

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 12th October, 2016

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

Hon. Speaker: I will issue a Communication later.

PETITIONS

DELAYED COMPENSATION OF LAND ACQUIRED BY GOVERNMENT

Hon. Speaker: Member for Manyatta.

Hon. J.M. Nyaga: Thank you, Hon. Speaker.

I, the undersigned, on behalf of land owners and concerned residents of Manyatta Constituency, draw the attention of the House to the following:-

THAT, in 1991, the Government compulsorily acquired plots Serial Numbers 01 to 12 - 12 plots - to construct the then Manyatta Divisional Headquarters, which currently serves as the headquarters for Embu North District;

THAT, later, the Government earmarked for acquisition 13 plots (Serial Numbers 13 to 25) to cater for the future expansion;

THAT, the land owners of the 25 plots were verbally promised by Government of compensation by way of provision of land in Mwea and Njukiri Forest in Embu County;

THAT, though all the relevant requirements have been made, including valuation by the Ministry of Lands, the owners of the compulsorily acquired plots have, to date, not been compensated by the Government;

THAT, in an attempt to resolve the matter, both the Ministry of Lands and the Ministry of Interior and Co-ordination of National Government have filed reports on fact-finding missions that recommended compensation by the National Treasury;

THAT, since the compulsory acquisition, plot owners continue to languish in poverty as they have no stable sources of income;

THAT, there have been numerous engagements on the matter among the land owners, the Ministry of Interior and Co-ordination of National Government and the National Treasury as well as the Commission on Administrative Justice - Office of the Ombudsman - in a bid to bring the matter to its logical conclusion and that all those attempts have not been successful;

THAT, the issues with respect to which this Petition is made are not pending before any court of law or any constitutional legal body;

Now, therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Finance, Planning and Trade:-

- (i) Causes the revaluation of all the 25 plots in order to reflect their current market value; and,
- (ii) Causes the Cabinet Secretary of the National Treasury to approve compensation to the plot owners which has been delayed for over 20 years.

And your Petitioners will ever pray. Thank you, Hon. Speaker.

Hon. Speaker: Let us go to the next Petition. Hon. Members, I will allow you to comment on both Petitions.

Let us have Hon. Birdi.

FAILURE TO OFFER EMPLOYMENT OPPORTUNITIES BY
CHINA ROAD AND BRIDGE CORPORATION

Hon. (Ms.) Sunjeev: Thank you, Hon. Speaker.

I, the undersigned, on behalf of the residents of Narok County, draw the attention of the House to the following:-

THAT, there is ongoing construction of the Standard Gauge Railway Project in Narok, along the Duka Moja Trading Centre site and at the Narok-Mai Mahiu Road;

THAT, there is an influx of workers from China to do manual jobs, which jobs are supposed to be undertaken by the local communities;

THAT, China Road and Bridge Corporation has been awarding employment opportunities to foreigners and locking out locals, thereby denying locals employment opportunities;

THAT, there have been alleged reports of harassment by the Chinese site officer where, for instance, he battered one of the local chiefs;

FURTHER, there are no healthcare facilities at the construction site to cater for employees and cases of poor working conditions;

THAT, we, the undersigned, on several occasions, have consulted and pleaded with the China Road and Bridge Corporation to resolve the matter to no avail;

THAT, the issues in respect to which this Petition is made are not pending before any court of law or any constitutional legal body;

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Labour and Social Welfare:-

- (i) Ensures that China Road and Bridge Corporation hires local communities to work at the Standard Gauge Railway;
- (ii) Recommends and ensures that China Road and Bridge Corporation establishes healthcare facilities at all their sites;
- (iii) Ensures that the working conditions are reviewed and improved and ensures that the company adheres to labour laws;
- (iv) Ensures that the Petitioners' plight is addressed; and,
- (v) Makes any order or direction that it deems fit in the circumstances of the Petition.

And your Petitioners will ever pray.

Thank you, Hon. Speaker.

Hon. Speaker: Let us have Hon. Cyprian Iringo.

Hon. Kubai Iringo: Thank you, Hon. Speaker. I stand to support the Petition from my brother from Manyatta. Land is very emotive and, sometimes, when the Government is trying to put structures in place to, at least, do development, people who have already settled on that land for a long time are affected. It is prudent before that decision is taken, whoever is being displaced should be given a chance or relocated first, before being pushed away and then you are told you will be compensated later. Those people are languishing as squatters whereas they have been evicted from their forefather's land.

So, the Government should move expediently and settle those people because the land is being used by the Government. On the employment of local people by the Standard Gauge Railway (SGR), I do not know why we should get money from China and they bring their people to spend that money. We have enough manpower. It is different if we wanted technical people. But just because they have loaned us money they should not carry back that money to China. That money should be left here and our people should get employment.

Thank you.

Hon. Speaker: Let us have Hon. Justice Kemei.

Hon. Kemei: Thank you, Hon. Speaker for giving me the opportunity. I wish to comment on the Petition by Hon. Birdi. The SGR is a noble project in this country. Much as it has economic value, the first value that we need to get from it is employment for our people. If we have to get the technical staff, whose skills we do not have in this country, as a people, we do not mind. However, there are certain jobs that Kenyans who have trained in technical fields should do, as well as those who are able to provide manual labour.

I support. Thank you

Hon. Speaker: Hon. Member for Uguja.

Hon. Wandayi: Thank you, Hon. Speaker. I wish to speak to the matter of China Road and Bridge Corporation. Just like my other colleagues have pointed out, it is clear that one of the key obligations of any business entity is to support the local communities who have given them an opportunity to work.

One of the things that baffles us is why, for instance, the relevant Ministry would be issuing out work permits to people who are virtually unskilled and nearly laborers. They come and compete with Kenyans for jobs which anybody can do. Jobs which do not require any specialized skills. Going forward, we need to be more firm on this matter so that we do not have unnecessary conflicts between local communities and those corporations. It is unbelievable that for the corporation to work, they are investing in security to have policemen guard their Chinese workers - people who cannot even speak the local language - carrying metals and loads of other materials for constructing the railway line.

I wish to support. Thank you.

Hon. Speaker: Let us have the Member for Imenti South.

Hon. Murungi: Thank you, Hon. Speaker. I also want to comment on this Petition by Hon Birdi. The SGR is a very noble project in this country. So far, I am aware that the project was stopped in that section of Narok. It is important that both parties expeditiously and amicably resolve the issues surrounding that project so that it can continue.

On the second prayer by the Petitioner about healthcare of the workers, it is important that those people should adhere to the occupation health and safety regulations which are part of our law so that the laborers or people working on those sites are well covered medically. They should have a good working environment. It is important that they consider hiring locals for the jobs that they can do.

Therefore, I support this Petition. Thank you.

Hon. Speaker: Member for Butula

Hon. Onyura: Thank you, Hon. Speaker. Both petitions raise some serious issues of concern, especially the one on land by Hon. Nyaga. I cannot understand why that process has taken over 20 years. When you do that, is it bureaucracy, inefficiency or negligence? That should be established. The costs keep escalating for the users of that land. What about the opportunities that they have missed for all those 20 years? How will they be compensated for that? The one on SGR borders on breach of laws. The poor working conditions--- We might find that they have breached some of this country's labour laws. These are issues that should be looked at very seriously and I would urge the committees concerned to give these petitions the attention they deserve. Thank you, Hon. Speaker.

Hon. Speaker: Let us have the Hon. Member for Narok North.

Hon. ole Kenta: Thank you, Hon. Speaker. I thank Hon. Birdi for bringing this Petition. As Members may recall, just a few weeks ago, there was a very bad faceoff between the Maasai people and the Chinese because of that problem.

Hon. Speaker, what is worrying us as Kenyans is the new way of doing things such that the rights of Kenyans have been delegated to the periphery for the benefit of foreigners and, more so, the Chinese people. It is unfortunate that whereas all the resources are going back to China, even what can be done by our people is taken over. I would like to urge the relevant committee to ensure that this injustice is stopped forthwith because, at the end of the day, our people deserve to have rights as Kenyans. It is unfortunate that whereas we think about playing our roles as leaders or as people who are giving away contracts, we forget the rights of the communities that are supposed to benefit.

I think it is time for us, as legislators and leaders, to stand for our people and say enough is enough. We should not import fish from China and impose other sanctions because we are becoming a laughing stock in the international stage.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. The petitions are referred to the relevant two committees; the Departmental Committee on Finance, Planning and Trade and the Committee on Labour and Social Welfare.

Next Order.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Wednesday, 12th October, 2016:-

The Report to Parliament on all new loans contracted by Government as of 31st August, 2016. This is to be referred to the Budget and Appropriations Committee.

The Report of the Auditor General on the Financial Statements in respect of the following institutions for the year ended 30th June, 2016, and the Certificates therein:-

- (i) The Kenya Deposit Insurance Corporation
- (ii) The Central Bank of Kenya

The Report of the Auditor General on the Financial Statements of the National Government Constituencies Development Fund (NG-CDF) in respect of the following constituencies for the year ended 30th June, 2015, and the Certificate therein:-

- (i) Kasarani Constituency; and,

(ii) Ijara Constituency.

Thank you.

Hon. Speaker: Next Order

STATEMENTS

Hon. Speaker: The Chairman of the Departmental Committee on Labour and Social Welfare, are you giving an update?

Hon. Were: Hon. Speaker, I thought I gave the update on the situation in my Committee just before we went for recess. I did not expect to give another update today. I remember doing it just before we went for recess. So, I did not expect to give another update today.

Hon. Speaker: You gave an update?

Hon. Were: I gave an update followed by the brief report on Rio Olympics. I did that.

Hon. Speaker: So, what is remaining is your tabling of the Report?

Hon. Were: That is what is remaining.

Hon. Speaker: Very well.

ALLOCATION OF NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND FOR 2016/2017

Let us have the Chairman of the National Government Constituencies Development Fund (NG-CDF).

Hon. Lessonet: Thank you, Hon. Speaker, for giving me this opportunity to make a Statement. I want to make a Statement in respect of the NG-CDF. The Committee that I chair, that is the National Assembly Select Committee on National Government Constituencies Development Fund (NG-CDF), met yesterday and approved, in accordance with the law, the allocation of monies to each constituency for the Financial Year 2016/2017.

As most Members are aware, the National Government Constituencies Development Fund (Amendment) Act, 2016 came into force a few days ago on 7th October, 2016. As much as the House had passed that amendment way back, as per Article 116(2) of the Constitution, it provides that the Board, with the concurrence of the Select Committee on the National Government Constituencies Development Fund, shall allocate funds equally to every constituency in each financial year as outlined in Section 34 of the Act.

The Board, therefore, presented the allocation list to the Committee yesterday and the Committee duly approved. Allow me to table the allocation list. It will be too long to read 290 constituencies. I will not have to read because the allocations which I am tabling shortly are allocating equal amounts of money to every constituency - Kshs81,896,551.72. That is the allocation per constituency. In that allocation, the Act requires that Kshs4,094,827.59 goes towards emergency allocation and this table shows it. It shows all the 290 constituencies.

As I table this allocation list, I would also like to inform the House that when they go to their constituencies over the weekend, we need projects urgently, like today. The National Treasury has done a wonderful job. Out of that Kshs25 billion for the Financial Year 2016/2017, it has already sent Kshs14 billion to NG-CDF boards. So, as soon as the board gets projects from constituencies for this Kshs81 million or thereabout, disbursements will promptly be done to constituency committees.

That is to say that the ball is now in the court of constituency committees to work with their Members of Parliament and bring projects promptly. If we can get projects as early as this week or next, it will be good so that the Kshs14 billion can be disbursed promptly to constituencies.

As I make this Statement, I am sure Members are aware that we have shared Kshs25 billion for the obvious reason that the court reduced allocations to NG-CDF by Kshs10 billion. I am not going to pronounce myself on the Kshs10 billion very much because you are aware that, that matter is still in court. We know something will be done; something good will happen on that Kshs10 billion. Equally, I want to say that, that will come to pass very soon.

I thank you very much and I table the allocation list per constituency.

(Hon. Lessonet laid the document on the Table)

Hon. Speaker: Hon. Member for Gichugu.

DELAYED PAYMENT TO KIARITHATHI COFFEE FARMERS

Hon. Barua: Thank you, Hon. Speaker. I had pressed the intervention button to make a request based on my earlier request for a Statement last year. Sometime last year, I requested a Statement from the Cabinet Secretary (CS) for the Ministry of Agriculture, Livestock and Fisheries in connection with coffee which was sold through the Kenya Planters Cooperative Union (KPCU) by a farmers' co-operative society in my constituency. The society is called Kiarithaini Coffee Farmers Society. They sold coffee worth Kshs14 million in 2008 through the KPCU. As we speak, the farmers have not received their money and yet, it is almost nine years since then. When the CS appeared before the Departmental Committee on Agriculture, Livestock and Cooperatives, he promised to give a position---

I think I will repeat because the Leader of the Majority Party was engaging Hon. Speaker. Sometime last year, I requested for a Statement from the CS, the Ministry of Agriculture, Livestock and Fisheries. It was in connection with coffee which was sold by a farmers' co-operative society from Gichugu Constituency, through KPCU.

Now the Deputy Leader of the Minority Party is consulting Hon. Speaker. I want Hon. Speaker to listen to this. They sold the coffee in 2008 worth Kshs14 million. Up to now, the farmers have not been paid. When the CS appeared before the Committee in March this year, he promised to give a position on the money within 30 days. We have not received a position six months down the line and the farmers are in distress.

I am raising this issue so that we can be given direction on how those farmers, who have suffered so much for so long, can get their money together with interest.

Thank you, Hon. Speaker.

Hon. Speaker: You are saying the CS gave an undertaking?

Hon. Barua: The CS, the Principal Secretary (PS) and the Chairman of the Departmental Committee on Agriculture, Livestock and Co-operatives were there. They gave an undertaking to give a position within 30 days. That was in March. Six months down the line, I have not received any undertaking from them and the farmers continue to suffer. What they sold has not been paid for. Children are at home because of lack of school fees.

Hon. Speaker: Do not give us stories about children.

Hon. Barua: It was an undertaking.

Hon. Speaker: I will not be able to deal with children who are out of school.

Hon. Barua: Okay, Hon. Speaker.

Hon. Speaker: The issue is: You are saying that the Cabinet Secretary (CS) gave an undertaking.

Hon. Barua: Yes he did. He endeavoured to give a position within 30 days from the day of that meeting, which was around March this year.

Hon. Speaker: Have you followed it up?

Hon. Barua: Yes, I have followed through the Chair of the Committee and so far nothing has happened.

Hon. Speaker: The Committee should take up the matter.

Hon. Barua: Hon. Speaker, that is why I am seeking your assistance.

