

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 31st May, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:-
Dr. Bonny Khalwale.

COMMUNICATION FROM THE CHAIR

PRESIDENTIAL ASSENT TO THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL

Mr. Speaker: Hon. Members, I have the following Communication to make. It is with respect to a return on a Bill received from the Attorney-General pursuant to the Standing Orders. Standing Order No.125 requires that the Attorney-General presents to the President within 14 days of receipt from the Clerk every Bill passed by this House. Thereafter, at the expiry of 14 days, the Attorney-General is required to file a return to the Speaker indicating the time and the date that the Bill was presented to the President. The return received indicates that the Vetting of Judges and Magistrates (Amendment) Bill, 2011 which was passed by the National Assembly on 11th May, 2011 was presented by the Attorney-General to His Excellency the President for assent and was duly assented to on 17th May, 2011 at 5.00 p.m.

Thank you.

Hon. Members there are four other Communications which are due for delivery today. The first is with respect to the Budget and the matter was raised by the Member for Gwassu. It will be delivered on Thursday, 2nd June, 2011. The other three Communications, on a matter raised by the Member for Gichugu, a matter raised by Member for Central Imenti and a matter pertaining to Sheikh Dor's Question on whether or not Article 35 of the Constitution with respect to access to information has been respected with regard to Committee Reports that are submitted to His Excellency the President will be delivered on Thursday, 9th June, 2011.

PAPERS LAID

The following Papers were laid on the Table:-

Annual Report and Financial Statements of Kenya Pipeline Company (KPC) for the year ended 30th June, 2010 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Regional Development Authorities
(Mr. ole Metito) on behalf of the Minister for Energy)*

Annual Report and Financial Statements of Kimathi University of Technology for the year ended 30th June, 2009 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Financial Statements of Kimathi University of Technology for the 10 months period ended 30th June, 2008 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Regional Development Authorities
(Mr. ole Metito) on behalf of the Minister for
Higher Education, Science and Technology)*

Financial Statement of the County Council of Kwale for the year ended 30th June, 2009 and the Certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of the Town Council of Ogembo for the six years period ended 30th June, 2003 and the Certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of the Town Council of Chapareria for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of the Town Council of Chapareria for five years ended 30th June, 2003 and the Certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of the Town Council of Lwanda for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of the Town Council of Ogembo for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

Financial Statement of the Municipal Council of Limuru for the year ended 30th June, 2008 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Regional Development Authorities
(Mr. ole Metito) on behalf of the Deputy Prime
Minister and Minister for Local Government)*

QUESTIONS BY PRIVATE NOTICE

OCCUPATION OF KENYAN ISLANDS BY UGANDAN SECURITY FORCES

Mr. Mbadi: Mr. Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Is the Minister aware that Ugandan security forces still occupy Migingo Island in Lake Victoria despite an agreement between the Government of Kenya and Uganda

and that the Uganda Government has continued with expansionist policy on Kenyan soil and waters by illegally taking occupation of Ugingo, another Kenyan island next to Migingo?

(b) Why has the Government failed to reclaim Migingo Island even after Parliament passed a Motion urging the Government to use all means possible to reclaim the island on 27th May, 2009?

(c) Could the Minister explain, giving timelines, the steps the Government will take to reclaim Migingo Island and any other Kenyan island occupied by foreign forces?

Mr. Speaker: Is anyone here from the Ministry of Foreign Affairs? We will revisit the Question a little later on because I am aware that the Ministry was alerted to ensure that this Question is answered this afternoon.

DIVERSION OF DRAINAGE WATER TO NEW WOOD
ESTATE BY SHENGLI CONSTRUCTION COMPANY

Mr. Kabogo: Mr. Speaker, Sir, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) Is the Minister aware that the ongoing construction on Thika road by Shengli Construction Company has affected the residents of New Wood Estate by diverting drainage water into the estate, hence heightening the risk of water-borne diseases?

(b) What immediate measures is the Ministry taking to address the matter?

The Minister for Roads (Mr. Bett): Mr. Speaker, Sir, I beg to reply.

(a) Following an undertaking I made before the Chair and the House on 19th May, 2011, I made another visit. The first visit was made by the officers of the Ministry together with the hon. Member of Parliament for Juja, Mr. Kabogo, to the New Wood Estate to assess the cause of the flooding. We also went with the engineers from the Ministry. The contractor was also present. I observed as follows during the visit:-

(i) The ongoing construction of Thika Road has not diverted drainage water into New Wood Estate.

(ii) The flooding of the estate is a natural phenomenon since it is constructed on a low-lying area which is a seasonal swamp. This, therefore, means that water from the surrounding elevated areas accumulates until it rises to levels that can flow to a river that is one kilometre away. The remaining water can only dry through natural means of evaporation. The problem of flooding, therefore, does not emanate from the construction of Thika Road.

(iii) When the road was first tarmacked, a culvert was provided at this point to allow flow of water across the road. The contractor has lengthened the culvert in line with the widened road surface. The size of the culvert has also been increased.

(iv) Indeed, the problem of flooding is exacerbated by the increased construction of houses within the estate which collect a lot of roof run-off water, when it rains. This water cannot be drained since there was no provision within the plan of the estate for a master drain plan.

(b) As stated above, the issue of the drainage of this swampy ground is completely outside the ambit of my Ministry. It is to do with physical planning and environmental matters which belong to other ministries.

Mr. Kabogo: Mr. Speaker, Sir, it is true that we co-visited with the Minister as he says but in part (i) he says that they have not diverted the road. It is true that they have not diverted; all they have done is directed water collected from one side of the road into New Wood Estate. Again, he says that it is because there is roofing and I do not know whether roofs change the rainfall amount per cubic inch. Whether there are houses or not, there will still be water falling on that ground.

However, he says that this is a matter of the Ministry of Planning, National Development and Vision 2030 and the Ministry of Environment and Mineral Resources, yet we know there is what we call collective responsibility in this coalition Government. When will the Minister bring this matter to the other two Ministers because he has already visited the area and he is aware, instead of wasting resources to get the other two Ministers to visit the site and take action? Could he take the initiative to liaise with the rest of the Ministers?

Mr. Bett: Mr. Speaker, Sir, yes, it is true that water from roofs increases the velocity of water once it is on the ground, compared to water that has rained directly on the surface. I want to indicate that, yes, there is a collective responsibility and I am already getting in touch with the relevant Ministries to deal with the matter but let me indicate that the current culvert is squarely on the same position like the previous one and it was done to be in line with the valley that is in that particular part of the land. Down the valley, there are so many buildings. I want to urge the hon. Member as a leader of that area, to initiate moves to assist the Ministry concerned when it comes to doing the drainage.

Mr. Mbuvi: Mr. Speaker, Sir, this Ministry is performing its duties selectively, just like the Ministry of Local Government. When the construction work on this road began, properties belonging to poor Kenyans were demolished without any compensation from the Government. When dealing with similar cases, for example, during the expansion of Mombasa Road, there were so many buildings which were to be demolished but we saw Ministers and the Prime Minister forming a task force that stopped the demolition of the said buildings.

Mr. Speaker: Come to your question!

Mr. Mbuvi: Mr. Speaker, Sir, my question to the Minister is this: Why are there double standards? Could this Ministry come up with a work plan that will protect the interests of both the poor and the rich before any road is constructed?

Mr. Bett: Mr. Speaker, Sir, I want to assure the House that we are not engaged in any double standards at all. We are only concerned with road reserves. If the buildings have been built on a road reserve, they will be demolished to provide space for construction of roads that the public requires. With regard to Mombasa Road, I want to indicate to the House that the Ministry of Roads had not acquired the land that was in question on Mombasa Road. So, I want to assure the House that we will always respect the law and, where there is compensation, we will make sure that those concerned are compensated with regard to the land that has been acquired by the Ministry of Roads for the construction of roads.

Mr. Njuguna: Mr. Speaker, Sir, as traffic jam continues to be a nightmare on Nairobi-Thika Highway, could the Minister indicate to this House when the works are expected to be completed so that motorists can start to enjoy utilizing that road?

Mr. Bett: Mr. Speaker, Sir, I think I like the last statement where he says that motorists will enjoy the use of that eight-lane highway, which is of great significance and one of the best in this part of Africa. We had challenges and difficulties when we started constructing this particular road and we had to relocate utilities like power, water, sewerage pipelines and electricity pipelines. We also had to deal with individual owners of plots and that cost us a lot of time. Otherwise, we were anticipating completion before the end of this year. We have revised the completion period and we believe strongly - I can confirm - that we should be completing that road by March next year. Meanwhile, with regard to areas which have been completed, we are allowing motorists to use them.

Mr. Kabogo: Mr. Speaker, Sir, I heard the Minister say that on Thika Road, they only demolished properties that were on road reserves. We know that Nakumatt Thika Road was demolished and the road has now taken shape and at the place where Nakumatt was, the land is still there and has not been touched. Could he probably elaborate on that? Finally, the last question---

Mr. Speaker: Order, hon. Member for Juja! You know the rules! You do one question at a time and you have done so!

Mr. Bett: Mr. Speaker, Sir, that matter was handled in this House and I now want to refer the hon. Member to the specific HANSARD report because it was conclusively handled by the House.

Mr. Speaker: Next Question by hon. Member for Central Imenti!

DEPORTATION OF MS. CLARA GUTTERIDGE

Mr. Imanyara: Mr. Speaker, Sir, I beg to ask the Minister of State for Immigration and Registration of Persons whether he could explain the circumstances under which Ms. Clara Gutteridge, a human rights investigator was deported from Kenya.

The Assistant Minister, Ministry of State for Immigration and Registration of Persons (Mr. Keya): Mr. Speaker, Sir, I beg to reply.

Ms. Clara Gutteridge, holder of British Passport No.402364500 was deported following adverse information received from the security agencies; that is, National Security Intelligence Service (NSIS), indicating that the subject had involved herself in subversive activities which were a threat to national security and contrary to national interest. Her involvement with known terror operatives and the *Al Shabaab* was considered not to be in any way related to human rights activities. In view of the above, on 23rd February, 2011, the NSIS wrote to request for deportation orders and for the person to be declared a prohibited immigrant. The orders were issued on 22nd March, 2011.

The subject was arrested at Jomo Kenyatta International Airport (JKIA) and found in possession of materials relating to the *Al Shabaab*. She was subsequently removed from the country. The British High Commission was fully briefed on the circumstances of the arrest and reasons for deportation. Besides, it was unlawful for the subject to involve in gainful employment purportedly as a researcher on human rights issues without relevant work permit from the Immigration Department contrary to Section 13, subsection 2(f) of the Immigration Act, Chapter 172, Laws of Kenya.

Mr. Imanyara: Mr. Speaker, Sir, it is a tragedy that an answer such as this bears a signature of one good friend of mine, Mr. Otieno Kajwang, with whom I have fought

many battles to see that this kind of answer never comes to the House, particularly from anybody who has never been served with a detention order. The answer given by the Assistant Minister clearly indicates that this visitor had committed offences contrary to some sections of our laws. Why was she not taken to a court of law in Kenya and charged?

Mr. Keya: Mr. Speaker, Sir, on the advice of NSIS, and the seriousness of the matter, we would not have resorted to that but to deport her.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, first I want to let the Assistant Minister know that we cannot allow the country to go back to where we came from. Could he tell us who are these known terrorist operatives and *Al Shabaab*? If you know them, why have you not arrested them? We do not want the Government to be fearful of human rights and you cannot take us back to where we came from!

Mr. Keya: Mr. Speaker, Sir, the known *Al Shabaab* terrorists have been here and you know about them. We have had to deport some of them.

Mr. Speaker: Order, Mr. Assistant Minister! You must be persuaded that you are giving an answer that you believe in and just address the House. So far, you are wavering and that is not helpful!

Proceed!

Mr. Keya: Mr. Speaker, Sir, I am not really wavering but I am telling you what is there!

Mr. Speaker: Address the House! Please, be careful about what you say! In the earlier part of your answer, as you started, and that is why I thought you are wavering, you said that hon. Members know that there is *Al Shabaab*. How do hon. Members know?

Ms. Karua: Mr. Speaker, Sir, it is obvious that the Assistant Minister is not seized of the necessary facts to comprehensively answer the Question. In view of the importance of this Question, will I be in order to ask that the Question be deferred and the Assistant Minister prepares himself thoroughly to give the House proper answers?

Mr. Speaker: What is your reaction to that, Mr. Keya?

Mr. Keya: Mr. Speaker, Sir, I think I would agree with the hon. Member and I request that I be given time, to next Thursday, to respond to it.

(Laughter)

Mr. Speaker: Very well! That Question is deferred to Thursday next week, 9th June, 2011.

(Question deferred)

Next Question!

PAYMENT OF LAND RATES ON PRIVATE PROPERTY
L.R. NO.7879/4 BY GOVERNMENT

Mr. Kutuny: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Under what circumstances has the Government, through the Office of the President, been paying land rates to the Nairobi City Council for a private property, LR No. 7879/4?

(b) What is the ownership status of the said property and are there any outstanding rates owed to Nairobi City Council?

(c) When will the Government finalize transactions for the purchase of the parcel of land which was initially meant for the construction of the General Service Unit (GSU) housing units?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Speaker, Sir, I beg to reply.

(a) The Government, through the Office of the President, has not been paying land rates to the Nairobi City Council for private property LR.No.7879/4---

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead the House that the Government has not been paying rates while there is a letter here from the Nairobi City Council confirming that the Government has been paying rates on a private piece of land which is not owned by the Government? I will read it to the Assistant Minister before I table it! It says:-

“Take notice that since 1998 the land rates for the above plot have been remitted to the City Council of Nairobi by the Government of Kenya through the Office of the President.”

And it gives the breakdown of the payments. In part (a), he is saying that the Government, through the Office of the President, has not been paying rates to the City Council of Nairobi. Is he in order to mislead this House? I table the letter!

(Mr. C. Kilonzo laid the document on the Table)

Mr. Speaker: Mr. Lesrima, what is your reaction to that?

Mr. Lesrima: Mr. Speaker, Sir, obviously, the information being tabled is not in my possession and I would request for more time to check the authenticity of the letter and come back with a good answer.

Mr. Speaker: How long do you want?

Mr. Lesrima: I request to be given time up to Tuesday.

Mr. Speaker: It is so ordered!

The Member for Cherengany, please, note Tuesday, next week!

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.847

UPSURGE OF INSECURITY IN ELDORET SOUTH CONSTITUENCY

Member for Eldoret South, because we have set a precedent where we accommodated a Minister a little earlier, we will re-visit this Question a little later.

Next Question!

Question No.963

NUMBER OF INTIMATE-PARTNER ABUSE CASES IN KENYA

Mrs. Odhiambo-Mabona asked the Minister of State for Provincial Administration and Internal Security:-

(a) how many cases of intimate-partner violence (including husband-abuse, wife-abuse, boyfriend/girlfriend-abuse) have been reported to the police from 2010 to date,

(b) how many of the cases have been prosecuted and how many have resulted in convictions, and;

(c) what measures are in place to proactively deal with intimate-partner abuse and when the Government will present the Domestic Violence and Family Protection Bill to the House.

The Assistant Minister for Provincial Administration and Internal Security

(Mr. Lesrima): Mr. Speaker, Sir, I beg to reply.

(a) The following cases have been reported countrywide from the year 2010 to date. These are cases of intimate-partner violence. Nairobi, 164; Coast, 88 cases; North-Eastern – 14 cases; Western, 179 cases; Rift Valley, 344 cases; Eastern, 175 cases; Central, 69 cases and Nyanza, 98 cases. The total number of cases reported to the police from 2010 to date, add up to 1,131.

(b) The following cases have been prosecuted and others resulted in convictions: The number of cases prosecuted for Nairobi is 164; convictions, 47; Coast, 46; convictions, 28; North Eastern, 14 prosecuted; two convictions; Western, 179 prosecuted; 51 convictions; Rift Valley, 344 prosecuted; 64 convictions; Eastern Province, 164 prosecuted; 40 convictions; Central 52 prosecuted; 39 convictions; Nyanza 98 prosecuted and 13 convictions. The total number of prosecutions are 1,061 and total convictions is 284.

(c) The following measures have been put in place to proactively deal with intimate/partner abuse: Establishment of gender desks in all police stations which are manned by trained officers both male and female; gender mainstreaming policy in the Government; sensitizing officers on gender mainstreaming policy that is spearheaded by the Ministry of Gender, Children and Social Development; the enactment of the Sexual Offences Act, 2008; the Act harmonizes sexual violence legislations that provides a comprehensive definition of rape, introduces minimum sentences, criminal sexual harassment and expands sexual harassment to include gang rape, deliberate infection with sexually transmitted diseases; trafficking for sexual exploitation and child pornography; the adoption of two regulations in 2008 to guide judicial officers in the implementation of Sexual Offences Act; the Sexual Offences Regulations, Sexual Offences Dangerous Offenders and DNA Data Bank Regulations.

Mr. Speaker, Sir, in 2000, the Domestic Violence Family Protection Bill was tabled before Parliament, but it lapsed before it was enacted. The Bill has now been revised and updated to reflect present-day requirements by making it wide and flexible. It deals with all matters relating to gender violence. As soon as consultations with

stakeholders are concluded, the Government will plan to re-introduce Family Protection Bill for debate.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I would like the Assistant Minister to clarify. What I can see from his response is that he has concentrated a lot on issues of sexual violence. I would like to know whether he was responding to issues of sexual violence or he was responding to issues of domestic violence. Those are very distinct, unless he is telling me, that of the cases he received, husbands were sexually abusing their wives and wives were sexually abusing their husbands!

Mr. Speaker, Sir, I feel that he has not answered my Question. Could he, please, clarify whether the figures that he has given of 1,061 relate to husbands beating their wives or wives beating their husbands, or boyfriends beating their girlfriends and vice-versa, but not cases of sexual violence? Could he clarify whether that is the case?

Mr. Lesrima: Mr. Speaker, Sir, I think the figures are obviously summarized. All these relate to husbands, girlfriends, boyfriends, *et cetera*. So, I do not have a breakdown of the relationships provided for in these statistics. It is something to do with violence, not necessarily to do with sexual violence. I did also mention that the Ministry of Gender, Children and Social Development has responsibility in terms of social work for this kind of thing.

Mr. Njuguna: Mr. Speaker, Sir, you will note that it is really alarming to note the number of cases that have been reported, particularly at Nairobi Women's Hospital. What is he doing to assist the traumatized rape victims who are scattered in various parts of our country?

Mr. Lesrima: Mr. Speaker, Sir, I have just mentioned the role of the police in this aspect. The Government has stationed counselors and social workers in various districts to do counseling of Kenyans who face this kind of violence.

Mr. Mbuvi: Mr. Speaker, Sir, in most of these cases, our beautiful girlfriends and wives are to blame. Why is it that Government agents, especially the police, are siding with the girlfriends and the wives?

Mrs. Shebesh: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: What is your point of order?

Mr. Mbuvi: Could the Assistant Minister come up---

Mr. Speaker: Order, Member for Makadara! Hon. Shebesh is on a point of order!

Mrs. Shebesh: Mr. Speaker, Sir, is it really in order for the Member for Makadara to say that "in most of these cases of domestic and sexual violence that our beautiful girlfriends and wives are to blame" without clearly explaining what he means?" This is a public Floor. The country is watching as he is speaking so carelessly! Is he in order?

Mr. Speaker: Mrs. Shebesh, are you challenging the Member for Makadara to substantiate?

Mrs. Shebesh: Mr. Speaker, I would like him to substantiate that it is the young girls and wives who are responsible for the domestic and sexual violence that is meted on them.

Mr. Speaker: Very well! Member for Makadara, do you want to do so?

Mr. Mbuvi: Mr. Speaker, Sir, it is obvious! At the same time, even handsome men are sometimes beaten!

Could the Government consider hiring professionals to deal with these cases?

Mr. Lesrima: Mr. Speaker, Sir, as I said, every police station should be having a Gender Desk to deal with these issues, so that the kind of discrimination that is being alluded to by the hon. Member does not arise. However, this is a very wide area for the Government to be asked to supervise human relationships.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. I kept quiet when hon. Sonko spoke about this for obvious reasons. I want to say---

Mr. Speaker: Order, hon. Odhiambo-Mabona! Who is hon. Sonko?

Mrs. Odhiambo-Mabona: Hon. Mbuvi, Mr. Speaker, Sir! Actually, I forgot his names!

Mr. Speaker: Order! Hon. Odhiambo-Mabona; you will then have to withdraw the word "Sonko" and apologise!

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I apologise for calling hon. Mbuvi, "hon. Sonko". I am sorry because I do not know his name, but I am glad to know it today.

However, I want to ask: Is the hon. Assistant Minister in order to trivialize a very serious issue? The same attitude that I am seeing other hon. Members portraying is what the Assistant Minister is portraying. Only a few weeks ago, we buried a woman as a consequence of domestic violence. Is he in order to tell us that? These are not personal issues; these are criminal acts. If a woman kills her husband or vice-versa, it will be a criminal act as per the Penal Code; it is outlawed in the Constitution! Are you in order to be trivializing serious issues?

Mr. Speaker: Order! That will not pass for a point of order!

Hon. Karua!

Ms. Karua: Mr. Speaker, Sir, it is unfortunate that a lot of prominent people and leaders display ignorance whenever these matters of domestic violence are tackled, but the Assistant Minister has indicated that in 2000, the Family Protection Bill was published. What he did not say is that I sought leave from this National Assembly for two Bills - the Family Protection and Equality Bills – which never saw the light of the day. Could he say why the Government has not brought that particular Bill – The Family Protection Bill – and why cases of domestic violence are not being prosecuted to enable Kenyans know that there are no two sets of laws – one for domestic and one for the rest of the world, and that it is criminal to violate the bodily integrity of any Kenyan?

Mr. Lesrima: Mr. Speaker, Sir, I have just tabled statistics to show that there have been some prosecutions. Of course, the figures are not as high as one would expect. The prosecutions that I have tabled show a number of cases are withdrawn or are never brought forward. With regard to the question of the Family Protection Bill, I have not been able to establish from the Ministry of Justice, National Cohesion and Constitutional Affairs, at what stage that Bill is. This is something that I was not able, at the time of coming to this House, to know the stage at which that Bill is. But, obviously, any Member can bring a Private Member's Bill the way the Sexual Offences Bill was brought. However, I intend to follow up with the relevant Ministry to find out the status of this Bill.

Mr. Mureithi: Mr. Speaker, Sir, considering the psycho-social support which these people are supposed to get, a law has never been passed in this country regarding psychologists. Could the Assistant Minister inform this House which institutions he is using to give psycho-social support to the traumatized women, men, boys and girls who have suffered in the hands of criminals?

Mr. Lesrima: Mr. Speaker, Sir, these institutions exist within the reporting institutions which are the police service, medical institutions such as women hospitals and Government hospitals, including Mathare Mental Hospital and also the Social Services Department.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I am reminded that there was a case of Lorena Bobbit who “bobbited” the husband with very serious consequences. She bit off the private parts of her husband. So, therefore, cases of domestic violence can be perpetrated by women against men and vice-versa. So, could the Assistant Minister inform the House what he is doing to train dignified members of society, including hon. Members, who can be victims of violence? They need to take this issue seriously!

Mr. Lesrima: Mr. Speaker, Sir, I can only say that the Government can facilitate various organizations, including the church, to train Kenyans to be more tolerant. Indications are that after 2007, Kenyans are becoming less tolerant to one another. Also, we want Kenyans to live peacefully and respect the laws of the country. We want the Ministry of Education, for example, to include in the syllabus, the question of domestic violence, and even violence against children. I had the opportunity to visit Sweden to look at their early childhood education programmes 15 years ago; two-year olds in school are given police hotlines, which they can use to call the police anytime their parents molest them. So, I think various Government Departments, including the civil society and religious organizations, can play a part with facilitation.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to purport that the Government is very keen when it comes to abuse of spouses, when only the other day we saw an ambassador of a country in West Africa who thrashed his wife properly, yet we never saw this Government demand that he be recalled by his country? We never saw any statement! The only statement we saw from the Government was that diplomats enjoy diplomatic immunity.

Mr. Lesrima: Mr. Speaker, Sir, I believe that matter was reported. I believe that the Ministry of Foreign Affairs is handling it and the Assistant Minister for Foreign Affairs is offering me information, which I am willing to take.

(Mr. Onyonka stood up in his place)

Mr. Speaker: Order! That is not the way we do it here!

The Assistant Minister for Foreign Affairs (Mr. Onyonka): On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Mr. Assistant Minister, do you want information?

Mr. Lesrima: Yes, Mr. Speaker, Sir.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, I just want to inform the House that the matter was not publicly discussed by the Ministry of Foreign Affairs. However, the issue has been sorted out and the Ambassador has actually been recalled.

Mr. Speaker: Next Question by Mr. Nyamai!

Question No.821

HIGH POLLUTION LEVELS IN ATHI RIVER

Mr. Nyamai asked the Minister for Environment and Mineral Resources:-

(a) whether he is aware of the high levels of pollution in River Athi and what measures the Government will take to reverse the state; and,

(b) what interventions he has put in place to ensure residents of Kitui West, who live along the river, access uninterrupted clean water from the river.

Mr. Nyamai: Mr. Speaker, Sir, I have not been provided with a written answer. This question was deferred to today from last week because the Assistant Minister wanted to do some research. I would not feel comfortable to proceed without a written answer.

Mr. Speaker: Let me hear the Assistant Minister first before I decide on it.

The Assistant Minister for Environment and Mineral Resources (Mr. Kajembe): Mr. Speaker, Sir, it is true that a written answer has not been delivered to Mr. Nyamai. That is because we have just concluded the report. Like I said last week, I would be very comfortable if I answered the Question on Wednesday. But you reminded me that Wednesday would be a public holiday. I have the answer and I could give it if the---

Mr. Speaker: How long do you need to get the answer to the hon. Member? Do you want to answer the Question on Thursday?

The Assistant Minister for Environment and Mineral Resources (Mr. Kajembe): Mr. Speaker, Sir, I will answer it on Tuesday next week.

(Mr. Nyamai stood up in his place)

Mr. Speaker: Order! Hon. Nyamai, is Tuesday next week okay with you?

Mr. Nyamai: Mr. Speaker, Sir, Tuesday is not okay for me. He can do it on Thursday because he has already admitted that he has the written answer. I believe all it takes is to photocopy it. In fact, with your indulgence, I had requested the Parliamentary staff to get it from him and photocopy for me. But he has refused to give it to them. So, the latest I can accept is Thursday this week!

