deleting paragraph (f)
- (f) by deleting paragraph (g)

Hon. Temporary Deputy Chairlady, I do not know whether I need to explain it or not. I do not know whether hon. Members have this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Millie, explain it because it is not on the Order Paper. I think the amendment was not fully circulated in the House. Serjeant-at-Arms, please circulate the amendment by hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, I have spoken with the Chairman and he was to get back to me on part (e). He was saying that my amendments are in tandem with his proposed amendments. Basically, I am trying to align the powers of the Commission as per the Constitution. This is because what the Bill is trying to do is to limit the powers that are given to the Commission. So, what we have done is to remove the conflict but return the powers that are provided constitutionally.

I do not know whether I can give an example or if I can explain each one of them, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Millie, did you say that you consulted with the Chair of the Committee?

Hon. (Ms.) Odhiambo-Mabona: Yes, and he agreed with me.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Millie, let me hear from the Chair of the Committee so that we can reduce on the time spent.

Yes, hon. Kamama.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, we are actually in concurrence in quite a number of them but I would rather we retain the provisions that are contained in the amendments. I do not know whether the hon. Member is in opposition but we are in agreement that the first amendment is on the powers of the Cabinet Secretary. We have removed that. The Commission will work in consultation with the Inspector-General on most matters. Really, we want to retain what is in the amendment. Unless she reads out her side of the amendment, we just want to retain what we have here.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kamama, from your explanation on what hon. Millie has said, I do not think that there is concurrence. This is because hon. Millie wants to delete the whole of paragraph (a) while from your

amendment, you want to amend it by deleting some words. So, I will allow hon. Millie to complete her explanation and then I will give hon. Abongotum reason to---

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, I know what I am going to propose is unique. However, because we are working a bit late and Members did not have time, I would like to propose the amendment and then hon. Abongotum can say his. If it speaks to the same thing, one of us can drop the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Millie, from where I am seated, it does not speak to the same thing. If your proposal goes through, hon. Kamama has nothing to amend. This is because if you delete the whole paragraph then the amendment by hon. Kamama will be in the air. So, you need to complete your amendment and that is why we have given you priority to dispose of your amendments before we go to any other amendment proposed by any other Member.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, Sir, I request the Chairman to listen. I do not know whether he is listening.

(Several hon. Members stood up in their places)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, please take your seats quickly. We want order. Hon. Kamama, please get the attention of hon. Millie so that we move quickly.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, because I know we are moving section by section, my proposed amendment to paragraph 3(a) was that:

“On the recommendation of the Inspector-General and approval of the Cabinet Secretary, develop and keep under review all matters relating to human resource policies of all members of the service.”

Hon. Temporary Deputy Chairlady, that actually limits the work of the Commission. It is the Inspector-General who recommends, the Cabinet Secretary approves, then the Commission does its work. Really then, what is the work of the Commission? My understanding, after I have consulted with the Chair, is that he is agreeable that we delete and what obtains is what is in the current Act. I, therefore, propose that it be deleted.

Hon. Abongotum: Hon. Temporary Deputy Chairlady I oppose the amendments. We want to have a proviso that states thus: “In consultations with the Inspector-General, the Commission will develop and keep under review all matters relating to human resources policies and standards of qualifications required of the members of the service”.

Of course, the role of the Cabinet Secretary has been removed here, but the consultations with the Inspector-General must always be there because he is the person--- I oppose her amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You are opposing hon. Millie’s amendment. I want to give a chance to other two Members.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, if he provides the way he has provided the amendment, then I am comfortable. My worry is if you say, “on the recommendation of the Inspector-General and the approval of the Cabinet”. So, if it is removing the Cabinet, I am saying that there is consultation. I have

no problem with consultation with the Inspector-General who is also still a member of the Commission.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You, therefore, need to withdraw your amendment.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, I withdraw my proposed amendment and support the one of the Chairman of the Departmental Committee.

(Proposed amendment by hon. (Ms.) Odhiambo-Mabona withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Millie Odhiambo-Mabona you have another proposed amendment. Can you also address your amendment which proposes the deletion of paragraph (c)? Are you withdrawing that too?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, maybe you should guide me. I only withdrew (a).

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): If you have withdrawn then I will go to hon. Kamama who has an amendment on part “(a)” so that we can dispose of that.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, the proviso is intended to keep under review all matters relating to standards or qualifications required of the members of the service.