Hon. Speaker: What do you want me to do and I am not the Chair of the Committee?

Hon. Barua: Hon. Speaker, the Committee has not given me any position and I thought it was good for me to ask this during the plenary. I am sure there could be many other Members going through the same tribulations.

Hon. Speaker: But if the CS gave an undertaking and the Committee has its record of it, that matter should be taken up by the Committee on Implementation.

Hon. Barua: Hon. Speaker, I am happy that you can order that.

Hon. Speaker: Can the Committee on Implementation take up the matter and give a Report? The Committee on Implementation should take up the matter within 14 days and bring a Report to the House.

Hon. Barua: Thank you, Hon. Speaker.

Hon. Speaker: The Clerk will communicate that to the Committee.

Hon. Katoo: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order, Hon. Katoo?

Hon. Katoo: Hon. Speaker, I do not know whether we have gone past the order. I wanted to make a small comment on the Statement laid by Hon. Chairman of the Constituencies Development Fund Committee, Hon. Lessonet. It is good for Members to take note. This is the first time we are getting the lowest amount of money to our constituencies. That is Kshs81 million per constituency. We had amended the Act to allow equal sharing of the 100 per cent of CDF. Every Member would have expected to get more than Kshs100 million, but we are receiving Kshs81 million.

Hon. Speaker, it is good to bring to the attention of this House that the allocation for the last financial year to NG-CDF is the same amount that has been allocated to NG-CDF this financial year. I think the National Treasury has deliberately made us lose a lot of NG-CDF money. That is a deliberate move from the National Treasury and I would want to urge the Budget and Appropriations Committee and the NG-CDF to ensure that, that mistake is not repeated this time round. Alternatively, they should look for ways of compensating lost funds. Every time, the Budget should be in such a way that the national revenue is divided between the county government and the national Government. After allocating it, get the NG-CDF from the national Government share which will be 2.5 per cent of national Government revenue. This time, the National Treasury has horizontally put three votes, one for the county government, the National Government and another one for NG-CDF. The NG-CDF was allocated Kshs35 billion. During the hearing of that case, it was discovered that the system used for allocation was wrong. It was an oversight by this House. However, since this House has the powers of making the Budget, we should look for ways of compensating the constituencies. We have never received

Kshs81 million in our constituencies. I wish I could illustrate how that mistake was done by the National Treasury. I think it was deliberate because they have never done that before.

Hon. Speaker, I regret that we are getting the lowest amount at a time when we are having the same allocation to all constituencies. Last year, the constituency that received the lowest amount got Kshs100 million.

Hon. Speaker: Since you have claimed to rise on a point of order, I have not heard you say what is out of order. You have just been arguing some case and I do not know with whom.

(Laughter)

I am unlikely to make any comment about this. When you feel like saying something to the House, do not rise on a point of order. That is misusing the orders and the rules. The result is that you will be out of order and the consequences of being out of order are well known to you.

(Hon. Members raised their hands)

Hon. Member, I do not want to see Members raising their hands. If you just want to make a comment about what Hon. Lessonet has presented, do it. Do not claim to be rising on a point of order because it is not right for experienced Members of this House, and the ones who are fresh and should be growing some grey hair since they have been here long enough to do that. When you want to say something, do not claim to be rising on a point of order.

(Hon. Onyonka stood up in his place)

I can see the Member for Kitutu Chache North is unable to remain seated. If you stand, I will not give you a chance. Just press your button and that should be enough. Do not keep jumping because you do not know your position in the intervention list. There is no debate, just comments.

Member for Igembe North.

Hon. M'uthari: Thank you, Hon. Speaker. I would like to make a comment on the issue raised by Hon. Lessonet. In my opinion, we are receiving a raw deal given what we were promised in the beginning and what we are receiving at the moment. It means that most of the proposed projects or those that are ongoing will not be accomplished, given the amount of resources that is going to be disbursed to our constituencies. The committee had made commitments with the constituents. Given the fact that the money is allocated at the national level---

Hon. Speaker: Who is going to respond to what you are raising? This is not a Speaker's *Kamukunji!* It is the plenary of the National Assembly and you cannot speak in vain.

It looks like Members want to discuss matters of general concern.

Hon. M'uthari: Yes, Hon. Speaker.

Hon. Speaker: To discuss that, you cannot do it by way of points of order. Unless Hon. Lessonet is going to respond, but he is not the one who has the resources. If you just lament then after that, walk out to have a cup of tea, what is the use of lamenting?

Hon. M'uthari: Hon. Speaker, we have leaders here. We have the Leader of the Majority Party who acts as a bridge between us and the Executive. We can get some of these issues handled. We have Hon. Lessonet who is a Member of the National Government Constituency

Development Fund Committee. These things can be deliberated. We are also requesting that you organize a *Kamukunji* for us. You are the head of this arm of the Government and you have a responsibility. I am requesting you to organise a *Kamukunji* for us to air our issues, given the fact that this is not the place to do it. You are a serious leader in this Republic and you can make things happen, if you want.

(Laughter)

Hon. Speaker: Can I hear Hon. Onyonka's position?

Hon. Onyonka: Thank you, Hon. Speaker. I would like to support my colleagues' sentiments.

Hon. Speaker: Hon. Onyonka, just before you continue, let me recognise the presence of pupils from Kapcheplanget Primary School from Cherangány Constituency, Trans-Nzoia County. You are welcome to observe the proceedings of the National Assembly.

Proceed, Hon. Onyonka.

Hon. Onyonka: Thank you, Hon. Speaker. Secondly, I wanted to refer to the issue that Hon. Metito raised. What I was trying to say is that because the matter of the Kshs10 billion and Kshs25 Billion is in court, it would have made sense for him not to discuss it. Finally, on the Reports which are coming to the House, like the Report on the CDF, it will make sense for the Committee Chairman to make use of the facilities you provided them so that everything comes online in soft copy. That is because we do not get the hard copies. That way, it will be easier for us to interrogate any outstanding issues.

Hon. Speaker: I think that suggestion goes to Hon. Lessonet's Committee or the Board Member for Samburu West. Did you also have an intervention?

Hon. Lati: Thank you, Hon. Speaker. I know you will not be kind to me concerning the issue I am about to raise. As Hon. Kato was speaking, I heard some allegation. If that allegation is true, then this House has committed an illegality. That is because in the Division of Revenue Bill, there are only three items that should go through this House – the County Funds, the National Funds and the Equalisation Fund. For us to have passed the Division of Revenue Bill with an item called CDF is illegal. I seek your guidance. It only says we do not have Division of Revenue Act.

Hon. Speaker: That is why I am saying we are discussing the wrong issues. If you have an issue of interpretation of the Division of Revenue Act, 2016, apply the provisions of Article 165 of the Constitution and proceed to the High Court. There, they will tell you what you passed for you to understand better. The High Court has exclusive authority to interpret the Constitution.

Hon. Midiwo.

Hon. Midiwo: On a point of order. Hon. Speaker. Hon. Lessonet is our representative. He chairs the NG-CDF Committee – the most important Fund where Members are involved. He cannot be in order to notify the House that they called a meeting and accepted a lower figure that is below the statutory figure. The NG-CDF is not less than 2.5 per cent of the Budget. The correct figure is not Kshs81 million. It is less than what Members got averagely last year by about 40 Million. He cannot be in order to purport to have negotiated a law or an agreement with the Minister for a lower figure. This House makes laws. The Government must follow the law. The NG-CDF must call a meeting between us and the Executive if the Committee cannot do its job. Let us tell the Executive that we are accepting nothing less than 2.5 per cent. That is what Hon. Metito and Hon. Onyonka were trying to say.

When we were doing the Bill, they told us that everybody would get an equal share. They even spoke about a figure of Kshs126 million. Many people have planned their projects based on Kshs126 million, which is 2.5 per cent. I request that the Chairman of the NG-CDF and the whole NG-CDF Committee be found not to be in order to purport to dupe Members and break the law. The Chairman should immediately explain to this House which rules were used to arrive at the new allocation. We know that the matter is in court but the aspect which is in court does not affect the CDF Act. It does not. What Hon. Lessonet is trying to give Members to take to their constituencies is less. I have thought about it. I have calculated. The amount has been reduced by an average of Kshs40 million to Kshs50 million per constituency. He must give us our money or explain where our money has gone.

Thank you.

Hon. Speaker: Hon. Members, let us proceed in a much more orderly way. Since Hon. Lessonet's Committee is a Select Committee, rather than present funny documents from some quarters, he should present a Report that has been adopted by his Committee. You have a Committee of Members of this House. They should sit, interrogate what is in that document you got from whomever or wherever and table a Report in this House. That Report must be debated and adopted by the members of the Committee so that Members can have an opportunity to interrogate the matter. Otherwise, proceeding in the manner we are doing is like we are headless. It is like we are headed nowhere. We need to see a Report which the House will either adopt or reject and send Hon. Lessonet's Committee back to the drawing board or from wherever they will have come from. I think that is a better route.

Hon. Lessonet, rather than you sneaking in with documents from wherever – whether they are as a result of negotiations or whatever – you should have called a meeting of your Committee. The Members of this House are at liberty to attend the meetings of your Committee, in keeping with our rules, so that they can understand what it is that you are tabling in this House. Your Committee should have adopted a report saying: “This is what should be presented in the House.” You walk into the House carrying some papers you said you collected from some place through negotiations. Your Committee has some Members. Are they part of this document? They should have helped you to carry those papers because that is the normal way a Committee reports to the House. Hon. Lessonet has adopted a new method of sneaking in with papers from some place and claiming that he is informing Members.

Hon. Lessonet, if we allow you to use this method, you will be misleading Members. Therefore, take back your documents, call a meeting of your Committee and discuss the matter with Members. The rest of the Members of this House are at liberty to attend the proceedings of your meetings. If you want the meeting to be done in this Chamber, we will make the Chamber available for you as a Committee to explain to Members. I am sure that the Members of your Committee are not privy to the information that you have just deposited to the House. The Clerk is advised to give you back your documents. We cannot allow you to table what you purport to be coming from your Committee. The way to present documents here is through the Committee. It should be the form of a report that should have been adopted by your Committee.

(Applause)

Hon. Speaker: Are Members agreeing?

Hon. Members: Yes!

Hon. Speaker: The Committee needs to see it. We need to see a Report from the Committee. Not many of you are saying “yes” from your places.

Hon. Lessonet, table the Report tomorrow, if need be.

Hon. Lessonet: Hon. Speaker, first, I want to thank you for your directive in terms of tabling a report. That would not be a problem. I want to read a letter dated 11th October, 2016 from the Clerk of the National Assembly. The last paragraph of that letter---

Hon. Speaker: To who is the letter addressed?

Hon. Lessonet: It is addressed to the Chief Executive Officer (CEO), the NG-CDF Board. The letter is the basis of the document that I have just tabled. More importantly, the last paragraph of the letter says that the NG-CDF Board presented the constituency allocations before the Committee during the Sitting on 11th October, 2016 for its concurrence. This means it is with the concurrence of the Committee that I chair. That is what the NG-CDF Act anticipates. It requires that the schedule of allocations to the constituencies be tabled before the Committee that I chair for concurrence. This is confirmation by the Clerk of the National Assembly that such an event took place.

So, Hon. Speaker, I was just tabling the document before the House for purposes of information of the House and of our constituents.

Hon. Speaker: Hon. Lessonet, the House is not just going to receive documents from wherever. They must come through the normal procedure. That letter says that it should be tabled before your Committee. Your Committee then should present it through a Report.

Hon. Lessonet: Hon. Speaker, this letter says that they were tabled before the Committee for concurrence and further it says that: “This is, therefore, to inform you of the concurrence of the Committee for your necessary action.” This letter---

(Hon. Midiwo consulted loudly)

Let me just finish! Hon. Jakoyo should allow me to speak to the end. I wanted to interrupt you but you spoke to the end. Allow me to also speak to the end.

So, what we did as a Committee - and this letter confirms that - is that it was for the Committee to concur and inform the National Government Constituencies Development Fund Board that we have concurred. Actually, the NG-CDF Act does not even require that we table those allocations here.

Hon. Speaker: Then, why bring them here?

Hon. Lessonet: What the Board has done from yesterday when it received our concurrence is to inform each constituency by a letter, the allocation for each constituency which has already been done. I still found it necessary - and nothing in law or the Standing Orders stops me as a Chairman from tabling any document in this House - to table the report. That is why I brought it here to inform my colleagues and the country. There is no other forum of information better than the Floor of this House.

As I finish, I want to respond to Hon. Jakoyo Midiwo because he is misleading the House. The allocation to NG-CDF of Kshs35 billion is, of course, within the law of, at least, 2.5 per cent. I wish Hon. Speaker, you could listen in bold. The word used is “at least”. It should not be less than 2.5 per cent. When we went before the court, as Hon. ole Metito has put it, the structure of the Division of Revenue Bill does not originate from the Committee that I chair. The Division of Revenue Bill is normally processed through this House. So, this House, the Budget and Appropriations Committee and everybody in it did not see it. So, the structure of the

Division of Revenue Bill places NG-CDF among the sharing entities such as the national Government, county governments and the Equalisation Fund. When we went to court, it therefore, allowed us to access 2.5 per cent of the national Government share. The national Government share of ordinary revenue is Kshs1 trillion. 2.5 per cent of Kshs1 trillion is the reason we have Kshs25 billion available, which I have tabled to show how it is shared. The reason I am saying that Hon. Jakoyo Midiwo is misleading the House is to anticipate that my Committee only comes in with the monies available to NG-CDF, which is Kshs25 billion. When we are at the tail end, we cannot, as a Committee, rewrite the Budget. Hon. Jakoyo Midiwo anticipates that the Committee I chair can re-write the national Budget. We cannot. The national Budget has already been passed by this House.

With those comments, allow me, therefore, to say that this Kshs25 billion has been shared and the NG-CDF Board has written specifically to each constituency to communicate to them the allocations. I still found it appropriate, as the Chair of that Committee, to inform Members by tabling exactly what has been allocated to each constituency.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, the only way to move the House is through a Motion. So, you cannot just say that this is information you are sharing gratuitously with Members merely because you were in a happy mood or you felt philanthropic to provide information. I have said that, that document should be taken back and so, there is nothing to debate. Indeed, even Hon. Lessonet confirms that even the Act does not require him to even give that information. Now that the information you want to give is causing anxiety, take it back, go and use it in a proper way you know how under the Act and the Members will know in a way that they will not get excited. We cannot begin to discuss nothing. This is not business. There is no business before the House. I have directed that the document be taken back to Hon. Lessonet. I will not be addressed on that. There is nothing.