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. A similar Question on pollution, in the same river, was here barely a month ago and you directed that the Assistant Minister tables the report from the Government Chemist on the pollution level in that river. So, I would wish that when he is answering the Question, he could also table the report on the same river.

Mr. Speaker: Mr. Assistant Minister, do you have the report such that you would be able to table it?

The Assistant Minister for Environment and Mineral Resources (Mr. Kajembe): Mr. Speaker, Sir, the report from the Government Chemist has not yet been concluded. I will ask the Government Chemist to bring it to us.

Mr. Speaker: How long do you want for it to be concluded?

The Assistant Minister for Environment and Mineral Resources (Mr. Kajembe): Mr. Speaker, Sir, it is with the Government Chemist. So, I would ask the Chair to give me, maybe, two weeks for that report to be tabled here.

Mr. Speaker: Very well! Mr. Assistant Minister, you may resume your seat for a moment. Mr. Assistant Minister, I want to treat the Government very fairly. That is because I know the Government is very efficient, has many officers and all the institutions are working well. So, I will give you until Thursday next week, which is roughly ten days. You will come to answer the Question and table the requisite report by the Government Chemist.

(Question deferred)

Question No.818

LOSS OF REVENUE IN NAIROBI CITY COUNCIL
THROUGH FRAUD

Mr. Speaker: Is the Member for Igembe South not here?

(Question dropped)

Question No.847

UPSURGE OF INSECURITY IN ELDORET SOUTH CONSTITUENCY

Mr. Speaker: Is Hon. Chepchumba still not here?

(Question dropped)

QUESTION BY PRIVATE NOTICE

OCCUPATION OF KENYAN ISLANDS BY UGANDAN
SECURITY FORCES

Mr. Mbadi: Mr. Speaker, Sir, for the second time, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Is the Minister aware that Ugandan security forces still occupy Migingo Island in Lake Victoria despite an agreement between the Government of Kenya and Uganda and that the Uganda Government has continued with expansionist policy on Kenyan soil and waters by illegally taking occupation of Ugingo, another Kenyan island next to Migingo?

(b) Why has the Government failed to reclaim Migingo Island even after Parliament passed a Motion urging the Government to use all means possible to reclaim the island on 27th May, 2009?

(c) Could the Minister explain, giving timelines, the steps the Government will take to reclaim Migingo Island and any other Kenyan island occupied by foreign forces?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, I beg to reply.

(a) Yes, we are aware that 35 Ugandan policemen are currently stationed on Migingo Island. However, the Ugandan national flag has been removed as one of the

conditions that we had given to the Ugandan Government. Ugingo Island, itself, is not yet occupied by the Ugandan police officers, though we have got 16 structures which exist on that island and they are owned by both Kenyan and Ugandan fishermen.

(b) Kenya has actually not failed to reclaim Migingo Island. We have been trying our level best to make sure that all the diplomatic channels are utilized and used to make sure that we achieve that peacefully. The Government of Kenya and Government of Uganda have jointly been discussing this matter and, as a result of that, there are two outstanding issues that have come up from the Kenyan side and another two outstanding issues which have also come out from the Ugandan side.

On the Kenyan side, the Ugandan team has been insisting that we must rename all the islands within Migingo Island. The second issue is that the Ugandan team had insisted that we must reconstruct a new boundary and place new pillars where the survey work is going to be done and as a result, the Kenyan Government has actually refused to agree to those two conditions. The Kenyan Director of Surveys has confirmed that the island known as Ugingo, which is next to an island known as the Pyramid Island, cannot be re-identified and renamed because historically, that was done in 1900 to 1901 by the Commander of the White House and Royal Navy when they were doing that, in setting up the structure to set up the Kenya-Uganda Railway.

Secondly, the Kenyan Government has actually made a request – as I am speaking to you – where the Acting Minister for Foreign Affairs, Prof. Saitoti, has written to his counterpart in Uganda and sought for the surveys to continue so that we can amicably sort out this issue. As a result, the Ministry of Foreign Affairs has given priority to this matter, where the Government of Kenya has demanded that the Government of Uganda proceeds, so that we can sort out this dispute amicably, before we take any other further action. As a result of that, the Kenyan Cabinet also has made a recommendation and directive that we set up a Department of International Boundaries to make sure that we register all our boundaries and map them correctly, so that nobody can make a claim to them.

(c) Lastly, as I speak here, the matter is seized by the Ministry and all the necessary departments in Government. We are working on it and as soon as possible--- I believe it should not go beyond the end of this year, when we will come up and find an amicable solution because we still maintain that Uganda is our good neighbour and biggest trading partner and we must handle the matter carefully, so that it does not go beyond our control.

Mr. Mbadi: Mr. Speaker, Sir, I am saddened by that very lazy answer from the Assistant Minister for Foreign Affairs. Listening to the Assistant Minister, you get surprised because he has talked of Ugingo Island having not yet been occupied as if he is waiting for the Ugandan forces to occupy it. He has even talked of Uganda giving us conditions to rename the islands. Next time, they will give us conditions to rename Nairobi. My question is this: We agreed with the Ugandan Government, when we made the agreement, to do the survey of the boundary; that, both countries were supposed to withdraw their security forces alongside lowering their flags. Now that the Ugandan Government has refused to withdraw its security forces from those islands, is Kenya going to send its security forces on the islands, so that we can both have security forces there? Is the Government of Kenya going to do that?

Mr. Onyonka: Mr. Speaker, Sir, yes, indeed, there was initially a discussion and it was agreed that both parties will withdraw their forces. Uganda has not done it, but the Kenya Government is not sending its troops to go and occupy Migingo because we believe that the matter can be discussed and sorted out amicably. I would urge my colleague to be a little bit patient because sometimes in diplomacy, it takes a while before we can conclusively sort out the issues. The matter on Migingo and Ugingo islands is the issue for---

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to ask for my patience when this matter has been with us from March, 2009? This agreement was reached before May, 2009. Is it in order for him to ask for unnecessary patience from the Member for Gwassi?

Mr. Onyonka: Mr. Speaker, Sir, I will repeat myself that sometimes, diplomacy takes quite a little longer to achieve results. We believe this matter will amicably be sorted out. There is no reason for us to escalate the tension between Kenya and Uganda. We believe that soon, we will have an answer to this problem.

Mr. Muturi: Mr. Speaker, Sir, it is surprising to hear the Assistant Minister saying that the Kenya Government is trying to woe the Ugandan Government to move out its forces. Could he tell us who owns these islands? If they are owned by Kenya, why has he not reclaimed them by force?

Mr. Onyonka: Mr. Speaker, Sir, this is basically an international dispute on boundaries which has to be negotiated between two parties. The Ugandans are making a claim to our boundary. The position of the Kenyan Government is that we will use all the necessary mechanisms which will help us sort out this matter amicably. We will go through the AU and if need be, we will go to the International Court of Justice to sort out this matter so that we can achieve an amicable settlement. The Kenyan Government is not ready to go to war with Uganda over the Migingo Island unless we fail to reach an amicable solution. Right now, we are working on it.

(Several Members stood up in their places)

Mr. Speaker: The Member for Alego Usonga! The other Members who were on their feet all along were out of order! So, Member for Alego Usonga!

Mr. Yinda: Mr. Speaker, Sir, could the Assistant Minister accept or deny that the Kenya Government gave Migingo Island as a present to the President of Uganda?

Mr. Onyonka: Mr. Speaker, Sir, we do not have such evidence to confirm or deny what the Member has said. As far as I am concerned, that is not possible.

Ms. Karua: Mr. Speaker, Sir, although I agree with the Assistant Minister that we must exhaust diplomacy to the fullest, why is Kenya not protecting the residents of Migingo from harassment by Uganda, pending diplomacy? Why are we talking of what the Government is going to do when the problem is more than two years old and the Government ought to have done all those things earlier?

Mr. Onyonka: Mr. Speaker, Sir, as I said and I will repeat myself, this is a dispute that has been simmering for the last two years. My Government has been coming up with solutions to this problem. The Ministry of Foreign Affairs, the Ministry of State for Defence, the Ministry of State for Provincial Administration and Internal Security and all Government departments have been working tirelessly to make sure that we achieve

the required results, namely; peacefully solving the problem of Migingo and Ugingo islands. As far as the Government is concerned, we are not allowing Kenyans to be harassed. We are looking for a peaceful way on how the Ugandan Government can withdraw its police officers from Migingo Island and make sure that we come up with an amicable solution.

Mr. H.M. Ali: Mr. Speaker, Sir, I would like the Assistant Minister to confirm or deny that they are exposing Kenya to threats from all our neighbours, including the Meriles who attacked and killed four Turkanas two weeks ago.

Mr. Onyonka: Mr. Speaker, Sir, the Kenyan Government has been trying to make sure that we have all the necessary mechanisms in place to protect our borders. The Kenyan military is on full alert to make sure that Kenyans are not harmed. The incident that happened in North Eastern Kenya has been investigated. The President has already had a meeting with Prime Minister Zenawi and we have agreed that such an event must not happen again. The skirmishes which take place across our borders take place because of varied reasons. I can assure my colleague and this House that the Kenyan Government is going to do all it can to make sure that our borders are secure and no Kenyan is harmed by anybody, whatsoever.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. I would like to seek your directive over this matter. This House passed a Motion urging the Government of Kenya to refer this matter to the UN Security Council as a threat to international peace and security. Since then, the Government has failed and/or refused to take action. Would I be in order to request the Speaker to stop the Ministry from transacting any further business in this House until it deals with the issue of Migingo?

Mr. Speaker: Order! You have a legitimate case, but you will not be in order to ask the Speaker to impose sanctions on the Minister because you have other avenues that you have not explored. As a House, you have an Implementation Committee. So, refer this matter to the Implementation Committee before you can now move back to the Speaker. That rests the matter.

Mr. Mbadi: Mr. Speaker, Sir, I would have requested the Assistant Minister to talk to the Commander-In-Chief of this country to wake up and know that our territory is under threat. He has talked of taking steps to refer this matter to the AU or maybe, the UN. Could he tell this House categorically, when the Government of Kenya will refer this matter to the AU? Could he tell us which date?

Mr. Onyonka: Mr. Speaker, Sir, I would first like to inform my colleague that the Commander-In-Chief of the Armed Forces of this Republic is very much awake and alert. He is just not a war monger. It is much easier for people to expect this country or any other country to go to war, but it is not easy to stop the war once it starts.

Secondly, the road map as to whether we can go to the AU or the UN Security Council will be dictated by whether we have agreed or disagreed with the Ugandan Government on the matter which is seizing us.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. It is quite obvious that the Government is treating this matter so lightly the way it has done for more than two years now. My question was very specific. The Ugandan Government has refused to do even the simple thing which we agreed, namely; to withdraw the security forces. Is it in order for the Assistant Minister to evade my question? Could he tell us when he will determine

that this matter cannot be resolved diplomatically between Kenya and Uganda and it is necessary to refer it to the UN Security Council, as we agreed?

Mr. Onyonka: Mr. Speaker, Sir, I wanted to mention that the Ugandan Government has not communicated to us to say that they have completely refused to do what Kenya has asked it to do. The point I was making is that there are discussions and negotiations going on and I believe that these discussions will bear fruit. I am asking the House to be patient on this matter and we will solve this matter amicably. The Ministry of Foreign Affairs and the Office of the President do not discuss publicly the negotiations which are taking place, but we will achieve positive results for both our countries.

Mr. Speaker: Order, hon. Members! That brings us to the end of Order No.6! Next Order!

Hon. Members, the nature of Business that is before the House this afternoon is such that we will restrict Business under Order No.7 to only those that are requests. Statements which are due for delivery will be deferred to Thursday this week at 2.30 p.m. because of the nature of Business before the House, particularly Order No.8. So, are there any requests?

Proceed, the Member for Gichugu!

Ms. Karua: Thank you, Mr. Speaker, Sir. I rise to seek your guidance. It is in the public domain---

Mr. Speaker: Order, the Member for Gichugu! I said "requests for Statements". So, we will have to take the requests first. I am aware that you would be raising a point of order.

(Mr. Imanyara stood up in his place)

What is it, the Member for Central Imenti?

POINTS OF ORDER

FAILURE BY CONSTITUTIONAL AFFAIRS MINISTER TO INTRODUCE MOTIONS ON APPROVAL/DISAPPROVAL OF CHIEF JUSTICE/DEPUTY CHIEF JUSTICE/DIRECTOR OF PUBLIC PROSECUTIONS

Mr. Imanyara: Mr. Speaker, Sir, I am glad that the Minister for Justice, National Cohesion and Constitutional Affairs is here, because I rise to seek a Ministerial Statement on the grave issue of the Nominees to the Office of the Chief Justice, Deputy Chief Justice and Director of Public Prosecutions. I would like the Minister to tell this House why he has failed to introduce the two Motions for consideration and approval or disapproval of the nominees in terms of Articles 157 and 166 of the Constitution, given that you communicated to this House via your Communication from the Chair in terms of Standing Order No.37(2). I would also like to know, bearing in mind that the provision for public participation is provided for in Article 73(2)(b) and (e), whether the Minister has received any memoranda from the Kenyan public and if he has done so, why has he not complied with the requirements of Articles 157 and 166 so that the House can, if necessary, go into the Committee of the Whole House to finalize this matter once and for all?

Mr. Speaker: Mr. Minister, are you ready to deliver the Statement this afternoon?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you, Mr. Speaker, Sir. I am not ready but I will do so on Thursday.

Mr. Speaker: On Thursday at 2.30 p.m?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well!

Yes, the Member for Rarieda!

ENGAGEMENT OF CONSULTANTS FOR FEASIBILITY STUDY ON
PROPOSED LAMU PORT

Eng. Gumbo: Thank you, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Transport on how the consultants to conduct a feasibility study for the Proposed Lamu Port were engaged.

In the Statement, I want the Minister to explain in detail how Japan Port Consultants were awarded the multi-billion shilling consultancy and, in particular, make the following clarifications. If an expression of interest and a request for proposals was sent out, when it was sent out and how many firms were invited. Could the Minister provide the detailed request for proposals and documents used in sourcing these services? Could he also provide the detailed bids of all the firms that responded to the RFP both in terms of the technical and financial bids?

Mr. Speaker, Sir, I also want the Minister to provide detailed curriculum vitae of all the individuals in the respective firms that placed bids for this contract and the respective man/month rates applicable to each of the members in the financial bid. I also want the Minister to provide a detailed tender evaluation report showing how both technical and financial bids for each firm scored and table a letter of awards to the winning bidder including the contract amount, terms of payment and the expected contract period, including how much money has been paid to Japan Port Consultants to date.

Finally, I want the Minister to confirm whether the provisions of the Public Procurement and Disposal Act, No.3 of 2005 and the Public Procurement and Disposal Regulations of 2006 were strictly adhered to.

Thank you, Mr. Speaker, Sir.

(Applause)

Mr. Speaker: Is the Minister for Transport here?

The Minister for Roads (Mr. Bett): Thank you, Mr. Speaker, Sir. I have heard the request. I will endeavour to get my colleague in Transcom House to give a reply on Thursday.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well!

Yes, the Member for South Mugirango!

AVAILABILITY OF SEED MAIZE FROM KENYA SEED COMPANY

Mr. Oyongo Nyamweya: Thank you, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Agriculture regarding the availability of seed maize in the Kenya Seed Company (KSC).

In the Statement, the Minister should:-

(a) provide information on the farmers contracted by the KSC to grow maize seeds and the total acreage of maize contracted;

(b) indicate the contracted amount per kilogramme of seed and the price at which the company sells seeds to farmers for planting; and,

(c) confirm the availability of maize seeds held by the KSC for planting during the forecasted short rains in July, 2011.

Mr. Speaker: Is the Minister for Agriculture not here? Prof. Ongeru, could you hold brief for your colleague?

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, indeed, I will transmit the information to the Minister for Agriculture to issue that Ministerial Statement.

Mr. Speaker: On Wednesday morning?

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, on Wednesday, next week in the morning.

Mr. Speaker: Very well! It is so directed!

Yes, the Member for Turkana Central!

INVASION OF KOTARUK/LOBEI VILLAGES BY CATTLE RUSTLERS

Mr. Ethuro: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security. Last week, once again, raiders attacked my villages of Lobei and Kotaruk simultaneously. This follows the raid that took place at Todonyang. What I would like the Minister to respond to in that Statement is to determine the number of animals that were taken away, the number of fatalities and how many people were displaced.

Secondly, I would like the Minister to give the specific interventions in terms of the state of security along our boundaries, so that the number of policemen that are deployed are the same as the ones that go at the time of drought.

Finally, what measures will prevent further escalation of this kind of cattle rustling related activities along our common border both internally and with the other countries?

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Yes, Mr. Lesrima!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Speaker, Sir, we should be able to give a Statement on Thursday.

Mr. Speaker: Thursday this week?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well! The matter appears urgent on the face of it. Yes, the Member for Gichugu!

PRESENTATION OF BUDGET SPEECH BY FINANCE MINISTER

Ms. Karua: Thank you, Mr. Speaker, Sir. I rise to seek your guidance. I have been looking at our Constitution, especially the Sixth Schedule, Clause 2(c), which says:-

“Articles 129 to 155 of Chapter Nine, except that the provisions of the Chapter relating to the election of the President shall apply to the first general elections under this Constitution.”

Mr. Speaker, Sir, these are the suspensions of provisions in the Constitution and that Chapter on the Executive is suspended. However, there is Article 221 on Budget Estimates and Annual Appropriation Bill which has seven sub articles. It is quite clear that the Budget is to be presented to Parliament by a Cabinet Secretary responsible for Finance. We all know that we do not have the Cabinet Secretaries now but we have Permanent Secretaries and I have no problem with the Minister tabling it. However, it is clear from the provisions of Article 221 that the Deputy Prime Minister and Minister for Finance cannot read the Budget to Parliament because the provisions of this Constitution now apply and there will be no reading of the Budget any more. This Article is not suspended, and yet I have heard the Deputy Prime Minister and Minister for Finance, publicly state that he will be reading the Budget on 8th June, 2011.

Mr. Speaker, Sir, I have raised this issue for your ruling whether it is in order for the Deputy Prime Minister and Minister for Finance to even contemplate reading the Budget before this House because it is better that it is sorted out now through your directions than trying to raise it on the day of the Budget.

Mr. Speaker, Sir, I believe that there are many Members who have gone through the same Articles, and are of the view that since this new provision applies, we no longer can have the funfair ceremony of a Minister reading the Budget to this Parliament. I seek your guidance and directions.

(Mr. Mbadi stood up in his place)

Mr. Speaker: Order, Member for Gwassi! That obviously is a formidable matter, and I would want to hear a few more views on this.

I want to take, maybe, three Members from the Backbench, and hear the Front Bench. What is the Government's position on this matter?

Yes, Member for Gwassi!

Mr. Mbadi: Mr. Speaker, Sir, in your ruling and as you consider this matter, I would like to draw your attention to the fact that if you read Article 221(4)(5), it makes it mandatory to involve public participation. That is why the Constitution provided that, not less than two months to the end of the financial year, the Cabinet Secretary, which in this case is the Deputy Prime Minister and Minister for Finance, should submit to Parliament, the Budget Estimates.

Mr. Speaker, Sir, now that we are already only having one month to the end of the financial year, and we have already violated the Constitution, I would like to ask you how will we then proceed? Will we still have the two months envisaged in the Constitution to

look into the Budget before the final approval, because public participation is mandatory as per the Constitution?

Mr. George Nyamweya: Mr. Speaker, Sir, perhaps, I would just like to draw your attention to our obligation under the East African Community Treaty, that really requires that the Budgets of the East African Community be read at the same time. The fact that we have adopted a new Constitution does not excuse us from our international obligations. I believe it might well be, when we are harmonizing our laws, that this may be part of the amendments we need to look at: How are we going to proceed forward within the East African Community, when we have taken a different type of governance system from the one that rest of the Community has? So, I think, it may not be one of quick interpretation. It may well be that the Government may have to come up with legislation, which can harmonize and align our commitment together with the requirements of the new Constitution.

Mr. Speaker, Sir, furthermore, there is a transition period. There is the fact that the Members of Parliament, who are Ministers, those positions are saved under the Constitution, and perhaps, we might be generous and look at our interpretation of whether we are completing transiting to the new Constitution, or we are still in the process of carrying out previous obligations, as the Tenth Parliament, as we move towards the Eleventh Parliament. So, I would, perhaps, urge that we look at possible legislation to guide us across to the Eleventh Parliament.

Dr. Machage: Mr. Speaker, Sir, these are anomalies some of us did tell the nation. Nobody could listen to us! Some of us were thrown in for hate speeches!

(Applause)

(Laughter)

Indeed, hon. Karua is right. There is no clause in the Constitution that gives us transition status of the Budget. This Constitution says the Budget should actually be in March, not even in June. This is in total disregard to the East African Community Treaty. This we said, but nobody listen to us. This is an anomaly. Unfortunately, I think this is one of the ten chapters that can only be amended by a referendum.

Mr. Imanyara: Mr. Speaker, Sir, given the positive obligation on each and every one of us under Section 3 to respect, uphold and defend this Constitution at all times, and bearing in mind what hon. Karua has told you, and given the fact that this Minister - in breach of this provision in the Constitution, that requires us to uphold the Constitution, went on to publish that he would be reading the Budget in this House on the 8th of June, what measures are we as Members supposed to take to ensure that, that obligation placed on us by the Constitution is obeyed to prevent him from coming to this House to breach the Constitution?

Mr. Speaker: Minister for Justice, National Cohesion and Constitutional Affairs, I want to hear the Government's position, now that the Attorney-General is not here. I believe one or two of your colleagues want to assist you; I want to hear you.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, you always gives me the most difficult job, but I would

make an effort to see whether I can assist in your very difficult task of responding to hon. Karua.

Mr. Speaker, Sir, I want to begin by saying that without fear, there are no anomalies in the Constitution. None at all! In fact, all that you may wish to say at this point in time before this beautiful country is that you want to propose some adjustments. But you cannot call them anomalies. A Constitution is a live document. It is living. Above all, I would like to say that in interpreting it, and I am now addressing this to my learned friend hon. Karua; in interpreting, she must treat it as a living document, not as a document whose life is dead and will not move.

Mr. Speaker, Sir, allow me to mention something hon. Karua has not drawn to your attention, so that in giving your direction, you consider. I suggest that you look at Section 3. She has referred you to Section 2 only, which refers to the Articles of the Constitution that are suspended. But looking carefully at Section 3, there are some Sections of the old Constitution which are still in force. Therefore, we need sobriety as we approach this matter. I agree with those who are saying that the issue in front of you must be looked at as a challenge of the transition of this country that we have been fighting so hard. Therefore, you will find in Sections 30 to 40---

Mr. Speaker, Sir, I do not need to remind you because you are an experienced jurist in your own right that those are the Sections of the old Constitution that gave Parliament the power to make laws and how to make them.

Again, you will find that Sections 43 to 46 are extended. In fact, it was only last week, although the politics of the thing has grounded us again, that you gave advise to the country, particularly, His Excellency the President and the Right Hon. Prime Minister that Section 56 of the Constitution is still in force.

So, therefore, in making your ruling, I want to suggest that one of the starting point is to consider that transitional provision, whereby, existing Sections of the Constitution recognizing the Deputy Prime Minister and Minister for Finance are still in force. If you go further, you will see that apart from the Sections extended, the provisions of the former Constitution concerning the Executive and the National Accord and Reconciliation Act shall continue to operate until the first General Elections held under this Constitution.

Mr. Speaker, Sir, again, because I trust your judgment, and I know you will make a valid finding, to address this very fundamental issue, allow me to refer you to Article 259, which all of us continue to ignore in our work. Allow me to say in my experience now as the Minister for Justice, National Cohesion and Constitutional Affairs; I notice that my country is still in what is called denial in psychology. There are many people who still think that the old order continues. That is called denial. But fortunately, the psychologists and psychiatrists have told me that after denial, comes acceptance. The time for us to accept that we have a new Constitution is now and start respecting it. So, I am in a way, agreeing with hon. Karua that the Treasury has forgotten that Article 221 is actually in force.

Mr. Speaker, Sir, I want to refer you to Article 259, which, on occasion, as the Sir Solomon of Kenya, you have sometimes used it to move us forward. It says:-

“159(1) This Constitution shall be interpreted in a manner that-

(a) promotes its purpose, values and principles---“

That brings us to what hon. Nyamweya has said, because you also ignore it at the peril of the country's arrangement. We have a very fundamental institution called the "East African Community". In fact, one of the reasons as to why the Minister has offered to read the Budget on 8th is because Tuesday, 9th June, 2011 is a public holiday in Uganda. Whatever Kenya provides in its Budget, relative to the East African Community, must come timeously on the same day that the application for Uganda, Tanzania, Rwanda and Burundi come into force. You ignore that again, as a Legislature that has nominated Members of Parliament for the East African Community, at enormous peril to the constitutional future of this country.

Mr. Speaker, Sir, this is quite clearly an oversight. I want to suggest that, in your ruling, you need to interrogate the Treasury to find out whether ignoring Article 221 was an oversight, negligence, a mistake or was a human error. In either event, we want this House to offer leadership because it is so clear that the provisions of the new Constitution relating to the Budget should be in force.

(Several hon. Members stood up in their places)

Mr. Speaker: Proceed, Mr. Minister.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, that is why I am saying, in my respectful view, that in reading Article 221, you must read it together with Article 259, and find the purposeful purpose of the Constitution and the financial arrangements. Speaking from where I am standing, I believe – I stand to be corrected if I am wrong – the Government position is that this honourable House must allow the reading of the Budget and allow an element of facilitation, so that you do not punish the country merely because Article 221 has not been complied with in full. Therefore, I would support the reading of the Budget. We cannot afford to grind this country to a halt.

Above all, I believe that since the Executive has been extended, under Section 32, you can find a window---

Mr. Mbadi: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Mr. Minister, do you want to be informed by hon. Mbadi?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): No! Unless it is hon. James Orengo, I do not want information!

(Mr. Mbadi stood up in his place)

Mr. Speaker: Order, Member for Gwass! You are now treading on dangerous grounds!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, in fact, if you look at Article 221(6), which hon. Karua has not referred to, it says that even after Parliament finishes, the Secretary responsible for the Treasury, who for the time being, under the National Accord, is the Minister for Finance, is still also required to bring to this House an Appropriation Bill. Therefore, if you still expect him to bring an Appropriation Bill, you must allow him to indicate what that Appropriation Bill will cover.

Mr. Speaker, Sir, I beg to support the reading of the Budget.

Mr. Speaker: We will take the Chair of the Constitutional Implementation Oversight Committee.