My proposed amendment, that is, 1(a) seeks to delete the paragraph and substitute therefor the following new paragraph: “Where in consultation with the Inspector-General develop and keep under review all matters relating to human resources, policies and standards or qualifications required of members of the service.

Hon. Temporary Deputy Chairlady the rationale is---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kamama, you are reading an amendment that is not on the Order Paper. Are we speaking to the amendment on the Order Paper on Clause 3(a)? Some of the text you have read does not appear on the Order Paper. So, if it is a further amendment, you will need to--- What you have in the text is different from what you have just read out. Just look at the Order Paper so that you are guided. Look at Page 630 of the Order Paper.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, this is a further amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kamama, could we first of all dispose of the amendment as it appears on the Order Paper and then we will go through the procedure to further amend. We must first pass the amendment as you have proposed on the Order Paper.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, I beg to move: -

THAT, clause 3 be amended in paragraph (a), by deleting the words “and approval of the Cabinet Secretary” appearing in the proposed new paragraph (a).

We are actually removing the Cabinet Secretary from micromanaging the Commission so that the Inspector-General and the Commission can work independently.

(Question of the amendment proposed)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kamama you can now move your further amendment. However, if you have it, we need it in written form.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, for me it is not a question of Jubilee or CORD. We have been in this House for a very long time, even the hon. Member. When a Member gives his word, really it is very unfortunate. I do not know what is becoming of this House. I have dropped my amendment because the Member said--- We had agreed and he had even said it on the HANSARD. I do not think it is in order for Members to move this way. We have always agreed. I think they need to go and see ole Metito. He is a gentleman on issues like these. He needs to learn that the way we operate is not by misleading your fellow Members of the House. It does not happen like that.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Millie, I want you to look at the Order Paper because you will realize that the amendment as had been proposed did not have a further amendment. What the Chair has done is to allow the amendment as was in the Order Paper to be moved by hon. Kamama.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, I wish to agree with my good friend, hon. Millie, that we have a further amendment that says that we remove the approval of the Cabinet Secretary. That is a further amendment. So, we have removed that part completely.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kamama, that is already the amendment on the Order Paper. You cannot have a further amendment to that. That is already what we have passed. Hon. Millie, I have given hon. Kamama a chance to move a further amendment and he has said that he has no further amendment. What hon. Kamama has moved, according to what is on the Order Paper, speaks to what he has just said in terms of removal of "Cabinet Secretary". So, I do not know what the contradiction is, hon. Millie. However, I believe, hon. Kamama, that you understand that you already moved that in your initial amendment. The further amendment would be superfluous, if you ask me, because it is already in the main amendment, hon. Kamama.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairlady, I will just add that it is really very important to just be honest. The Chair is on HANSARD reading the further amendment. In fact, after reading that further amendment, hon. Millie withdrew her amendment. The numbers are here, we can either defeat or pass amendments, but we should not be dishonest on the HANSARD. The import of the further amendment was different from the import of the amendment that has been moved in this sense. This says that "on recommendation of the Inspector-General". This means that for the Commission to move, it has to be on recommendation of the Inspector-General. What the Chair had said was in consultation with the Inspector-General, the Commission will proceed with the functions that have been listed. What we are looking at here, consultation is good. The Inspector-General is a member of the Commission, but when you say "on recommendation", it means that this work becomes work of the Inspector-General. He is the one who recommends for the Commission to move. That is why we were amenable to

the idea of consultation. That is the further amendment that the Chair is now refusing to move.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, I agree with your sentiments in terms of the procedure that we have followed. I am actually the one who asked hon. Kamama that the text that he was reading was not in tandem with what was on the Order Paper. But after we have completed that process, I have then asked the Chair to move the further amendment, the Chair has declined. I cannot, from where I am sitting, force the Chair. I cannot move further than I have done.

Hon. (Ms.) Nyasuna: Can we move a further amendment?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You know the procedure of moving a further amendment, hon. Millie.

Hon. (Ms.) Odhiambo-Mobona: We have been doing it the same way—

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You know you would have to approach that very Chair to move the further amendment. So, can we dispose of the first amendment, so that we leave the opportunity for further amendments? The Chair does not have a further amendment.