Hon. Lessonet, deal with it in terms of the Act. You either call your Committee or you want us to call a *Kamukunji*, but you cannot use the plenary to debate matters that have come to the House in the wrong way.

Hon. S.S. Ahmed: On a point of order, Hon. Speaker.

Hon. Speaker: There is nothing on this point. Member for Kisumu East, your point of order must not be on this.

Hon. S.S. Ahmed: I beg your pardon, Hon. Speaker. It is in respect of the NG-CDF Caucus Committee that this House---

Hon. Speaker: You are out of order. There is nothing about NG-CDF on the Order Paper. Let us proceed to the next Order.

(Hon. (Dr.) Munyaka stood up in his place)

Hon. Member for Machakos Town, just take your seat. Hon. Members, debate on this Bill was concluded in the morning. What remains is for the Question to be put.

BILL

Second Reading

THE INSTITUTE OF DIRECTORS OF KENYA BILL

(Hon. Ochieng on 12.10.2016)

(Debate concluded on 12.10.2016- Morning Sitting)

(Question put and agreed to)

(The Bill was read a second Time and committed to a Committee of the whole House tomorrow)

Hon. Speaker: Next Order.

MOTION

CHANGES TO COMMITTEE MEMBERSHIP

Hon. Speaker: The Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to Move the following Motion:-

THAT, pursuant to the provisions of Standing Order No. 175, and further to the resolutions of the House of 8th October 2013, 28th April 2016, 14th June 2016 and 6th July 2016 on appointment of Members to respective Committees, this House further approves the appointment of the following Members to the Committees specified hereunder:-

(i) Hon. Opiyo Wandayi, MP to be re-appointed to the Departmental Committees on Agriculture, Livestock and Co-operatives and Environment and Natural Resources to replace Hons. Hezron Awiti Bollo, MP and Zuleikha Hassan Juma, MP, respectively, who now ceases to be members of the corresponding Committees;

(ii) Hon. Hezron Awiti Bollo, M.P. to move from the Departmental Committee on Agriculture, Livestock and Co-operatives to the Joint Committee on Parliamentary Broadcasting and Library to replace Hon. Zuleikha Hassan Juma, M.P., who now ceases to be a member of the Joint Committee on Parliamentary Broadcasting and Library;

(iii) Hon. Zuleikha Hassan Juma, M.P. to be appointed to the Committee on Regional Integration to replace Hon. Florence Mutua, M.P., who now ceases to be a member of the Committee;

(iv) Hon. Zuleikha Hassan Juma, M.P. to be appointed to the Departmental Committee on Education, Research and Technology to replace Hon. Dorcas Kedogo, M.P., who now ceases to be a member of the Committee; and,

(v) Hon. James Onyango K'oyoo, M.P. to be appointed to the Committee of Privileges to replace Hon. (Dr.) Susan Musyoka, M.P., who ceases to be a member of the Committee of Privileges.

This is from the CORD Coalition and it is as a result of consultations and approval by the Selection Committee and the House Business Committee (HBC). Everything is in order. It is a small matter.

I beg to move and ask the Whip for the Minority, Hon. Mwadeghu, to second.

Hon. Mwachugu: Ahsante Mhe. Spika. Naomba kuunga mkono Hoja hii ya mabadaliko ya Wabunge katika nyadhifa mbalimbali za kamati. Kama unavyoelewa, imebidi mara nyingine tuje mbele ya Bunge tuombe kibali cha kupatia Wabunge kamati mbalimbali kulingana na uzito wa kazi vile ulivyo.

Kama tunavyoona, tuko na Mhe. Opiyo Wandayi, ambaye kama mnavyorejua kuna wakati alikuwa na tatizo. Kwa hivyo, tunamrudisha maana tulikuwa tumekwishapeana nafasi katika kamati mbalimbali. Imebidi basi tufanye mabadaliko na ukarabati ili angalau nafasi zipatikane ndiposa kila moja apate nafasi yake.

Tumejadiliana na ikatubidi tufanye mageuzo yanayowahusu wenzetu katika kamati mbalimbali ili wapate kupelekwa kufanya kazi katika kamati nyingine. Wapo wengine walioomba ruhusa wabadilishiwe kamati kwa sababu labda kazi zimewazidi ama wangependa wapate kuelewa zaidi kazi katika kamati nyingine. Kwa hivyo, imebidi tufanye mageuzo haya na ni ombi langu kwenu Wabunge wenzangu mwapatie kibali ili wapate nafasi ya kuhudumu katika kamati hizi. Iwapo itabidi, tutarudi hapa Bungeni tena kuleta mageuzo mengine ili kila Mbunge apate nafasi ya kuchangia kikamilifu katika shughuli za Bunge.

Naunga mkono.

Hon. Speaker: Before I propose the Question, allow me to recognise pupils from Loyangalan Primary School seated in the Speaker's Gallery from Laisamis Constituency, Marsabit County. They are welcome to observe the proceedings in the House.

(Hon. (Ms.) Nyamunga walked while the Speaker was on his feet)

Hon. Members, it is becoming very--- I know the second Tuesday of August in the fifth year is fast approaching and it is making us not to concentrate a lot.

(Laughter)

(Question proposed)

(Question put and agreed to)

Next Order!

Hon. Speaker: Order, hon. Members! Take your seats. I have a Communication to make relating to the business in the Order Paper, which has just been read out, about the proposed amendments to the Kenya Defence Forces (Amendment) Bill (National Assembly Bill No. 41 of 2015).

GUIDANCE ON PROPOSED AMENDMENTS TO THE
KENYA DEFENCE FORCES (AMENDMENT) BILL

Hon. Speaker: Before we proceed to the next Order, which is the Committee of the whole House on the Kenya Defence Forces (Amendment) Bill (National Assembly Bill No. 41 of 2015), I wish to offer the following guidance.

In mid-March this year, I received proposed amendments to the Kenya Defence Forces (Amendment) Bill by the Member for Homa Bay Town, Hon. Peter Kaluma. The said amendment seeks to propose a compulsory compensation to members of the Kenya Defence

Forces who suffer any form of disability or their dependents on death while on duty, a lump sum of not less than Ksh20 million. In addition, the amendment also proposes a waiver of all fees or tuition charges in all public institutions of learning, up to college level, for the members' children.

Hon. Members, whilst I am conscious that the amendments mean well to our Defence Forces, it is the opinion of the Speaker that the said amendments have a money Bill effect in terms of Article 114 of the Constitution. As you may be aware, the Budget and Appropriations Committee ought to consult with the Cabinet Secretary for the National Treasury before the House can proceed with the consideration of the amendments in Committee of the whole House.

Hon. Members, I am also reliably informed that such formal consultations have not been concluded. In the circumstances, I order that the said amendments are not considered in the Committee of the whole House as the extent of their financial implication have not been determined nor has this House made any legislative provision to meet the consequent budgetary requirements of the amendments, should they be passed. I am also aware that the Member has a separate legislative proposal with a similar effect, which is under consideration by the relevant committees before publication into a Bill. This is, indeed, a preferred alternative as it will also allow room for the obligatory public participation and determination on the implication of the proposed legislation on the pension scheme for the Kenya Defence Forces.

The House and the Committee of the whole House are guided accordingly that the said amendments shall not be considered.

Thank you.

Hon. Speaker: Hon. Members, the effect of my Communication is that the proposed amendment by Hon. Kaluma will not be considered in the Committee of the whole House.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE KENYA DEFENCE FORCES (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, we are now in the Committee of the whole House to consider the Kenya Defence Forces (Amendment) Bill (National Assembly Bill No. 41 of 2015).

(Loud consultations)

Those Members who are leaving the House should do so quietly, so that we can proceed with the business that is before us. We should also be mindful of the guidance that has been

provided by the Speaker, that the amendments proposed by Hon. Kaluma will not be considered in this session.

Clause 3

The Temporary Deputy Chairman (Hon. Omulele): There is an amendment by Hon. John Kiragu.

Hon. J.K. Chege : Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 3 of the Bill be deleted and substituted with the following—

3. Section 8 of the principal Act be amended—

(a) by inserting the following new subsection immediately after subsection (1)—

“(1A) In addition to the functions under subsection (1), the Defence Forces shall undertake research and development and production of defence equipment to meet the defence needs of the country.”

(b) by deleting subsections (3) and (4).

Hon. Temporary Deputy Chairman, I am proposing that we allow the Kenya Defence Forces (KDF) to be involved in research, development and production. This amendment is important because as we grow, like the other nations, we should develop capacity to defend our country.

When you look at all the superpowers in the world, the Defence Forces have been involved in research in space technology, medicine or special vehicle development. Kenya has a potential to grow. We cannot have a defence force that does not appreciate the major interests that have been put in place by the Government in research and development, particularly in institutions of higher learning.

I am proposing this amendment so that we can pave way for collaboration with other stakeholders, be it the private sector or the KDF itself, so that our country can compete with other nations.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I will give this chance to the Chairman of the Departmental Committee on Defence and Foreign Relations.

Hon. Gethenji: Hon. Temporary Deputy Chairman, given that most militaries around the world are driven by military industrial complexes, and are involved in development to improve the weaponry and equipment used in the field, it will only make sense and give impetus if we involve our own KDF. I am aware that they undertake their own research. They also have production facilities in the name of the Kenya Ordinances Factories Corporation. There is no harm in including in the legislation that the military will now, as a policy, be involved in research, development and production.

They can even seek funding from the National Treasury and donations from the militaries of friendly states like the US and other countries to help them in their endeavour of industrialisation of the military. This will have the effect of creating jobs. It will also provide

security for neighbouring communities, who can participate in that venture which is not military in itself, but research, development and academic.

The amendment by Hon. Kiragu is welcome. We have also been crying for the same for many years in terms of supporting military industrialisation and research in KDF.

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

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairman. I have keenly looked at this amendment in the aspect of academic, research and development. What is the core role of KDF? I do not want us to open a Pandora's box. When it comes to production, I have no doubt that even with the ordinances factory in Eldoret, those people have been working. We have not had any interests. The KDF is a disciplined force. If we make it open-ended, we are more likely to open a Pandora's box. I do not see the value of doing that. Your amendment might be good, but we might be opening a Pandora's Box. Those are disciplined forces and the moment you allow them to do that, we will be risking.

I oppose.

The Temporary Deputy Chairman (Hon. Omulele): Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Chairman. I am a leader and I would like to ask my good friend, Hon. Kiragu, to withdraw his amendment. The core mandate of the KDF is very clear in our Constitution. We do not mind if the KDF have colleges, but we should not dilute their core mandate as provided for in their Act and the Constitution. Let us leave that to the National Defence College, which is more like a university. Let us not give that mandate to the military. We should send our children to the army to do specific functions as provided for in the Constitution.

I would like to ask him to withdraw the amendment. I do not want to say that I oppose because I am his leader.

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

Hon. J.K. Chege: Hon. Temporary Deputy Chairman, with all due respect to what my colleagues have said, I think it is important for us to look at what is happening around the world. The KDF has a factory in Eldoret, but they are also performing their duties. It is very dangerous for us to lock out the activity that I am proposing because somebody might say in future that they should stop what they are doing because it is not provided for in law.

We have just received the President of South Africa and one of the things the governments have agreed is that we will be supplied with special equipment. It is important for us to know that the equipment has been developed with the support of the Government in that country. We know that Boeing produces jets used in this country, including all the jet fighters.

Hon. Temporary Deputy Chairman, on research, if we have to develop as a country, we have to open the academia to join the army because we are no longer dealing with conventional warfare. It is becoming a sophisticated area and, locking out research is not the best thing for this country as we move forward.

The Temporary Deputy Chairman (Hon. Omulele): To be fair in having the voice of the other gender on this issue, I will allow Hon. Annah Nyokabi, the County Women Representative for Kiambu to have a say on this and then we shall take a vote.

Hon. (Ms.) Gathecha: Thank you, Hon. Temporary Deputy Chairman. I rise to make my contribution on this point. We fully understand that it does not matter when we talk about research and development. We know there is provision for expertise and training that goes on within the military, including the use of equipment internationally.

If we look at research in the academic field, we will realise that there is no provision that stops anybody within the military to pursue a PhD in whatever area of specialisation. We already know that there are members of the military who teach in academic institutions. We should provide for research, development and policy. We cannot say that we have specialised industries, like in equipment manufacturing in this country. There is standardised procedure in the manufacture of weapons in our ordinance factory. When there is a requirement for expertise and highly technical training, it is provided for outside the country. This opens a Pandora's box and creates another institution that takes care of that. This completely goes against the core mandate of the KDF. I recommend that the Member withdraws his amendment.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, I can see that there is a lot of interest in the amendment. However, we can all express ourselves on this by taking a vote.

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

(Clause 3 agreed to)

(Loud consultations)

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, that is why I was saying that you need to pay close attention. Let me explain to you what we have just done. In the first stage, we have put the Question on the clause as amended and it has been rejected. We moved on to have it without that amendment as it appears in the Bill, which you have just passed. That is the way it goes.

Clause 4

The Temporary Deputy Chairman (Hon. Omulele): There is an amendment that has been proposed by the Chair of Committee. Hon. Chair, you have the Floor.

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

THAT, Clause 4 of the Bill be amended—

(a) in paragraph (a) by inserting the words “and National Assembly” immediately after the word “President”;

(b) in paragraph (b) by inserting the words “and report thereon to the President and the National Assembly” immediately after the words “defence matters”;

(c) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) by deleting paragraph (h) and substituting therefor the following new paragraph—

(h) submit an annual report, in writing, to the President and National Assembly which shall include—

(i) the work and accomplishment of the Ministry, the Services and the Defence Council during the period covered by the Report;

- (ii) the expenditure of the Ministry and the Services by the Principal Secretary in the Ministry; and
- (iii) such other recommendations as he or she may consider appropriate.

Hon. Temporary Deputy Chairman, the Committee deliberated severally on all the amendments which are presented as Committee amendments to the Bill. The net effect of the clause, before we amended it as a Committee, was to remove the role of Parliament in oversight, contrary to Articles 94 and 95 of the Constitution. Our proposed amendment to this clause, which is in the Order Paper, seeks to retain the oversight role of the National Assembly.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Yes, Hon. Chris Wamalwa.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairman. Procedurally, when it comes to amendments, you move the amendments and you give the justification. I am a member of the Committee and I agree with my Chair. However, in this context, we have several amendments. You realise that we have Clause 4(a), (b) and (c). Procedurally, it demands that we justify every amendment and not generalise the way the Committee Chair has said. Therefore, for the sake of Hon. Members' understanding, let him explain further. I support it as it goes further.

There are some sections we are trying to delete and insert. Maybe the Committee Chair can go further to explain that so that Hon. Members can understand it fully as opposed to what he has just said in one or two words. Explaining per part will help.

Thank you.