Mr. Abdikadir: Mr. Speaker, Sir, these are the problems of transition. They say when you are driving on the road, the most dangerous time is at dusk, when the sun has gone down and the moonlight is not yet on. This is really the period we are in as far as the transition is concerned. So, things are not very clear. In 2012, things will be very clear.

In the period we have come from, things were very clear. For example, Ministers were Members of the House. We used to read the Budget because we were in the Westminster system. After 2012, clearly, we will not be in the Westminster system. They will not be there. The Budget will not be read. What about in the interim period – in this transition period? That is where the problem is.

That requires to every time refer to what the Constitution says. Two issues are important: One, the House, as it used to operate, has been saved, except for a few issues, and you have to go back to the Constitution for those few issues such as prorogation of the House under the old Constitution. The President now has no powers to prorogue Parliament.

Mr. Speaker, Sir, the same applies to the Executive. The Executive is saved under the old Constitution, but there are certain things which the Constitution has let go. We are supposed to operate under the Constitution because we have only one Constitution. If we agree to the contention that Article 221 is operative, which is the view that the Legal Counsel of Parliament, which the Budget Committee sought opinion from, has, and the Budget Committee of this House is also of that view; if we are of the view that Article 221 is operative, which the Minister, the Budget Committee and the Legal Counsel of Parliament said it is, then we are in the new dispensation as far as the Budget is concerned.

Article 221 deals with the Budget. The Budget Statement and the Appropriations Bill come to the House through a Committee of this House. Currently, the Ministers are in the House. So, really, this is an issue of transition and my opinion is that it really touches on Article 221. If we all agree that Article 221 is operative, the Budget process is under the new dispensation. Article 221 says as follows:-

“221. (1) At least two months before the end of each financial year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of the revenue and expenditure of the national government for the next financial year to be tabled in the National Assembly.”

Mr. Speaker, Sir, the Estimates referred to, including Estimates of Expenditure, are supposed to go to the Parliamentary Committee and then come to the House as a Report of the Parliamentary Committee.

Mr. Speaker: Hon. Members, the Chairman of the Constitution Implementation Oversight Committee, and even the Minister for Justice, National Cohesion and Constitutional Affairs, appear to me to be riding two horses. So, they are not giving any idea as to what direction we should go.

Member for Budalangi, maybe, you will help us to improve.

Mr. Namwamba: Mr. Speaker, Sir, thankfully, I ride only one horse.

Mr. Speaker, Sir, as you grapple with this obviously monumental challenge, I also want to invite you to consider the provisions of Section 31(2) of the Sixth Schedule to the Constitution, which says:-

“31(2) Subject to Subsection (7) and Section 24, a person who immediately before the effective date held or was acting in a public office established by law so far is consistent with this Constitution shall continue to hold or act in that office as if appointed to that position under this Constitution.”

Mr. Speaker, Sir, I am inviting you, in your determination, to guide this House on whether, in fact, by reason of that provision under Section 31(2) the position of Cabinet Minister should not, in fact, be regarded as a position of Cabinet Secretary in terms of the application of Article 221. This is because what Section 31(2) says is that once we made the cross-over on 27th August, 2010, any holder of public office as at that point automatically assumed the dressing of the offices established under this Constitution. Therefore, the application of Article 221 should really not cause us confusion merely because of the terminology “Cabinet Secretary” because already, that dressing of the position of Cabinet Secretary already applies to those who hailed the position of Cabinet Minister.

Mr. Speaker, Sir, I also---

Mr. Mbadi: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Do you want some information, Mr. Namwamba?

Mr. Namwamba: No, I do not mind being informed by this great son of the Abasuba.

Mr. Mbadi: Mr. Speaker, Sir, I want to inform Mr. Namwamba, Mr. M. Kilonzo and the House because Mr. Orengo does not have this information. In February, this year the Budget Committee alerted the Minister for Finance to respect Article 221 of the Constitution. This is information that I doubt whether Mr. Orengo has. On 17th March, 2011, the Treasury issued a circular to all Accounting Officers. That was Circular No.2/2011. It advised them to compile their budget in accordance with Article 221 of the Constitution. Therefore, the issue of oversight or not knowing does not arise. That is the information that I wanted to give.

Mr. Speaker: Very well. That would be useful. Perhaps, also from the Chair, that aware of the provisions of Article 221, your Speaker chairing the Parliamentary Service Commission (PSC) ensured that the PSC tabled its budget in the House on 28th April.

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Mr. Minister for Lands, please bear with the Member for Budalangi.

Proceed, Mr. Namwamba.

Mr. Namwamba: Mr. Speaker, Sir, my second---

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order. The Member for Budalangi has the Floor.

Mr. Namwamba: Mr. Speaker, Sir, the second point I want to make is that the Minister for Justice, National Cohesion and Constitutional Affairs has appropriately made reference to Article 259 of the Constitution in terms of construing this Constitution which among other things, provides that this Constitution shall be interpreted in a manner that, among other things, promotes its purposes, values and principles.

I want to refer him, so that he does not selectively make reference to the Constitution, that among the national values and principles that are enshrined by the same Constitution and which Article 10 indicates that they must guide interpretation and application of this Constitution are the following: Those values include, participation of the people. That is among the most important values that Article 259 makes reference to. Participation of the people is given a window through Article 221. So, you cannot make reference to Article 259 and ignore Article 10 that lists the specific values that must guide the interpretation and application of this Constitution.

Finally, this House has already set a precedent. We should have witnessed a State Opening of this current Session of Parliament if we were to follow in the traditions of pomp, fanfare and colour, the kind of ceremony that the Budget brings to this House.

Mr. Speaker, Sir, I believe walking in light of Article 31(2) that I made reference to at the beginning, this House already set a precedent by breaking with that tradition and living by the values of this Constitution and doing away with the State Opening of this Parliament.

I am not saying that the Minister for Finance cannot submit estimates to this House. What we are saying is that there is no longer space for the pomp, fanfare and ceremony of budget-reading before this House. In doing so, in making that presentation, he must live by Article 221.

To conclude let me just emphasize that no treaty, no international convention, no international legal instrument can be superior to the Constitution of the Republic of Kenya.

Mr. Speaker, Sir, we should actually know we have a legal culture where upon ratification becomes part of our law, when or change our Constitution, especially the mother law, which is this Constitution, it automatically renders redundant any other law, including international treaties, that may go against the letter and spirit of this Constitution. Therefore, it is not right to argue that we are bound by East African Community treaties to an extent superior to this Constitution.

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

Mr. Speaker: Is that targeted at what the hon. Member for Budalangi has said?

Dr. Machage: Yes, Mr. Speaker, Sir.

Mr. Speaker: Proceed.

Dr. Machage: Mr. Speaker, Sir, would I be in order to remind Mr. Namwamba of Article 2(5) of our Constitution? It clearly talks about accepting international laws?

(Mr. Namwamba stood up in his place)

Mr. Speaker: Order, Member for Budalangi. We will have that argument another day. I also have the feeling that, perhaps, you are being extravagant in some of your submissions. Let us give this chance to the Front Bench. I will give them two slots and the matter must close.

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, when this Constitution was being made, it was done in good faith. I think that is the basis upon which this Constitution was formulated and, finally, promulgated.

Secondly, there was obviously in the eyes of the drafters, an indication that there would be moments when the new Constitution may not translate itself on the very day of promulgation, hence the transitional clauses which were inserted in it.

Schedule VI clearly stipulates which sections of the old Constitution were saved. I want to submit to you that in the process of making your submissions, it might have not been feasible at that time to anticipate or, for that matter, to know that such an important element of Budget would not have been one of those transitional clauses saved in order to be able to make a smooth transition to the new Constitution.

Why am I saying so? Any decision in this House in rigorously following Article 221 of this Constitution is not without extreme repercussions. I think we must remind ourselves as Members of Parliament that there will be repercussions. Unless we think through the way we handle these repercussions, we may find ourselves in a situation of paralysis. When we are in paralysis, there will be no remedy even through the very same instruments of the Constitution that will tell us what will be the next move.

What do I mean? If this Budget is not read--- I do not think it is a Budget being read; but a presentation of a policy statement of estimates. So, we must differentiate from the actual Budget and policy estimates by the Minister for Finance. For this matter, it is the Cabinet Secretary responsible for finance.

This being just a policy statement, it can be tabled and referred back to the relevant Committee, so that they can then channel the details to this House for further debate.

If we do not allow that policy statement to be read on the requisite day, in accordance with the rest of the agreement with the East African States, what it means is that come 30th June, both Parliament and all the institutions that we are supposed to be protecting and promoting will come to cease.

Mr. Speaker, Sir, if they cease, what next? This is because there will be no resources appropriated to run these services, including this august House which has been mandated to develop and be able to make sure that laws are in place.

Mr. Speaker, Sir, so, in your ruling, look at the wider picture in this country. What happens after 30th June? You have a remedy to it. If you do not, does this Constitution have a remedy for it? I propose to you it does not and, therefore, it is my submission that you must consider that this might have been one of those omissions of transitional clauses that should have been captured at that time, but were not foreseen.

Thank you, Mr. Speaker, Sir.

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Speaker, Sir. I can see the dilemma we are in, but it is something that was expected and it is something for which we need to work out a way of dealing with.

Mr. Speaker, Sir, let me first of all, clarify one thing; that the reading of the Budget has nothing to do with the presentation of the Estimates of revenue and expenditure. The reading of the Budget is the proposals that the Government wishes to put forward in terms of the policies to be pursued in the following year, a review of what has happened in the past one year and giving of a notice of a Motion of issues that will be brought in the Finance Bill, which should be debated separately, and also issues that will be brought in the Appropriation Bill, which should also be debated separately. So, it brings together all these things in terms of where the Government is going and where the policies are; it is a summary of where we are coming from; it is a signal for the

investment community to know the direction the Government wants to go, so that people can make their investment decisions. It is also an indication of where we are within the region.

Mr. Speaker, Sir, so, from that perspective, the reading of the Budget Speech can as well be done with or without Article 221. The Government is at liberty to then come and agree on a date when it will provide that statement on where the Government is going, what the coming proposals are, what the taxation proposals that will come in subsequent dates and then at each point, Bills will then be read, debated by the House and passed.

Mr. Speaker, Sir, in terms of the tabling of the Estimates, if we can even borrow from the former Constitution, I think this matter is covered by Section 100, which, apart from the timing, says that:-

“The Minister for the time being responsible for finance shall cause to be prepared to lay before the National Assembly in each financial year Estimates of the revenues and expenditures of the Government of Kenya for the next following year.

It does not have any time line as to whether it should be done. Traditionally, you will recall that the Printed Estimates would actually be tabled on the Tuesday before the reading of the Budget. This time round it has now been said that they have to be tabled two months before. I think it is very important to appreciate that in Section 221 of the current Constitution, it is anticipated that Parliament will enact a law that will define the form and manner of the Budget. That law, in my recollection, has not been passed. So, we will need to then work with the Minister for Finance and agree on terms of the Budget that he will be presenting and what form it will take. Article 221(2)(b) says:

“The Estimates referred to in Clause 1 shall be in the form and according to the procedure prescribed by an Act of Parliament.”

To my recollection, we have not passed an Act of Parliament to put into effect the provisions of Article 221. The only Act we have close to that is the Fiscal Management Act that prescribes that the Minister shall table the Budget Strategy Paper; I believe it has already been tabled in the Committee and is being debated by the same Committee. The feedback from it is what will then inform the Minister in terms of where to put emphasis and all that.

So, I think as we move from the old system to the new system, I do not see whether there have been any breaches, so long as there is understanding across the board. We might have an issue on the definition of the two months, but a Budget Strategy Paper, which contains Estimates of revenue and expenditure, was actually tabled in this House. That may also suffice until we, as a House, define the form and the procedure of an Act of Parliament for the tabling of the Estimates.

Mr. Speaker, Sir, so, I would like to urge the House that we do not scuttle things. We should allow the Budget Speech to be read on this date. Kenya is a leading economy within East Africa. Our brothers and sisters in Uganda, Tanzania, Rwanda and Burundi will be looking for signals from this country in terms of where we are going for them to know where to invest. If we get ourselves too much in the legalities and some of these things, we could lose on that competitive advantage we have as a country in terms of being the “big brother” of East Africa, and a setter of the pace regarding where development will take place.

Mr. Speaker, Sir, I will urge that in your ruling, you find that there are still some things to be done by Parliament, and the Minister for Finance has actually not failed in his duties. He can go on and receive that Statement, which is beyond the Estimates on the 8th to just show this country where we are going, where will we be putting our emphasis, where are we expecting money to be taxed from, what are we doing about the cost of living and all the other things that we are grappling with as a Parliament.

Thank you, Mr. Speaker, Sir.

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I will be very brief. As far as I am concerned, we are in a new constitutional order and the test is; are we living by the dictates of the current Constitution or not? I think that is the fundamental question. We cannot go out there hunting for answers to what is provided in the current Constitution. My reading of this Constitution, particularly of the Sixth Schedule--- The Sixth Schedule is the only mechanism for moving from the old Constitution to the current Constitution. You cannot try to move from the old Constitution to the new Constitution in any way other than by using the provisions that are contained in the Sixth Schedule.

Mr. Speaker, Sir, the Sixth Schedule of this Constitution is very clear on which parts of the Constitution are suspended, and which parts of the old Constitution have been saved. So, I think my colleagues are pursuing a tortured interpretation of the transitional and consequential provisions, which provide very clear answers. To me, unlike what my hon. friend from Gwassu was saying, these circulars are things which are in the public knowledge. It is good we have a Speaker who was anticipating all these. Being a good Minister, I anticipated all this. So, the only way forward is to give full compliance to Article 221 of the Constitution. The moment you look for forms and systems of expediency---

Ms. Karua: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Minister, do you want a point of information from the Ms. Karua?

The Minister for Lands (Mr. Orengo): I will accept it.

Ms. Karua: Mr. Speaker, Sir, I just want to inform my esteemed colleague and the House that actually, the Budget reading is not a matter of the Constitution. It is Westminster tradition. All that is being said is that the Minister stands in the place of a Cabinet Secretary. Yes, he can table, but there can no longer be that pomp of reading and the House adjourning. He will table and the business of the House will continue. If he wants to move a Motion, he will move it and we will debate it, beginning the time he moves it. That is all that this document is saying.

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I am very grateful for that point of order but I think what is possible is that the Government and the Minister responsible must show compliance with the Constitution first. If he wants latitude to be provided for him to give a speech, I mean there are mechanisms. He can say: "I want to make a Ministerial Statement", because it is not a matter that falls within the Standing Orders or the Constitution, as read within the context of the new constitutional order. So, I would plead with my colleagues, and this thing is not just in the financial sector, but in the whole public sector and in the security system. We are still living as if we were still part of the old order. We have a new constitutional order; we must move by this new Constitution.

Mr. Speaker: Very well! Order, hon. Members! That must then rest the matter. You have left the Chair in a position that is not so enviable, particularly with the

Government speaking at cross purposes. It is not normal for Ministers in the Government to contradict each other on the Floor of the House. But I have to live with that and give directions, which I will do so on Tuesday next week, at 2.30 p.m. I am grateful to all of you for the contributions that you have made; some of them, obviously, very informative and incisive. I will give you directions on Tuesday at 2.30 p.m.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL

The Temporary Deputy Chairman (Mr. Imanyara): Order! Order, hon. Members! We are now in the Committee of the whole House. We will begin with the Independent Electoral and Boundaries Commission Bill.

Clause 2

The Temporary Deputy Chairman (Mr. Imanyara): The Minister has an amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended by deleting the definition of Fund and substituting therefor a new definition “means the Independent Electoral and Boundaries Commission Fund established by Section 17”

Mr. Temporary Deputy Chairman, Sir, that is the definition of “Fund”---

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Minister, since this has been widely circulated before, you do not have to read. That is because the proposed amendments are all in the Order Paper. So, you can just introduce the amendment and then I will propose the question.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Imanyara): There is a further amendment by hon. Abdikadir.

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

THAT, Clause 2 of the Bill be amended by deleting the definition of the expression “first review” and substituting therefor with the following-

“first review” means the review conducted by the former Boundaries Commission taking into account any outstanding work of that Commission and issues arising from that review.”

The Temporary Deputy Chairman (Mr. Imanyara): Perhaps, very quickly, just explain the amendment briefly.

Mr. Abdikadir: Mr. Temporary Deputy Speaker, Sir, this is a definition of “first review” under the Act. You will notice that the Constitution that we moved from had set up an elections body and an Independent Boundaries body. That was a constitutional Commission and it did finalize its work. The current Constitution, through the transitional mechanism, also gave power to that interim body to conclude the process and it did not. Now, we require to link that old one to the new one to finalise the work.

(Question of the further amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Mbadi and hon. Kioni, are you proposing those amendments in view of the similarity between that and what has just been approved?

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, given that I had forwarded this amendment before we considered this Bill, I wish to withdraw my amendment because the one for the Chair of the CIOC is more elaborate.

(Mr. Mbadi's amendment withdrawn)

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Kioni, likewise?

Mr. Kioni: Likewise, Mr. Temporary Deputy Chairman, Sir.

(Mr. Kioni's amendment withdrawn)

The Temporary Deputy Chairman (Mr. Imanyara): Very well! I will go to the proposed amendment by hon. Ogindo, on the same clause.

Hon. Ogindo, you are only moving part “b”.

[The Temporary Deputy Chairman

(Mr. Imanyara) left the Chair]

[Mr. Chairman took the Chair]

Mr. Chairman: Hon. Ogindo!

Mr. Ogindo: Mr. Chairman, Sir, just give me a minute! I have mixed up my papers.

Mr. Chairman: Hon. Ogindo, it is on page 2442. If you look at the upper right---

Mr. Ogindo: Mr. Chairman, Sir, I am sorry! It is not on the Order Paper that I have.

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

THAT, Clause 2 of the Bill be amended-

(a) by inserting the following new definition in its proper alphabetical sequence-
“former Electoral Commission” means the Interim Independent Electoral Commission established under Section 41 of the Constitution.

(b) in the definition of the expression “issues arising” by deleting the words “paragraph 1 of” appearing after the words “specified in”.

Mr. Chairman: Hon. Ogindo, could you explain? Hon. Abdikadir, do you want to assist?

Mr. Abdikadir: Mr. Chairman, Sir, I think the amendment is good and it makes the clarification clear. The problem is that Section 41 of the current Constitution does not deal with that. So, we have to get an amendment to say “the former Constitution or retired Constitution.” But I think both amendments are useful.

(Question of the further amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, may I persuade my good friend, hon. Ogindo, that these matters are very well covered by the proposals of the CIOC, particularly in Schedule 5. I really cannot express as precisely as my learned friend, the Chairman would, that the both definitions are covered by the proposals that will appear later on Schedule 5. I request that he withdraws. I am very well aware of what he wants. But I think it is covered for.

Mr. Abdikadir: Mr. Chairman, Sir, that, indeed, is correct. The former boundaries commission is defined in the Bill itself and the issue that the second amendment was going to address can be sorted out once we move to the Fifth Schedule because it is going to be an editorial issue. This amendment refers to Part One of the Fifth Schedule. If the Fifth Schedule becomes a new Fifth Schedule and Part One no longer deals with that, then we should be able to handle it through editorial or other amendments at that point.

Mr. Ogindo: Mr. Chairman, Sir, I want to go by the mood of the House that the Fifth Schedule is, indeed, going to capture this definition as succinctly as I was trying to put it here. So, I withdraw the amendment.

(Mr. Ogindo’s amendment withdrawn)

(Clause 2 as amended agreed to)

Clause 3

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended-
in paragraph (a) by inserting the word “responsibilities” after the words provide for the operations, powers”; and
in paragraph (c) by inserting the word “responsibilities” after the words “exercise of the powers”.

This is essentially to include the word “responsibilities” as part of the Commission’s objects and purpose. You will see that the clause talks about operations, powers and functions, but we are including the word “responsibilities” also, so that the members of the Commission do not just have functions, but they also have responsibilities.

(Question of the amendment proposed)

Mr. Bahari: Mr. Chairman, Sir, I do not see why the word “responsibilities” is coming in. When we talk about functions, it already defines “responsibilities”. In my view, this is just a duplication that the Committee is trying to bring in.

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

Mr. Kioni: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended in paragraph (d) by inserting the words “in reviewing constituency and ward boundaries” after the words “with interested parties”.

What are these people going to engage in? The mechanisms for the Commission to facilitate consultation should be on constituency and wards boundaries. This is just for clarity purposes.

(Question of the amendment proposed)

Dr. Eseli: Mr. Chairman, Sir, I do not see the need for that amendment because when we are talking of consultations, this is an Independent Electoral and Boundaries Commission. In case of elections, there might be need for consultations. So, if we are going to limit them to only consult *vis-a-vis* the boundaries, then we are saying that they cannot consult in case of elections. If I understand hon. Kioni’s amendment, that will limit the Electoral and Boundaries Commission to only consult on boundaries and nothing else.

The Minister for Medical Services (Prof. Anyang’-Ny’ong’o): Mr. Chairman, Sir, when you read section (d), it says: “Establish mechanisms for the Commission to facilitate consultation with interested parties pursuant to Article 89(7)”. That means that Article (89) (7) gives the content of those consultations. So, you do not need to repeat it

here because it is already provided for in the Article so referred in that particular section (d).

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Chairman, Sir, this amendment, in my opinion, is not relevant. The Fifth Schedule of this Bill covers all these. If you look at (d) of the same, it talks about Article 97(7). That covers it. So, it is not necessary.

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, actually, I oppose the amendment because it negates the amendment that we have talked about; of the first review.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Chairman, Sir, I also stand to oppose the amendment. We are just duplicating. Article 89(7) of the Constitution says:-

“In reviewing constituency and ward boundaries, the Commission shall-
(a) consult all interested parties”.

So, definitely the Bill is just shortening the fact that the Commission will do its work pursuant to Article 89(7). So, it is a repetition. I oppose the amendment.

Mr. Kioni: Mr. Chairman, Sir, I do not think there is need to insist on this. I withdraw the amendment.

(Mr. Kioni’s amendment withdrawn)

(Clause 3 as amended agreed to)

Clause 4

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 4(g) be amended by deleting the phrase “civic and”.

We are trying to remove the words “civic and”, so that they are limited, as per the Constitution, to voter education.

(Question of the amendment proposed)

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

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended-

(a) in paragraph (c) by deleting the words “using appropriate technologies and approaches” appearing after the words “constituencies and wards” and substituting therefor the words “in accordance with the Constitution”;

(b) in paragraph (l) by inserting the words “pursuant to Article 157(12) of the Constitution” at the end of that paragraph; and

(c) by inserting a new paragraph after paragraph (l) as follows-

“(IA) the use of appropriate technology and approaches in the performance of its functions.”

This deals with delimitation of constituencies and wards using appropriate technologies and approaches. I am proposing the removal of the term “appropriate technologies and approaches”. Later, we propose that to be part of the broad functions of the Commission to generally use appropriate technologies, but we are specifically removing it from the delimitation of constituencies, so that the criteria in the Constitution as far as delimitation of constituencies is not interrupted and with the fear that somebody could use a computer system; a formula that is not in the Constitution, and we are told that this is as a result of power given by the Act. I am proposing the deletion of “using appropriate technologies and approaches” at the end of (c).

(Applause)

Mr. Chairman: Hon. Abdikadir, could you explain all the amendments?

Mr. Abdikadir: Mr. Chairman, Sir, I propose the amendment to Clause 4 as carried on the Order Paper on page 2428. Part (a) deals with amendment to Clause 4(c) by deleting the words “using appropriate technologies and approaches” appearing after the words “constituencies and wards” and substituting, therefor, the words “in accordance with the Constitution.”

As to Clause (b) in Paragraph “l” by inserting the words “Pursuant to Article 157(12) of the Constitution” at the end of the paragraph. And “c” by inserting a new paragraph after “l” as follows---

Mr. Bahari: On a point of order, Mr. Chairman, Sir. This is a very important session and we are now reading the entire amendments together and this will confuse this House. You have asked the hon. Member, with due respect, to read all the amendments and yet he had read only one at the beginning.

(Loud consultations)

Mr. Chairman: Order! He is explaining the amendments---

Mr. Abdikadir: Mr. Chairman, Sir, I am just dealing with the amendment to Clause 4 and nothing else!

Mr. Bahari: Mr. Chairman, Sir, but he has many amendments to Clause 4 alone! He has “a”, “b” and all that!

Mr. Abdikadir: Thank you, Mr. Chairman, Sir. Finally, in “c”, by inserting a new paragraph after paragraph “l” as follows. (1A): “The use of appropriate technology and approaches in the performance of its functions” so that appropriate technologies, for example, in the registration is okay. Any other appropriate technology is also okay. However, we are worried about the link to delimitation because that section just deals with delimitation.

An hon. Member: Correct!

(Applause)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I welcome the---

Mr. Chairman: Order! Order!

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I welcome this proposal because it adds value to the Bill.

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

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

The Assistant Minister for Livestock Development (Mr. Duale): On a point of order, Mr. Chairman, Sir. Have we put the law where--- Under Mr. Abdikadir's amendment, it was "a", "b" and "c." So, have we disposed of the three or have we---

Mr. Chairman: It has been disposed of!

The Assistant Minister for Livestock Development (Mr. Duale): Thank you, Mr. Chairman, Sir.

Mr. Chairman: Proceed, Dr. Otichilo!

Dr. Otichilo: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended in paragraph (j) by inserting the words "and enforcement" after the words "the development"

Mr. Chairman, Sir, I propose this because we must enforce the code of conduct after we develop it. However, the way it is written in this Bill now, there is no enforcement. So, we just develop the Board and nothing happens.

(Applause)

(Question of the further amendment proposed)

The Minister for Medical Services (Prof. Anyang' Nyong'o): Mr. Chairman, Sir, I was just supporting the Minister for Justice, National Cohesion and Constitutional Affairs that we just go ahead and amend it.

(Laughter)

Mr. Chairman: Order!

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

Mr. Chairman: Proceed, Mr. Kioni!

Mr. Kioni: My amendment is on page 2444.

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

THAT, Clause 4 of the Bill be amended in Paragraph (k) by inserting the words “of the Constitution” after the words “by Article 82(1)(b).

Mr. Chairman, Sir, this is just for clarity’s sake.

(Question, of the further amendment proposed)

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

(Clause 4 as amended agreed to)

Clause 5

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended-

(a) in Subclause (1) by inserting the words “Article 250(4) of” after the words “in accordance with”; and

(b) by deleting subclause (4).