Hon. (Ms.) Odhiambo-Mobona: Hon. Temporary Deputy Chairlady, I have approached the Chair and he is willing to move. Can I go on record?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kamama, it would really help if you could make it clear, because you are the only one who can move the further amendment. I do not want to take this House too far on this issue. Members, I therefore, now put the Question that clause---

Hon. Ababu: On a point of order, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ababu, honestly, there is not much we can do even if we raise more points of order. The Chair has said that he has no further amendments. We can ventilate on it, but it will not change. I have allowed hon. Wanga and hon. Millie to ventilate. Hon. Ababu, please, let me put the Question because you will be able to ventilate on other clauses that have amendments. Bear with me because we have already allowed debate in the Committee of the whole House.

Members, I will now put the Question that Clause 3 as amended be part of the Bill?

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

There is another amendment on Clause 3 by hon. Agoi. Hon. Millie, we are coming to your other amendment. We are still on (a). Hon. Agoi, is your amendment to 3(a) taken care of? I would imagine that it is by the amendment by the Chair.

Hon. Masadia: Hon Temporary Deputy Chairlady, (a) is taken care of.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I will give you the opportunity to move the other amendments, once we complete with 3(a). We now go to hon. Millie on amendment to paragraph “c”.

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

THAT, Clause 3 be amended in sub-clause (3)-
(b) by deleting paragraph c.

I propose that we delete that amendment. The reason is that the amendment is trying to delete (j) which provides that the Commission needs to ensure that the service is sufficient and effective. Really, I do not know why we would not want to have a service that is efficient and effective. Because of that, I propose that we delete it.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I will propose the Question.

(Question of the amendment proposed)

Hon. Abongotum: Hon. Temporary Deputy Chairlady, I am not in agreement. If we retain what we have, it will not do any harm. So, I oppose.

Hon. Nuh: Hon. Temporary Deputy Chairlady, I request the Jubilee Government to accept this. You cannot have a service which is not effective and efficient. It is ironical for the Chairman to oppose an amendment that is giving Kenyans a better service in terms of the force. I do not know what these people are up to. This is a serious matter.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh); Hon. Millie, you will start again because if your amendment passes, hon. Agoi's amendment would be dropped.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, I am very happy, whether it is defeated or not, I will be on record that I proposed that we delete that amendment because it is seeking to limit the powers of the Commission only on disciplinary matters, transfers and promotions. The Constitution does not limit the mandate and what we are doing is unconstitutional. I proudly oppose.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, she has actually opposed her own amendment, therefore, we retain the amendments that we have.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, I have not opposed my amendment. What I have opposed is what is provided in the Bill. That is why I am proposing a deletion by opposing. I know English is difficult but to some of us we get it clear. I will teach him.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is very clear, hon. Gikaria

Hon. Gikaria: Thank you, hon. Temporary Deputy Chairlady. If you look at the National Police Service Act and the Constitution, Article 246(3), the procedure for implementing is by the Inspector-General. The purpose of the National Police Service Commission is to monitor the compliance. So, I do not see why she wants the National Police Service to do what she wants done. Article 246 (3) shows very clearly that the procedure will be by ---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The point is made, hon. Gikaria.

Hon. Gikaria: The National Police Service Commission will do the monitoring of the compliance.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us hear from hon. Ochieng’.

Hon. Ochieng: Hon. Temporary Deputy Chairlady, I wish to support the amendment as proposed by hon. Odhiambo-Mabona. Whatever we do will not take away the fact that the Commission is supposed to be a check, in fact, the only check that is there in law on the police service of this country. If we pass this amendment and somebody goes to court tomorrow, these provisions will be struck by the courts of the law as they are unconstitutional.

Thank you.

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

Hon. Masadia: Hon. Temporary Deputy Chairlady, I beg to move that the word “disciplinary” be inserted immediately after the word “transfers” and also delete the word “disciplinary” before “on” and after “matters”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, you must move the amendment as is on the Order Paper. You cannot add any other thing unless it is a further amendment. Go according to what you gave.

Hon. Masadia: Hon. Temporary Deputy Chairlady, I beg to move: -
THAT, clause 3 be amended—

(b) in paragraph (d) by inserting the word “discipline” immediately after the word “transfers”

(Question of the amendment proposed)

Hon. Abongotum: Hon. Temporary Deputy Chair, I oppose. We want to retain what we have.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Odhiambo-Mabona, please move you proposed amendment on sections (e) and (f).

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, on section (e) I am glad you have noticed the trend and that is why you are joining. But I am also glad with my trend which I will probably do.

But on Section (m) I wish to propose that as per the Order Paper---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Odhiambo-Mabona, deal with section (e) first.