Hon. Gethenji: Hon. Temporary Deputy Chairman, I am surprised that Hon. Wamalwa, who is a member of the Committee, is making that suggestion. We spent almost four days in Mombasa deliberating over the various amendments, the net effects and the amendments that we subsequently brought, which were curing some ills in the amended Bill. What we did in our Report and proposals is that we identified the net effect of each of the amendments that we were bringing. This is because the net effect may only be in one subsection and not in the entire clause. So, the justifications we are bringing show the curative effect of what we are now proposing in each amendment.

Therefore, if we went through 16 amendments that we have brought clause by clause, we will be here until tomorrow evening.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Wamalwa, you are a member of that Committee.

Hon. Wakhungu: Hon. Temporary Deputy Chairman, I am a member and I said I support. However, Hon. Kaluma came to me so that I could explain to him. There are several amendments. It is true that, that is the net effect. I support. I am a member of the Committee but when we come here, it is a whole plenary. The Hon. Member is not a member of the Committee. He has come to me so that I can explain to him.

The Temporary Deputy Chairman (Hon. Omulele): I understand, Hon. Wamalwa. I take it that you support the proposed amendment by the Committee Chair. Now that we have proposed the Question, I will now give the opportunity to the next person to have a say on this.

I can see the Leader of the Majority Party. The next one will be Hon. David Pkosing.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I support the Committee Chair. I want to tell Hon. Wamalwa that he is not the teacher of all of us. Every Member of Parliament has this Bill. If you check at the back of the Bill, you will note that it shows the areas in the KDF Act being amended. If Hon. Kaluma wants to read, Hon. Wamalwa cannot be his tutor. The amendment that the Committee has rejected sought to amend Section 4 which states that if Parliament is not in session, deployment can take place. I support that because even if we are not in session, Parliament can be called to hold a Special Sitting. Therefore, approval must be sought. The oversight role played by Parliament, more so the National Assembly cannot be denied.

Hon. Chairman, I thought you were not going to support me on this, but I know this one will give you more *bonga* points. The oversight role of Parliament must be respected the way we respect the oversight role of the President.

I support.

The Temporary Deputy Chairman (Hon. Omulele): Very well spoken, Hon. Leader of the Majority Party. I think it is clear. Can we have Hon. David?

Hon. Losiakou: Thank you, Hon. Temporary Deputy Chairman. I am a member of the Committee and I can attest to the fact that we had lengthy deliberation on this matter. The principal reasons we agree with this amendment are as follows:

First, our oversight role as Parliament is indicated under Article 95 of the Constitution. It gives the Committee the mandate to oversee the ministry. So, if you do not have Parliament you are actually removing the Committee from playing its oversight role. Therefore, we are bringing that role in.

Secondly, according to the Constitution, if you let the KDF intervene with regard to security issues, the matter has to come to Parliament. So, we are just re-aligning the amendment to the Constitution.

Finally, if you look at the principal amendment that is before the Chairman's recommendation, you will realise that it has no Principal Secretary (PS). This is the case and yet the PS is the Accounting Officer in that Ministry. Therefore, you cannot say that you are submitting an annual report or a financial report without involving the PS. That is why we are supporting this amendment. It is now clear.

I support.

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

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

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

(Clause 4 as amended agreed to)

Clause 5

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

THAT, Clause 5 of the Bill be amended by inserting the words “to an employee of the Ministry” immediately after the word “Act”.

The Departmental Committee on Defence and Foreign Relations had other amendments to Clause 5. The net effect of the amendment that was in the original amendment Bill was to give the CS the discretion to decide who to delegate his or her powers to. The current provision in the Act has the potential to erode the civilian oversight over the KDF.

However, Clause 5 does not cure that mischief that it intended to cure as the amendment is still ambiguous and does not bar the CS from delegating to military officers, which will erode civilian oversight role over the military in the Ministry of Defence. Therefore, our proposed amendments to Clause 5 seek to do just that; to cure this by providing that the CS may delegate only to an employee of the Ministry. That is only among civilian staff at the Ministry of Defence. This will then cure any cross-linkage that the CS may create by delegating her powers and authority to military command. I think that should be clear enough.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Do I see interest from Hon. David Pkosing, the Member for Pokot South?

Hon. Losiakou: Yes, Hon. Temporary Deputy Chairman. I have interest and support that amendment. Initially, if you looked at the principal amendment, it was not clear. If you say: “The CS may where appropriate and in writing delegate any power or assign any duty conferred on him or her under this Act---” The question that begs is, to whom?

This is because you cannot delegate power in a vacuum. So that you do not create that vacuum whether you delegate to generals or whoever, we are now saying: “To an employee of the Ministry”. I think that now brings clarity, It also means that civilian authority is more powerful than military authority as it is provided for in the Constitution. So, it makes it very clear and specific to whom the power is being delegated.

An Hon. Member: He is superfluous!

The Temporary Deputy Chairman (Hon. Omulele): Very well. Is there any other Member interested in this?

Yes, Hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Chairman, this amendment, together with the proposed substantive amendment, are superfluous and should not be anywhere in law. I oppose this amendment and what my brother, Hon. Pkosing has read out. It is not tenable that a CS or anybody can delegate power to the military. It cannot happen because the military works by command.

I have been seeing the CS for Internal Security and Co-ordination of Government purporting to direct the Inspector- General to arrest people and do all sorts of things. It is all superfluous. So, I will personally oppose this amendment and further oppose the legislative proposal in the Bill. This is because they are superfluous and not necessary.

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

(Clause 5 as amended agreed to)

Clause 6

Hon. J.K. Chege: Hon. Temporary Deputy Chairman, this was consistent with what I had proposed earlier. I will stay as earlier agreed. As far as I am concerned there is an opportunity for us to consider the role of research and development. To me it is not something that ---

The Temporary Deputy Chairman (Hon. Omulele): Hon. Kiragu, I think the right way for you to go about it will be for you to move the amendment so that we have it on record. After that you can discuss it.

Hon. J.K. Chege: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 6 of the Bill be deleted and substituted with the following—

6. Section 12 of the principal Act be amended—

(a) by inserting the following new paragraphs immediately after paragraph

(g)—

“(ga) instigate an integrated program for research, development and production for defence purposes; and

(gb) recommend measures of co-ordination of research, development and production among Defence Forces and other stakeholders on matters of national security interest.”

(b) by deleting the words "of the Defence Forces" and substituting therefor the words "instructions or directives issued to Service Commanders" in paragraph (l)

Let us allow this amendment to be part of the Bill. I believe that in our fight to ensure there is security in the modern world, it is important for us to understand that these are hard times and they call for serious actions. Just like other countries are doing, we must encourage all parties that have something to contribute. This is particularly those that are ahead of us in terms of research and development or cyber issues. All these are issues of national interest.

(Question of the amendment proposed)

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

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Speaker. If you look at this amendment, you will find that it is trying to operationalise the earlier amendment to Clause 3 that was rejected. So, the two amendments are mutually inclusive. It goes without saying because we rejected the proposed amendment to Clause 3. That is what Hon. (Eng.) Kiragu was trying to explain; that we automatically reject the amendment to Clause 6. That is why I used the words “mutually inclusive”.

So, we oppose it. Thank you.

The Temporary Deputy Speaker (Hon. Omulele): You are saying that they work in tandem. We will hear Hon. Ferdinand Wanyonyi on this.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairman, I support this amendment. My argument is that if you look at the recruitment to the armed forces, you will find that we have high caliber personnel. Some of them are graduates and engineers depending on the interest of individuals joining the armed forces.

We have our youth, as noted by Eng. Kiragu, who are idle. Maybe they will be idle if we do not allow them to explore. As a country, we are not here to just consume what is produced by China, Israel and the rest. We should have our people taking part in this to understand what is used to make the hardware we procure for our country. Therefore, I support the amendment.

I wanted to contribute to the first one but I was not given the opportunity. I want to support Eng. Kiragu.

The Temporary Deputy Chairman (Hon. Omulele): I understand. You would have supported the first one and subsequently this one.

Hon. F.K. Wanyonyi: I am subsequently supporting this because our youths are there. If you can give me a minute, if you go for recruitment today - we all see because we take part in those recruitments - our youths are graduates. Some of them have PhDs. They are joining the armed forces because they have interest. Therefore, we cannot consume what is produced in Israel, the United Kingdom (UK) or United States of America (USA). We should understand the kind of hardware we have. Therefore, I support the amendment because it gives us the latitude to understand the kind of hardware we have in our country.

Thank you.

The Temporary Deputy Chairman (Hon. Omulele): Very well, Hon. Ferdinand. We shall now have Hon. Peter Kaluma, the Member for Homa Bay Town.

Hon. Kaluma: Hon. Temporary Deputy Chairman, before I make my comment, when provisions like these are moved, the idea of moving them is that you get fellow Members to be properly informed about the purpose of the amendment. You know Hon. Wamalwa said this. Eng. Kiragu is also moving for the sake of moving. People do not get the gist of the public concern being raised by the amendment.

However, having listened to Members and being a quick learner, these are provisions we call superfluous. This is because for internal research, there are some matters we cannot speak in public in connection to defence. There is a lot about research and development that our military or KDF are doing related to their work and we do not need to put it in law. There is nothing it adds or takes away from them. I, therefore, oppose this amendment.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Kaluma, could you be talking about the kind of research that used to be undertaken by the former President of Uganda?

Hon. Kaluma: Yes. The only research you see when you move towards Moi's Bridge. There are some issues happening there that can only be sustained through research. The kind of research we do not want to legitimise here is this research where they come and say, "if you are short, you are not fit to join them". In the last recruitment in my constituency, they decided that you cannot be a military man if you had one tooth off. These are things they are already doing. In as much as we do not want them to unduly restrict people, I want to say a provision like this is superfluous and request my brother to withdraw it. This is superfluous. Research necessary and incidental to the work of the military or the KDF is already being done by them. They are automatic and you cannot do anything about it. So, I request my brother that he drops the amendment so that we can move to more substantive things.

The Temporary Deputy Chairman (Hon. Omulele): Members, I think we have all heard the comment. I think we should not take too much time on this. I will therefore proceed to--

Hon. Losiakou: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Omulele): Yes, Hon. David Pkosing.

Hon. Losiakou: Hon. Temporary Deputy Chairman, I think you should have guided the House earlier on by saying that if an amendment from a Member was defeated, it means this was naturally defeated. If we defeated the other one which this one is operationalising, what exactly shall we be doing as a House? This is a very important amendment.

I am a Member of the Departmental Committee on Defence and Foreign Relations. Research and giving opportunities to the defence personnel to go further in manufacturing equipment is important. Hon. Kiragu knows that if there is something important like this, he should present it to the Committee during discussion. That is so, so that the Committee can have an opportunity to ventilate, do more research and consult widely so that it is something we have thought over critically before it comes to the Floor of the House. Otherwise if we allow this one to be passed--- Guide the House.

I do not support this one because we did not pass the other one. It is not because it is bad but I think it is coming in the wrong way.

The Temporary Deputy Chairman (Hon. Omulele): Thank you, Hon. David Pkosing. You have got the gist of what we are discussing. Now that the earlier one failed, to use the words of Hon. Kaluma, but without the same meaning, it is superfluous.

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

(Clause 6 agreed to)

(Clauses 7 and 8 agreed to)

Clause 9

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

THAT, Clause 9 of the Bill be deleted and substituted therefor with the following new clause—

Amendment of
section 17 of No. 25
of 2012.

9. Section 17 of the principal Act is amended by —

- (a) inserting the words “in line with the chain of command” immediately after the words “responsible for”;
- (b) deleting paragraph (b).

The justification for the amendment that is brought by the Committee is similar to the one we had for Clause 5 but within the line of the military. Clause 9 seeks to give Service Commanders power to delegate without eroding civilian oversight over the KDF. The proposed amendment to Clause 9 seeks to ensure that the delegation is in line with the chain of command. Clause 9(b) of the Bill was amended by inserting the words “in times of war, emergency or during extraneous security circumstances” immediately after the words “one year”. This was in reference to the position of the Chief of Defence Forces (CDF) and retirement of the CDF which allows extension of tenure of CDFs in times of war or emergency. It does not augur well in times of war to have a change in command and leadership because it disorganises the chain of command and the operations of the KDF and any military operations that may be ongoing. So, we sought to qualify that extension by only limiting it to times of war or emergency. That is the net effect of the amendment to that clause.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I can see interest from Hon. Katoo ole Metito. Since he is not there, let us have Hon. Kaluma who also has interest in this one.

Hon. Kaluma: Yes, Hon. Temporary Deputy Chairman. The idea that the term of a serving Chief of Defence Forces can be extended by law in times of war is very dangerous, if we do not define war as when KDF is engaged actively with the enemy of the State. Remember, this is the person who commands his team to go to war. We must encourage a situation like what happened with the immediate former Chief Justice, Mutunga. You can leave office in good time. On the idea that you can create some emergency, it is worse when you say emergency without defining “emergency situations” that would necessitate the extension of a term of a serving Chief of Defence Forces.

For those purposes unless the Chair is making those clarifications and specifications, it is not good to have a situation where people think that even those wars we are fighting as a country cannot be fought without them. The Chief of Defence Forces is just one person. We have a whole chain of command down there. Let them go home when their time comes. This mentality we are borrowing from other African nations has to stop.

I oppose

The Temporary Deputy Chairman (Hon. Omulele): Very well. I see no further interest in this clause.

*(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 9 as amended agreed to)

(Clause 10 agreed to)

Clause 11

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

THAT, Clause 11 of the Bill be amended by inserting the words “in times of war, emergency, or during extraneous security circumstances” immediately after the words “one year”;

Hon. Temporary Deputy Chairman, I spoke to this in the previous clause erroneously but I just want to say that the justification for the amendment that we brought to Clause 11(6) is, it seeks to give the President powers to extend the term of office of the Chief of Defence Forces, the Vice-Chief of Defence Forces and service commanders by a period not exceeding one year. However, the amendment, as it presently is in the Bill, may arguably inhibit upward mobility. The concept of preservation of institutional memory is likely to be abused.

The proposed amendment that we are moving as a Committee seeks to ensure that the extension of the term of the Office of the Chief of Defence Forces, the Vice-Chief and the Service Commanders is only done in times of war, emergency and during extraneous security

circumstances. I do not wish to preempt debate, but war is clearly defined in the Constitution and the Kenya Defence Forces Act. It is there for anyone who has gone beyond Form Four.