Mr. Chairman, Sir, Clause 5(a) deals with inserting the words “Article 250(4) in front of the words “in accordance with” while Clause 5(b) deals with deleting Clause 5(4) of the proposed Bill.

On the earlier one, really, there is no major issue in terms of adding Article 250(4) because it is just clarifying part of the Constitution in terms of (4), which reads as follows:-

“The Chairperson and members of the Commission shall respect the delimitation of duties between the Commission as the policy-making organ and its Secretariat as the policy-implementation and administrative organ.”

Mr. Chairman, Sir, we propose the deletion of part (4), first, so that we do not start with antagonism between the two institutions and secondly, both of them have very clear functions. The functions of the Commission are very clear under the Constitution and you might not be able to limit it just to policy. The functions of the Secretary and the Secretariat are clearly listed in the next section and you will see this when we get there. This is very elaborate that we do not need to bring Subclause 4.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I want to persuade my learned friend and the Constitution Implementation Oversight Committee (CIOOC), including this House and to remind the House of the problems identified by the Kriegler Commission.

(Applause)

One of the problems was this evaporation and – if I may call it – erosion between the clarity as to functions. So, Clause 5(4) was put there deliberately, even if it appears to be repeating what the country is saying. However, we want clarity that the Commission

and the Secretariat understand their different functions. If you think it is negative, it is not. We have debated this for a long time and I persuade the Committee and the Chairman to accept this.

Mr. Chairman, Sir, I beg to oppose.

Eng. Gumbo: Mr. Chairman, Sir, I also want to agree with the Minister that the proposed deletion of Clause 4 be opposed and that we retain it because it is very important that the roles of the Commission and the Secretariat be separated, even if it means---

Mr. Chairman: It is Clause 5 and not Clause 4!

Eng. Gumbo: Mr. Chairman, Sir, it is Clause 5(4). I want to oppose the proposed deletion because it is very clear that we distinguish the functions of the Commission and the Secretariat as outlined in the earlier Bill presented to the House.

Mr. Chairman, Sir, I oppose the amendment.

Mr. Ruto: Mr. Chairman, Sir, I rise to support the deletion and oppose the Minister's assertion.

The Constitution has borne in mind the fact that this is a Commission. It is not a Board. The Commission carries the overall responsibility for the management of that particular institution. To make it an ordinary technical responsibility for a Chief Executive Officer (CEO) will negate the entire principle within the Constitution that this is a Commission.

Mr. Chairman, Sir, I oppose the Minister's assertion and support the deletion as per the Committee's proposal.

The Minister of State for Public Service (Mr. Otieno): Mr. Chairman, Sir, I would like to plead with the Members to examine the governance structure in all these independent Commissions. The practice before was that commissioners converted themselves to executive position. When they did so, they would account to nobody. It is better they set the procedures, rules, standards, performance measurements and supervise the Secretariat to deliver on the basis of those. Then, the commissioners, as a Commission now reports to Parliament. It would be worse if the commissioners are also fulltime. They are supposed to chair the Commission sub-committees looking at procurements, establishment and elections. Who will then supervise the commissioners when they themselves will be committing acts that maybe in breach of their own procedures in that Commission?

Mr. Chairman, Sir, this governance structure is so important. We should delineate exactly the role of the Commission in addition to what is in the law to make sure they do respect the division of duties and supervise a professional management team under guidance, rules, procedure and standards that they will set. If we allow them to double in, they will breach their own laws or change them at their whims.

Mr. Chairman, Sir, it is so important that we do avoid a situation where the new institutions we are establishing will again be subjected to strengths of personalities who with impunity, would destroy those very institutions themselves.

I oppose this amendment.

Mr. Bahari: Thank you, Mr. Chairman, Sir. I stand to support the amendment.

Mr. Chairman, Sir, the aspect of implementation and administration also requires that the Secretariat becomes accountable to the Commission in totality. The way it is now, it will create a rogue administration which is not acceptable.

Mr. Chairman, Sir, I support the amendment.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Chairman, Sir, I stand to support the deletion.

Mr. Chairman, Sir, even in my earlier submission, when we discussed this Bill, I was very clear on that. Why do we want to have a Commission that is toothless? Why do you want to have a Commission that cannot even question the Secretariat? Why do you want to have a Commission that is discriminated by the same law?

Mr. Chairman, Sir, we already have other Commissions that are carrying out executive functions that Commission on Implementation of the Constitution (CIC), and others already approved by this House. Why do you want to pretend today that when it comes to the Independent Electoral and Boundaries Commission, we do not want them to exercise equal powers with other Commissions that are supported by this Parliament?

Mr. Chairman, Sir, there is already conflict of interest. If we really want the Secretariat to be the overall, then let them go through the scrutiny other Commissioners are going through. They should be brought to Parliament. Let us vet them. We should know for sure they will carry out the actual obligation of the Commission. That is the only way we will know that the commissioners are just there to assist them. It should not be the vice versa.

I beg to support.

Ms. Karua: Mr. Chairman, Sir, I want to begin by apologising, because I am a Member of the Committee and deemed to have accepted. But as I do so, I think we have liberty to change our minds.

Mr. Chairman, Sir, I want to oppose the amendment for the simple reason that any section of a law that contravenes the section is null and void. So, this section is subject to the Constitution. We are separating the duties as they are in the Constitution. Remember that further down the line, we will create penalties for someone failing to do their duty deliberately. If we mix duties, we shall end up where we were with the Kivuitu Commission, where nobody was responsible. The clerks said it was the Commission and the Commission said it was the clerks. I want to plead with Members let us retain the clause. When it comes to hiring, let us make sure that the hiring is competitive, so that we understand who will be in charge of elections.

I beg to oppose.

The Minister for Lands (Mr. Orengo): Mr. Chairman, Sir, I also want to oppose the deletion. I want to oppose it by looking at the other Commissions.

If what my learned friend is saying holds, then we will have a lot of problems with the other Commissions. For example, there is the National Police Service Commission (NPSC). If the NPSC were now to take upon themselves to execute the functions of the Inspector-General, then I do not know what type of police force we will have. There must be a delineation of the responsibility of that NPSC and the Inspector-General and the two deputies that they have.

There is the Parliamentary Service Commission (PSC). We have a Commission for this Parliament. But when it comes to the day to day running of Parliament, then the Office of the Clerk has responsibilities, which are spelt out in the Commission. Take any other Commission such as the Judicial Service Commission (JSC). The judicial authority vests in the Judiciary, which consists of the courts and so on. However, Registrars have

certain powers, which are clearly spelt out in the Commission. There is also the National Land Commission (NLC).

So, it would defeat the purpose of the Constitution, if instead of dispersing authority and responsibilities, we want to concentrate that authority in a Commission, which then would be executing functions as an oversight body, and then also as an executive body. I think that would not meet the objects of the Constitution.

Mr. Abdikadir: Mr. Chairman, Sir, first of all, the Commission is the commissioners and that is the legal body. It is not the Secretariat. The Committee debated this very seriously, and there were both views expressed very strongly. In fact, that is why you see quite a number of our Members, because they were of the view that we should not have deleted it. But ultimately, we came to that conclusion.

Let me also read the functions of the Commission. For example, the continuous registration, Section 88(4) of the Constitution. These are the functions of the IEBC, continuous registration of citizens as voters. If you told the Commission today, that part of that is policy and part of that is administrative, while the Constitution very clearly says that is a function for the Commission. How can you limit that function and say that the regular revisions of the voters rolls or part of that cannot be handled by the Commission because it policy or otherwise.

That is really where our problem is. We are aware that there are commissions which have overstepped their mandates. We are aware that this causes a lot of friction in most commissions. The problem is: How would you, by statute, limit functions that are very clearly stated, for example voter education? If the Constitution says that it is the Commission's function to carry out voter education, how can we, through a statute, say that, that bit on voter education is administrative and that it should not be a function of the Commission? That is really where our problem is.

Mr. Mbadi: Mr. Chairman, Sir, I am also a Member of the Constitution Implementation Oversight Committee, and I expressed my displeasure with the deletion of this Clause for two reasons. Firstly, we legislate to correct previous mischief. We got it very clearly from the Constitution Implementation Commission, that if we have fulltime Commissioners, they tend to involve themselves in the day-to-day functions of the Commission. In fact, the coming amendments will make all Commissioners fulltime. If we delete this particular Clause, then we will have the same problem.

Secondly, if you read the Kriegler Report, you will find that it is very categorical that the Committee system of the previous Commission tended to render the secretariat mere senior clerks. We need to correct that through legislation. Let us put very clear provisions, so that the two will know the boundaries of their functions.

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, I rise to oppose the amendment by the Committee for the reason that although it may appear as if it is superfluous, it was deliberately put here. I know that we debated it heavily in the Cabinet. It has deliberately been included for avoidance of doubt. This is the first time we are getting into an arrangement where Commissioners and the Secretariat will have clearly defined roles.

So, for avoidance of doubt, let us make it very clear upfront that there will be a very clear demarcation and respect for the duties of the Commissioners and members of staff of the Commission who, together, will make up the Commission. We have seen this in chairmen and directors of boards. In all those places where one person becomes

domineering, the operations of a secretariat are affected. So, for purposes of making progress, I would urge the Chairman of the Constitution Implementation Oversight Committee and the hon. Members who feel that the inclusion of this clause is superfluous to allow it to stay. It does no harm to state within the law what we already believe they are going to respect – delimitation of their duties. It does not harm to state very clearly that they need to respect that delimitation of their duties. So, I urge that the amendment be withdrawn, instead of hon. Members having to vote against the Chairman of the Committee.

Ms. A. Abdalla: Mr. Chairman, Sir, I would like to support the recommendation by the Committee. I agree that Krieger's recommendation was that the commissioners did get into the work of the secretariat, but the difference between the Commission that Krieger was evaluating and the Commission that we are creating now is clear as day and night. There were 22 commissioners who were vetted by nobody. They were just provided in a list by political parties. They were dealing with 210 constituencies. We are now dealing with nine commissioners, who will deal with seven elections and 290 constituencies. What time will these commissioners have, to interfere with the secretariat work? Moreover, the mistakes that had occurred before Krieger's recommendations were dealt with by the new Constitution. So, I am not convinced that we should not delete this Clause.

Dr. Eseli: Mr. Chairman, Sir, I am going to be very factual in opposing this amendment. Precedent was set before. In South Africa, the Chief Executive Officer (CEO) of the Electoral Management Board had to go to the Constitutional Court when the commissioners usurped the role of her secretariat. A similar thing happened in Namibia, where the President had to intervene to ensure that the secretariat was left with more muscle than what the commissioners wanted. Ghana's election body, which is one of the best elections management bodies we have in this continent, has a clear-cut role between the Commissioners and the secretariat. Ghana has set a very good example in election management. Who are we to try to re-invent the wheel? This amendment is ill advised and should be rejected.

Mr. Samoei: Mr. Chairman, Sir, I am informed by the spirit of the new Constitution, which has been laid out by the Chairman of the Constitution Implementation Oversight Committee. The new Constitution provides clearly who the Commission is and what its functions are. We cannot correct the Constitution through legislation, not unless we want to amend it. Therefore, it is very clear that already the Constitution envisages a Commission with powers and functions as outlined in that Constitution. We cannot, therefore, deny the proposed Commission those powers and responsibilities through legislation. Even if we attempt to do so, that part of the legislation will be unconstitutional.

Secondly, we should not prepare this country for what we saw in Ivory Coast, where they have two bodies which have the capacity to announce results. If we go this route, we will end up with a scenario where the secretariat, citing powers that exist in the legislation, will make certain announcements, and the Commission, citing powers vested in them by the Constitution, will make a different announcement. Let us be careful. Let us do the right thing. Let us follow what the spirit of Constitution has laid out. Let us pass the amendment as suggested by the Chairman of the Constitution Implementation Oversight Committee.

The Minister of State for Public Service (Mr. Otieno): On a point of information, Mr. Chairman, Sir.

Mr. Chairman: Who do you want to inform, Mr. Otieno?

The Minister of State for Public Service (Mr. Otieno): Mr. Chairman, Sir, I want to inform hon. Samoei.

Mr. Chairman: He has already concluded his submissions. Do you want to contribute or have you already contributed?

The Minister of State for Public Service (Mr. Otieno): Mr. Chairman, Sir, I have already contributed to this amendment.

Mr. Chairman: In a Committee of the whole House, you have the choice to make clarifications.

The Minister of State for Public Service (Mr. Otieno): Mr. Chairman, Sir, I just want to clarify that the Commission is not the Commissioners. The Commission is the Commissioners and the employees of the Commission. So, when we talk of delineation of duties, it is the duties of the Commissioners and the duties of the secretariat under the CEO.

Mr. George Nyamweya: Mr. Chairman, Sir, I stand to support the deletion of this clause. We have to be careful on this one. You can see that we are a full House. This is the most important piece of legislation we are ever going to do for this country. We are doing this because of the events of 2007, where it was said that only one party did all the nominations of the commissioners to the defunct Electoral Commission of Kenya (ECK) and, therefore, managed the electoral process. If we do not go together on this one, we will be laying the ground for difficult elections. We do not want to have any doubt whatsoever. There should be no room for the possibility of conflict between the Commission and its secretariat. It is not useful to go that way.

Mr. Chairman, Sir, where we said, for instance, that there is delimitation of roles of the President when he gives policy directions and the Permanent Secretary in the Office of the President doing--- Where does it say that the Speaker of the National Assembly will respect the delimitation between his role and that of the Clerk of the National Assembly? Why is it on this one? Why do we think it is so important to remind everybody of this one? The Act governing the operations of the Judicial Service Commission (JSC) does not say that the JSC shall respect the Registrar's role. The ultimate responsibility is that of the Commission, and the Commission must have that authority without any questions whatsoever. Therefore, I move that we delete this clause.

Mr. Koech: On a point of order, Mr. Chairman, Sir. Without interrupting the Minister, I have listened and views have been expressed, would I be in order to request that we go for Division?

Mr. Chairman: Order! You are out of order, hon. Koech!

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Chairman, Sir, I see that the word causing problems in this particular Clause 5(4) is the word "delimitation". I think hon. Members reading the word "delimitation" think there is the possibility of creating a chasm between the Chairperson and members of the Commission, on the one hand, and secretariat, on the other hand.

Mr. Chairman, Sir, I think this concern is genuine. We should not downplay it. Therefore, the manner in which the clause is worded can, as Mr. Ruto said, be

problematic if, indeed, the Constitution is the fundamental document giving the Commission its functions.

If we wanted to remind the commissioners and the chairperson not to be involved in the day-to-day running of the Commission--- This has been the problem with some commissioners. In fact, the former Chairman, Mr. Samuel Kivuitu of the defunct Electoral Commission of Kenya (ECK), at one time complained to me bitterly, that his commissioners were organizing meetings and sittings day in, day out, and that he did not know what they were doing. He said that they were doing so, even without the approval and arrangement of the secretariat which was supposed to do this work.

The mischief that this particular clause is trying to treat or deal with is the mischief where commissioners get themselves involved in the administrative running of the Commission. So, the word that we should use is not “delimitation” but we should say that the chairperson and members of the Commission shall respect their constitutional duties and functions and leave the day-to-day running administrative work of the Commission to the secretariat.

I think we should be specific. I am amending the amendment to say that the chairperson and members of the Commission---

An hon. Member: The amendment is to delete!

The Minister for Medical Services (Prof. Anyang’-Nyong’o): No, I do not want it to be deleted! I think we need it so as to deal with the possible chasm. The way the subsection is worded is wrong because the word “delimitation” gives a wrong connotation.

Secondly, we need a clause here which should deal with the possibilities of commissioners getting involved in administrative functions. So, I am saying that the chairperson and members of the Commission shall respect their constitutional functions and leave the day today running of Commission to the Secretariat.

Mr. Abdikadir: Mr. Chairman, Sir, if that can be properly worded, that is a good compromise that is acceptable to the Committee.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): It is also acceptable to me if it is properly worded.

The Minister for Lands (Mr. Orenge): Mr. Chairman, Sir, I think what Prof. Anyang-Nyong’o is proposing is acceptable. However, there is some debate we heard on this because of the manner in which the old Commission had managed the affairs of the elections. For example, there was a proposal that the Chair of the Commission should be the spokesperson for the Commission. We have found problems with that in the sense that imagine an election where there are going to be other electoral officers like presiding officers and returning officers--- If you look at the electoral law, all of them have got functions which are clearly stated in the law. So, some functional provisions which will make it quite possible for anybody who has a problem with the Commission to know where the role of the Commissioner stops and where the role of the secretariat starts and ends would be useful. So, I think what Prof. Anyang’-Nyong’o says actually addresses the fears that we had when we were debating this. But it was to deal with the practical problem that we saw in previous elections.

I support the further amendment.

Mr. Chairman: Just before I give the Floor to Ms. Karua, indeed, Prof. Anyang-Nyong’o understands the rules of the House. You have to put it in writing and bring it to the Chair.

Proceed, Ms. Karua.

Ms. Karua: Mr. Chairman, Sir, I just want to dispel any notion that separating the duties would be against the Constitution. I would like to refer hon. Members to Article 88 of the Constitution in its entirety. It does not say who will do what. It merely says in Article 88(5) that the Commission shall exercise its powers and perform its functions in accordance with this Constitution and national legislation. That is why it is so important that we set out the duties as is being proposed very clearly. If we do not do so, then we are reverting to the original situation. So, it is very necessary that we separate the duties right now.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Chairman, Sir, mine was a contribution on the original amendment by the Committee. Let me just say something before the amendment on the amendment is moved by Prof. Anyang-Nyong’.

I want to support the amendment by the Committee that Clause 4 be deleted. If you refer to the HANSARD, Clause 5(4) of the Bill which was actually debated for a record six days, most of the contributions were on the functions of the secretariat and the selection panel. It is because we wanted to get an office that is responsible for election matters. We wanted to make it very clear that the Commission is above the secretariat. That was why we were in a way, looking at this issue of staggering the appointment of the commissioners. If we leave the secretariat to do some other issues on the elections then the Commission which is the one responsible to this House may say those are administrative issues. So, I really support the proposed amendment by the Committee.

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Chairman, Sir, as we await for the amendment to the amendment, I have been seeking an opportunity to support the original amendment by the Committee.

The presentation has been made here about issues of corporate governance. This Commission is not a board of directors. Article 88 of the Constitution that has been referred to extensively, Article 88(3) provides that anybody serving in this Commission shall not hold another public office. This suggests that this Commission is seen by the Constitution as a full time body that is making critical decisions and managing the affairs of conducting elections and other functions.

Mr. Chairman, Sir, I fully agree that in trying to have wording that can create different interpretations by the secretariat and by the Commission, we are setting ourselves up for a circumstance where the CEO or the Secretary to this Commission can take one decision on election day and the Commission takes a different decision. We must have a focused responsibility, so that there can be no loophole of two parties who are supposed to be part of the same management process---

Let us not burry our heads under the sand. For example, just this afternoon, we have been chastised by the Speaker as the Government because Ministers in one Government are contradicting themselves here on the dispatch box. Therefore, the likelihood of having a secretariat that is pulling in one direction and a Commission that is pulling in a different direction is not far-fetched. We must have one point of

responsibility that is clearly defined. If you read Article 88 carefully, that is what is envisaged. Therefore, we should support what the Committee says.

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Chairman, Sir. I rise on a point of order to move that we adjourn the Committee Stage. The Committee reports progress to the House to enable us to ask for extra time to sit so that we dispose of the matter on the Order Paper. So, I beg to move that this Committee reports progress to the House.

Mr. Chairman: Order, hon. Members! I will now proceed to propose the Question that the Committee of the Whole House do report progress and seek leave to sit again tomorrow.

Hon. Members: No! It is now!

Mr. Chairman: Order! Hon. Minister, you moved! Hon. Minister, the Chair was of the opinion that you moved that the House sits tomorrow, but if, indeed, you want the House to sit again today, then move it properly.

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, I beg to move that the Committee of the whole House reports progress and seeks leave to sit again today.

Mr. Ruto: On a point of order, Mr. Speaker, Sir.

Mr. Chairman: Order! Could you take your seat?

(Question, that the Committee of the whole House reports progress and seeks leave to sit again today, proposed)

(Question, that the Committee of the whole House reports progress and seeks leave to sit again today, put and agreed to)

(The House resumed)

*[Madam Temporary Deputy Speaker
(Dr. Laboso) in the Chair]*

PROGRESS REPORTED

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL

Mr. Farah: Madam Temporary Deputy Speaker, I beg to report that a Committee of the whole House is considering the Independent and Boundaries Commission Bill, and has instructed me to report progress and seek leave to sit again today.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): seconded.

(Question proposed)

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, Sir, as the Committee was progressing in the debate, it became very clear that Order No.8 may not be completed by the time of the adjournment of the House at 6.30 p.m. and it will be necessary to seek leave of the House to extend the sitting of the House until we conclude the business appearing under Order No.8.

(Question put and agreed to)

*[Madam Temporary Deputy Speaker
(Dr. Laboso) left the Chair]*

IN THE COMMITTEE

[Mr. Chairman took the Chair]

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL

(Resumption of consideration interrupted in Committee)

Mr. Chairman: Order, hon. Members! Hon. Chair of the Constitution Implementation Oversight Committee (CIOC), you need to withdraw your amendments to allow the Minister to move the amendment, if that is the understanding.

Mr. Abdikadir: Mr. Chairman, the amendments are on the Order Paper. I will accept his amendment to my amendment, provided it is in the language the Minister talked about.

Mr. Chairman: Order! Hon. Abdikadir, he is proposing to delete. How do you have a further amendment to a deletion?

Mr. Abdikadir: Mr. Chairman, if he says: "Following the deletion then replace with or insert the following"; I have no problem with that.

Mr. Chairman: Order! The mood in the House is very clear. Hon. Abdikadir, I think for us to be able to go forward, it is clear.

The Assistant Minister for Public Works (Mr. Kiunjuri): On a point of order, Mr. Chairman, Sir. All we are requesting, so that hon. Abdikadir can be comfortable, is whether we can actually hear what the contents of the amendment being proposed by the professor are, so that we are in agreement, and so that when he withdraws them, then we will not get an amendment that will not be agreeable to us.

Mr. Chairman: Fair enough! Could the Minister move the amendment?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, with your permission, I propose to move an amendment to the amendment---

Mr. Chairman: Order! Order! Could you just explain yourself because you cannot move an amendment to a deletion?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, the wording that has been agreed between hon. Prof. Anyang' Nyong'o, the Chairman of the CIOC and others is that the 5(4) will be replaced by the following words "the Chairperson and members of the Commission shall perform

their functions as provided in the Constitution, and the Secretariat shall perform the day-to-day administrative functions of the Commission.”

Mr. Abdikadir: Mr. Chairman, Sir, I, therefore, withdraw the amendment.

(Mr. Abdikadir’s amendment withdrawn)

Mr. Chairman: Fair enough. Mr. Minister, can you now move the amendment?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 5(4) of the Bill be deleted and replaced with a new clause-

“The Chairperson and members of the Commission shall perform their functions as provided in the Constitution, and the Secretariat shall perform the day to day administrative functions of the Commission.”

(Question of the amendment proposed)

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

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

Mr. Chairman: Hon. Kioni, are you still seeking a further amendment to Clause 5?

Mr. Kioni: Mr. Chairman, Sir, in the light of that amendment, I wish to withdraw.

(Mr. Kioni’s amendment withdrawn)

(Clause 5 as amended agreed to)

Clause 6

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 6(1) of the Bill be amended by deleting the phrase “a superior court” appearing in the clause and substituting therefor the phrase “the supreme court”

Mr. Chairman, Sir, the reason is that we want to raise the threshold for appointment of Chairperson of the Commission because it is a desirable thing.

(Question of the amendment proposed)

Mr. Abdikadir: Mr. Chairman, Sir, may I seek some clarification? Sorry for taking you back, but in Clause 5, I had proposed two amendments. I did withdraw an

amendment to Clause 5(4), but there was an earlier one on Clause 5(1) which had to do with inserting Article 250(4) after the words “in accordance with the Constitution.”

Hon. Members: That was carried!

Mr. Abdikadir: If that is the case, then---

Mr. Chairman: It was not carried! You withdrew it in its entirety!

Hon. Members: No!

Mr. Abdikadir: Mr. Chairman, Sir, with your indulgence, I read the first and second parts of the proposed amendment. What I did withdraw was the deletion of subclause (4).

Mr. Chairman: Fair enough! Hon. Abdikadir, it is going to be considered at the very end. That is the practice.

Mr. Abdikadir: If that is the case, then I withdraw my amendment to Clause 6 because it is exactly as stated by the Minister.

(Mr. Abdikadir’s amendment withdrawn)

*(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)*

Mr. Chairman: Hon. Members, there are other amendments which were proposed by hon. Abdikadir and hon. Konchella which have been withdrawn.

(Proposed amendments withdrawn)

Eng. Gumbo!

Eng. Gumbo: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 6 of the Bill be amended in paragraph (b) of subclause (2) by inserting the word “post-graduate” immediately after the words “holds a”.

Mr. Chairman, Sir, the reason for this amendment is actually very bold. I just want those who are going to hold constitutional offices in Kenya to know that there would be no more free lunch in this country. There can only be one chairperson of the Commission. That is because we have too many graduates in this country, we are telling them that if you want to be the only one to hold such a high office in the country, then you must also spend more time in school. Therefore, I am asking that we include a requirement for post-graduate degree.

(Question of the further amendment proposed)

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Chairman, Sir, with due respect, I rise to oppose the amendment by Eng. Gumbo. The reason is that one can have a post-graduate degree, but perform poorer than the one with a first graduate degree. It surely depends on the interviewing process and ensuring that it is not

the degrees that, in the final analysis, determine quality; that quality is matched by degrees. So, I would say that a degree from a recognized university is enough. I do not mean the University of Jaipur or something else! The rest can be taken care of by the interviewing process. I plead with hon. Eng. Gumbo that, as much as in many cases, post-graduate degrees do in actual fact, go hand in hand with quality, there are cases where they may not say much about quality. So, I think a basic qualification is good enough.

The Minister for Education (Prof. Onger): Mr. Chairman, Sir, I rise to oppose this amendment. Education is a continuous learning process. You cannot suddenly put a limitation on the kind of level of qualification you must get. If you get a masters degree, well and good. But I think one of the areas that we have recently noticed, with a lot of disgust, is the qualifications being used for some other reasons other than the experience and number of years somebody has served in the various activities. I think experience, quality and in addition later on if they add on, is an added advantage.

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

Mr. Chairman: Order, hon. Members! The amendment by Dr. Otichilo has been withdrawn. Can you proceed and indicate that you have withdrawn?