Hon. (Ms.) Odhiambo-Mabona: Sorry, hon. Temporary Deputy Chairlady.

I beg to move: -

THAT, clause 3 be amended in sub-clause (3)-
(d) by deleting paragraph e.

Section (e) makes reference to section (m) in the parent Bill. What the proposed amendment does in the Bill is to delete the words “organization” and “administration”

and it therefore, leaves the Commission only with the power to investigate, monitor and evaluate personnel practices and service. Meaning somebody else would have set it, then they only come to evaluate. So, really what we are doing is killing the Commission. Therefore, I very proudly oppose.

Hon. Temporary Deputy Chairlady, again on section (f), I am also proposing that we delete paragraph (g). If you look at---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Just clarify section (f), hon. Odhiambo-Mabona.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, you told me to speak to both.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Just clarify on section (f)

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

THAT, clause 3 be amended in sub-clause (3) -

(e) by deleting paragraph (f).

Again, what the amendment is seeking to do is also to remove the role of the Commission to monitor and evaluate the performance of the service. Therefore, what we could do after this if my amendment fails; perhaps, you could change the Bill and say; the Commission's work shall be to sweep. That is what we are basically doing. I will still put my amendment, nonetheless.

(Question of the amendment proposed)

Hon. Abongotum: Hon. Temporary Deputy Chairlady, we did a lot of consultation on this. In fact, we met many Kenyans on this and they were actually in agreement with our proviso. This is actually meant to confine the Commission to its fundamental mandate.

Therefore, I oppose.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Bowen, you have an amendment on Section (3) (f).

Hon. Bowen: Hon. Temporary Deputy Chairlady, I beg to move: -

THAT, clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (f)

(ff) by deleting the word "sergeant" appearing in subsection (2) and substituting therefor the word "superintendent"

Hon. Temporary Deputy Chairlady, this is a very simple amendment. This is delegation of powers by the Commission to the Inspector-General. The principal Act states that the Inspector-General can transfer, discipline, or promote officers up to the rank of sergeant. In the police ranks, "Sergeant" is just rank number two. From college, you get to the rank of a corporal and then the rank of a sergeant.

Hon. Temporary Deputy Chairlady, what the amendment tries to do is that it gives the Inspector-General powers to transfer officers, even unionizable employees up to the rank of Sergeant.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Departmental Committee Chairman.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, the Committee is really in support of that amendment. We are in agreement with that kind of amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Isaac Mwaura.

Hon. Mwaura: Hon. Temporary Deputy Chairlady, I rise to oppose the amendment. We need to, as much as possible, ensure that any amendment that we bring to this House does not infringe on what is already provided for in the Constitution. We have continued giving too many powers to the Inspector-General. We are now increasing the ranks that he can deploy from number two to number four. What we are doing is actually ensuring that the Inspector-General will control the National Police Service and make it a force, which is actually what we are trying to get away from.

With those remarks, I beg to oppose vehemently.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Waiganjo.

Hon. Waiganjo: Hon. Temporary Deputy Chairlady, I am constrained to oppose my good friend's position on this matter. I want to say that the laws that we are making here are for posterity. We know the position of National Police Service. We know the provisions of our Constitution. Let us not kill the Commission, which is a creature of the Constitution that has come into being to check the excesses of the police force.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Millie Odhiambo, your final amendment on sub-clause 3(g).

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairlady. I am glad that you said it is my final amendment on that clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Just a minute, Millie. What is your point of order, hon. Kimaru?

Hon. Kimaru: Hon. Temporary Deputy Chairlady, I had sought to introduce a further amendment to the amendment by hon. Bowen. I would like the rank to rise---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kimaru, you know the rules. Have you approached the Chairman of the Departmental Committee?

Hon. Kimaru: Yes, hon. Temporary Deputy Chairlady. He is amenable.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): He is the one who should bring the further amendment to that particular amendment.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, we want to raise the rank to senior superintendent.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kimaru, you know that position.

An hon. Member: No!

(Loud consultations)

Hon. Kimaru: Hon. Temporary Deputy Chairlady, I had consulted.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Chairperson of Departmental Committee, what is your reaction?

Hon. Abongotum: Hon. Temporary Deputy Chairlady, his further amendment has been overtaken by events but let us listen to it.

The Temporary Deputy Chairman (Hon. (Ms.) Shebesh): Hon. Committee Chairman, even as we listen, please, know that the final further amendment must be brought by you.