So, emergency will be in situations where there is a massive natural disaster that requires that the Defence Forces are deployed to support civilian authority. In the event of massive civilian unrest, the Defence Forces are called out to support the civilian authority. Other extraneous security circumstances can also be defined not only by the Departmental Committee on Defence and Foreign Relations, but the whole House or the plenary. I do not think there is any risk or ambiguity as to what these definitions would apply. Therefore, the qualifications that the Committee has brought to limit the extension of the tenure of the Service Commanders, Vice-Chief of Defence Forces and the Chief of Defence Forces by the Commander-in-Chief will not be more than one year. I repeat for my brother, Hon. Kaluma's sake. It is only under those circumstances.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Let us now have Hon. Peter Kaluma.

Hon. Kaluma: Thank you very much for the opportunity, Hon. Temporary Deputy Chairman. We know what war is and we may also understand the parameters of emergency. However, what is "during extraneous security circumstances"? What is it in legislation? Is it in the Kenya Defence Forces Act or in the Constitution?

I beg the Mover to listen. We do not want to leave the operations of KDF at any level, to the thinking or determinations of an individual somewhere. Remember, the KDF is one organ that operates under a command. We have the Commander-in-Chief, the Chief of Defence Forces and the commanders going downward to the company. When you say "extraneous security circumstances," what is it in law? Is it left for the Commander-in-Chief to decide, "we want to deploy you to go and deal with Hon. Kaluma during elections," which is an extraneous security circumstance or what is it?

I would not oppose this amendment if we limited it to the extension of the terms of these critical officers in our KDF in times of war or emergency. This happens in America. I would urge for the sake of not opposing the entire amendment, that we remove the vague provisions in matters relating to a force that is under command on specific duties like the KDF. It is a dangerous vague provision.

The Temporary Deputy Chairman (Hon. Omulele): I hear you, Hon. Kaluma. Those of us who go to court know what "extraneous" means. I want to give this opportunity to Hon. Abdikadir, the Member for Wajir West.

Hon. A.O. Ahmed: Thank you, Hon. Temporary Deputy Chairman. I rise to oppose this clause. We need to be very clear. We are enacting laws and we need to be clear especially on security issues. When we allow words that are not clear, we are opening up room for misinterpretation and that can be very dangerous. Extraneous security circumstances can be during elections. What will stop us from calling elections extraneous security circumstances? With the strongest terms possible, I oppose this amendment.

The Temporary Deputy Speaker (Hon. Omulele): To just temper it with gender sensitivity, I will give this chance to Hon. Mishi Juma, the County Women Representative for Mombasa.

Hon. (Ms.) Khamisi: Thank you, Hon. Temporary Deputy Chairman. I really do not want to oppose this clause but I am opposing it just because of the wording “extraneous security circumstances”. To me, these words are ambiguous and one can take advantage and use this provision negatively for their own interest and not for the country’s interest. Therefore, we need clarity on this amendment. Otherwise, if you remove these three words, we will support the amendment.

Thank you.

The Temporary Deputy Chairman (Hon. Omulele): Let us hear Hon. Katoo ole Metito. Because of the heated nature of the matter, I will also give a chance to Hon. Ferdinand Wanyonyi to be the last one to contribute on this.

Hon. Katoo: Thank you, Hon. Temporary Deputy Chairman. Let me also thank my colleagues for supporting this amendment. What is dividing us is not really a big thing. The words “extraneous security circumstances” would not do any harm if the Chairman would agree to remove them. However, there are very many security issues which you may not be able to explain in terms of war and emergency. I would like my good friend, Hon. Kaluma to hear this. I have no problem if the Chair would agree to delete the three last words.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Katoo, I will allow you but I hear some whispering. I think the Chair wants to say something in that regard.

Hon. Katoo: May be he is moving towards that direction but before he says it, let me just explain what could be an extraneous circumstance in terms of security. Look at what is happening in Ethiopia right now. Surely, there is no emergency of six months. That is an extraneous security concern. The state of emergency that has been called for by the Commander-in-Chief there is for six months. You may not know how long an emergency will take. For the sake of moving together, I have no problem if the Chair could agree to delete those three words. However, I know there are some strenuous security circumstances. It is not about elections.

(Laughter)

The Temporary Deputy Chairman (Hon. Omulele): Let us just hold on. We will proceed in an orderly way. I will allow the Leader of the Majority Party to contribute.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Chairman. I have consulted the Chair on the words “extraneous security circumstances”. There is a bad history where I come from. I come from northern Kenya, and the Wagalla Massacre is on my mind. Emergency is what is happening in Ethiopia. Emergency can happen. With your permission, Departmental Committee Chair, we want to build a bipartisan consensus. We want to have a good law. We will ask the Departmental Committee Chair, with the Speaker’s permission, to remove the word “Extraneous” from the Bill. Let us retain the words “war” and “emergency”. We can define those two words but these other words have no permission.

The Temporary Deputy Chairman (Hon. Omulele): Very well. We will have the Chair. So, Hon. Ferdinand can comment. Hon. Ferdinand, you want to comment before he amends?

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairman, I have gone to school. We are making this law for posterity. I do not know who will be there 10 years to come. This is law. Ten years to come somebody may misuse this provision. The word “extraneous” means “out of law”. That means somebody can use this provision and argue that it is law. Without wasting time, we are talking about this country’s disciplined forces. The KDF is ranked fifth in Africa. The

moment you give somebody a leeway, anything can happen 20 years to come, just as the Leader of the Majority Party has said.

I oppose the amendment. Let him get rid of that word.

The Temporary Deputy Chairman (Hon. Omulele): Very well, Hon. Wanyonyi. We are all on the same page. The word “extraneous” is causing problems.

Hon. Gethenji: Hon. Temporary Deputy Chairman, without denying my brothers the opportunity to use all the English words they know, I am not opposed to their proposal. In the spirit of bipartisanship, Hon. Mishi Mboko, I thank you for supporting. We are not opposed to removing the last four words. The proposed amendment seeks to ensure that extension of the terms of the Chief of Defence Forces, the Vice-Chief of Defence Forces and the Service Commanders is only done in times of war or emergency. Hon. Mishi, are we okay?

Hon. (Ms.) Khamisi: Yes.

Hon. Gethenji: Hon. Temporary Deputy Chairman, allow me to amend my proposed amendment on the Floor.

The Temporary Deputy Chairman (Hon. Omulele): It is okay. Read your original amendment without the words “extraneous security circumstances”.

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

THAT, Clause 11 of the Bill be amended by inserting the words “in times of war or emergency” immediately after the words “one year”.

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

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

THAT, Clause 13 of the Bill be amended by inserting the following new paragraph (d)—

“(d) expenditure incurred or expected to be incurred.

The justification of the amendment by the Committee is that, as it was in the original amendment Bill, it removes the need for the CS to inform the National Assembly where the Defence Forces are deployed. It also removes the need for the CS) to inform the National Assembly on the expenditure incurred or expected to be incurred. This, of course, is a violation of Article 201 of the Constitution which outlines openness and accountability as one of the guiding principles in financial matters. The proposed amendment seeks to include expenditure expected to be incurred during deployment of the KDF as one of the items the CS should disclose to this august House.

The amendment the Departmental Committee on Defence and Foreign Relations is proposing ensures that openness, accountability and reporting to the National Assembly is

adhered to in accordance with Article 201 of the Constitution, which was not the case in the original Bill which we are now seeking to amend.

Hon. Kaluma: *(Inaudible)*

Hon. Gethenji: Hon. Kaluma, that is clear. I hope you get me. That is the position.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see a bit of interest on this clause. We will have Kipruto Moi, the Member for Rongai.

Hon. Moi: I wanted to comment on Clause 12, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Omulele): Unfortunately, we have already passed that. Let us have Hon. Mishi.

Hon. (Ms.) Khamisi: Thank you, Hon. Temporary Deputy Chairman. I want to support the Chair on this amendment. The National Assembly is a platform for the public and they need to be involved in all development issues regarding this country. For the expenditure incurred by the security forces, the public also needs to know what we are using and what we are getting. So, this is a proper amendment which we all need to support.

Thank you.

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

(Clause 13 as amended agreed to)

(Clause 14 agreed to)

Clause 15

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

THAT, Clause 15 of the Bill be deleted and substituted therefor the following new clause—

Amendment of
section 33 of No. 25
of 2012.

15. Section 33 of the principal Act is amended —

(a) in subsection (1) by inserting the words “ and other authorities” immediately after the word “Service”;

(b) by deleting subsection (2); and

(c) in sub-section (3) by—

(i) deleting the expression “(2)” and substituting therefor the expression “(1)”; and

(ii) deleting the words “administration, command” in subsection (3).

The upshot of this amendment is to ensure smooth operations in times where KDF is deployed internally within our borders, in support of civilian security forces and civilian authority. We envisage, and I must thank Members of the Committee who exercised their minds on this issue, where there will be confusion in the chain of command where the KDF is deployed as anticipated in the Constitution.

The proposed amendment seeks to ensure that the administration and command of forces is retained by the respective commanders in joint operations while the Inspector-General of Police shall be left in charge of control and overall superintendence of the operation. This is to make it clear that in internal operations where the military is deployed to support civilian authority, the Inspector-General of Police is in control of the overall superintendence of the operation, but the individual commanders are in charge of the units and can downstream operational command.

That is it, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see interest from Hon. Annah Nyokabi, the County Women Representative for Kiambu.

Hon. (Ms.) Gathecha: Thank you, Hon. Temporary Deputy Chairman. I rise to support this amendment. If we take a look at the chain of command in the disciplined forces, we will see that hierarchy is extremely important in order for operations to be carried out so that we do not have the kind of disasters we saw in some internal operations a while ago. It is important that the person responsible for a particular operation within the country bears responsibility and accountability in ensuring that proper deployment is done and people answer to their responsibilities.

This amendment is of great importance and I support it.

The Temporary Deputy Chairman (Hon. Omulele): We will have Hon. Mary Wambui from Othaya and then Hon. Duale.

Hon. (Ms.) Munene: Thank you, Hon. Temporary Deputy Chairman for giving me this opportunity to support this amendment because it is very important for our forces. We know that they are disciplined. We also do not want to take chances because if we do not pass the amendment, it will give leeway and anybody can come with malice and make things bad.

I support the amendment.

Thank you.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, this is a very important amendment. The Constitution anticipates the deployment of KDF when there is an internal problem like it happened in Tana River, Marsabit, West Pokot and Westgate. The Inspector-General of Police must not lose his command structure. That is why when the Westgate terror attack happened, ole Lenku and Kimaiyo said mattresses were being burnt when Kenyans were dying. They added that it was under “sieke” meaning under siege. I am happy that Mr. Kimaiyo wants to vie for the Senate seat for Elgeyo Marakwet. “Mr. Sieke” will be vying on an old party called “KANU”.

This is very important. If KDF is sent to North Eastern, Kisumu or Mombasa, for example, they will maintain law and order. They will supplement the National Police Service, but the command will remain with the Inspector-General of Police. This is a very important amendment. That is why we have to ask ourselves how people disappear in the hands--- The KDF will only handle internal matters with the approval of this House within the provisions of the Constitution.

I thank the Chair because even if we send them now to Tana River or Ijara, as the new Member of Parliament under Jubilee is sitting here and he has no apologies to make because he has decided to be in Jubilee, the command structure will be very clear.

The Temporary Deputy Chairman (Hon. Omulele): I will give a chance to one more Member on this one.

Yes, Hon. Peter Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Chairman, I support the amendment save I believe that the former Inspector-General of Police, Mr. Kimaiyo is one of the best this nation has ever had. The Leader of the Majority Party should not be worried about Mr. Kimaiyo simply because Hon. Senator Murkomen is under siege somewhere.

(Laughter)

He is not under siege at all. He is taking Elgeyo Marakwet and we wish him well.

The Temporary Deputy Chairman (Hon. Omulele): Members, let us not put the House under “*sieke*” or whatever. We need to move on.

*(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 15 as amended agreed to)

Clause 16

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

THAT, Clause 16 of the Bill be amended—

(a) in sub-paragraph (i), by deleting the expression “241(3)(1)” and substituting therefor the expression “241(3)(b)”;

(b) by deleting sub-paragraph (ii) and substituting therefor the following new sub-paragraph (ii)—

“(ii) in paragraph (a) by inserting the words “or the President” immediately after the words “National Security Council”;

(c) by deleting sub-paragraph (iii) and substituting therefor the following new subparagraph (iii)—

“(iii) in paragraph (b) by inserting the words “or the President” immediately after the words “National Security Council”;

This is supposed to be the role of the National Security Council (NSC). The proposed amendment seeks to retain the role of the NSC in approving the deployment of the KDF in support of the National Police Service (NPS), and further extends the same powers to the President as the Chairman of the NSC. This ensures that the NSC, which is the highest security organ in the country, retains its role in the deployment of the KDF as envisaged in the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see an interest from Hon. David Pkosing, the Member for Pokot South.

Hon. Losiakou: Hon. Temporary Deputy Chairman, I want to support that amendment and support my Chairman. Ordinarily, the person in charge of the country is the President. If anything goes wrong, all fingers point at him. It does not matter whether it is bad water, insecurity or other things. If you look at the early amendments, you will realise that they were not giving prominence to the role of the President. That is why we had to bring this amendment. It is very clear now that if people blame the President, indeed, he has the instruments to implement whatever will benefit Kenyans.

I support the amendment.

The Temporary Deputy Chairman (Hon. Omulele): Very well. We shall have Hon. Nicolas Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Chairman. It is okay to propose that the KDF should co-operate with other authorities. To that extent, it would be admissible. It has been a trend in recent times that KDF seems to play the role of other constitutionally guaranteed authorities like the National Police Service which is wrong. If the import is to co-operate, that is good, but if the import is to take---

The Temporary Deputy Chairman (Hon. Omulele): Hon. Gumbo, if you had been here two or three minutes ago, you would have realized that, that issue was addressed very well in the debate on the previous clause.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I heard how it was being addressed from where I was. I am just raising a concern which is developing in the country. However, I agree with the idea of co-operating with other authorities as long as that is limited to co-operation and not taking over the roles of those authorities.

The Temporary Deputy Chairman (Hon. Omulele): We shall now have Hon. Annah Nyokabi.

Hon. (Ms.) Gathecha: Thank you, Hon. Temporary Deputy Chairman. I rise to support this amendment. In the world right now, security is not just under the domain of the Defence Forces. The approach that is being taken, especially by the NSC, involves all levels of security including intelligence. In our bid to protect Kenya's borders internally and externally, this will ensure that there is a multilateral agency approach. It will also infuse expertise and professionalism that could be used to advise the President on security issues.

I support.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Peter Kaluma, do you have something to say?

Hon. Kaluma: Thank you, Hon. Temporary Deputy Chairman. The idea that we want to give the President a voice on the mandate that falls under the NSC is very good, but has the Mover also thought about the composition of the NSC? In my view, the President or his voice is already there.