Dr. Otichilo: Mr. Chairman, Sir, I have withdrawn!

(Dr. Otichilo's amendment withdrawn)

Mr. Chairman: There is further amendment by hon. Kioni.

Mr. Kioni: Mr. Chairman, Sir, the amendment by the Minister captured what I wanted to capture. So, I withdraw!

(Mr. Kioni's amendment withdrawn)

(Clause 6 as amended agreed to)

Clause 7

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be deleted and substituted with the following new clause-

7 (1) The members of the Commission shall be appointed for a single term of six years and shall not be eligible for re-appointment.

(2) The members of the Commission shall serve on a fulltime basis.

(3) The Commission shall be properly constituted notwithstanding a vacancy in its membership.

Mr. Chairman, Sir, essentially, the Minister had proposed a membership which was fewer than the maximum provided for by the Constitution. In view of the number of elections we are going to be holding in one-and-a-half years time, and the fact that the new Constitution will in full fledge be coming into force, and the very different new

structures that we will have, we believe that the Commission will do with all hands on deck. We believe that this is also as much acceptable as possible in the country at this point in time due to the political temperatures.

(Question of the amendment proposed)

Mr. Konchella: Mr. Chairman, Sir, while I agree with hon. Abdikadir, when you look at other jurisdictions like Ghana and Brazil, you find that there has been continuity in terms of elections. We will have a constitutional crisis after this by virtue of appointments of the Commissioners in the future. So, my proposal is that we should look at it in terms of staggering this thing so that we will not be in that problem in the future.

Mr. Mbadi: Mr. Chairman, Sir, this is an amendment that, we, as a Committee agreed on. I support it but I am just alerting the country that we have given those who will be here in future a problem to sort out. The commissioners, constitutionally, must be in office for six years. The commissioners that we will appoint; the nine of them at the same time, will retire just a few months to the 2017 General Election. So, we have a problem to sort out, which probably we can only sort out by having a very strong Secretariat. Otherwise, this country will have a problem in 2017.

Mr. Ruto: Mr. Chairman, Sir, I stand to support the amendment by the Committee. I am sure exigencies of the nature hon. Mbadi is mentioning are possible to sort out. They have been sorted out in other jurisdictions. Even this Parliament will have to shorten its life next year if it will have to go by the Constitution. We may have to do elections in August. There is that possibility. I do not want to create another debate, but I am saying that it is proper that in the interim, we go by the report of the Implementation Committee.

I support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I note the mood in the House, but I have a very important obligation to alert the House. If we pass this law tonight, the President assents to it this week or even next week, it simply means that the next Commission to be constituted will be constituted probably a month or two before the 14th August elections of 2017. I know that my good friend has said that we will postpone and leave this problem to those who will come, but those to come are our children, our wives and daughters. Those to come are Kenyan citizens and we have an obligation, as a House, to consider staggering what I had proposed. But I am also guided by the mood of the House.

Mr. Samoei: Mr. Chairman, Sir, while appreciating what the Committee has done and the background, especially on Sub-section 3 of the proposed amendment; that the Commission must be constituted in its entirety, and that is correct, I want to persuade the House that we can cure the problem by proposing a further amendment to Clause 7(1), where we can make the appointment of the commissioners one term with a possibility of a renewal for an extra one term, so that administratively, whoever is appointing these commissioners can now stagger. In the earlier part of this legislation, we have recognized the value of experience and having people who have worked there before for continuity. That is why we are saying that five of the commissioners that will be appointed this time must have served in the previous Commissions. So, I do not know whether we can create

a marriage somewhere, so that we do not export the problem in its entirety to the next Parliament.

Mr. Chairman: For the benefit of hon. Samoei and the other Members, Article 250(6) of the Constitution says:-

“A member of a Commission, or the holder of an independent office-

(a) unless ex-officio, shall be appointed for a single term of six years and is not eligible for re-appointment”.

The Constitution does not allow two terms.

Mr. Chachu: Mr. Chairman, Sir, while I support the amendment, it is very critical that we do not run away from the responsibilities for 2017. While I accommodate this amendment, I think the principle of staggering is important to ensure that in 2017, this country will not be in crisis. On that basis, I seek that we consider that principle of staggering.

Mr. Chairman: The Chair notes the fact that if the matter is a constitutional matter, then why does it have to find its way into a statute exactly in the same frame as it is? Maybe the Minister for Justice, National Cohesion and Constitutional Affairs needs to amend that by deleting that section. When the Constitution says that it is only one term and no re-appointment, then you cannot say that the members of the Commission shall be appointed for a single term of six years and shall not be eligible for re-appointment.

The Minister for Medical Services (Prof. Anyang’-Ny’ong’o): On a point of information, Mr. Chairman, Sir. Can I give some information to the Minister for Justice, National Cohesion and Constitutional Affairs?

Mr. Chairman: Does he need your information?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, Mr. Chairman, Sir.

Mr. Chairman: Proceed!

The Minister for Medical Services (Prof. Anyang’-Ny’ong’o): Mr. Chairman, Sir, the simplest thing which will satisfy everybody is to accept the amendment, but say the following:-

“The members of the Commission shall be appointed in accordance with Section 250(6) of the Constitution”.

That solves everything because you cannot state terms of appointment at variance with the Constitution. Even if it is not at variance, why do you repeat it? Just say: “In accordance with the Constitution”. It is enough!

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, let me start by opposing the amendment by the Committee. If you look at Clause 7 of the Bill, it goes beyond repeating what is in the Constitution. In fact, the amendment by the Committee is only restating what is already in the Constitution except Clause 7(2) where it is turning all the commissioners to serve on a full-time basis. But (1) and (3) are already within the Constitution and in the current Bill. The fundamental issue that we need to be careful about is that in December, 2007, just a couple of weeks before the elections, the term of the former Chairman of the ECK was extended. There was debate both ways that his term should be extended and that it should not be extended and after the elections, there was a blame game in terms of who extended his term or who should not have extended his term. This is something that we must be very careful about in the future. It is on that basis

that we need to be very careful that come 2017, we do not have a situation where all the first six commissioners are going home because constitutionally, they must go home. Then we have a slate of new commissioners coming in to conduct an election.

I am proposing that we consider withdrawing this amendment as a Committee, so that we leave the Bill as it is. It provides the mechanisms of staggering the appointments of the commissioners.

Mr. Chairman, Sir, Section 7(4) reads that the Chairperson and four members of the first Commission shall be appointed upon the commencement of the Act and the other commissioners will be appointed slightly later but within the same one year. However, you will never have a situation where all the commissioners go home in one day and a new team comes in. Suppose you have a dispute come 2017 because we would all have moved in terms of our allegiances--- Suppose there is no agreement in the parliamentary committee – like we are having now in the vetting of the Chief Justice and all that or in terms of appointing of the commissioners – and elections are put very clearly that they must be held on the second Tuesday of August, what will happen when you have no commissioners at that time because they have retired and you cannot appoint because the House cannot agree?

Mr. Chairman: You have made your point, Mr. Kimunya!

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, I urge that the Committee considers withdrawing this because we can always come back to the Bill later on and move further amendments because it is an Act of Parliament. However, for now, let us be very careful on what we do for the future.

Mr. Lessonet: Mr. Chairman, Sir, I want to support the amendment by the Committee and as proposed by Mr. Abdikadir with a small cure. We have a cure on the date of August by saying, as we pass this Bill that administratively the appointment of these commissioners should be effective by October. These commissioners can be appointed in October because we are in June. We are just a few months to the threshold of August. So, these commissioners can come after the deadline of August so that they are able to conduct the election of 2017.

Mr. Mbadi: On a point of order, Mr. Chairman, Sir.

Mr. Chairman: Order, Mr. Mbadi!

Mr. Lessonet: So, that is my proposal, Mr. Chairman, Sir.

Mr. Chairman: What is out of order, Mr. Mbadi?

Mr. Mbadi: Mr. Chairman, Sir, is it in order for Mr. Lessonet to propose that we appoint commissioners in October, and yet we want these commissioners to finish the review of the boundaries? The new constituencies must be in place 12 months to elections.

Dr. Kones: Mr. Chairman, Sir, it is a matter of concern that we must have a Commission by the time we are going for the next elections. I propose two options. First, this House should approve the entire list of commissioners that will be there, but one set should start this year while the other group starts a year later. What I am saying is that we approve all the nine names now---

Mr. Chairman: We are dealing with the Bill now and not the appointment of commissioners.

Dr. Kones: Mr. Chairman, Sir, we can do it in the Bill!

Secondly, we can put the age limits and say they serve six years or if you are 70 years old, you retire. However, we should make sure we avoid people who are about 70 years.

Mr. Chairman: You have made your point!

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): Thank you, Mr. Chairman, Sir. I have listened to the contributions by hon. Members and I want to support the amendment. We looked at both sides of the coin and considered staggering the appointments, but we realized that we will create another problem because if one region, for example, has their commissioner appointed one or two years after the rest, then that region will complain that while critical decisions were being made by this very critical Commission, their region was not appropriately represented. We will not have a constitutional crisis. We want people of integrity who will put the right systems in place. With the right structures and systems in place, even if you appoint the commissioners two weeks to election date, they will execute their mandate because this is what we want to run away from---

Mr. Chairman: Are you supporting the amendment?

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): I am supporting the amendment, Mr. Chairman, Sir.

Ms. A. Abdalla: Thank you, Mr. Chairman, Sir. As I support this amendment, let me try to convince the other hon. Members, although Mr. Mbadi did not allow me in the Committee to finish the proposal of what I wanted to say.

Mr. Chairman, Sir, it is understandable that we need the new commissioners to serve at least in the first two-and-a-half years, because that is when we will agree on the boundaries; we will do voter registration, all the hard work and then they run the elections. They all need that experience if you want them to send it to the next Commission. So, this is something that has already been done in the Kenya National Commission on Human Rights. When they were appointed, they did a lottery and they decided that some of them would serve for four years and others would serve for three years. Why do we not propose in this case that they serve for the first three years and then the ones who lose the lottery will go on a one-year leave and then return during the elections?

(Applause)

Mr. Chairman: Order! Except that the Constitution is very categorical. It says; "Shall serve for a term of six years and not eligible for re-appointment."

Ms. A. Abdalla: Mr. Chairman, Sir, my question is: Does it have to be six years continuously or a total of six years? That is the point!

(Laughter)

Mr. Chairman: Order, hon. Members! We do not have terms that essentially are staggered! You do not have an hon. Member serving for one year and coming back after eight years to serve for another year!

Proceed, Mr. Abdikadir!

Mr. Abdikadir: Mr. Chairman, Sir, this is a very vexed issue and you can be very sure that the Committee considered every side of this coin. We discussed “every which way”. We understand very critically what the Minister has talked about; that the Constitution just talks about one term of six years which will end very close to the elections in 2017. We considered those two and in the balance of convenience, we better inconvenience that side now, in our opinion as a Committee for the following reasons. First, we have just come from a very traumatizing election. The way, the elections will be held in 2012 and it is very critical. If it is held badly, there might even be no election in 2017. Secondly, we will conclude the boundaries issue which is a very critical function. This country almost split into several portions because of whom and where which commissioner was coming from. So, in the wisdom of the Committee, having looked at this in totality, we feel that the best way forward is for all the nine commissioners to be appointed at once for them to immediately take up the issue of the boundaries, conclude it and then lay down the process for the election for 2012 so that, once and for all, we are done with this process. We have looked at staggering and the terms---

Mr. Lessonet: On a point of information, Mr. Chairman, Sir. I want to inform Mr. Abdikadir. The point of information which I want to make is very simple. It will take us one month if we pass this Bill today to get a panel and June will have gone. In July, the panel will run advertisements for these commissioners, the interview process and we shall be in August. The effective date for these commissioners definitely will be after 14th August. So, I do not see the problem and the technicality of 2017 arising.

(Applause)

Mr. Chairman: The Chair will entertain two more!

(Mr. Samoei stood up in his place)

What is it, Mr. Samoei? Is it a point of order? What is your point of order, Mr. Samoei?

Mr. Samoei: Mr. Chairman, Sir, I think this House has the responsibility and we must not run away from it. We have the responsibility, first, to make sure that we run these elections with a proper Commission and also ensure that we do not transfer a problem to the next Parliament.

Mr. Chairman, Sir, I do not know whether the Committee considered having a Commission with a shorter term, maybe, three years. That way, this Commission can end after doing the next election, say two years. Another Commission can be appointed that will have another three years or so. But we can limit that term using legislation. Did the Committee consider this?

Mr. Chairman: Order! You cannot legislate on a statute to a matter that is provided for in the Constitution until or unless such a time that you amend the Constitution itself.

Mr. Abdikadir: Mr. Chairman, Sir, I have been given some information which I found very useful.

Mr. Chairman, Sir, we really considered all these options in terms of the term. Unfortunately, the Constitution is very strict; one six-year term period! We cannot extend

it or reduce it! We cannot split them into two portions. A commission is appointed for a six-year term. It is fixed.

Now hon. Lessonet brought in a novel idea. He said if the appointment was to come at the end of August, the six years would end after the elections of 2017. Then they can take up that matter. I think that is something we could really consider in terms of the appointment.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Chairman, Sir, having listened to the hon. Lessonet, I beg this House to go by the Committees Report. I think it is the best way forward.

Mr. Chairman: Hon. Abdikadir, did you consider the fact that this Commission, among other things, is supposed to work on the boundaries? With regard to boundaries, the Constitution is very categorical that it has to be done, at least, one year---

Mr. Abdikadir: Mr. Chairman, Sir, the Constitution has taken care of that. Under the Transitional Clauses for the first review that 12 month deadline is exempted. So, the boundaries can be done three months to the next elections, even though we sincerely believe it will be done before those elections. If we were to appoint in September or August, the proposal that is coming from the Committee is that the Commission be given only four months to conclude that process that was done.

Mr. Chairman: Mr. Minister for Justice, National Cohesion and Constitutional Affairs, I thought you would be able to shed light on this, because you are the Minister responsible for that!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, my position still remains the same. The only amendment I would propose to the Bill would be that the staggering be reduced to three months. If you staggered it by three months, so that they take office with a difference of either two months or three months, then I would be happy.

Mr. Chairman, Sir, alternatively, I would accept seven and two. You appoint outright seven. They start immediately, and the other two within two months or within three months. By so doing, we will have the institutional memory.

Mr. Chairman: Indeed, yes, hon. Abdikadir, the Chair appreciates that this particular one is exempted because Sixth Schedule, Article 27(3) says:

“The requirement in Article 89(2) that a review of constituency and ward boundaries shall be completed, at least, 12 months before the general election does not apply to the review of boundaries preceding the first election under this Constitution.”

(Mr. Kimunya stood up in his place)

Mr. Deputy Leader of Government business, I was about to put the question. Proceed!

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, there are two components of the amendments, and we have just been looking at one amendment in terms of staggering. I would urge that Members look clearly at Article 75 of the Bill. It provides that the second batch of the commissioners shall be appointed not more than 12 months. They could well be appointed one month after the first lot. That is the essence of this clause, so that we do not delay appointing people until after August to comply. We

can get the first five. Who knows? We may not even have all the gender equity within this time. We can get the first five, make progress and move on.

Mr. Chairman, Sir, the other issue why I was opposing this, and I want Members to consider is that we are now saying all the commissioners to become full time. The Constitution envisaged a situation, where there are good Kenyans, who would want to serve on this Commission, but they do not want to be caught by the constitutional requirement that so long as you serve on a full time basis, you cannot engage in any other business for profit, including your private business. So, we are now limiting the scope of people who can become commissioners. We are limiting them by saying that only people who are prepared to forfeit their business or any other work they are engaged in to be appointed as commissioners. We need to be careful on that. We do not want to lose people who can serve this country pretty well. That provision is telling them that once they are appointed as commissioners, they cannot even run their business or do any other work for six years. They will work as commissioners for full time for six years.

Mr. Chairman, Sir, I beg to urge that let us not discriminate against people through this legislation. Let us give that preference to allow as many Kenyans as possible to participate in line with the spirit of all inclusiveness.

Mr. Chairman: That discrimination is in the Constitution. The hon. Deputy Leader of Government business, what you are talking about is provided for in the Constitution, not in this legislation. Even if it is provided for, you cannot amend a constitutional provision through an Act of Parliament.

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, the point is that the Constitution provide that people can serve on either full time or part time. But it says if you serve on full time, you cannot do anything else. What we are now doing within the legislation is that we are saying that all the commissioners must be full time. This means they cannot do anything else. That is why I am saying we are now disenfranchising people from their right in the Constitution to serve their country on part time, while they engage in other things. But if they become commissioners, then they are discriminated upon and they cannot do anything else. The Bill is actually contradicting the rights in the Constitution.

Mr. Abdikadir: Mr. Chairman, Sir, the proposed amendment is not contradicting the Constitution at all. What the Constitution says is that commissioners can either be part time or full time. If they will be full time, they cannot handle any other job. If they are part time, they can handle other jobs. That is what the Constitution says.

We want every member of this Commission to be full time because of the nature of the job that is being handled by the Commission. This is a very critical Commission. Indeed, when this House passed the Bill that deals with the Commission on Implementation of the Constitution (CIC), we said five can be permanent and the others could be part time, even though the President opted to have them all full time. In this one, we want to be very specific that all of them be full time. That is really, the proposal we are making.

The Minister for Lands (Mr. Orengo): Mr. Chairman, Sir, I was in the discussions that brought about what is in the Bill and fully support them. However, I now realize the very first responsibility of the Commission must have a full house. Some of these issues, which may include the issue of boundaries, if they will be dealt with a Commission which consists of about four out of nine commissioners, then some areas

may feel not represented. To the extent that the business of this Commission is so critical to everybody, we should have a full house, when it is appointed.

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

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

Mr. Chairman: Hon. Otichilo, you have to drop your amendment!

Dr. Otichilo: Mr. Chairman, Sir, I am dropping my amendment.

Mr. Chairman: Fair enough!

(Dr. Otichilo's amendment withdrawn)

Mr. Chairman: Hon. Konchella, you have to drop your amendment!

Mr. Konchela: Mr. Chairman, Sir, I withdraw my amendment.

(Mr. Konchella's amendment withdrawn)

(Clause 7 as amended agreed to)

(Clause 8 agreed to)

Clause 9

Mr. Chairman: Hon. Members, Clause 9 has so many amendments. So, we will have to go subclause by subclause.

Yes, hon. Kioni!

Mr. Kioni: Mr. Chairman, Sir, my amendment to subclause 1(c) of Clause 9 was to subject the Secretary to approval by the National Assembly, but in light of other amendments that have been proposed by other hon. Members, I wish to withdraw that amendment.

(Mr. Kioni's amendment withdrawn)

Mr. Chairman: Hon. Kioni, the amendment to Subclause 2 is also yours. Please, proceed and move the amendment.

Mr. Kioni: Mr. Chairman, Sir, I beg to move that Clause 9 be further amended as follows:-

(d) in Subclause (2)-

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

“(c) has had at least ten years proven experience at a senior management level”;

Mr. Chairman: Hon. Kioni, proceed and move the amendment to Paragraph (e) of Subclause 2. We are on the same Order Paper and same page. It is just next to the one you have just moved.

Mr. Kioni: Mr. Chairman, Sir, I wish to withdraw the amendment to subclause 2(e)

(Mr. Kioni's amendment to Subclause 2(e))

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Chairman, Sir. Just for clarity, we need to know what is being amended, because I can see that hon. Kioni is amending Clause 9(2)(c) but you are talking about Clause 9(1).

Mr. Chairman: Indeed, you are right.

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, could I, please, contribute?

Mr. Chairman: No, you cannot contribute. You are on a point of order.

Yes, hon. Mbarire!

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Chairman, Sir, I rise to oppose the amendment because, for a brilliant young man or young woman, five years is good enough to gain enough experience to be able to hold any other position. Ten years is too long. We are making it look impossible for somebody at 40 years to get this job. The amendment is discriminatory against young people. We are seeing young people doing so well. I can give an example of the current Chairman of the Independent Interim Electoral Commission (IIEC), who is doing very well. He is young and able.

Therefore, I strongly opposed this amendment.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Chairman, Sir, in the spirit in which hon. Mbarire has spoken, I also rise to oppose this amendment for the same argument advanced regarding undergraduate degrees. We have seen young people doing very well in positions. What really matters is the recruitment process. If we put a minimum of five years, the recruitment process should be competitive enough, so that those with five years' experience, but do not show proper performance qualities will be eliminated through the recruitment process. If we put experience of 10 years, we will discriminate against a big cross-section of our society. So, we should oppose the amendment and go with the spirit in which hon. Mbarire has proposed.

Mr. Midiwo: Mr. Chairman, Sir, I rise to oppose the amendment because, as a country, for so many years, we have used age limit to lock out the youth from positions of leadership. If you read newspaper advertisements for jobs that matter, you find that some of them call for as many as 20 years' experience. When will the youth get to senior management positions? I want to agree with Prof. Anyang'-Nyong'o that competence should be determined through the process of selection, so as to give the equal opportunity to young and old people.

I beg to oppose.

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

The Assistant Minister for Public works (Mr. Kiunjuri): On a point of order, Mr. Chairman, Sir. I rise to seek your advice. On so many occasions, we have passed laws which discriminated against the youth of this country. It is important for Parliament not to engage in doublespeak. When we make laws here, most of the time, we put a ceiling on experience. Parliament should be seen to be consistent. Therefore, it is---

Mr. Chairman: Order, hon. Kiunjuri! You are out of order! Your argument is irrelevant! I know you want to contribute!

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Chairman, Sir, I am seeking your guidance, so that in future, this does not recur.

Mr. Chairman: Mr. Kiunjuri, the Question is carried! So, your argument right now has no relevance on this matter since the matter has been disposed of.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Chairman, Sir, I wish we could be consistent!

Mr. Chairman: Kenyans and the youth of this country have watched you on television, and that is good enough!

Hon. Minister, you have an amendment to Clause 9, at page 2429 of the Order Paper.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 9(2) be amended by deleting the word “five” appearing in the Subclause and substituting therefor the word “ten”

Mr. Chairman: Order, Mr. Minister! The amendment you have moved is already overtaken by events!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): That is correct, Mr. Chairman, Sir.

(Proposed amendment withdrawn)

Mr. Chairman: Yes, hon. Abdikadir!

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 9 of the Bill be amended in Subclause 4 by inserting the words “term of five years” after the words “one further”.

Mr. Chairman, Sir, basically, Clause 9(4) reads as follows-

“9(4) The Secretary shall hold office for a term of five years but shall be eligible for re-appointment for one further---“

So, we are specifying “one further term” of five years. It is on page 2429 of the Order Paper.

Mr. Chairman: Order, hon. Abdikadir! Hold on that one while we dispose of hon. Gumbo’s amendment to the same.

Eng. Gumbo: Mr. Chairman, Sir, on page 2438 of the Order Paper, that is, Clauses 9(a) and 9(b)---

Mr. Chairman: Eng. Gumbo, you can only move part (a) of your amendment because the other one has been overtaken by events.

Eng. Gumbo: Mr. Chairman, Sir, that is okay. What I wanted to say is that the proposal that I had to amend this clause was in very good faith. However, an hon. Member has come to me and told me that, unfortunately, I come from Siaya County

which has the highest density of professors per kilometre square and that I am thinking only in terms of Siaya County and discriminating against the rest of the country. In that spirit, I meant it well for Kenya and not just Siaya County. As much as I appreciate that that is good for us, I also appreciate that there are parts of this country that need affirmative action. So, in that spirit, I wish to withdraw the proposed amendment.

(Eng. Gumbo's amendment withdrawn)

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 9 of the Bill be amended in Subclause 4 by inserting the words "term of five years" after the words "one further".

(Question of the amendment proposed)

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

Mr. Chairman: Hon. Members, under the circumstances, Dr. Otichilo will have to withdraw his amendment because it stands withdrawn in any case.

Dr. Otichilo: Mr. Chairman, Sir, I withdraw it.

(Dr. Otichilo's amendment withdrawn)

Mr. Chairman: Mr. Konchella and Eng. Gumbo, the same applies to your amendments. Mr. Minister, it is presumed that yours has also been withdrawn or overtaken.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, it is withdrawn.

(Proposed amendment withdrawn)

Mr. Baiya: Mr. Chairman, Sir, I beg to move:-

THAT, (i) The second Subclause 7 of the Bill be deleted.

(ii) Subclause 8 of the Bill be deleted.

Mr. Chairman: Order, Mr. Baiya! Since you are moving an amendment of deletion and Mr. Kioni is moving one of deletion and insertion, it is only appropriate that we start with Mr. Kioni's proposed amendment.

Mr. Kioni: Mr. Chairman, Sir, I think there is confusion somewhere. There is Clause 9(7) and my proposed amendment was really a typographical error because we have two clauses on 9(7). If you look at the Bill itself, Clause 9(7) is repeated twice. That was a typographical error. I was not, therefore, deleting.

However, there is my intended amendment of deleting Subclause 7 which was the correct one. In light of what we did with Clause 5(4) where we were able, with the amendment that was proposed by the Minister, to define the responsibility of the Commission as provided for in the Constitution and for them not to interfere with the day-to-day management of the Commission, I then wish to withdraw the intended

amendment of deleting Subclause 7. I also wish to draw your attention to the earlier proposal to amend for typographical reasons.

(Mr. Kioni's amendment withdrawn)

Mr. Chairman: That one will be done.

Mr. Baiya: Mr. Chairman, Sir, I am on page 2444 of the Order Paper.

I beg to move that:-

(i) The second Subclause 7 of the Bill be deleted.

(ii) Subclause 8 of the Bill be deleted.

The amendment we are seeking on that provision talks about the terms upon which the Secretary to the Commission may be removed from office due to inability to perform his functions of office arising from physical incapacity, gross misconduct, bankruptcy, incompetence and so on. Sub-clause 8 talks about the conditions to be followed before removal and Sub-clause 7 talks about the Secretary being informed in writing of the reasons for removal and so on.