Yes, hon. Kimaru.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, I say this in order to bring order to the National Police Service. Senior Superintendent is usually the rank of an Officer Commanding Police Division (OCPD). It is important for the Inspector-General to be able to have command over the OCPDs and the officers below that rank.

So, it would be a good idea to move a further amendment to so that the Inspector-General can have the authority to transfer and command up to the rank of Senior Superintendent.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kimaru, let me give the Departmental Committee Chairman an opportunity to speak to that issue.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, I just want to plead with my neighbour from Laikipia that we want senior positions to be handled by the Commission, in terms of promotions. Since the Inspector-General is also a member of the Commission, let us leave it at the level of superintendent. Let officers at the level of OCPDs be thoroughly interviewed and assessed by the Commission. So, let us oppose the further amendment. I would like him to withdraw it.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, I drop the amendment.

(Proposed amendment by hon. Kimaru dropped)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Millie Odhiambo, let us have the amendment to Clause 3(g), which is the final amendment on that clause.

Hon. Member: Drop it!

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, I will not drop the amendment. Unless one is a stranger in this House, hon. Members know that I will move the amendment.

Therefore, I beg to move that we delete paragraph (g).

The proposed amendment is actually very long. Sub-clause (f) provides that the Commission will review or ratify disciplinary action taken by the Inspector-General. So, all the other amendments that the Departmental Committee Chairman is purporting to make become a nullity in the face of this particular amendment. This is because the Inspector-General will take all the disciplinary actions. All that the Commission will be left to do is reviewing or ratifying. There is no rejection. Therefore, I propose that we

delete paragraph (g). This is a very anti-reformist agenda. I am not an anti-reformist. My party is not anti-reformist. The Constitution is not anti-reformist.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Departmental Committee Chairman, I will only give you the Floor because of the time and the Speaker's ruling.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, in the interest of time, we have compared notes with her. Her route is actually a very dangerous route. We cannot accept it. So, we oppose the amendment.

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

(Clause 3 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Mover, could you move that we report progress to the House?

PROGRESS REPORTED

THE NATIONAL POLICE SERVICE COMMISSION (AMENDMENT) BILL

Hon. Abongotum: Hon. Temporary Deputy Chairlady, the Committee of the whole House is considering the National Police Service Commission (Amendment) Bill (National Assembly Bill No.17 of 2013) and has instructed me to report progress and seek leave to sit again today.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I am sure that you know the procedure we are following.

(Question proposed)

*(Question put and agreed to)
(The House resumed)*

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

REPORTS AND THIRD READINGS

THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Vetting of Judges and Magistrates (Amendment) Bill and approved the same with amendments.

Hon. Chepkong’a: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. Kaluma seconded.

(Question proposed)

(Question put and agreed to)

Hon. Chepkong’a: Hon. Temporary Deputy Speaker, I beg to move that the Vetting of Judges and Magistrates, (Amendment) Bill (National Assembly Bill No.44 of 3013) be now read the Third Time.

Hon. Kaluma seconded.

(Question proposed)

(Question put and agreed to)

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

THE NATIONAL POLICE SERVICE COMMISSION (AMENDMENT) BILL

Hon. Kajwang: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the National Police Service Commission (Amendment) Bill, (National Assembly Bill No.17 of 2013) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Kajwang’, please complete by seeking leave to sit again as was moved when we were moving from the Committee stage.

Hon. Kajwang: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the National Police Service Commission (Amendment) Bill, (National Assembly Bill No.17 of 2013) and seeks leave to sit again.

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

Hon. Aden seconded.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, in accordance with the direction of the Speaker earlier in the night, the House now stands

adjourned until 11.30 p.m. today Thursday, 5th December 2013 for the third sitting of the day. However, hon. Members you are not encouraged to leave the Chambers as the next sitting commences in less than five minutes' time.

The House rose at 11.25 p.m.

NATIONAL ASSEMBLY OFFICIAL REPORT

Thursday 5th December, 2013

The House met at 11.30 p.m.

SECOND SITTING

[Hon. Speaker (Mr. Muturi) in the Chair]

Hon. Speaker: Hon. Members, please resume your seats. Lower you consultation tones. I want to draw your attention to the existence of Supplementary Order Paper No.2. We will dispense with prayers. It is assumed that those of you who have been sitting here the whole day into the night have been praying and it looks like your prayers have been heard. Therefore, dispense with that particular aspect of commencing this sitting. I direct that we do the first Order.