Two, when we are saying NSC or the President, what it means is that you can literally by interpreting that provision, shift the entire function which legally is under the NSC to the President. It would have been acceptable if we said "and the President" not "or the President". "Or the President" means the President may do it without reference to the NSC so that we end up with a situation in which we have vagueness in terms of the authority we should be waiting to execute this function. It may not be semantics but it is very critical. Can we say "and the President" not "or the President" otherwise the President will take over this function?

The Temporary Deputy Chairman (Hon. Omulele): Hon. Kaluma, I do not know whether the Chairman of the Departmental Committee on Defence and Foreign Relations is persuaded by your proposal. I will have to move on. Hon. Chairman of the Committee, do you have something to say to this?

Hon. Gethenji: I really have nothing to add, Hon. Temporary Deputy Chairman.

*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 16 as amended agreed to)

*(Clauses 17, 18, 19, 20, 21, 22, 23,
24, 25, 26, 27, 28 and 29 agreed)*

Clause 30

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

THAT, Clause 30 of the Bill be amended in paragraph (a) by deleting the word “Major” and substituting therefor the words “Lieutenant Colonel”.

The proposed amendment seeks to relax the restrictiveness for requirements of a Major to be promoted to the rank of “Lieutenant Colonel”. Some of the Members deliberated extensively. The in-house expertise of Hon. Members who are retired colonels and, therefore, well versed with military ranking played a major role in advising us.

The interaction with the Vice-Chief of the Kenya Defence Forces gave rise to this amendment to allow for ease of movement in rank from a Major to a Lieutenant Colonel to prevent the bottleneck that is becoming apparent within the KDF. It is quite straightforward and clear.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Yes, Hon. Nicolas Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, this is a good amendment because up to now, promotion in the disciplined forces tends to be a rigid affair. The proposed amendment seeks to remove that rigidity and make it possible for promotions to be done in a more efficient and faster manner.

I support.

*(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)*

(Clause 30 as amended agreed to)

(Clause 31 agreed to)

Clause 32

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

THAT, Clause 32 of the Bill be amended by—

(a) deleting sub-paragraph (ii) and substituting therefor the following new sub-paragraph—

“(ii) by inserting the words “with the consent of the Defence Council” immediately before the word “notwithstanding”;

(b) deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) in subsection (9) by inserting the words “of the regular forces” immediately after the word “member”;

(c) deleting paragraph (d) and substituting therefor the following new paragraph (d)—

“(d) by deleting subsection (10) and substituting therefor the following new subsections—

“(10) The Government shall compensate members of the Defence Forces who lose their lives or suffer disabilities while undertaking military service or training.

“(11) The compensation referred to under subsection (10) may be facilitated through insurance schemes or compensation agreements as may be approved by the Defence Council from time to time.

The proposed amendment by the Committee seeks to ensure that a member of the Defence Forces is entitled to treatment for injuries sustained while on military service, beyond a member’s service contract.

Further, the amendment seeks to allow a member of the Defence Forces to receive an allowance while on treatment. It also seeks to protect the rights of the members of the Defence Forces by calling for their compensation when they lose their lives or suffer disabilities while exercising military service or training. This is in line with the Constitution and the humanitarian thinking that soldiers who are injured in the line of service continue to be treated. This happens in many other parts of the world. These members should also receive adequate compensation.

Hon. Temporary Deputy Chairman, Members of the Committee were moved by the touching stories that we have had in the past, and the selfless service that members of the KDF render to this country.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Let us now have the Member for Yatta.

Hon. Kilonzo: Thank you, Hon. Temporary Deputy Chairman. I rise to support this amendment. The international labour laws allow for adequate compensation of members. This is a well-thought amendment.

The Temporary Deputy Chairman (Hon. Omulele): Hon. (Ms.) Mishi Juma, you have the Floor.

Hon. (Ms.) Khamisi: Thank you, Hon. Temporary Deputy Chairman. I would like to congratulate the Chairman of the Committee for this good amendment.

According to the Constitution, Kenyans are entitled to treatment. It is paramount that members of our armed forces get proper treatment. Some members of our Defence Forces have been seriously injured in the past. Some have lost their lives while defending our nation, for example, during the recent attacks by *Al-Shabaab*.

Compensation should be made in good time so that the families of the officers who lose their lives during attacks can move on with their lives well.

The Temporary Deputy Chairman (Hon. Omulele): The Member for Gilgil, you have the Floor.

Hon. Ndiritu: Thank you, Hon. Temporary Deputy Chairman. This is a very timely amendment. I would like to congratulate the Chairman of the Committee.

I represent Gilgil, where we have a heavy military presence. On many occasions, I come into contact with families of soldiers who have unfortunately lost their lives or those who have been injured. We hear very many sad stories. This provision should be extended to all our forces that are involved in conflicts. We have enjoyed peace for a long time, but we have recently experienced several attacks.

I support.

The Temporary Deputy Speaker (Hon. Omulele): Let us hear Hon. (Eng.) Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, the idea of compensation is good. I wish the Chairman was bold enough to stop it from being whimsical. Sub-clause 11 of the Bill provides that the compensation referred to under Section 10 may be facilitated through insurance schemes or compensation agreements as may be approved by the Defence Council from time to time. I would be happier if we could have a compensation scheme as part of a subsidiary legislation accompanying this Bill.

There is a possibility that the Defence Council may not have a standardised way of arriving at compensations and then it becomes whimsical. I would like to request the Chairman of the Committee to amend this provision so that it does not become something that will be within the whims of the Defence Council. What one is entitled to when one suffers an injury should be clear.

The Temporary Deputy Chairman (Hon. Omulele): Hon. (Eng.) Gumbo, do you want to go to quantification of limbs? Let us hear from Hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Chairman, during the Westgate terrorist attack, I lost a cousin by the name Jackton Puodi. I am saying this in support of this provision and in seeking more. Jackton Puodi was an orphan from a rural town adjacent to Homa Bay Town. He got the 21 Gun Salute but the family was left without anything. The woman who was married only the other day is languishing in poverty since nobody cares about how her children will be educated. I have been unfortunate in Homa Bay Town Constituency because I also lost an orphan by the name Solomon Oludo, whom I educated before I came to Parliament, during the Garissa University College terrorist attack. Unlike the one for Jackton Puodi where we got a relative recruited to take up his boots, the boots of Solomon Oludo are hanging somewhere there. He left

a widow who was barely one year old in marriage and a child who was barely a month old. Nobody cares about how that family survives.

Let me tell the Chair of the Departmental Committee on Defence and Foreign Relations that this provision requiring compensation is already in the Kenya Defence Forces Act. There is nothing we are adding here. My amendment sought to go further and quantify the benefits these men and women should get. I was proposing very simple things, which due to our technical requirements, we are not able to process now. However, I request that my Bill be processed quickly.

I was proposing that if you have a situation like the two that I have mentioned, and there are several of them across the country, let their children, if they can go to school, benefit from university waiver for the first degree or secondary school waiver. Just that! Let us give some compensation because they died fighting for the country.

I will support this because it is already there, but I pray that I be facilitated in terms of my amendments because I do not want to contest the Speaker's ruling. I cannot. Let them be processed quickly, so that we put tangible meaning to it.

The Temporary Deputy Speaker (Hon. Omulele): That is kind of you.

*(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 32 as amended agreed to)

Clause 33

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

THAT, clause 33 of the Bill be amended—

(a) by deleting the words “reasonable time” and substituting therefor the words “ninety days”;

(b) in subsection (8) by —

(i) inserting the words “or the Service Commander” immediately after the words “Defence Council” wherever they appear;

(ii) deleting the words “reasonable time” and substituting therefor the words “fourteen days”;

The Committee felt, and I think it was prudent, that it was good to clarify the length of time after which a serviceman, a servicewoman or an officer, who wishes to resign from the KDF, would have to wait post handing in their written resignation to the Service Commander or the Defence Council. It defines the amount of time they have to wait to hear back. The previous amendment only provided for an ambiguous and amorphous “reasonable time” for the Service Commander or the Defence Council to revert to that particular person. So, the proposed amendment seeks to remove the ambiguity as to when resignation is approved and takes effect.

Further, the amendment seeks to allow Service Commanders to consider applications for resignation of an officer or a service member. That now is further defined from the ambiguous “reasonable time” to a more definite and definitive “90 days.”

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I can see quite a bit of interest in this. We shall have Hon. Sunjeev Birdi to start it off.

Hon. (Ms.) Sunjeev: Thank you, Hon. Temporary Deputy Chairman. I cannot emphasise adequately the importance of amending this clause. The Committee needs to be given five brown stars for bringing this amendment for it to read “90 days”. If you remember, sometimes ago I had a petition from a citizen in this country. One of the reasons was that people do not get replied back because the Act does not define “reasonable time.”

So, I applaud the Committee and support the amendment with my whole heart.

The Temporary Deputy Chairman (Hon. Omulele): We shall have Hon. Richard Makenga, Member for Kaiti.

Hon. Makenga: Thank you, Hon. Temporary Deputy Chairman. I support this amendment particularly removing the ambiguity of the term “reasonable time” and replacing it with a specific timeline which is 90 days. It is quite in order for this amendment to be done.

The Temporary Deputy Chairman (Hon. Omulele): Hon. (Dr.) Nyikal, do you have something to say to this?

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairman, I support this amendment, but I just wonder if the Committee Chair would explain why 90 days. If somebody wishes to be released and he has made the request to be released, why should they wait for all three months? I am sure they will be told to wait for three months. Why can it not be 30 or 60 days? I support it, but I think we can do more. The Committee Chair has the mandate. We can actually bring it to 60 days if the Committee Chair actually agrees. That amendment can be done on the Floor with the agreement of the Chair.

The Temporary Deputy Chairman (Hon. Omulele): Before I put the Question, let us have the Chair of the Departmental Committee on Defence and Foreign Relations to respond.

Hon. Gethenji: Hon. Temporary Deputy Chairman, the amount of days was debated severally in the Committee. It was felt that there is a legal precedent in law.

The Temporary Deputy Chairman (Hon. Omulele): So, you will not be moved.

Hon. Gethenji: I will not be moved.

The Temporary Deputy Chairman (Hon. Omulele): I want to give a chance to one more person.

Hon. Gethenji: Hon. Temporary Deputy Chairman, do you want me to share my thoughts.

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

Hon. Gethenji: There is a precedent in law. If you go to court or in any civil transition, 90 days is the typical period within which to revert even in conveyancing. In addition, this is the military. It is not civilian practice. There is a situation where you may have a very good officer, who, for personal or emotional reasons, may wish to resign. That can be resolved within a period of 90 days where he has to report to the Service Commander or the Defence Council. The Defence Council can then convene a meeting, look into the situation, convince the officer or serviceman that it may not be in his best interest to resign and also in the interest of the forces. That can be done within a period of 90 days. If it is too short, then you will have a situation where an officer has left and you find that maybe you could have resolved the matter differently and you have already lost a very good soldier.

So, we agreed on a period of 90 days within which to manoeuvre. Also in terms of handing over facilities, equipment and so on, 90 days was felt adequate.

The Temporary Deputy Chairman (Hon. Omulele): Good explanation. We shall have Hon. Lentoimaga, the Member for Samburu North.

Hon. Lentoimaga: Hon. Temporary Deputy Chairman, I am not a Member of this Committee, but I concur with their amendments, specifically the one the Committee Chair has just spoken about. In the armed forces, soldiers go through very serious trauma, especially when there is an attack. I think a period of 90 days is okay. A soldier can hurriedly want to leave the service without thinking so much. So, 90 days can allow him or her to decide or get counselling. He or she can reverse his or her decision. When somebody is trained for a long time, it is not easy to get another person immediately. So, we encourage that they get time before they resign to decide what can happen.

I also want to emphasise that as staff or soldiers resign, there is also a lot of bureaucracy in terms of paperwork. The Committee can also urge the Defence Forces that when there is any kind of process that is done on behalf of the servicemen, it has to be done a bit quickly. I have seen servicemen taking a long time before they get their dues or before they are released. Before anything is done, there is a lot of paperwork and bureaucracy.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, there is quite a bit of interest in this, but I think we have allowed sufficient discussion.

*(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 33 as amended agreed to)

Clause 34

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

THAT, the Bill be amended by deleting Clause 34.

I am not a foreteller of events, but I can almost guarantee you we will have no objection to this particular deletion. The proposed amendment in the Bill gives the President powers to order auxiliary reserve forces to be part of the KDF, which in effect, and as was observed by the Members of the Committee, may arguably give room for the militarisation of the Kenya Forest Service (KFS), the Kenya Wildlife Service (KWS) and the National Youth Service (NYS). Further, pursuant to Article 241 of the Constitution, KFS, KWS and NYS do not form part of the KDF. For the avoidance of doubt and to avoid that eventuality or possibility, the Members felt it would be prudent to delete that clause in totality, so that that possibility or eventuality, which we know would cause problems not only on the Floor of this House, but also in the minds of Kenyans, may not arise.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I can see interest in this from Hon. Kipruto Moi.

Hon. Moi: Hon. Temporary Deputy Chairman, I just want a clarification. It is being deleted, but is there an insertion that a reserve force will be created? I seek clarification from the Chair of the Committee.

The Temporary Deputy Chairman (Hon. Omulele): You can clarify that point.

Hon. Gethenji: The KDF Act makes provision for reserve forces. Those reserve forces are retired officers and servicemen.

(Hon. Moi remained on his feet)

The Temporary Deputy Chairman (Hon. Omulele): Hon. Moi, resume your seat as he responds to you.

Hon. Gethenji: They are retired officers and servicemen below a certain age who, after retirement, have a period within which they have assented to be called back to duty and into active service, if the nation requires them. There is already a provision in the KDF Act for reserve forces of that nature.

The Temporary Deputy Chairman (Hon. Omulele): We shall now hear Hon. Samuel Ndiritu.

Hon. Ndiritu: I rise to support the amendment by the Committee. I agree that there is a lot of wealth of experience in those who have retired when they are still young.

I support.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Moi, I want to come back to you because you had sought a clarification. Are you satisfied with the clarification from the Chair of the Committee?

Hon. Moi: Yes, I am, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Omulele): Very well. We shall now hear from Hon. Pkosing, the Member for Pokot South.

Hon. Losiakou: Hon. Temporary Deputy Chairman, I am a Member of the Committee and I want to support the amendment from my Chair. We had a long discussion as a Committee. We took almost half a day to resolve this matter.

The principal amendment says that KFS, KWS and NYS shall be auxiliary forces, but that is not even enough. Sub-clause (3) says that all those auxiliary forces shall be under the KDF. It is like changing every force in this country to be KDF. There is a great fear. One of our discussion points is that this requires a lot of consultation. If you are saying that every service is under the KDF, then all other services shall be under the KDF. It does not work that way. There was a concern that then we are trying to do away with every service and make them KDF. That is why we are saying that this requires a lengthy consultation. It will bring conflict in this country and it will militarise our country. That is why we are supporting the deletion of that clause.