Mr. Chairman, Sir, those provisions have been borrowed word for word, from the provisions of Section 251(1) of the Constitution relating to the removal from office of independent commissions. I am saying that to entrench the position of the Secretary to the level of an independent commission is likely to have prejudicial impact in terms of the relationship between the commissioners and the Chief Secretary. In the other commissions that we have dealt with, like the Judicial Service Commission (JSC), Commission on Implementation of the Constitution (CIC) and so on, we have not had occasion to state the terms upon which a chief executive officer may be discharged from employment. There is, therefore, inconsistency. We are not saying that we are not going to uphold his right of natural justice but in the same way we are treating the secretaries to other commissions, let us also treat this one in the same way. The whole idea is to ensure that we have one centre of control in the Commission and that should be the commissioners.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, I have listened very carefully to Mr. Baiya and I am not convinced. The reason I am not convinced is, first, that the Bill does not actually say that we are making the position of the secretary a constitutional office but for clarity, it is important to provide grounds upon which you can remove a secretary. If the grounds are similar, that is okay because it will avoid confusion and also avoid creating friction within the Commission when people are dismissed at somebody's whims. That is why it is important that we have those grounds. In fact, it is just because it is constitutional, otherwise, for me, I would even have removed some of the grounds that are so wide that you can remove anybody for whatever reason. For me, I would be more persuaded if we amended and removed these reasons instead of living it open. I think this is a very important Commission and we must be very clear because it is not doing the ordinary task. It is actually doing a very difficult task as opposed to other commissions. That is why we were very clear about issues of clarity of roles.

I beg to oppose.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Chairman, Sir, it is always dangerous when you propose a clause in a Bill with a particular individual or person in mind. It is also important that we be consistent. We have other commissions. I will not oppose this amendment; I will let it be carried. However, it is also important for this House to know that right now we are frightened of what happened three years ago. That is why we are taking this Commission to be more important than other commissions. We forget that we also have other very important commissions like the Revenue Allocation Commission. I hope that when we come to other commissions, we shall also be consistent as we are in this Bill.

I support.

Ms. Karua: Mr. Chairman, Sir, I want to oppose the amendment. I think it misunderstands something. The grounds for removal of the secretary do not suggest that a tribunal be formed. These are the grounds for the commissioners in the Constitution. It is necessary that we have specific grounds upon which we can remove a secretary. You do not want a shaky secretary who is tip-toeing because he is doing the work at the pleasure of the commissioners. Let there be a legal mechanism that must be satisfied before anybody casts a stone on him. But the threshold is lesser than a constitutional commission where you form a tribunal. I think this is the way to go, spelling out clearly when a person may be removed.

Mr. Chairman: Hon. Minister, just before you put it, the Chair gets the feeling that when you say “may be removed”, it means may or may not, including gross misconduct, inability to perform functions and bankruptcy.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, my Ministry is also in a learning curve. The original Bills that we presented to you certainly did not provide for clauses like this. As we go along, we will recommend to the House that we do so. I will tell you the reason.

The main reason is that the Constitution has provided for appointment by the Commission. However, it does not provide for method of removal. My Ministry has suffered enormous problems where you find that the Commission just gets into a coalition with the secretariat. They can easily argue like some people have argued that since the Constitution does not provide for my removal, you cannot remove me.

Let me beg and persuade the House to accept this recommendation. You can fine-tune it, but let us provide for it because legislation allows Parliament to add flesh to the Constitution. We are not setting up a constitutional office where you cannot remove someone. We just want to give guidelines, rules of natural justice and so on.

I beg to oppose the amendment.

Mr. Baiya: Mr. Chairman, Sir, I am persuaded and I withdraw the amendment.

(Mr. Baiya's amendment withdrawn)

Mr. Chairman: Hon. Baiya, could you move your amendment on Subclause 8 or you have withdrawn both?

Mr. Baiya: Yes, Mr. Chairman, Sir.

(Mr. Baiya's amendment withdrawn)

Mr. Chairman: Hon. Kioni, on the same Subclause 8(1)(a) and (b)?

Mr. Kioni: Mr. Chairman, I had intended to amend the clauses. After discussions with the Minister, we seem to concur that this be left as an administrative function. So, I withdraw.

(Mr. Kioni's amendments withdrawn)

Mr. Chairman: Hon. Kioni, the numbering can be done by the Secretariat. That is understandable, but what about the substantive amendments you are moving to 8(a) and (b)? Have you withdrawn them?

Mr. Kioni: Mr. Chairman, those are the ones I was referring to.

(Clause 9 as amended agreed to)

Clause 10

Mr. Mbadi: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 10 be amended Subclause (3) by deleting the word "budget" appearing after the words "subject to its approved" and substituting therefor the word "establishment".

Mr. Chairman, I would want the word "budget" to be deleted and replaced by "establishment. I want to read Clause 10(3) which states: "The employees of the Commission may be appointed subjected to its approved budget".

Mr. Chairman, Sir, I am urging this House to replace the word "budget" with "establishment" because one, the Constitution is very clear that all commissions should be given enough funds by Parliament to carry out their duties. Finally, we do not want a system where it would appear as if the Executive will control the activities of the Commission.

(Question of the amendment proposed)

Ms. Karua: Mr. Chairman, Sir, just to simply support, organizations employ according to their establishment. Even if you have a budget and you have not agreed on the number of people, you cannot employ. It is the correct language.

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

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

(Clause 10 as amended agreed to)

Clause 11

Mr. Kioni: Mr. Chairman, Sir, I beg to move:

THAT, Clause 11 of the Bill be amended by deleting subclause (3).

Mr. Chairman, Sir, the requirement that instructions can be given through Short Message Service (SMSs) is bound to be misused. I think it is important that instructions are given in a manner that we can follow.

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

Clause 12

Mr. Kioni: Mr. Chairman, Sir, I wish to withdraw the proposed amendment, again, because we had a discussion with the Minister and he was able to explain to me how it is covered in other areas.

(Mr. Kioni's amendment withdrawn)

(Clause 12 agreed to)

(Clauses 13 and 14 agreed to)

Clause 15

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 15 of the Bill be amended by deleting the word "Third" appearing in the clause and substituting therefor the word "Fourth".

Mr. Chairman, Sir, there is typographical error in reference to the Schedule. It is the wrong Schedule. If you look at the clause, it says "Third" Schedule, but it is actually "Fourth" Schedule.

(Question of the amendment proposed)

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

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

Mr. Chairman: Dr. Otichilo, you need to confirm that you have withdrawn your amendment?

Dr. Otichilo: Mr. Chairman, Sir, I have withdrawn the amendment, because the Minister has exactly done what I wanted to do.

(Dr. Otichilo's amendment withdrawn)

(Clause 15 as amended agreed to)

Clause 16

Mr. Kioni: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 16 of the Bill be amended in paragraph (b) by inserting the words "through the Treasury" after the words "given to the Commission".

Mr. Chairman, Sir, this is the provision that deals with grants, gifts, donations and other endowments given to the Commission. The reason is that if we are not careful, we may end up with commissions that are well funded by donors as opposed to our own Government. For that reason, loyalty would easily shift from us to those who are giving the money.

(Question of the amendment proposed)

Ms. Karua: Mr. Chairman, Sir, I stand to oppose the amendment. Once you have an independent commission and then you say any grant or donation has to be through the Treasury, you are actually trying to control them. There are a lot of things that the Commission does which are not directly related to the registration of voters or elections, like partnering for purposes of civic education and training. Our commissions over the years have partnered. That partnership has not been the cause of any problem. I think we ought to allow the Commission to receive. It could even be grants from a Kenyan corporation or from any other organization.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I want to persuade my good friend, hon. Kioni, that Article 250(3) of the Constitution makes this body a body corporate and independent. Similarly, Clause 12(1), which we have already passed also makes it a body corporate. The House should know that my Ministry has had enormous difficulties where we do not make a provision like this. In fact, the Committee of Experts ended up with donations coming from countries including Japan for civic education. The money was never released by the Treasury and even as we speak, the issue is still ongoing. Therefore, the Treasury has its own procedures that frustrate independent bodies. So long as these bodies are able and required by the Constitution to report to this House regularly and to His Excellency the President under Article 250, we have considered this and we recommend it.

I oppose the amendment.

Mr. Bahari: Mr. Chairman, Sir, I stand to oppose this amendment because in the Fourth Schedule of the Bill, there is the code of conduct for members and the employees of the Commission which among other things says:-

“Every member and employee of the Commission shall impartially and independently perform the functions of a member in good faith and without fear, favour or prejudice and without influence from---“

Because of that, I have no doubt that this has already been taken care of and my brother Kioni will be more than willing to withdraw this amendment.

Eng. Rege: Mr. Chairman, Sir, I oppose this amendment because if we allow this to happen, then it will be reciprocal in that the collections by this body would also have to go back to the Treasury. So, I oppose this. Otherwise, it will be set a very bad precedent for the rest of the institutions that we are planning to put in place.

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, while I can see the spirit of what hon. Kioni wants to achieve by making sure that all the money received, at least, is accounted for through the Treasury, if we put it as proposed, it could also be misused in that they cannot receive anything except from the Treasury. So, there is a misinterpretation issue. To the extent that the Bill is also obligating them that they must account for all the money received and pay and publish that in two newspapers, then whatever they receive will have to be public knowledge at the end of the financial year. So, I urge that perhaps he could withdraw it knowing that it is already captured elsewhere within the reporting mechanisms.

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

(Clause 16 agreed to)

(Clauses 17 and 18 agreed to)

Clause 19

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, now that the Salaries and Remuneration Commission Bill is coming after this, I beg to withdraw the amendment.

(Proposed amendment withdrawn)

Mr. Chairman: Hon. Mbadi, you probably have no relevance now, you also withdraw!

Mr. Mbadi: Mr. Chairman, Sir, it is fine. If the Salaries and Remuneration Commission will be in place, I withdraw the amendment.

(Mr. Mbadi's amendment withdrawn)

Mrs. Odhiambo-Mabona: In the spirit of Suba!

Mr. Chairman: Order, hon. Odhiambo-Mabona! This is the National Assembly of Kenya and not Suba National Assembly! Order!

(Clause 19 agreed to)

Clause 20

Mr. Konchella: Mr. Chairman, Sir, I beg move:-

THAT Clause 20 be amended by deleting Subclause (2) and substituting therefor the following- “(2)” The Commission shall present its estimates for consideration and approval by the National Assembly.”

Mr. Chairman, Sir, this is an independent entity which has got its own budget. Therefore, I do not see the reason why the Cabinet Secretary should bring these funds here for approval. I am glad the Minister has accepted this amendment on page 2436 of the Order Paper.

(Question of the amendment proposed)

Mr. Chairman: Yes, Minister for Justice, National Cohesion and Constitutional Affairs, do you welcome the amendment?

Yes, the Deputy Leader of the Government business hon. Kimunya.

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, it is important for Members to note that the Constitution only recognizes three arms that can present a Budget to Parliament under Article 221. These are the Executive, Judiciary and Parliament. But there is no provision in the Constitution for any of the other Commissions to table their budgets here. So, we can put it in a law, and then we will find a situation where their budget will not be funded. I would rather propose that we do not have this amendment, unless we change the Constitution to provide for the independent Commission to also table their Budgets to the House. There has to be another mechanism of how those budgets will actually come here, because Article 221 is very clear that Parliament, Judiciary, and Executive shall present their Budget and they will be harmonized by the Parliamentary Committees. There is no provision in the Constitution for an independent Commission to present their budget directly to the National Assembly.

Ms. Karua: Mr. Chairman, Sir, I just want to persuade my colleague, hon. Konchella, to withdraw the amendment. What happens is that even when Commissions are independent, there has to be a meeting point where people balance the national needs because the envelope is one. I do not think that this will undermine the Commission in any way. But it is necessary that there be a point where people meet, or Government agencies meet.

With those few remarks, I beg to oppose.

Mr. Ogindo: Mr. Chairman, Sir, I want to equally persuade my friend, hon. Konchella, to withdraw this amendment. I know the spirit of his amendment was to secure direct funding to the Commission without any frustration. However, the budgeting process has since changed. It is clearly in the hands of Parliament. Ahead of funds being budgeted, it will pass through Parliament as intended by the amendment.

So, I beg to oppose.

Mr. Chairman: It is important that you acquaint yourself as hon. Kimunya has said with the relevant provisions of the Constitution because we might just be debating something that is unconstitutional. Article 221 (1) of the Constitution says:-

“At least two months before the end of each financial year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of the revenue and expenditure of the national government for the next financial year to be tabled in the National Assembly.”

The Estimates referred to in Clause 1 shall include-

- (a) Estimates for Expenditure from the Equalisation Fund; and,
- (b) in the form and according to the procedure prescribed by an Act of Parliament.
- (3) The National Assembly shall consider the Estimates submitted under Clause 1,

together with the Estimates submitted by the Parliamentary Service Commission and the Chief Registrar of the Judiciary under Articles 127 and 173 of the Constitution respectively.”

Hon. Konchella, under those circumstances, it is only fair that you withdraw your amendment. There is a constitutional provision which does not allow anybody, other than the institutions mentioned therein, to table things in Parliament.

Mr. Konchella: Mr. Chairman, Sir, I am guided by the Constitution.

(Mr. Konchella's amendment withdrawn)

Mr. Chairman: Hon. Members, the same thing applies to hon. Mbadi's amendment. Just as Mr. Konchella did, please, withdraw your amendment.

Mr. Mbadi: Mr. Chairman, Sir, I grudgingly withdraw the amendment.

(Mr. Mbadi's amendment withdrawn)

(Clause 20 agreed to)

(Clauses 21, 22, 23 and 24 agreed to)

Clause 25

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 25 of the Bill be amended-

(a) in Subclause (1) by inserting the words “but shall observe the principle of public participation and the requirement for consultation with stakeholders” after the words “any person or authority”;

(b) by deleting Subclause (2); and

(c) by deleting Subclause (3).

Mr. Chairman, Sir, Clause 25(1) says as follows:-

“25. (1) Except as provided in the Constitution, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority.”

That is the way it should be, and it is what the Constitution provides. However, the Bill goes further to state that the Commission will be not be subject to direction from the officers mentioned therein.

Mr. Chairman, Sir, in view of the history of these Commissions, especially when it comes to independence, it will be very difficult for either a line Ministry, Parliament or any other individual to deal with them, if you specify that any state officer, any Government organ, any political party or any candidate---

(Question of the amendment proposed)

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

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

(Clause 25 as amended agreed to)

(Clause 26 agreed to)

Clause 27

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 27(a) be amended by deleting the phrase “its principal office” appearing in the Clause and substituting therefor the phrase “all its offices”.

Mr. Chairman, Sir, we have had situations where electoral commissions move polling stations without consultation. I have a complaint to this effect right now in my office. We want to make sure that the electoral body specifies to the public where these offices are throughout the country. It is a desirable thing for public participation.

I beg to move.

(Question of the amendment proposed)

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

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

(Clause 27 as amended agreed to)

(Clause 28 agreed to)

Clause 29

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 29(1) be amended by deleting the word “shall” appearing in the Subclause and substituting therefor the word “may”.

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

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

Mr. Chairman: Hon. Member, Eng. Gumbo has a further amendment to Clause 29. Go ahead and move the amendment, Eng. Gumbo!

Eng. Gumbo: Mr. Chairman, Sir, I beg to move:

THAT, Clause 29 of the Bill be amended by inserting the following new Subclause after Subclause(3)-

(4) Regulations proposed to be made under this Act shall be made only after a draft of the Regulations has been approved by the National Assembly.

This is a procedural amendment. I propose that as we have done with other Bills of appointing Commissions that regulations they make be brought here for approval. We did it with the CIC and we have also done it with the other commission. I request the Minister for Justice, National Cohesion and Constitutional Affairs that since this is procedural if we could include this clause in this amendment in the related Bills for related Commissions.

Mr. Gunda: On a point of order, Mr. Chairman, Sir. Mr. Abdikadir had an amendment with regard to Clause 28 unless it has been withdrawn.

Mr. Chairman: That amendment will be brought at the end.

(Question of the further amendment proposed)

Mr. Abdikadir: Mr. Chairman, Sir, the whole idea of having institutions do regulations is so, so that they do not have to come through Parliament for legislation. We get them tabled in the House after they are passed. If Parliament wants to pronounce itself, it can do so at the end. It will be cumbersome for the institutions to be required to submit their regulations beforehand. That is the whole idea of having them done by the institutions otherwise we would be making laws for---

Ms. Karua: Mr. Chairman, Sir, I just want to remind our colleague that currently we have a Committee on Delegated Legislation. If anybody makes delegated legislation that we do not like, we can upset it. So, there is no need for it to come here, but because it will be published and we have notice of it, if it contravenes any of the laws or it is not good for public policy, we would be able to intervene because Parliament has power. So, I urge Eng. Gumbo to reconsider that amendment.

I oppose.

Eng. Gumbo: Mr. Chairman, Sir, it is also good that as a House we are consistent because this is not the first time we are proposing an amendment. The intention is not really to control the Commission. The Commission's actions have far-reaching effects on Kenyans. What is really difficult in asking them to bring their regulations here for approval? I do not think there is a problem. We did it with the Commission on Implementation of the Constitution (CIC) and other commissions. It is just a procedure, really.

Mr. Baiya: On a point of order, Mr. Chairman, Sir. I think there is a misunderstanding by Eng. Gumbo. The point being pushed by Ms. Karua is that we do, in fact, have a procedure for tabling of subsidiary legislation or any regulations in this House. The purpose of tabling them is to give Parliament an opportunity where it wishes to intervene, to actually do so. So, that mechanism already exists and the Committee on Delegated Legislation is already proposing a Bill that will enhance that mechanism very effectively. So, is it in order for him to still insist that we do this in relation to this Act when generally, Parliament has already reserved those powers?

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

Mr. Kioni: Mr. Chairman, Sir, the proposal that I had made to amend Clause 29 is the same one that was made by the Minister and so, I wish to withdraw.

(Clause 29 as amended agreed to)

(Clause 30 agreed to)

Clause 31

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT clause 31 of the Bill be amended by-

- (a) re-numbering the existing provision as Subclause (1); and
- (b) inserting the following new Subclause after Subclause (1)-
(2) A person who immediately before the commencement of this Act was an officer of the former Electoral Commission shall, subject to the provisions of the Constitution, this Act and any other relevant law, be an officer of the Commission

(Question of the amendment proposed)

Mr. Kioni: Mr. Chairman, Sir, I think the Chairman of the Committee on Implementation of the Constitution should have been fair to read out the intended amendment because what it provides for is that a person who immediately before the commencement of this Act was an officer of the former Electoral Commission of Kenya (ECK) and the word used is "shall", subject to the provision of the Constitution and any other written law be an officer of the Commission. So, in essence, what we are doing is that we are transferring every Tom, Dick and Harry to this new Commission. We are not giving them an opportunity to even check and find out whether for the time they have

been in office, there are those who did not perform as expected. For that reason, I think it is important that the Commission also be given some leeway to deal with the officers who were there. We want a situation where we do not end up with the situation we had three years ago.

So, I have a problem with that proposed amendment and I wish to oppose it.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I want to support Mr. Kioni in what he has just said. I have said before and I would like to repeat here that we want an independent body. If we start by recruiting for it, we are automatically eroding that independence.

I want to very kindly persuade the Committee and my learned friend, the chair, to reconsider this and withdraw it. We want an independent body. The body will not be capricious; it will not remove people haphazardly; it will respect the law.

Mr. Konchella: Mr. Chairman, Sir, the concern of Mr. Kioni has been taken care of by the New Clause. His concern has actually been taken care of by my amendment.

Ms. Karua: Mr. Chairman, Sir, though we do not want to hire for that Commission we cannot also make it look like everybody will go out again. So, I am proposing an amendment to this amendment that Clause 31(2) should now read as follows:-

“by inserting the word “may” instead of “shall” between the word “commission” and “subject” so that it reads:-

“A person who immediately; before the commencement of this Act was an officer of the former Electoral Commission of Kenya may, subject to the provisions of the Constitution, and this Act and any other relevant law, be an officer of the Commission.”

Mr. Chairman: Ms. Karua, under the circumstances, you will have to write that and either you move it or the Minister does.

Mr. Abdikadir: While they are moving it can I give a bit of an explanation as to why---

Mr. Chairman: Order. You do not have the Floor.
Proceed.

Mr. Abdikadir: Mr. Chairman, Sir, the reason why we put this amendment in that fashion is because part of the mandate of the old Commission was to set up a proper secretariat. In moving to the new institution, we have transited quite a number of issues under the Bill. However, nothing had been mentioned about the staff. It is not to ensure that people get their jobs immediately. We are just looking at how we can transit.

Mr. Mbadi: Mr. Chairman, Sir, as Mr. Abdikadir says, we are transiting assets and liabilities, but we are not touching on the staff. It is important to observe that when the Act that set up the Interim Independent Electoral Commission of Kenya, one of the eight tasks that this House gave that Commission was to set up an efficient and effective secretariat. So, if we again give a loophole where all the staff can be retired, then we are going to be in a problem.

Finally, it is also important that we become responsive to the plight of other Kenyans. You will remember that we sent the whole former ECK home. If we again do it with this IIECK staff, then nobody will be willing to work for the electoral commission in future.

The Minister for Lands (Mr. Orenge): Mr. Chairman, Sir, I feel that the word “shall” used in that proposed amendment is not quite mandatory because of the way it is;

it says “subject to the provisions of this Constitution, this Act or any other relevant law”. This means it creates a basis upon which any officer can transit from the old Commission to the new Commission. There is a threshold on the part of the recruitment agency; if you just say “may” and you do not give a basis upon which a decision can be made or do not make it subject to the provisions in the Constitution or any other law, then it will look like the word “may” does not really subject the Commission to ensuring that nobody is punished for something that is not in the law. It is really about fairness; the way it has been crafted, it says “subject to”. So, it is not automatic and we need some basis for it.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, the amendment that I would like to propose is---

Mr. Chairman: Are you moving?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, Mr. Chairman. Mr. Chairman, Sir.

I beg to move:-

THAT, the amendment to Clause 31 be further amended by deleting the word “shall” in the second line and inserting inserting in place thereof the word “may”.

I think that will take care of the problem. It is an amendment to the amendment to Clause 31.

(Question of the further amendment proposed)

Ms. Karua: Mr. Chairman, Sir, I think now we are in a comfortable position, because we are talking of “subject to the Constitution and any other law”. The employment law has procedures as to how you can destabilize any person who is employed. So, there are enough safeguards to ensure that instability is not caused and any targeting is also not possible.

I beg to support.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Chairman, it is for the same reason that I support. This is because a commission might decide that they want to create employment for a few people, and then they disband the whole commission. I would like to support the amendment to the amendment.

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

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

Mr. Chairman: Hon. Mbadi, do you still wish to continue with your own amendment?

Mr. Mbadi: Yes, Mr. Chairman, Sir. I am proceeding with my amendment.

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

THAT, Clause 31 of the Bill be amended by-

(b) inserting the following new sub-clause as sub-clause (3)-

(3) A person who served as an officer of the former boundaries Commission shall be eligible, subject to the staff establishment of the employment, for employment by the Commission.

Mr. Chairman, Sir, my amendment, as it appears on the Order Paper, was in two parts. I have withdrawn the first two parts, that is parts 31(a) and b(2), and I have moved only part 31(b)(3).

Mr. Chairman, there are staff of the former or defunct boundaries commission and these people did a lot of work in the commission and they have the institutional memory of the so-called Ligale Commission. I think it will be fair that we give these people a chance to be in this new commission. The staff from the electoral commission will only have the institutional memory of electoral matters, but when it comes to boundary matters, these staff know them. If anything, they were not many.

Mr. Chairman: Hon. Mbadi, the presumption is that you could only move Clause 31(b) (3), but it has been overtaken by the provisions of this amendment.

Mr. Mbadi: No, Mr. Chairman. The first amendment is only dealing with the staff of the electoral commission, but I am dealing with an amendment to also consider those staff who were in the so-called Ligale Commission. Let me put it that simply, so that it can be understood; they should be given an opportunity to also serve in the new commission.

Mr. Chairman: Fair enough!

(Question of the amendment proposed)

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Chairman, Sir, I rise to support that amendment. I think it is a healthy and fair amendment, considering what we have done for the former Electoral Commission of Kenya staff.

Hon. Members: Put the Question!

The Assistant Minister for Industrialization (Mr. Muriithi): On a point of order, Mr. Chairman, Sir. Is it really in order for hon. Members to insist that you put the question, when half the House is trying to contribute?

Mr. Chairman: Fair enough! Your point of order is taken. Hon. Odhiambo-Mabona, proceed!

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, I wish to support the proposed amendment because we want to carry the same expertise from the Interim Independent Electoral Boundaries Commission to this new Commission.

(Loud consultations)

Mr. Chairman, Sir, I can hear the hon. Members encouraging me to propose an amendment by replacing the word “shall” with the word “may”. I think it is cosmetic because once you subject it to the Constitution and any other law that in itself, already makes it discretionary.

Mr. Chairman, Sir, despite being encouraged, I want to support it as it is because it will be merely cosmetic even if you put the word “may.”

Mr. Chairman: Eligible means “may” or “may not.”

Ms. Karua: Mr. Chairman, Sir, even when making laws, we should also be consistent in how we word them. Therefore, I am proposing an amendment to the amendment to sub-clause 3 of Clause 31, so that we substitute the word “shall” between the Commission and “be” with the word “may” to be consistent with the earlier clause.

I beg to move.

Mr. Ruto: Mr. Chairman, Sir, while I support the amendment, I still think it is a little bit weak, bearing in mind that we have actually transited the staff of the current Electoral Commission. We are forming an Electoral and Boundaries Commission. The transiting of staff from the former Boundaries Commission should be identical with that of the Electoral Commission. In this situation, we are using the word “shall”. We may use the word “may” but the word “eligible” makes it even weaker still. I would expect that we should transit them in a positive manner, just like the others. Remember, we are forming these commissions.

Mr. Chairman, Sir, I want to suggest that we delete the word “eligible.”

Mr. Lessonet: On a point of order, Mr. Chairman, Sir. I was just wondering where the staff of the Boundaries Commission are, considering the Mr. Ligale stopped working almost a year ago. They wound up a long time ago.

Mr. Chairman: Order, hon. Lessonet! They are there in Kenya. Eligibility does not mean that there is a functioning institution now.

Yes, hon. Chachu!

Mr. Chachu: Mr. Chairman, Sir, I oppose this amendment. This is an independent Commission. We have no powers to dictate to it or to control it. So, we should give it the necessary autonomy to do its work.

I oppose the amendment.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Chairman, Sir. Just for clarity, what amendment are we discussing? There was an amendment that was proposing “may”. Hon. Ruto has proposed another amendment to delete the word “eligible”.

Mr. Chairman: We are still debating the amendment that was moved by hon. Mbadi. We have to dispose of one amendment after the other. You cannot have a chain of amendments.

Ms. Karua: On a point of order, Mr. Chairman, Sir. When an amendment to the amendment is proposed, it is normally the amendment to the amendment that is disposed of first because if it is carried, then that becomes the amendment.