Hon. Members, that is not the way to transact business.

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member: -
Mr. Khatib Abdalla Mwashetani

MOTION

DEPLOYMENT OF KENYA DEFENCE FORCES TO MARSABIT,
SAMBURU, POKOT AND TURKANA COUNTIES

Hon. A.B. Duale: Hon. Speaker, Sir, I beg to move that pursuant to Article 241(3)(c) of the Constitution, this House approves the deployment of the Kenya Defence Forces (KDF), for the purposes of restoring peace and security, including averting further loss of lives and destruction of property in Marsabit, Samburu, West Pokot and Turkana counties of the Republic of Kenya.

This was done following consultations in Government. This request is necessitated by the fact that, in the recent past, there have been inter-clan conflict lead by militiamen with more sophisticated weapons in Marsabit County. Some of the militiamen

in Marsabit County or Moyale sub-county are coming from the neighbouring country and military intervention is very critical to avert further loss of lives and destruction of property. Given the magnitude of the problem, the Government requires two infantry companies of the KDF and planes for aerial coverage.

We feel that in those four counties, more so in Marsabit County, it is the responsibility of the Government under this Constitution to make sure that lives of Kenyans are saved and destruction of property is assured. This Motion requests KDF to assist Kenyans for such a period until security situation is restored and stabilized. I will ask my colleague, the Chair of the Justice and Legal Affairs Committee, hon. Chepkong'a to second.

I beg to move.

Hon. Chepkong'a: Thank you hon. Speaker, Sir. I wish to second this very important Motion. It is important because it arises from the resolution of this House this afternoon. This is a constitutional provision that requires this House to grant approval to the Government for them to deploy the KDF.

Hon. Speaker, Sir, this afternoon I had lunch with two hon. Members of Parliament; one from the Pokot community and another one from the Turkana community. While we were discussing, I asked them; how is it that the Pokots encircled a Turkana village? They said that these are militiamen that are from out of the country. I asked, so what happened to the militiamen when the police arrived? The answer that I was given was that they disappeared into the community and no one arrested them.

Hon. Speaker, Sir, it is a very sad situation that people could not be arrested although they had encircled a village seeking to massacre people. This is a very serious matter. It calls upon the KDF to intervene in this situation and bring order and sanity in our country.

I beg to second.

(Question proposed)

Hon. Speaker: Hon. Members, whereas this is a matter of great moment, unfortunately, as you know your own rules do not allow you to go beyond midnight and you still have to do a Motion for Adjournment. I have already proposed the Question. Any Member is at liberty to contribute, but for one minute or so for the next 10 minutes.

Hon. Dido: Thank you, hon. Speaker. This Motion is important. I do not stand to oppose this Motion, but I think it is very sad in the history of this country where soldiers are going to be deployed with arms in their own country when we have police and the Administration Police who are solely responsible for internal security in the country. Our soldiers, under Article 241 of the Constitution, have a role to safeguard the national sovereignty of the Republic of Kenya. If we are going to deploy armed soldiers in any part of the country we must go further and look at why that constitutional necessity has taken place. It means that those counties will have failed and they are not functioning properly. We cannot hide from that fact.

Hon. Midiwo: Hon. Speaker, I rise to support. I want to thank the President for following what the law requires him to do and restore peace. The President has done a thing of honour. We are not always here to oppose.

(Applause)

The talk that politicians are involved in this mayhem must be dealt with and dealt with by what the President said. We cannot live as a lawless people.

(Applause)

Hon. Speaker, I have pictures which I want to table. When a lorry carrying food for the helpless was stopped and looted and torched and yet police were guarding it, it is very sad. Maybe that is why the President is helpless. The President's hands are tied. The police cannot help; he must use the highest force.

(Hon. Midiwo tabled the documents)

It is important because these pictures need to be investigated because they appear to show one of our very own supervising this crime. This army must go after Members of Parliament who have militias. I beg to table.

Hon. Nooru: Hon. Speaker, however painful it is, the reason why this Motion is before this House is because of the Constitution that we have put in place. The Administration Police and police are unable to restore law and order. Despite the fact that this is an internal issue, it requires the intervention of the KDF.