I support my Chair.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, I will now put it to you to make a decision.

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

(Clause 34 deleted)

(Clauses 35 and 36 agreed to)

Clause 37

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

THAT, the Bill be amended by deleting Clause 37.

The justification for this is that we seek to ensure that funds for the KDF are in a separate vote. The issue of mixing the votes for the civilian component and the military component at times causes a challenge. We wanted to have a clear delineation of the KDF Vote given the peculiarity and the nature of their work, so that they can access their funds expeditiously for better operations.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see no interest in this. I will, therefore, put the Question.

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

(Clause 37 deleted)

Clause 38

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

THAT, the Bill be amended by deleting Clause 38.

The justification for this is that the proposed amendment seeks to ensure that the KDF keeps proper books and records of its income, expenditure, assets and liabilities. Further, the proposed amendment seeks to ensure that the Accounting Officer in the Ministry shall submit to the Auditor-General the accounts of the KDF within a period of three months after the end of each financial year, together with a statement of income and expenditure for that year and a cash-flow statement. This will ensure transparency and accountability in the manner in which the funds are utilised in line with the Constitution of this country. There is also the expectations of the citizens of this Republic to have proper accountability on issues of funds and visibility into the same through the Office of the Auditor-General, the Public Accounts Committee, the Departmental Committee on Defence and Foreign Relations and, indeed, this august House.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see interest from Hon. Florence Kajuju, the Member for Meru.

Hon. (Ms.) Kajuju: Thank you, Hon. Temporary Deputy Chairman. I rise to support the deletion. The justification by the Chair is good considering that what maintains our KDF is from Kenyans who pay taxes. Therefore, it is important that Kenyans get to know how their money is

spent. For purposes of transparency and accountability, which is a core value in our Constitution, it is very important.

I support.

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

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairman, I must congratulate the Committee for this. The KDF is probably one of the largest spenders of public funds. For a long time, there have been a lot of misgivings whether this money is spent properly. Therefore, to subject them to public scrutiny and make the audited books and accounts available to the public is a progressive act.

I support.

The Temporary Deputy Chairman (Hon. Omulele): We shall hear Hon. Naomi Shaban.

Hon. (Dr.) Shaban: Asante sana, Mhe. Naibu Mwenyekiti wa Muda. Nakubaliana na Mwenyekiti wa Kamati hii kwamba sheria ilioko isibadilishwe ili wananchi wajulishwe matumizi ya pesa za umma kupitia Bunge hili ili uifisadi usikuwepo na pesa zitumike inavyotakikana.

Asante sana.

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

(Clause 38 deleted)

Clause 39

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

THAT, the Bill be amended by deleting Clause 39.

Again, this is with regard to financial matters. This amendment seeks to retain the oversight role of Parliament in financial matters within the KDF. The justification is that the proposed amendment seeks to ensure that the Defence Council prepares an annual report for each financial year and submits it to the President through Parliament.

(Question of the amendment proposed)

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

Hon. Ndiritu: Thank you, Hon. Temporary Deputy Chairman. I congratulate the Committee for being bold. The drafters of the Bill wanted to escape public scrutiny through Parliament. Therefore, I support and congratulate the Chair for this amendment.

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

Hon. Lentoimaga: Thank you, Hon. Temporary Deputy Chairman. I also support and congratulate the Committee for being bold enough. I want to make some comments on the issue of assets.

For some time now, we have had issues with assets, especially equipment for the KDF and even the police. There is always a problem when it comes to acquisition and the Committee should investigate that. There are rumours that what we acquire as equipment for our Defence

Forces are of very low standard. Now that we are faced with threats from our borders, we need to have good equipment to protect Kenyans and our boundaries. If you look at the National Police Service, a number of aircraft were bought recently, but they have kept on crashing. In fact, some Members of Parliament and dignitaries avoid flying aboard the aircraft acquired by the National Police Service. With regard to the Defence Forces, I urge the Committee to be vigilant on this matter.

I support.

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

(Clause 39 deleted)

(Clause 40 agreed to)

Clause 41

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

THAT, Clause 41 of the Bill be amended by—

- (a) deleting paragraph (e);
- (b) renumbering the existing sub clause as sub clause (1);
- (c) inserting the following new sub clause (2)—

“(2) The Standing Orders shall not be inconsistent with this Act.

The justification for this amendment is restricted in particular to paragraph “e”. The proposed amendment seeks to delete paragraph “e” in light of the deletion of Clause 34, which had provided for auxiliary reserve forces. Further, the amendment seeks to ensure that the standing orders to be made by the Chief of Defence Forces or the Commandant of the Constabulary are not inconsistent with the Kenya Defence Forces Act, 2012.

In essence, paragraph “e” was referring to creation of standing orders or other types of orders with regard to the re-integration of auxiliary forces. Since we already dispensed with the auxiliary forces in Clause 34 then, that paragraph “e” becomes superfluous. We, therefore, seek to clarify that the standing orders that may come into effect from time to time within the KDF do not contradict, in any way, the Kenya Defence Forces Act, 2012.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see some interest from the Hon. Katoo ole Metito.

Hon. Katoo: Hon. Temporary Deputy Chairman, while I support the Mover of the amendment, I want him to consider an insertion of something about the KDF standing orders. This is for purposes of clarity. Sub-section 2 states that the standing orders shall not be inconsistent with this Act. It needs to be clear which standing orders we are talking about. Of course, it is not the Standing Orders of the National Assembly.

The Temporary Deputy Chairman (Hon. Omulele): Very well, let us hear the Chairman of the Departmental Committee.

Hon. Gethenji: The standing orders are defined within the Act itself. The previous clause also created and provided for the same. Therefore, this is just a reference to that previous creation and provision. So, I do not think we need to further define this. In fact, even the Act itself has a definition.

The Temporary Deputy Chairman (Hon. Omulele): Very well. Clause 2 takes care of that. Let us have the Member for Seme.

Hon. (Dr.) Nyikal: Once again, I must congratulate the Committee because its Members are really observant. The Committee must have noted that all the amendments that they brought, that is, Clauses 34, 38 and 39, indicate that there was somebody, considering that this is coming from the Government, bent on taking the country backwards. All the amendments were intended to militarise the country and to hide the accounts of the military. The Committee should have taken exception to that. I wish they had expressed themselves on that matter so that they can save the country from a Government Bill that is intended to take us backwards when we have already made progress in terms of being transparent.

I support.

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

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

(Clause 41 as amended agreed to)

New Clause 26(A)

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 26—

Amendment
of section 186
of No.25 of 2012.

“26A. Section 186 of the principal Act is amended—

(a) in paragraph (b), by inserting the words “and make subsequent appeals to any other superior court” immediately after the word “High Court”;

(b) in subsection (2), by inserting the words “and make subsequent appeals to any other superior court” immediately after the word “High Court”;

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Omulele): I see interest from Hon Florence Kajuju, Member for Meru County

Hon. Kajuju: Thank you, Hon. Temporary Deputy Chairman. I note as well that the Committee has done a good job by ensuring that it has tapped into all clauses that would have brought issues in implementation. I also would like to tell my friend, Hon. (Dr.) Nyikal, that what he has just said proves to this country that the Jubilee administration is the best administration that you can ever have. I challenge him to cross the Floor and join us because we will ensure that he participates.

Over and above that, my support for this new clause is because there should be that hierarchy in terms of settlement of disputes. I notice that this clause intends to bring on board another court just in case one is aggrieved by a particular decision from any one body. One has a right to move to the superior court to ensure that justice is not only done, but it is seen to be done. Therefore, I support. It is important to ensure that access to justice is given to all of us and especially to our Defence Forces, so that people can see that the forces are open.

I support.

The Temporary Deputy Chairman (Hon. Omulele): Very well. Hon. David Pkosing.

Hon. Losiakou: Thank you, Hon. Temporary Deputy Chairman for giving me this opportunity once more. As a Member of the Committee, I support the amendment, but I want to make a clarification because this is in public domain. Somebody gave wrong information by insinuating that we have obsolete machinery in KDF. Such information will bring panic in this country. I want to confirm, as a Member of the Committee, that we have proper equipment and our security is intact courtesy of the KDF. It is Hon. Lentoimaga who said that and yet he is the Vice-Chairman of the Departmental Committee on Administration and National Security. May be they have a problem with the National Police Service and so, they should not import their problems into the KDF. We want to assure Kenyans that our country is safe under the KDF.

In this amendment, our motivation was to give every Kenyan an opportunity. If you want to appeal because you feel that you have been insufficiently heard, you may move as far as it is provided for in the laws of this country. Therefore, I support the amendment.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Chairman. I once again support this. I really support the work of the Committee although Hon. Kajuju has gone. This progressive keenness where the Departmental Committee on Defence and Foreign Relations is seeking to see anything that is retrogressive or bringing back things that are behind us and picking them out is good. We want transparency. My worry is and why I will not go for the view that the Jubilee Government is a good one, those parts that are retrogressive that were seeking to amend the Bill, were actually brought by the Leader of the Majority Party. The saving grace came from the Committee, which I am sure represents all the parties. Were it not for that, left to the Jubilee side alone, the amendments would have passed, but I support that there is provision that if you are not satisfied at one level, you can move and seek justice at a higher level.

The Temporary Deputy Chairman (Hon. Omulele): Very well. Chairman, you have something to say?

Hon. Gethenji: Yes. It is just to say that the Committee has played its rightful role in ensuring checks and balance. I think this is what Hon. Nyikal is referring to, but do not forget that Jubilee is a substantive component of the Committee including the chairmanship. We are alive to the progressive nature of the Jubilee administration, our leadership and the country. We want to make sure we move forward ever, backwards never. These things you are seeing here is really the Jubilee spirit which is infusing our thinking and actions. So, Hon. Nyikal, we implore you to join us.

*(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)*

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Omulele): I now call upon the Mover to move to report.

Hon. Katoo: Thank you, Hon. Temporary Deputy Chairman. I beg to move that the Committee doth report to the House its consideration of the Kenya Defence Forces (Amendment) Bill (National Assembly Bill No.41 of 2015) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE KENYA DEFENCE FORCES (AMENDMENT) BILL

Hon. Katoo: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Kenya Defence Forces (Amendment) Bill (National Assembly Bill No.41 of 2015) and approved the same with amendments.

Hon. Gethenji: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Katoo ole Metito to second the Motion for the agreement with the Report of the Committee of the whole House.

Hon. Katoo: I second.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Omulele): The Mover to move the Third Reading.

Hon. Gethenji: Hon. Temporary Deputy Speaker, I beg to move that the Kenya Defence Forces (Amendment) Bill (National Assembly Bill No. 41 of 2015) be read a Third Time. I also request Hon. Katoo ole Metito to second.

Hon. Katoo: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Omulele): I see some interest from Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I think these amendments are good, especially amendments that touch on the compensation of soldiers who get injured in the line of duty and on the promotion of our men and women in the Defence Forces. Over time, some of us have expressed grave concerns in the manner our Defence Forces have been deployed to keep peace in any part of Kenya. It is not bad to deploy our Defence Forces to keep peace in any part of Kenya which is affected by unrest or instability. I think these amendments, and even without them, the Constitution, under Article 241(3)(c), is so clear that that deployment can only be done with the approval of the National Assembly.

We have reason to believe that there have been many instances that this clear provision of the letter of the Constitution has been violated. Parliament is commanded to defend the Constitution. So, I would want to believe that going forward with the amendments that we have done, we will observe strict adherence to the written letter of the Constitution particularly with regard to deployment of members of our Defence Forces, to restore peace in any part of Kenya affected by unrest or instability. We have had instances where we have been told that a blanket approval was given for Boni and, therefore, it applies in Pokot. I do not think that is what the Constitution entails. I hope the Chair of the Committee will agree with me that it is our duty. We have no choice. We are commanded by this Constitution to observe strict fidelity to the letter of this Constitution and we have no option.

I support.

The Temporary Deputy Speaker (Hon. Omulele): Very well, Hon. Gumbo. Let us have Hon. James Nyikal.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Speaker. I also want to appreciate that this Bill, which has moved to the Third stage, has very good components as Hon. Gumbo said. The components include those on compensation, treatment of our soldiers, appeal when they feel aggrieved and those of the date and time of discharge on request, being indefinite. It is very good. However, I want to put caution that when we have such amendments, we have seen some retrogressive tendencies that seek to take us back to the areas where there was a lot of opacity particularly in areas of accounting, where somebody was seeking to lock the accounts of the Defence Forces from being public and going through the Auditor-General. Those amendments together with amendments in Clauses 34 and 38 are mischievous. We have to be careful.

We have also seen similar tendencies when we have miscellaneous amendments that tend to do more than expected. Miscellaneous amendments are often just for minor corrections. Miscellaneous amendments tend to give Cabinet Secretaries (CSs) a lot more power by changing boards and appointments. As we were saying about the Jubilee Government, and as we progress forward, the tendency and the desire to move backwards must be eliminated completely.

As I end, I hope that in line with Clause 1, the CS will operationalise these amendments in good time and not keep them in abeyance. We would have looked at that, but time has passed. We should have put a definite date instead of leaving it to the CS to decide when to operationalise them.

With that, I support the amendments as they are good.

The Temporary Deputy Speaker (Hon. Omulele): Very well. We shall have Hon. Ndungú Gethenji, Member for Tetu.

Hon. Gethenji: Hon. Temporary Deputy Speaker, I would just record my gratitude for the diligent work and the attention that the Members of the Departmental Committee on Defence and Foreign Relations brought to this particular exercise and this Bill. The Committee is dedicated as we have seen, to ensuring that the Kenya Defence Forces (KDF) execute their mandate to the best interest of the people of the Republic of Kenya.

We have said here severally that military matters are sensitive. They are not common place. In many countries around the world, they are treated with a lot of reverence and secrecy. I appreciate the same has been pertaining in Kenya and continues to pertain for obvious reasons. It is not possible that we can lay bare all matters security and military 100 per cent to the public because this is the last line of defence for the republic and we certainly need to have a modicum level of secrecy, so that those who would seek to do us harm do not have prior knowledge and intelligence about the nature, being and capacity of our Defence Forces.

As we do our oversight work, we also request the public for sensitivity in matters military. It is imperative and important that they be facilitated to be able to execute their mandate 100 per cent by not exposing them. In fact, not only by creating weakness in that exposure, but also exposing members of our military to harm by exposing how we operate, the equipment and manpower that we have, so that the enemy may not get a strategic advantage in our attempt to create an environment of openness and transparency. We have to strike a balance and this is what we have continually said. The Constitution must be respected, but at the same time, we must protect our Defence Forces from overexposure to enemy infiltration and giving them advanced intelligence about our capacity and capability.