Mr. Chairman: That is now the amendment we are disposing of.

Ms. Karua: The amendment to the amendment!

Mr. Chairman: Order! This amendment is moved by hon. M. Kilonzo.

Ms. Karua: This is a new one that I have moved.

Mr. Chairman: Order, Hon. Karua! This amendment of yours was moved, if my memory serves me right, by none other than the Minister for Justice, National Cohesion and Constitutional Affairs.

Ms. Karua: Mr. Chairman, Sir, that is an earlier one. I think the Chair is tired.

Mr. Chairman: Hon. Karua, you have moved your amendment!

Ms. Karua: Yes, I have moved, Mr. Chairman, Sir.

Mr. Chairman: Has it been seconded?

Ms. Karua: Mr. Chairman, Sir, it was supported by hon. Mbadi.

Mr. Chairman: Can you move it again for clarity?

Ms. Karua: Mr. Chairman, Sir, I will once again move an amendment to the amendment to Clause 31 which was proposed by hon. Mbadi. I am merely deleting the word “shall” which is between the words “Commission” and “be” and substituting it with the word “may”, so that it reads that “the staff may be eligible” instead of making it mandatory. It is also for the sake of consistency of language because that is what we did to Clause 2 in the Minister’s amendment.

*(Question of the further amendment to
the amendment proposed)*

Dr. Eseli: Mr. Chairman, Sir, you had given me the Floor before the points of order came in. I would like to support the amendment to the amendment. It is very important that we realize that if we are talking about institutional memory, and we have kept on talking about it, it is not only carried by the Commissioners. It is also carried by the technical staff. It will be important that we also retain some technical staff who will be able to carry on the work, so that we do not have people coming in who might not have the memory of what should continue.

So, I support the amendment to the amendment.

The Minister for Lands (Mr. Orenge): Mr. Chairman, Sir, the amendment by hon. Karua, in my view, is just a comfort clause. Really, saying “may be eligible”, first of all, the word “eligible” does not mean that you necessarily qualify. If you look at Clause 10, which sets out who are going to be the staff of the Commission, there are no disqualifications for the members of the former Commission. So, if it is just a comfort clause, I have no problem, but essentially, it is not changing anything.

The Minister for Roads (Mr. Bett): Mr. Chairman, Sir, we have just passed an amendment to transit staff from the former Electoral Commission. Now we are looking for a clause to transit staff from the former Interim Independent Boundaries Commission.

Why are we reinventing the wheel? Why do we not use the same words which we used, or even better, “A person who immediately, before the commencement of this Act was an officer of the former Electoral Commission, or you add in the IIBRC, may, subject to that--- So, we bring in the IIBRC to that earlier amendment, or repeat that particular provision for the IIBRC.

Mr. Chairman: The provision which is proposed by the hon. Karua is exactly the same one that is essentially there.

The Minister for Roads (Mr. Bett): Mr. Chairman, Sir, I am prepared to amend hon. Mbadi and hon. Karua’s amendments, so that it ends that way.

Mr. Chairman: Fair enough! Under the circumstances, we have got to dispose of hon. Karua’s amendment then you can suggest another amendment.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Chairman, Sir, I rise to support the amendment of the amendment by the hon. Karua by the fact that that particular amendment of the amendment is consistent with the transitional clause of the Constitution, Article 28(2), which reads:-

“When members of the IEBC are selected, regard shall be had to the need for continuity and the retention of expertise and experience”.

Mr. Koech: Mr. Chairman, Sir, I would wish to support hon. Karua amendment, but there is one problem there that, when you use the word “ shall” and the word

“eligible”, when you combine the two it actually means “may”. So, if she wants to use “may” then it should be the Commission “may, subject to” So, we must delete the word “eligible”. Otherwise, we may intend to say “shall be eligible” and it still reads “may”. That is the real meaning of “shall be eligible.”

So, I hope my learned friend, will remove the word “eligible” and use the word “may” or remain with “shall be eligible” and it still means “may”.

The Minister of State for Public Service (Mr. Otieno): Mr. Chairman, Sir, hon. Mbadi is trying to preserve the employees of the former IIBRC. These officers had their terms terminated and they were paid off. When you bring them back as officers, you see we are preserving the IEBC, because they are still in office and the coming into effect of this Commission will find them in office. So, they will transit to the new Commission. The other ones were appointed specifically up to 27th November. We are going to bring them home after six or eight months and make them come and complicate the establishment here. They should apply normally like any other person to be brought into the new Commission.

Mr. Chairman: Order! Order! Hon. Karua will have a final clarification on this matter and then we dispose of it.

If the Chair gets it right, the import of this amendment is that these people have a right like any other Kenyans; they do not have to be victimized. So, it does not give them any special status when you say even “shall be eligible”.

Proceed, Ms. Karua. Nonetheless, the Chair would hesitate to be involved.

Ms. Karua: Mr. Chairman, Sir, I would just want to say that when we say they will be eligible it is not a literal carrying over. It is just opening for them to apply like other Kenyans. So, there is no way they will complicate the establishment as has been said by my colleague. Those hiring will consider all the relevant qualifications.

Mr. Mbadi: Mr. Chairman, Sir, the fears of hon. Otieno are taken care of because I talked of “subject to staff establishment”. The main reason as to why I brought this amendment is to also recognise the fact that those people have institutional memory wherever they are, even though they have gone home. As a country, we need that institutional memory in the new Commission. So, we should find a way of bringing that institutional memory back to the Commission.

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, I want us to be alive to the fact that we say time and again that Parliament does not legislate in vain. The Constitution is very clear. It has already provided for all these people. I recognise that fact. By us saying that they are eligible, we are basically saying that, like any other Kenyan, they are eligible. It is a superfluous provision we are putting in this law. Such a provision could provide for mischief for them to say: “Parliament recognises us. So, you should consider us, and not anybody or everyone else”.

Let us, first, close one chapter. Hon. Dalmas Otieno has explained very clearly. Their contracts were sorted out. They were paid. Let us only worry about the others. The amendment that has been proposed is actually superfluous. It does not add value to their case or to this law.

(Loud consultations)

Mr. Chairman: Order! Order, hon. Members!

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

(Clause 31 as amended agreed to)

(Clause 32 agreed to)

Clause 33

Mr. Konchella: Mr. Chairman, sir, I beg to move:-

THAT, Clause 33 be amended by inserting the following new sub-clauses after sub-clause (1)-

(1A) Two of the members of the first Commission, being one man and one woman, shall be drawn from among persons who were members of the former Boundaries Commission.

(1B) Two of the members of the first Commission, being one man and one woman, shall be drawn from among persons who were members of the former Electoral Commission.

Mr. Chairman, Sir, this amendment takes care of what we have been debating all along. If you look at page 2436 of the Order Paper, you will see that I have added a new clause to this amendment.

Mr. Chairman, Sir, I beg to move a further amendment as follows:-

THAT, the Bill be further amended by inserting the following new clause after Clause 33-

New Clause

“(1) One person who immediately before the appointment of the Chairperson and a Member of the Commission under Sub-Clause 4 of Section 7 was an officer of the former Electoral Commission may, subject to the Constitution, continue.”

(2) A person who ceases to hold office as a result of Section 1 shall be eligible, subject to the requirements of Article 232 of the Constitution, this Act, and any other law, for the employment by the Commission or for deployment in the Public Service.

Are you following me?

Hon. Members: No!

The Assistant Minister for Industrialization (Mr. Nderitu): Mr. Chairman, Sir, the hon. Member has moved what is essentially a new clause. My submission is that we dispense with the old clause because you have already ruled that the new clause should come at the end.

Mr. Chairman: Order! Mr. Konchella is amending Clause 33 and the amendment is there. Mr. Konchella, you have already moved the amendment to Clause 33. Could you argue it out then?

Mr. Konchella: Mr. Chairman, Sir, for the sake of institutional memory in accordance with the Sixth Schedule Section 28(2), when members of the Independent Electoral and Boundaries Commission (IEBC)---

Mr. Chairman: Which amendment are you moving?

Mr. Konchella: Mr. Chairman, Sir, its Clause 33. I was saying that two members each from the former Interim Independent Boundaries Review Commission (IIBRC) and the Interim Independent Electoral Commission (IIEC) should be recruited to the new Commission for the sake of institutional memory. This is in light of the spirit in the Third Schedule in Section 28(2) which allows for institutional memory and continuity in the Commission. That is what I have done.

(Question of the amendment proposed)

Mr. Mbadi: Mr. Chairman, Sir, I normally do not like opposing my friend, Mr. Konchella. However, I think this matter was extensively discussed in various consultative meetings. I remember when we were in Naivasha we asked ourselves who the two people we will take out are. This would be restricting this Commission because, there are nine members and we have already pre-determined how four of them are to be recruited. I think this is going too far. I just urge my colleague that this may not be a very necessary amendment. Let us leave the Bill as it is.

I oppose this amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, allow me to persuade my good friend, Mr. Konchella that this amendment will create a terrible bottleneck and may lead to enormous confusion. How will you pick the two members; supposing you find that there are three who are good? Therefore, I suggest to my good friend, Mr. Konchella, to look at the way we phrased the original Bill because he is learned. I think we have taken sufficient opportunity to make sure that you can still have institutional memory without completely locking out the four new members who already exist without showing us how we will eliminate the others.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Chairman, Sir, I normally do not oppose my brother. You also know my love for this great man, but I want to urge him to withdraw this amendment. As the Minister has said, this amendment will bring many problems. This is because we will limit this Commission to specific areas. I would very humbly urge him to withdraw this amendment.

The Assistant Minister for Public Works (Mr. Kiunjuri): On a point of order, Mr. Chairman, Sir. Is it in order for the “General” to really plead with the “Colonel” when he is supposed to issue a command?

(Laughter)

Mr. Chairman: Order, Mr. Kiunjuri! You do not realise the fact that the “Colonel” was in the Army before the “General” and the “Colonel” must have been more senior than the “General” at some stage.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): On a point of order, Mr. Chairman, Sir.

What is your point of order, Maj-Gen. Nkaisserry?

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry):
Mr. Chairman, Sir, I joined the military the same day with Mr. Konchella but he retired early to join politics and that is why he was never made General!

(Laughter)

Mr. Chairman: Mr. Konchella, are you withdrawing or should I proceed and put the Question?

Mr. Konchella: Mr. Chairman, Sir, with the indulgence of the Minister, the spirit of the Sixth Schedule says that when members of the Independent Electoral and Boundaries Commission are selected, there is actually need for continuity and retention of expertise and experience. If we are able to capture that in the spirit of the new Clause, then I am happy and I withdraw.

(Mr. Konchella's amendment to Clause 33 withdrawn)

(Clause 33 agreed to)

(Clause 34 agreed to)

New Clause 28A

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting a new clause after clause 28 as follows-

28A. (1) A member or employee of the Commission who knowingly subverts the process of free and fair elections or who knowingly obstructs the Commission in the discharge of its functions or otherwise interferes with the functions of the Commission commits an offence and is liable, on conviction, to a term of imprisonment not exceeding three years or to a fine of not more than one million shillings or to both.

(2) A person who is convicted of an offence under sub-section (1) shall not be eligible to hold public office for a period of ten years following the conviction.

Mr. Chairman, Sir, this New Clause creates an offence by the officer or Commissioners of the Commission in the event that they obstruct or in any way interfere with the discharge of the functions of the Commission. We give a lot of responsibility and a serious mandate to the members of this Commission whether they are Commissioners or officers. We have given them a lot of leeway to handle these matters and we will give them a lot of support in terms of assets and resources. So, we also need to hold them accountable.

Before now, members of this Commission could do anything they wanted and all that would happen is that elections would be declared null and void by the High Court. If there are going to be any sanctions, they will go to the Government because the funds will be paid by the Exchequer. We now want to hold them individually responsible for two reasons: First, if you have come to seek funding or money out of the Commission, you should know that if you joke around, that money will go. Secondly, if you come willingly wanting to obstruct or in any way interfere with the free running of free and fair elections, you will be individually responsible and you will be held personally liable.

I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Minister for Lands (Mr. Orengo): Mr. Chairman, Sir, I am very happy with this amendment because the current law that is in existence under the Election Offences Act, the procedure for prosecuting anybody found to have committed election offences is so cumbersome and without the consent of the Attorney-General, you cannot initiate any prosecution. In fact, in the last 20 years, I do not think there has been a prosecution by the Attorney-General. There has not been a single prosecution by the office of the Attorney-General under the Election Offences Act.

So, I am very happy that within this Act which is not caveated by the procedures in the Election Offences Act, the Commission officials or the commissioners can be held responsible and accountable for any offences that they may commit. I think this is a very good law.

Mr. Njuguna: Mr. Chairman, Sir, I also rise to support this very timely amendment. This is a very good deterrent to any election violator. Therefore, I fully support the amendment.

Ms. Karua: Mr. Chairman, Sir, I support the amendment. Many hon. Members spoke very strongly on this during the Second Reading. I want to say that we must consider as Members of Parliament also assigning personal responsibility to members of the public and to those of us in the political class when we pass our electoral law.

I beg to support.

Dr. Eseli: Mr. Chairman, Sir, I think for a long time the petitions that we have had in court and so on, you have always found that an electoral officer made a blunder and yet, they go scot free and the Member of Parliament or civic body ends up suffering. This has encouraged a culture of impunity among electoral officers. This kind of provision that the chairman of the CIOC has brought will limit that kind of impunity among officers who have been tasked with conducting elections.

There are many times that people have complained about what electoral officers have done and got away with it scot free. Next time they come back, they do the same thing and get away scot free and everybody is blamed except them. This will make them take responsibility for their actions and also for their individual actions.

I beg to support.

(Mr. Kioni sprinted across the Floor)

Ms. Karua: On a point of order, Mr. Chairman, Sir. Did you observe Mr. Kioni sprint across the Floor without bowing to the Chair? Is it in order?

Mr. Chairman: Order, Mr. Kioni!

(Mr. Kioni went back to the Bar and bowed to the Chair)

That is more like it.

The Minister for Lands (Mr. Orengo): Mr. Chairman, Sir, in fact, in parliaments of yore, the Chair would not have just warned the hon. Member. The Chair would have used the mace on him. But he is lucky that the mace is no longer an instant weapon, but a sign of dignity.

(Laughter)

Mr. Ogindo: On a point of order, Mr. Chairman, Sir. I intended to bring an amendment to this amendment and I am being locked out.

Mr. Chairman: You are locked out because even after being here for three good years you are not able to acquaint yourself with the basic rules of the House. When you want to make an amendment, you put it in writing and bring it in advance to the Chairman here, so that it can be approved. You do not wait until a debate is concluded.

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

(The New Clause 28 A was read a Second Time)

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

(New Clause 28(A) agreed to)

New Clause 33 A

Mr. Konchella: Mr. Chairman, Sir, I beg to move:

THAT, the Bill be amended by inserting the following new clause after clause 33-

33A (1) A person who immediately before the appointment of the chairperson and the members of the Commission under sub-section (4) of section 7 was an officer of the former Electoral Commission shall cease to be such officer.

I want to amend that by further saying “may subject to the Constitution continue”.

(2) A person who ceases to hold office as a result of sub-section (1) shall be eligible, subject to the requirements of Article 232 of the Constitution, this Act and any other law, for employment by the Commission or for re-deployment in the Public Service.

(3) A person who served as an officer of the former Boundaries Commission shall be eligible, subject to the requirements of Article 232 of the Constitution, this Act and any other law, for employment by the Commission.

Mr. Chairman, Sir, in other words, I am trying to insulate these people. Some will be deployed by the Government but they should be eligible for employment, because of the experience and expertise that they got when they were serving. Indeed, most of these members of staff, last week, held a very good election in Ikolomani; there was no problem in the polls. So, they did a good job.

Mr. Chairman: Hon. Konchella, are you sure that all that you are now moving as new amendments have not been taken care of by the amendments that have been disposed of?

Mr. Konchella: Mr. Chairman, indeed, this is why I was saying I had brought these amendments to take care of what the hon. Members were complaining about. So, if it has been captured, then I withdraw them.

(Proposed New Clause 33 A withdrawn)

Paragraph 1 of the First Schedule

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT, paragraph 1 of the First Schedule be amended by deleting subparagraph (1) and substituting therefor the following new subparagraphs-

- (1) Within fourteen days of the commencement of this Act, the President shall, in conjunction with the Prime Minister and with the approval of the National Assembly, appoint a Selection Panel comprising-
 - (a) Two persons, being one man and one woman, nominated by the President;
 - (b) Two persons, being one man and one woman, nominated by the Prime Minister;
 - (c) One person nominated by the Judicial Service Commission;
 - (d) One person nominated by the Kenya Anti-Corruption Advisory Board; and
 - (e) One person nominated by the Association of Professional Societies of East Africa

(1A) The respective nominating bodies under sub-paragraph (1) (c), (d) and (e) shall, for purposes of making their nominations, each propose and submit two names of nominees, being one man and one woman, to the Clerk of the National Assembly.

(1B) The National Assembly shall, upon receipt of the names of nominees, consider them and-

- (a) Approve one of the nominees; or
- (b) Reject both of the nominees.

(1C) The Clerk of the National Assembly shall notify the respective nominating bodies of the approval or rejection under sub-paragraph (1B)

(1D) If the National Assembly approves a nominee, the Clerk of the National Assembly shall forward the name of the nominee to the President and the President shall appoint the nominee as a member of the Selection Panel.

(1E) If the National Assembly rejects the names of both nominees submitted by a nominating body, the Clerk of the National Assembly shall request the nominating body to submit the names of new nominees to the National Assembly for consideration and sub-paragraphs (1A), (1B), (1C) and (1D) shall apply, with necessary modifications, to the consideration of the new nominees.

(1F) Subject to sub-paragraph (1G), whenever a vacancy arises in the Commission, the President shall, within twenty-one days of the vacancy, with the approval of the National Assembly, appoint a Selection Panel consisting of the persons listed in sub-paragraph (1) using, with necessary modifications, the procedure detailed in sub-paragraphs (1), (1A), (1B), (1C), (1D) and (1E).

(1G) After the first elections under the Constitution, the persons to be nominated under sub-paragraph (1) (b) shall be nominated by the President.

Mr. Chairman, the First Schedule deals with the appointing panel for the first commission. The Bill itself proposes that all the commissioners be nominated by the Executive, the Executive in this case being the President and the Prime Minister, and then those ladies and gentlemen that are nominated by the President form a panel which will then interview the ladies and gentlemen who will be the commissioners of the Interim Boundaries Electoral Commission (IEBC). Our view is that the appointment process for this particular commission is going to come under a lot of scrutiny, and is going to require a lot of goodwill from all the parties involved – all political parties and the nation at large.

So, we should have an inclusive employment process as much as possible, in terms of the concerned institutions; the Executive, Parliament, political parties, non-political actors in the country and the openness of the procedure. So, we have proposed a very elaborate process for the appointment panel. We are proposing to reduce the number in the panel from nine to seven. Out of the seven, since the Bill had proposed that all the nine be appointed by the Executive, we are saying only four out of the seven be proposals coming from the Executive. That is the President and the Prime Minister.

Mr. Chairman, Sir, in view of the recent history, in fact, the Committee felt that it would even go further and say that two should be proposed by the President and two by the Prime Minister, so that we do not have a deadlock on that side. The three that remain, we are proposing to bring in professional and other statutory bodies to propose the nominations. Then, all those people who are nominated for that panel come to Parliament for approval, so that Parliament also has a role in that process. Then, they do the interviews and the process of appointment in an open interviewing process, so that there is public participation. That generally is the proposal as far as our amendments to the First Schedule are concerned.

Mr. Chairman, Sir, they start with paragraph one, where we are amending to create paragraph 1(a), (b), (c), (d), (e), (f) and (g).

Mr. Chairman: Proceed and indicate all the way to the new paragraph in the First Schedule.

Mr. Abdikadir: Mr. Chairman, Sir, we propose that paragraph 1 of the First Schedule be amended by deleting sub-paragraph 1 and substituting therefor the following new sub-paragraphs-

(1) Within fourteen days of the commencement of this Act, the President shall, in consultation with the Prime Minister and with the approval of the National Assembly, appoint a Selection Panel---

That is the proposal. How that happens is then set out in subsections (a), (b), (c), (d) and (e) and then the creation of paragraph 1 (a), (b), (c) as it appears on the Order Paper.

Mr. Chairman: Hon. Abdikadir, did you talk about Paragraph 2 in the First Schedule? You have a new paragraph and a first schedule.

Mr. Abdikadir: Mr. Chairman, Sir, I have dealt with Paragraph 1. If you want me to go ahead and deal with paragraph 2, I can go ahead and propose the amendments that we have under Paragraph 2.

Mr. Chairman: Only Paragraph 1 for the time being.

Mr. Abdikadir: Mr. Chairman, Sir, I have dealt with the amendments that we have proposed in Paragraph 1.

Mr. Chairman: Unless there is a typographic error, the contents of the new paragraph in the First Schedule which you are reading now--- The content of what you are reading and what we have here are at variance.

Mr. Abdikadir: Mr. Chairman, Sir, it is on page 2430 of the Order Paper, the proposed amendments under the Committee. There are other hon. Members who have proposed amendments on that Schedule. Are you there?

Mr. Chairman: Yes, we are here. It goes all the way to page 2432.

Mr. Abdikadir: Mr. Chairman, Sir, those are all the amendments that deal with the First Schedule, but I have just talked about Paragraph 1 of the First Schedule. Are we set? It deals with the panel.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I fully welcome any attempt to make this selection panel as comprehensive as possible. I want to salute the Committee but, unfortunately, there is no provision here for quorum. It seems to suggest that all of them ought to be there. I was going to suggest that we include a provision for a quorum so that in case one of the nominating bodies is either delayed or somebody resigns or dies, then the body is not tied down.

Mr. Chairman, Sir, otherwise, I support this approach.

Thank you.

Mr. Ruto: Mr. Chairman, Sir, having looked at this proposed amendment, I beg to oppose it for a few reasons. First of all, we have a background to this. In December, there was some serious discussion on this matter and there was a proposal by the then

Committee on Justice and Legal Affairs that the selection panel ought to consist of persons nominated by the stakeholders in the political field, which are essentially political parties. The current proposal concentrates more than half of the nominees in the hands of the contenders for the Office of the President. In the subsequent elections, only one person will be appointing half of that panel. I find this portending something a little bit dangerous for this nation. It may take us back to where we were. Also, we have brought in institutions that are supposed to provide oversight in other areas, for example, the Kenya Anti-Corruption Advisory Board nominating some members of the panel.

I would be more comfortable with the proposal by hon. Kioni, which generally agrees with the earlier agreement that was arrived at in December by this House as tabled by the Committee on Justice and Legal Affairs and passed by the House and also the various agreements and discussions by the stakeholders, including in Naivasha in which a number of us participated. This is a completely new invention in which we are asking non-players to give us a panel. We are not talking about the Commissioners. We are talking about a panel. Really, what is so bad about the political parties through this House appointing a panel? They will agree because there are two sides, namely, the PNU and the ODM. They can nominate four. I do not like where hon. Orengo is involved, but I am more comfortable going that route than inviting KACC.

We are actually abdicating our responsibility to appoint a mere panel. I really wish to oppose this and I will support the amendment later on, proposed by hon. Kioni, which is in line with further deliberations which we agreed on in December because there was a stalemate then.

[Mr. Chairman left the Chair]

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

The Assistant Minister for Tourism (Ms. Mbarire): Madam Temporary Deputy Chairperson, I rise to support the amendment by the CIOC. The wisdom that guided the Committee to come up with this amendment was that we have seen what squabbles at the political parties' level have done to the implementation process. It is clear to me that if we do what is being proposed, for example, by hon. Kioni, we will be bringing the same squabbles of political parties into this panel and for sure, we will never get this Commission in place. I beg, hon. Members, let us just leave it to independent bodies that do not have any political affiliations and let this process go on. Let us not allow problems that are emanating from political parties to find their way into the panel. I want to repeat here that we know what is happening in our political parties. For example, if you ask the PNU to give two names, we have problems. The PNU has too many parties inside it and we will never agree.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairperson, while I support in principle the amendment by hon. Abdikadir and without anticipating debate on the subsequent amendment coming, looking at paragraph one, the amendments that are proposed, especially, "d" one person nominated by the Kenya Anti-Corruption Advisory Board; I have a problem with that. This is because the Economic Crimes Act that sets up the Kenya Anti Corruption Advisory Board sets out a very clear

mandate of what the Board is supposed to do in terms of dealing with the Kenya Anti-Corruption Commission.

If the spirit of this is to vet people for the integrity, then, perhaps, the route we should be going is that all these candidates will be cleared by the KACC for their integrity. But the Board in itself by nominating anyone to come in, it is not vetting the nominees; it is well bringing in somebody to vet. I would propose that we consider bringing an amendment to that. I would like to say that instead of the Kenya Anti Corruption Board, perhaps, we should replace that with the Public Service Commission (PSC) because of the expertise in recruitment, so that we have the JSC, PSC, and the Association of the Professional Societies, plus the other nominees by the President and the Prime Minister. All these are going to be vetted anyway for their integrity. If that is agreeable, then I can craft the amendment to replace the Kenya Anti-Corruption Advisory Board with the Public Service Commission.

Dr. Eseli: On a point of order, Madam Temporary Deputy Speaker.

Is the Minister in order to suggest that we allow the PSC to sit on this panel, and yet, this same PSC is responsible for the skewed employment in all Ministries? Are we sure that they will be able to do a good job here?

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairperson, I think we are legislating here in good faith.

The Constitution itself has created a PSC. Do not look at the people in the current PSC or the past PSC as an indicator for the future. We are creating a law not just for today, but for the future. We are renewing all these bodies. The PSC is already involved in the recruitment of other panels. So, I would like to urge that we look at the institution and not the people. If the PSC has a problem, we need to clean it. But by going to the Kenya Anti-Corruption Advisory Board whose job is separate, then we are actually importing something. I would like to urge the Chairman of the CIOC to reconsider and we move the necessary amendment.

Mr. Lessonet: Madam Temporary Deputy Chairperson, I stand here to support the amendment by hon. Abdikadir.

Madam Temporary Deputy Chair, I want to take note of the fact that after this initial appointment, in the next appointment, four members of this Panel shall be appointed by the President. Imagine four of them out of seven will have been appointed by one person, that is after the position of Prime Minister has ceased to exist.

I wish the Committee or the Minister can allow that the President and the Prime Minister for now be just allowed to make one appointment each, so that the next appointment after this---

The Temporary Deputy Chairperson (Dr. Laboso): Are you proposing an amendment hon. Lessonet?