I want to request the KDF going on site to minimize casualties more so from the civilian side. They need to, however, deal with this issue very thoroughly. Those people who are involved, whatever rank they hold in the society, should be brought to book. They need to be arrested and put in cells. We cannot have people killing innocent children and mothers year after year and yet the Government is fully aware, as hon. Midiwo has said. These things happen during daylight in towns; they do not happen in the bushes. There are APs and police present when these things happen. They should not be involved in the operation that the KDF is going to carry. They should step aside.

Hon. Speaker: Hon. Namwamba. Hon. Members, this is not a village matter; it involves the entire country. So, do not imagine that because you come from those counties then you have exclusive right to contribute. This is a national matter.

Hon. Namwamba: Hon. Speaker, this is what is called leadership. This is leadership; this is decisive and this is timely. I want to commend the President. In supporting this Motion I want to say that the insecurity scenario in this country has reached levels which cannot be tolerated. The provisions in Article 241 of the Constitution are supposed to be used sparingly and in very special circumstances. I want to challenge the President and the Government that even as we do this and as we support this fully as the National Assembly let him also use this opportunity to overhaul the entire machinery of the police and other departments that are responsible for homeland security. This is because we want a scenario where all our security apparatus are functioning effectively. We are proud of KDF and we want to be equally proud of the Kenya Police Service. May the President use this opportunity to overhaul that system.

Finally, may I add my voice to the call that if there is any Kenyan of whatever rank – even if it is an honourable colleague sitting with us in this House that is responsible for endangering lives and property of Kenyans, your Excellency the President

go for that human being hammer and tongs and do not spare anybody anywhere whether it is under the water, in the air or on the ground. Go for them, your Excellency.

I support.

(Applause)

Hon. Speaker: Hon. Amina Abdalla, are you the one making noise?

(Loud consultations)

Hon. Asman Kamama.

Hon. Abongotum: Hon. Speaker, I will be very brief. I wish to support the President for taking this drastic, very decisive and prompt action. The leaders from the pastoral region, that is, Turkana, Pokot, Marsabit and others--- Recently we were actually advised by a sub-committee that went to Mandera that there were issues there. The President must be decisive. The politicians in pastoral areas have actually let this country down. Really, Kenyans there are killing each other on a daily basis and they cannot do anything. We want the army to take action.

(Applause)

Hon. Speaker, the army are trained and they must observe issues of human rights. They must take care of civilians, but deal with the crooks without any mercy. This is because it cannot be business like this. We used to believe that this devolution is going to be a blessing, but right now some political warlords have taken over and are actually perpetrating mayhem in this part of the country.

We support the Government fully only that human rights must be observed.

Hon. Speaker: The Member for Balambala, 30 seconds. Hon. Abdikadir.

Hon. Aden: Thank you, hon. Speaker. I stand to support this Motion and I think much of what I want to say has actually been said by my colleague, Asman Kamama. I want first of all to commend His Excellency the President for setting the precedent in ensuring that the law is followed in deployment of KDF.

I end by saying our military men and women, as they go to the ground must safeguard the human rights of the children and women in the villages. I thank you, hon. Speaker.

Hon. Speaker: Sorry, hon. Members. I told you it is only 10 minutes. I know 10 minutes is so little since you are very many. Let me put the Question.

(Question, that the Mover be called upon to reply put and agreed to)

Hon. A.B. Duale: I beg to move.

(Question put and agreed to)

MOTON FOR ADJOURNMENT

ADJOURNMENT TO A DAY OTHER THAN
THE NEXT NORMAL SITTING DAY

Hon. A.B. Duale: Hon. Speaker, I beg to move the following Motion: -

THAT, pursuant to the provisions of Standing Order No.28, this House adjourns until Monday, 10th February 2014 in accordance with the Calendar of the Assembly, (Regular Sessions).

I will speak very briefly. The hon. Deputy Leader of the Majority Party is a very good friend of mine. We served with him in the last Parliament. I want to take the statement he made in the morning very kindly. As we go for Christmas holidays, I want to assure the House that never in my life have I intended to use bad language on my colleagues and friends and that we are all here to serve the people of Kenya. So, hon. Deputy Leader of the Minority Party, I know we came from very far but we will all work for the people of Kenya. I ask my colleagues that during the recess, please those who come from volatile areas – the counties of Marsabit, Moyale, Pokot and Turkana – the clashes are politically instigated. As we deploy the army, the Government must deal with everybody who is inciting regardless of your position; whether you are in the Senate or the National Assembly so that Kenyans can live in peace.

Hon. Speaker, with those few remarks, I ask hon. John Sakaja to second.