Finally, we just wanted to say that we continue to support the men and women in uniform in their endeavours within and without this country in hotspots such as the Boni Forest and in Somalia. We will continue to support them and ensure that we provide whatever is necessary and whatever it takes in supporting their budgets and operations to ensure that they are able to execute their mandate in defending this country and protecting the people of this great republic and also protecting their lives.

With those few remarks, I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Omulele): Very well said, Hon. Gethenji. Hon. Members, for obvious reasons, I will not proceed to put the Question. We will defer it to another time when we shall have the necessary quorum.

(Putting of the Question deferred)

I, therefore, direct that we move on to the next Order.

BILL

Second Reading

THE COUNTY EARLY CHILDHOOD EDUCATION BILL

(Hon. (Ms.) S.W. Chege on 6.10.2016)

(Resumption of Debate interrupted on 11.10.2016)

The Temporary Deputy Speaker (Hon. Omulele): Hon. Gumbo, you had seven minutes to go on this.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker. Just to recap what I said yesterday, ECDE education is the foundation of education in any nation. Since it is the foundation, if it is weak, the rest of the structure will be weak. I said, free cannot only be interpreted to mean free of payment. These children need water, health services and clothing. Above all, these children need food. If we are to make ECDE truly free, then we have to provide water, health services, uniforms and food to these children.

I am gratified to note that this Bill talks about suitable premises for these children. Part of the problem that we have encountered in this country, and it is still very sad, is that almost 50 years into our Independence, we still have students in many parts of this country who still go to school under trees. We still have many children in many parts of this country who use rocks as benches. If we cannot provide suitable premises, I think we are endangering the lives of these children. The provision to have mobile schools is important. There are people in a large part of our country that are still nomadic in nature. If we are to confine them to particular areas, we will be restricting access to education.

This Bill, under Clause 39, provides for free admission into public education centres. This is good, but it was said yesterday, if we are to make ECDE free and compulsory, we must be able to identify these students. It is time we built synergy with other people who provide equally useful services in areas where we live.

If, indeed, we have to know where the children are, we have to use the services of village elders. The elders give a useful service in the sense that they have a lot of useful data that can help us to identify the individual homes where the children come from and establish why they are unable to access the free learning centres. In addition to village elders, we also have community health workers. I am sure where you come from they have data on virtually everything on matters of health. They have all the statistics that matter.

We have put, under Clause 41, a restriction on the age of admission. I have seen many cases where parents take children as young as one-and-a-half years old to ECDE centres. For me, that is child abuse. People cannot get children and then immediately relinquish their parental responsibilities by pushing away those children as if the caretakers and the ECDE centres have more responsibility for the welfare of the children than the parents. We need to introduce punishment for parents who push their children to the directors of ECDE centres as a way of escaping their parental responsibilities. Parenting cannot be outsourced. There is no question about it. A lot of times, Kenyan irresponsible parents attempt to outsource parenting. How do you outsource parenting? What else are we going to outsource next? Is it the art of getting the children? We cannot. When we make children, we do not outsource. Therefore, we should not outsource parenting. Any parent who attempts to outsource parenting should be punished by law.

I have talked about feeding programmes in education centres.

The Temporary Deputy Speaker (Hon. Omulele): Hon. Gumbo, just on a light note, I am sure you are not aware of the practice in the First World, where mothers fly to the Indian sub-continent to outsource the carriage of babies.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, those are the bad habits of the West, which we have no time for. I have been a parent many times over and a very proud one at that. I believe that just like you do not outsource the art of making children, you cannot outsource parenting.

As for the teacher to child ratio, it has been proved that the lower the grade, the more contact hours are needed between the teacher and the child. At the university level, one can learn on their own and pass exams. We need to improve on the contact hours between the teacher and the child. I have noticed that this Bill allows for the provision of teacher to child ratio in the regulations. It is my view that in an ECDE centre, the teacher to child ratio should never be more than 20 because every child has to be instructed almost on their own.

There is also the requirement that there should be no exam when children are being recruited. This reminds me of a very good instance. I request you to protect me by giving me back the minute that you took while making your comment, Hon. Chair.

The Temporary Deputy Speaker (Hon. Omulele): I will give you two minutes.

Hon. (Eng.) Gumbo: Thank you. Once upon a time, I was living in Zimmerman Estate. My neighbour took his child to a Catholic nursery school. The child was asked to name the five vowels and he could not. He was asked to count from one to ten and he could not. He was asked to name the first 10 letters of the Alphabet and he could not. The administrators of that centre told the father of the child that the child had failed. The father said, "Excuse me, how can this child fail? This is the beginning of education. Who was supposed to have taught them how to count from one to ten, if not you?"

The business of trying to examine nursery school children should stop because nursery school is the beginning of a child's education. Where were they supposed to have known how to count other than pronouncing that there is a father and a mother? I think this is a good provision that we have to protect.

I support, but I will be coming with amendments.

The Temporary Deputy Speaker (Hon. Omulele): Very well. Hon. Gumbo, I am quite enlightened by your submissions. Could we have Hon. Samuel Ndiritu, the Member for Gilgil?

Hon. Ndiritu: Thank you, Hon. Temporary Deputy Speaker. I would like to add my voice on this important Bill.

The foundation of a nation is the family. The family is built right from childhood to adulthood. The greatest foundation is the one that we put in our children. Today's life, unlike the way we lived during our times, has put a lot of responsibilities on parents. We have working parents. As much as we may want to be with our children, sometimes we find that we cannot because we are committed elsewhere. We have so many commitments that we completely transfer our parenting responsibilities to house helps and teachers. Children lose contact with their parents. They do not get the parental love that they should get at the early stages of their lives.

We have observed that children in ECDE centres are put on a lot of pressure. It seems like it is big pride for a parent to say that my nursery school kid can do Standard Two work. On the other hand, what they do not know is that they have exposed that child to a lot of pressure and learning what they should not be learning at that age. Children at ECDE centres should be playing with figures. When we went to nursery school, we used to sleep in the afternoons.

Immediately we had lunch, we would all go to class and sleep. Today, you will find a child doing homework at 10.00 p.m.

I happen to have worked in a school offering the British Curriculum and children in Standard One or what they call Year Three, purely play. They even have piped water where they mould using *matope*. I hope I am not out of order. We have unknowingly been subjecting our children to a lot of stress. They are allowed to play with figures and models and the learning process is pleasurable. However, in our case, we have made it unbearable for our children. I wish parents could realise this and let children to be children.

I would also like to talk about facilities. In most public schools, nursery school classrooms are in the worst conditions. In some cases, the floor is not cemented. Sometimes they are made of mud or off-cuts. The children sit on dusty floors and the teachers are barely paid. I would like to congratulate some county governments who have taken up the challenge and built a number of ECDE classrooms. I also congratulate those who have offered the alternative. Players in the private sector have provided good learning facilities for children. They provide good day care services. The only problem with private ECDE centres is that they overwork the children. They subject children to a lot of stress in that they cover Standard One and Two work when they are barely five years old. Some county governments have taken over the ECDE. We now have better facilities in public schools. We have seen them put up quite a number of ECDE classrooms. The problem is that they have not employed teachers.

We should have enough trained ECDE teachers. With the many opportunities for training by colleges and universities, we can have trained ECDE teachers. It is now possible to get many trained ECDE teachers to support and work in our public institutions.

I take this opportunity to request county governments - I may not know about many, but I know about my county of Nakuru - to employ enough ECDE teachers to save parents the high costs in private centres, which many of them cannot afford. The Government should have an ECDE curriculum. I sympathise with these young children for what they are made to go through at a very early age when they should be relaxing.

With those few remarks, I beg to support this Senate Bill. I hope at Committee of the whole House stage, we will propose some amendments, so that we can set a standard at which our children are not going to be tortured when we take them to these centres. They should enjoy the beginning of their schooling life. Some of these schools make them develop a negative attitude towards education and school that is difficult to remove for the better part of their lives. They may be very bright, but very irresponsible.

The Temporary Deputy Speaker (Hon. Omulele): Let us now have Hon. Joseph Kiuna of Njoro.

Hon. J. K. Ng'ang'a: Thank you, Hon. Temporary Deputy Speaker. I also support this Bill. I want to emphasise the need and importance of education. It is very important for us to lay strong and firm foundation from the ECDE classes. If we do not do that, the children will go to primary schools and other institutions of higher learning, but they will not get a proper foundation for education. So, it is very important, as we deal with this issue, to emphasise the importance of making sure that when a child goes to an ECDE centre, he gets the right standard of education from which he can develop.

Many ECDE centres in our rural areas have buildings which are in deplorable conditions. Although this function has been devolved to county governments, the Ministry of Education, Science and Technology should intervene. Many ECDE centres have no structures and the children learn under trees. Besides that, if there are people who have been neglected and

forgotten in this country, they are the ECDE teachers. The House will agree with me that if there is a person who requires to be paid well or his remuneration considered, it is the ECDE teacher. They do a lot of work to nurture the children, so that they can grow up as good students. If their welfare is not looked into, a majority of them will be demoralised. There are some areas in this country where teachers are not paid in time. You will find that they have salary arrears of, say, six months. Those teachers, even if they have the will to teach, will definitely not have the morale to go to class and teach. It is high time we looked at their remuneration and made sure that they are paid well.

I have a feeling we should also consider modernising our learning institutions from nursery schools. As my brother said, there are places where children study in mud houses. I thought we had moved from that generation because today everything is digital. It is true that many nursery schools in this republic do not have electricity. It is very important that the Cabinet Secretary comes up with strategic measures to ensure the welfare of every child in Kenya is considered.

I support.

Hon. Katoo: Thank you, Hon. Temporary Deputy Speaker. This is a very important Bill. It has attracted contribution from many Members. I think I am the 24th Member contributing now. Going by an average of 10 minutes per Member, that adds up to exactly four hours. I think by the end of this debate, we will have done great justice to this Bill.

Let me raise some concerns that the Departmental Committee on Education, Research and Technology needs to consider as we move to the Third Reading of the Bill.

Education centre has been defined as a public or a private early childhood education facility. It is not for any other purpose. That brings out other issues. Still on the issue of definition, the principal has been defined as the lead educator or administrator in an early childhood education training centre. This is my concern. You call that person heading three classes a principal. We must understand that in ECDE, you start from baby class, move to nursery, then pre-unit. Those are three classes yet you call the head of those levels a principal. Most of ECDE centres are within primary schools. The head of the primary school is called a head teacher yet you are calling somebody at a lower level a principal. There is need to look at that because it may bring some conflict in terms of seniority. When you go to a secondary school, you have a principal.

In the new Education Act, we removed what we used to call prefects in secondary schools. They are now called the student council. The chairperson of the council is called the president. I understand that, that is bringing conflict already because a student is called a president and yet the head of the school is called a principal. Right now, I am aware that principals of secondary schools have written to the Ministry of Education, Science and Technology seeking to correct that anomaly. Those are issues that need to be looked into.

The purpose of this Bill, in Clause 3, among other things, is to provide a framework for establishment of necessary infrastructure for learning in these institutions. It is good to inform county governments that there are supposed to be three classes for ECDE. They should build three convenient classrooms instead of one. I heard Members say here yesterday that county governments have built one class only and yet the requirement is that they build three classes in order to make an ECDE centre complete. It is part of the infrastructure.

Clause 2 of the Bill defines a “teacher” as a person registered as a teacher by the TSC. The ECDE teachers are not registered by the TSC. There was a court case on that at some point. The Bill needs to be clear on that issue.

The Bill also says that for one to qualify to be an ECDE teacher, one must have a diploma and must be registered by the TSC. The TSC does not register ECDE teachers.

Clause 6 of the Bill is contradictory. It says that county governments shall provide free and compulsory ECDE. That contradicts Clause 33(2)(e), which says that the functions of the Parents Teachers Association (PTA) will be among other things, discussing and recommending charges to be levied on children or parents. Clause 39 is a duplicate of Clause 48. The Committee should look into that. Clause 39 of the Bill, which is the same as Clause 48, says that a person shall not charge or collect any fee for purposes of admitting a child to any public ECDE. This contradicts Clause 33(2)(e), which says that the county government might charge levies.

Clause 39(b) of the Bill says that other charges may be imposed in a public education centre with approval of the County Executive Committee, in consultation with the member of the County Education Board. This will be open to abuse. Some of these issues need to be looked at critically.

The Temporary Deputy Speaker (Hon. Omulele): Hon. Katoo, you are raising very interesting issues. You are saying that some of these provisions are contrary to the Constitution, which makes education compulsory and free at that level. These matters should be noted, so that we can deal with them during the Committee of the whole House stage.

Hon. Katoo: Hon. Temporary Deputy Speaker, if the relevant Committee can go through the HANSARD, they will see what Members have said. They can pick out the contradictory provisions.

Clause 22 of the Bill is very good because it ensures that there is transparency and accountability. It says that for a centre to be registered, the premises must be monitored and supervised by the relevant authority. You earlier on mentioned outsourcing, but in some cases, individuals outsource premises for registration purposes. Once the centre is registered, it is relocated to its old premises. Regular monitoring through the quality assurance officer will solve this issue.

Clause 27 of the Bill provides for the establishment of public and private education centres. It says that a public education centre shall not be converted into a private education centre, but there is a criterion for doing that. The Bill does not show the criterion for converting a private education centre into a public education centre. There are cases where a sponsor runs short of money and decides to convert his private education centre into a public one.

As I conclude, I would like to talk about the qualifications of an ECDE teacher. The Bill says that one must hold, at least, a diploma in early childhood development and education, but we have ECDE teachers who hold certificates of the same. What happens to those who are just certificate holders and are currently employed by the Government?

Yesterday, I heard Members talking about poor remuneration of the ECDE teachers. Worst of it is Clause 36(3), which says that each county government shall be responsible for the remuneration of ECDE teachers in public education centres within the county, but if it is upon each county, then they will pay them differently. Teachers across the country in the same grade are paid the same, but if you leave this to each county, then, each county may decide to exploit their ECDE teachers. There is need to harmonise and pay them equally.

Although it says that they will agree on the payment in consultation with the Salaries and Remuneration Commission (SRC), the best thing is to have them registered under the TSC, then, they will be paid equally like the rest.

On the issue of having a provisional registration for ECDE teachers, it should be noted that ECDE is just for three years. So, the interim registration should not go beyond six months.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Omulele): Hon. Members, the time now being 6.30 p.m., this House stands adjourned until tomorrow, Thursday 13th October 2016 at 2.30 p.m.

The House rose at 6.30 p.m.