Hon. Sakaja: Hon. Speaker, I beg to second this Motion and just very briefly add my voice to what the Leader of the Majority Party has said. Even as we go on recess, we must consider really what he has said. This is because it is very embarrassing really if at all the allegations he made are confirmed to be true. It is a shame not just to them but to all of us because we cannot sacrifice the lives of Kenyans – young children and women at the altar of political expediency. Something must be done.

Hon. Speaker, even as I second, I want to congratulate our brother and friend, hon. Mwashetani for his return to this House. We share in your joy and we hope that you shall go on in the same breath. Finally, I want to welcome all Members to a small room somewhere even as we adjourn before you go home. I want to welcome you there for us to share stories of the past Session. We are chaired by hon. “*Washi*”, Washington Midiwo. *Karibuni sana*. Thank you.

(Laughter)

Hon. Speaker: Hon. Members, I want to request the Leader of the Majority Party to make an amendment before I propose that Question because the House does not sit on Mondays and if you heard him carefully, he mentioned Monday 10th February. Leader of the Majority Party perhaps you could make an amendment. When is that date? That 10th is which day?

Hon. A.B. Duale: Hon. Speaker, I move the amendment to the Motion that it now reads: -

Pursuant to the provisions of Standing Order No.28, this House adjourns until Tuesday, 11th February 2014 in accordance with the Calendar of the Assembly, (Regular Sessions).

Hon. Speaker, I am sure the secretariat of Parliament must be more serious than this. They cannot say Monday when they know the House sits on Tuesday. They cannot say 10th when it is 11th. So, they should have somebody to proofread their work. However, for the benefit of the House I have amended the Motion.

Hon. Speaker: The Leader of the Majority Party has proposed the amendment to his Motion and, therefore, I propose the Question.

(Question proposed)

Hon. Midiwo, of course hon. Members, you know there is also now seniority. This must be recognised.

Hon. Midiwo: Thank you, hon. Speaker. I will not take much time since I think I have been talking a lot. However, I want to say that I rise to support and I only want to urge the Treasury from the Floor of this House that Members will have a lot of time in their hands. We understand the challenges that the Government is having with the new expanded devolved structures. This country has been recording in the last 10 years economic development or growth figures on the upward trend because of the Constituencies Development Fund (CDF). So, I want to plead with the Cabinet Secretary in charge of the National Treasury to follow the law and send money. You know, Members are going to be challenged in January when kids are going back to school and the bursaries have been dwindling.

Hon. Speaker, these Members will be judged harshly because the little monies which they may have gotten is from the other Parliament. So, this Parliament has not been given any CDF money as per their right and it is their right. So, I want to urge Treasury to do the right thing.

I support. Thank you.

Hon. Speaker: Anthony Mutahi Kimaru.

Hon. Kimaru: Thank you, hon. Speaker. I stand to support the Adjournment Motion and as we proceed for Christmas holidays which will be a working holiday, it is important that we have peace throughout Kenya. I said earlier there was impending war in the section that I come from and it is now evident that, that is actually happening. The purview of the KDF in this particular operation should even spread further to Laikipia and so on so that we can have peace during this time that we are having holidays. As other speakers have said, Members of Parliament are involved.

Hon. Katoo: Thank you, hon. Speaker. Very quickly let me thank Members for this Session. They have been very articulate. I thank them for all these long hours. I wish them a Merry Christmas and a Happy New Year. As we go for a long holiday, let us try to minimize politicking in the country so that we bring this country together.

I beg to support.

Hon. Speaker: Hon. Members, now that we have come to the end of the day, the consideration of the National Police Service Commission (Amendment) Bill will commence in the next Session at the stage where it was interrupted today. As we prepare to go on recess and in view of the long sittings the Committees have had, it is advisable that they take a break too. This will also allow Members to meet their constituents and the officers and staff of Parliament will also take a break in preparation for the next Session. In this regard, I now direct that all Committees conclude any pending business

on or before 11th December 2013. Thereafter, no committee sittings will be allowed until 15th January 2014.

ADJOURNMENT

Hon. Speaker: Finally, hon. Members, the House now stands adjourned until Tuesday, 11th February, 2014 at 2.30 p.m. It is my prayer as your Speaker that peace will be restored in the counties experiencing instability. I wish you success during this break. I wish you Merry Christmas and a prosperous 2014 just after enjoying your Jubilee celebrations. I thank you hon. Members.

The House rose at 11.55 p.m.