Mr. Lessonet: Yes. I want to propose an amendment to the amendment to say "one by the President, one by the Prime Minister--"

The Temporary Deputy Chairperson (Dr. Laboso): Please, if it is an amendment, write it down on paper and bring it to the Table.

Mr. Lessonet: Madam Temporary Chairlady, let me write it down and bring it.

Mr. George Nyamweya: Madam Temporary Deputy Chairlady, it is important for us to look back to where we are coming from. If you recall, the reason as to why we had to invite Krieger, Kofi Annan and others was precisely because there was a very

strong feeling that one person, who was a player in the very exercise we were preparing for, had the opportunity to make all the appointments of the Commission members. We must go back to that one and understand that we must move away from there. It is because of that reason that I find it very difficult in this transition period to support a situation where we are giving two slots to the President and two slots to the Prime Minister, yet these are players like ourselves in the political field.

I would want to move away from that since we are all participants; the next elections will require that all of us be comfortable with the method used to pick the Commissioners of the election body and the process of managing the elections. Hon. Members will remember that the other day we had a problem when deciding whether there had been sufficient consultations, or whether there had been consultations at all, yet that was between two individuals in high offices.

Madam Temporary Deputy Chairlady, I would want to urge that we look at an amendment which involves the political parties and other players, so that we can have a broad consensus.

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

[Mr. Chairman resumed the Chair]

Mr. Ochieng: On a point of order, Mr. Chairman, Sir. Is hon. George Nyamweya moving an amendment to an amendment? If he is doing so, has he submitted any written amendment to the Chair?

Mr. Chairman: Mr. George Nyamweya, is it, indeed, true that you are moving an amendment to an amendment?

Mr. George Nyamweya: Mr. Chairman, Sir, I am opposing the amendment by the Committee. Am I not entitled to oppose it and give reasons for doing so? I may, at the end of my opposition, submit an amendment, but I am entitled to a bit of space.

Mr. Chairman: Mr. George Nyamweya, you are, indeed, entitled. Please, proceed.

Mr. George Nyamweya: Mr. Chairman, Sir, I am opposing the amendment for the reasons I have given.

Mr. Koech: On a point of order, Mr. Chairman, Sir. You notice that we seem to be moving forward and backward. I can see that we already have three proposed amendments to the Schedule. Would I be in order to suggest that we look at the three amendments that have already been proposed to this Schedule, so that we consider one? I have looked at the amendment proposed by hon. Konchela, and it is very clear that the majority of us would want to support it.

Mr. George Nyamweya: Mr. Chairman, Sir, can I then conclude?

Mr. Chairman: Order, hon. George Nyamweya. You do not sit down and then stand up again. You sat down on your own.

Mr. George Nyamweya: Mr. Chairman, Sir, I gave way to hon. Koech to raise a point of order.

Mr. Chairman: The point of order was determined and disposed of.

Mr. George Nyamweya: Mr. Chairman, Sir, if you feel that that is how we should manage our affairs, I will oblige.

Mr. Chairman: Order, Mr. George Nyamweya! You seem to forget that you sat down on your own. The Chair is not prepared to engage in a see-saw with you.

Hon. Martha Karua, please, proceed.

Ms. Karua: Mr. Chairman, Sir, I rise to support the amendment. Echoing the words of hon. Mbarire, I want to say that Kenya is more than political parties represented in Parliament. The Constitution that we passed gives the public the right to participate in all the processes. The proposed amendment is bringing in that participation. Yes, it is sharing selection between the President and the Prime Minister, which would have happened anyway even if we retained the old version. This is because the Constitution says that wherever the President is mentioned before the next general election, it is in consultation with the Prime Minister.

So, to avoid any problem, they are each allowed to nominate two people. The other three nominees will represent all other Kenyans. Even if we had six nominees for Parliament, they would never be enough for the political parties represented here, and we are not the only Kenyans. I want to plead with hon. Members. There is a Clause which hon. Abdikadir read. The interviews for these appointments will be conducted in public. If you look at the main Act, it says that it will be through competitive recruitment process. Therefore, we shall be able to monitor the process. I want to plead with hon. Members to realise that for once, we, the political class, are the ones who brought Kenya to her knees. We now need participation of the public, so that they, too, can be part of this process. In the political class, what we do best is just doing the wrong things, avoiding responsibility and accusing each other. I want to plead that we let this process which was carefully discussed by the Committee remain.

Mr. Chairman, Sir, I beg to support.

Mr. Bahari: Mr. Chairman, Sir, I want to support the principle of inclusiveness that is being proposed by the Committee. However, I am a little bit worried as other hon. Members have said that we are giving a lot of leeway to the President and the Prime Minister and running away from political parties. I think political parties, as institutions, will be more representative than the President and the Prime Minister. If there is a struggle or some competition within the panel, certainly that is also represented by a proposal of names forwarded by the President and the Prime Minister. I do not see how that solves the problem. Therefore, I think it is necessary that we do not avoid the political parties.

Mr. Kioni: Mr. Chairman, Sir, as we look at this issue on the composition of this panel, it is important that we remain awake to the difficulties that we had in 2007 and before and how we got there. One of the accusations that were leveled was that nominations were done by an interested party. What we have in the proposed amendment by the Committee, by and large entrenches the same argument that we have been trying to run away from.

We appreciate the desire to ensure that there is no stalemate when we talk about consultations, concurrence and all that we have tried to push for on this Floor. However, it is stated that two persons shall be appointed by the President - one a woman and one a man - and the other one by the Prime Minister. We have gone ahead to say that the Judicial Service Commission shall appoint one person, the KACC Advisory Board - one

person and APSEA shall also appoint another person. It beats logic how the requirements of the Constitution or Article 254 will be fulfilled. This is because these appointments are being done by bodies that are independent of each other.

How will they ensure that we have taken care of the provisions of Article 254 which say that the composition of the Commission shall reflect the regional and ethnic diversity of the people of Kenya? These persons are being appointed from different offices. We may end up with people from the same region serving in this panel and that will be the beginning of a disaster in this country. While the intention to spread this far and wide is good, if we have to go through this route, I propose an amendment which is that we allow the whole panel to be appointed by the Judicial Service Commission so that, at least, they can make sure that the requirements of the Constitution are fulfilled.

Mr. Chairman, Sir, at the same time, we should remove the participation of a person who has an interest. This time we may be complaining about the Prime Minister because he is in office and he has an opportunity to run next year, but in 2017 there will be another person in office who will also be interested in running for another term. We will, therefore, continue with these problems unless we agree to remove the office of the presidency from this process.

Mr. Chairman, Sir, I beg to move an amendment to this amendment:-

THAT, Paragraph 1 of the First Schedule be further amended by deleting the words after the words “commencement of this Act” and substituting thereof with the words, “the Judicial Service Commission shall select a selection panel comprising of eight persons and a chairperson. The amendment that I want to propose on the amendment---

Mrs. Odhiambo-Mabona: On a point of order, Mr. Chairman, Sir. Just for clarity, because we are dealing with a very important decision of coming up with a panel that would select the Commissioners; I have just heard Mr. Kioni moving a further amendment but on the Order Paper he has another amendment. We need to be clear about how we are moving. Is he moving an amendment in the Order Paper or he is withdrawing it? Is he moving an amendment to this one which is also substantive? There is an order that we move in, and we need to be clear on the order that we are taking.

Mr. Kioni: Mr. Chairman, Sir, I am entitled to speak on this amendment and I think Mrs. Odhiambo-Mabona needs to be a little bit patient. I was moving an amendment on the amendment. When we come to my amendment, we will stick to it but whether I will continue with it after having dealt with this one will be decided in the next phase. I was proposing an amendment to the amendment which you wanted me to go over again. If you are still of the same view, I would want to do the same.

Mr. Chairman: The procedure is that you first of all do it in writing and give it to the Chair.

Mr. Kioni: It is in writing and here it is.

(Mr. Kioni handed over the written amendment to the Chair)

Mr. Chairman: You better sign it first.

(Mr. Kioni signed the amendment)

Mr. Chairman: Proceed now. You can move your amendment. Your signature is strange. But nonetheless, go ahead and move it.

Mr. Kioni: Mr. Chairman, Sir, that amounts to my signature but I ask that you allow me to use the same. Mr. Sialai can confirm that that is how I sign. It would be difficult for you to deal with it in any other way.

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

THAT, paragraph 1 of the First Schedule be further amended by deleting the word after the words “commencement of this Act” and substituting thereof with the words “Judicial Service Commission shall select a selection panel comprising of eight persons and a chairperson”.

The Minister for Energy (Mr. Murungi): Mr. Chairman, Sir, I would like to second the amendment to the amendment by Mr. Kioni.

The whole purpose of this panel is to ensure that we have an independent, non-partisan panel which will enable us to pick independent members of the Independent Electoral and Boundaries Commission (IEC). I have tremendous respect for His Excellency the President and the Right Hon. Prime Minister but these are politicians and they have political interests. The President is the party leader of the Party of National Unity (PNU) and the Right Hon. Prime Minister is the party leader of the Orange Democratic Movement (ODM). If we want a neutral body, it would be good for us to remove politicians from nominating their own people in that panel.

Mr. Chairman, Sir, what criteria will the President use to nominate the two people? What criteria will the Prime Minister use to nominate the two people?

It is true that they will nominate one man and one woman. They will nominate people who support them politically. Those nominees will represent whose interests in the selection of the members of the Independent Electoral and Boundaries Commission of Kenya (IEBCK)?

So, the IEBCK that we want to appoint will be compromised from the start. It is for this reason that I support this amendment which has been proposed by Mr. Kioni that the members of the Judicial Service Commission (JSC) appoint or assist in the selection of the panel which will later on advertise and interview the members of the proposed IEBCK. I think it is a very good proposal. I am doing this with tremendous respect. I think it will also remove the confusion of bringing in a body like the Kenya Anti-Corruption Commission Advisory Board to it.

If the members of that panel act corruptly, they will end up at the Kenya Anti-Corruption Commission (KACC). So we do not want to bring such an oversight body into the nominations. I think this is a very good proposal. We had not discussed it, but wisdom can come at any hour. It is a very wise and sound proposal. I would urge all my colleagues to support it.

I second the amendment.

Mr. Chairman: Mr. Kioni, you moved an amendment here, but you have to clarify your amendment. I do not think you have adequately clarified. It says:- “Paragraph 1 of the First Schedule be further amended by deleting after the words “commencement of this Act.”

You have to say whether you are going all the way down to “e” and deleting it all. If you have to do that then also 1(a) on the next page has a relevance to that too. Clearly,

all the way to 1(g) there is a lot. So, you do not seem to have worked hard enough on your amendments. I have to approve this, and because I am approving it while you are moving it, I should have had enough time to reject it in the first place. So, can you say something?

Mr. Kioni: Mr. Chairman, Sir, I am certain that you are not withdrawing your approval. What I intended to amend is the amendment proposed by the CIOC as is contained on page 2430, that is 1(a) to (e). I want it amended by deleting 1(a) to (e) and substituting that whole selection of the panel to be done by the Judicial Service Commission (JSC) with the approval of the Chair.

Mr. Chairman: What is the effect after that on 1(a), (b) (c) (d) all the way to 1(g)?

Mr. Kioni: Mr. Chairman, Sir, the effect of it is that we now will not be having two persons appointed by either the President or the Prime Minister.

Mr. Chairman: That is consequential. So, can you then address it or maybe you need more time to do your work?

Mr. Kioni: It actually amounts to deleting (a) to (e). I will then need to work on Page 2431 because you note that it will be difficult for me to work on it while I am on my feet. That amendment should inform all the other---

Mr. Chairman: Maybe what you need to do is to oppose the amendment as moved by hon. Abdikadir, but then you work on your amendment properly. Do a proper job. Hon. Orengo, that amendment has been rejected and so you do not have to talk on it.

The Minister for Lands (Mr. Orengo): Yes, Mr. Chairman.

Mr. Chairman: The hon. Minister has given a notice of an amendment which has been approved by the Chairman.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I would prefer to see the outcome of the proposals by hon. Kioni because they are quite persuasive. I am worried that if we use the existing procedure, this question of regional balance and so on and so on, will become very difficult because each body will nominate their own and you will have no way of monitoring how they will be nominating, and we might end up with a--- So, I was thinking that hon. Kioni be allowed to polish what he is proposing, so that we have a central body, subject to approval by Parliament. This will reflect the spirit of the Constitution.

Ms. Karua: Mr. Chairman, I rise to oppose the amendment for the simple reason that we are running away from over concentration of power. Even the Judicial Service Commission (JSC) is not made up of angels. When you over concentrate powers, and give them the right to determine who conducts elections in Kenya, that is the beginning of evil because power corrupts, and absolute power corrupts absolutely. I agree with those who want to remove any political manipulation in the process and, therefore, want to delete the participation of both principals in the selection. But we need to diversify. If it is a body nominating, the JSC can be given two, if at all. Whichever three or four bodies we choose, we can distribute the seven people to reputable bodies. The Association of Professional Societies in East Africa is the umbrella body for all professions. It has more than 20 professions in it. It is representative of the Kenyan professional societies. If it is given three members--- If we put a clause, and my amendment is drafted, which tells them to observe gender, regional and ethnic diversity

as it is written in other sections of the Constitution, then we will be on a better and safer path than when we give the chance to one body like the JSC.

Mr. Chairman, the second reason why I am opposing is that when you give the chance to the JSC to nominate everyone, you then undermine the authority of the court that will hear disputes. It is a creature exclusively of the JSC; we are destroying the impartiality of the court that will hear the matter. Remember the Chief Justice is the chair of the JSC. But if they merely nominate one or two of the panel of seven, then their impartiality will not be destroyed. I urge hon. Members that, let us not be in a hurry to do something that may be counterproductive. Let us balance. I can see there are genuine efforts by the House to come up with a good mix, but let us weigh so that that mix is not wrong.

I beg to oppose.

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Speaker, Sir. I rise on a point of order to just say that we have so many amendments that are currently on. We are debating them even before they have been moved; I would like to urge that we move in a systematic way. I know people are getting tired, but let us move in a systematic way, so that we know which amendment we are talking on. More importantly, even as we bring these amendments, I would like to urge that we also respect that the new Constitution is very clear on the separation of powers between the organs of Government. I would hate a situation where we now go to court on an electoral petition, saying that the Commissioner did something else, and the people we will be appearing before is a judge who sat in the Judicial Service Commission, that appointed a panel that appointed Commissioners. So, there are some issues that we need to look at so that we do not create monsters as we run away from own issues. Let us, first of all, clarify which amendment we are on and then move on systematically.

Mr. Chairman: Fair enough! Order, hon. Members! This business of trying to prepare amendments while you are on the Floor of the House--- While debating other amendments, you think of something else, and then flood this place with many pieces of papers where you write some very hasty amendments; ideally this is not how it is supposed to be. You are supposed to do your work very well and bring these amendments to the Clerk's office and subsequently to the Speaker's Office or the Deputy Speaker's Office for them to be approved. The only amendment we have which has been properly brought here is the one by hon. Abdikadir. I have too many amendments coming here. It is only fair that we dispose of this amendment first.

We are debating hon. Abdikadir's amendment. Do we have hon. Members to support or reject it?

Hon. Oyongo-Nyamweya, proceed!

Mr. Oyongo Nyamweya: Mr. Chairman, Sir, what is happening here is that we are running away from political responsibility as a nation and Parliamentarians. The purpose of selecting those people is to supervise the Commissioners. If we, as politicians, do not put input or agree on the Commissioners, when something wrong happens, we will blame those people. So, let us take responsibility. Responsibility lies with the political parties. If we say that we have two Principals, they are going to make a decision on behalf of their political parties. The President will come with two names. The Prime Minister will come with two names and other professionals will nominate theirs. If we do not take that course then, let us take the initial political strength in Parliament, so that the

people who are selected to vet the Commissioners are men and women that Members of Parliament will agree with.

Mr. Chairman: Hon. Oyongo-Nyamweya, if you read the Bill very well, it ends in Parliament again, unless you are amending that.

Yes, hon. Wetangula!

Mr. Wetangula: Mr. Chairman, Sir, I want to persuade my learned friend, hon. Abdikadir, that he does consider the views that have been expressed by hon. Karua, and amend Paragraph 1. Then, there will be consequential amendments to the next by deleting all those bodies and persons indicated and substituting them with the Public Service Commission and the Association of Professional Societies of East Africa (APSEA). That is because APSEA encompasses all professional bodies in this country. The Public Service Commission is the custodian of public recruitment, so, they can assist us in recruiting. If we talk of political parties, that is where we have come from. It is the political parties that used to nominate.

So, I would want to urge hon. Abdikadir to consider recasting this amendment, so that it captures those two; the Public Service Commission and the APSEA.

The Minister for Lands (Mr. Orengo): Mr. Chairman, Sir, I am not in agreement that the Public Service Commission is necessarily a better organ than the Judicial Service Commission. It has not been appointed or vetted in accordance with this Constitution. We cannot run away from political responsibility. We are stakeholders in the process. At the end of the day, whatever we do, we must realize that in as much as we want to take the President and the Prime Minister away from this process, they are major stakeholders because if, really, we can talk about the persons who are given some form of mandate nationally, then it is the President and the Prime Minister. But I am not saying that the President and the Prime Minister must be there. I stand to be well guided, but to run away from responsibility and say that they cannot have a role to play and yet some judge who by being simply a member of the Judicial Service Commission would be entitled to have a role to play in this selection panel, I do not think we will be doing justice to this process.

The most important consideration which I think really finds favour with me and I support what hon. Karua was saying is about ownership. Kenyans want a process in which they can say; this body that has been appointed was through a process that we had confidence in and at the end of the appointment, there is an element of ownership. Mark you, the proposal by hon. Abdikadir is fair in the sense that after all is done, then Parliament has a final say. They will look at every nomination and approve or not approve. If Parliament does not approve, then the President shall not appoint.

This is not something new. The template that is used here is the template that was used with the Judicial Service Commission. We may not agree with the appointees, but I think this is the correct way to move.

Mr. Chairman: Order, Members! We still do not have an amendment to the amendment. We are debating hon. Abdikadir's amendment. You either oppose or support it. So, did you support it?

The Minister for Lands (Mr. Orengo): Mr. Chairman, Sir, I was supporting hon. Abdikadir's amendment.

Mr. Chairman: Let us get clear on that. Hon. Shebesh!

Mrs. Shebesh: Mr. Chairman, Sir, I want to support this amendment, first because I am a Member of this Committee and secondly because I think we like to play hide and seek and pretend that we do not know where we are coming from and where we are going. The inclusion of the President and the Prime Minister which is irritating everybody could easily for me be political parties. I actually was for political parties because this process of elections is not for electing a Pope. It is for electing a President of this country who must come from a political party. But because we like hiding behind issues and we never want to face things directly, we then have compromised to say that the two persons come from the President and the Prime Minister.

Mr. Chairman, Sir, the problem here is that we have lost the real meaning of political parties. If we had strengthened political parties who remained faithful to the Political Parties Act, we would not be having political parties that are eating their own children and adopting the children of their neighbour. That is the problem we are having here. I support this because even if we go around for ten years, we will not get out of the fact that this is a political process.

I support.

Mr. Chairman: Order, hon. Members! I have only one valid amendment in the sense that it meets the threshold of an amendment and is the one being moved by hon. Lessonet.

Can you move your amendment to an amendment, so that we can dispose it of?

Mr. Lessonet: Mr. Chairman, Sir, I want to move an amendment to the amendment to delete “one person being one man and one woman” in 1(a) and 1(b) and replacing with “one person” and also deleting the (1) in 1(c) and 1(e) and replacing in either case with (2).

Mr. Chairman: Can you start all over? I thought you said “deleting (1) and replacing with (1). How can you delete (1) and replace it with (1)? Can you start from the beginning?

Mr. Lessonet: Mr. Chairman, Sir, I want to move an amendment to this amendment by deleting in 1(a) and 1(b) “two persons being one man and one woman” in either case and replacing with “one person” and in 1(c) and 1(e), deleting (1) in either case and replacing with (2).

That is the amendment that I want to move, so that after that has been passed, we shall have two persons nominated by the Judicial Service Commission, two persons nominated by the Association of Professional Societies of East Africa, one person nominated by the President and one person nominated by the Prime Minister. It means that in the second appointment of the panel, the President shall be appointing two out of the seven. So, that is the amendment.

I have indicated that of the other two, we take one, so that the JSC will be appointing two. The Association of Professional Societies of East Africa will also be appointing two. So, that is the amendment.

Mr. Chairman: Why does the President again appoint two? Why does the other one come from?

Mr. Lessonet: When you go page 2431, you will realize under IG, where it says after the first election under the Constitution, the persons to be nominated under subparagraph (1B), that means the ones appointed by the Prime Minister, shall now be by the

President. That is in the second review. So, the President will be appointing two instead of four.

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Chairman, Sir. I think there is still something wrong with that amendment. If you read (IA) and (IB) on page 2431, then that amendment does not deal with---

Mr. Chairman: It is page 2430.

The Minister for Lands (Mr. Orengo): I know the amendment is from page 2430, but the amendment that he is making does not say anything about (IA) and (IB) which would then put that amendment into a lot of difficulties. It says after the nominations, Parliament shall consider and approve one of the nominees or reject both nominees. If you look at (IA) and (IB), it cannot co-exist with the amendment.

Mr. Chairman: Order! All said and done the only validly moved amendment is the one moved by hon. Abdikadir. Under the circumstances, I will just put a question on that.

Mr. Lessonet: Mr. Chairman, Sir, I have already moved my amendment.

Mr. Chairman: Your amendment is invalid because it only takes into consideration a small part of the whole thing.

Mr. Lessonet: Mr. Chairman, Sir, hon. Orengo can only cure it by moving a further amendment to it.

Mr. Ruto: On a point of order, Mr. Chairman, Sir. As evidenced, there are serious disagreements on this particular section. I do not know whether we really intend to steam roll this particular amendment.

Mr. Mbadi: On a point of order, Mr. Chairman, Sir. I was just pleading with my colleagues that before we effect hurried amendments, we must take into consideration the fact that these amendments were considered extensively by the Committee. On the amendment by hon. Lessonet, we must be very categorical when we provide for two nominees by the President and two nominees by the Prime Minister; that one must be a woman and one must be a man. If we bring on board paragraphs (c) and (d) without specifying that one should be of either gender, we will be negating what we discussed. We have taken care of the issue of regional representation by insisting that each nominating body will submit two names, and not one. Instead of submitting one nominee, the Judicial Service Commission will submit two nominees, so that Parliament will consider those names and consider regional balance and gender and forward the names. So, this amendment was well thought out. If we hurry to make amendments to this amendment, we will dilute, and even negate, it.

Mr. Kioni: On a point of order, Mr. Chairman, Sir. I am seeking your guidance. The amendment we are now discussing is the one that has been proposed by the Constitution Implementation Oversight Commission, through the Chair. I have also proposed an amendment to the same First Schedule.

Mr. Chairman: In the circumstances, we need to dispose of these amendments as they come up.

Mr. Kioni: Mr. Chairman, Sir, that is the guidance I am looking for. What will this mean to the other proposed amendments?

Mr. Chairman: Order, hon. Members! We will have to go strictly by the rules. What happens is that amendments will be taken one at a time. If hon. Abdikadir's amendment, or hon. Konchela's or hon. Gumbo's fails to go through, we will come to

yours. Any amendment that will go through will be the one which will be carried. So, all that you can do now is, if you have an amendment which is different from hon. Abdikadir's, you reject it. You reject one amendment after the other until your amendment is approved by the House. Under the circumstances, I have no option but to proceed that way.

Hon. Karua, even in your case, you have only dealt with paragraph (1) up to subparagraph (e). There is another amendment on the next page, which essentially has a lot of bearing on the rest.

So, I will now put the Question.

(Loud consultations)

Mr. Kioni: Mr. Chairman, Sir, I had not finished seeking your guidance.

Mr. Chairman: Order! Order!

Mr. Ruto: Mr. Chairman, Sir, noting the serious acrimony in the House, I propose that we adjourn for a few minutes.

Mr. Chairman: Hon. Isaac Ruto, if you want to adjourn debate on anything, including Committee proceedings, there are provisions in the Standing Orders. You can use a provision and seek the leave of the House. We do our business by the rules. Under the circumstances, I will now put the Question.

Mr. Lessonet: On a point of order, Mr. Chairman, Sir. Allow me to withdraw my amendment.

Mr. Chairman: Order! Order!

Ms. Karua: On a point of order, Mr. Chairman, Sir.

Mr. Chairman: What is your point of order, hon. Karua?

Ms. Karua: Mr. Chairman, Sir, because this is a critical section, it is important that you give hon. Members enough time to ventilate it. We are looking for consensus. We have been moving on very well. I have a proposed amendment, which is in your hands. Small issues like how sequentially the rest are numbered should not matter. The Attorney-General, when doing the vellum copy, has the power, under the law, to do the renumbering of the sections. I am pleading with you not to bar legitimate amendments. Let us have enough time to find consensus, even if it takes us up to morning.

Mr. Chairman: Under those circumstances, hon. Martha Karua, you refer to the appropriate Standing Order. So, if you want to give yourself more time, there is a provision under the Standing Orders. We go by rules. We cannot turn the Chair's desk here into a secretarial desk for hon. Members to keep on writing one amendment after another. In any case, I have an amendment from you here, which will essentially set any threshold.

Ms. Karua: Mr. Chairman, Sir---

Mr. Chairman: The Chair has bent backwards over to accommodate Members because of the need for us to transact a very important business. But nonetheless, we cannot turn this into another fish market. It has to be done in accordance with certain basic rules of the House.

I will now put the Question.

Ms. Karua: May I move my amendment?

Mr. Chairman: Ms. Karua, your amendment does not have my approval because it does not meet that threshold.

*(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)*

*(Paragraph 1 of the First Schedule
as amended agreed to)*

Mr. Chairman: Hon. Members, under the circumstances, the amendment by Mr. Abdikadir has now been approved. The amendment that was sought by Mr. Konchela has to be withdrawn because it has already been taken care of. Under the circumstances, we move on with the amendments by Eng. Gumbo, Mr. Kioni and Dr. Otichilo.

Can Mr. Mbadi move his amendment first then we come back to Mr. Kioni and Dr. Otichilo?

Paragraph 1 of the First Schedule

Mr. Mbadi: Mr. Chairman, Sir, I beg to move:-

THAT the first Schedule be amended by inserting the following new paragraph after paragraph 1-

(1A) The chairperson and members of the Selection Panel shall, before assuming office, take and subscribe the oath or affirmation of office prescribed in the Third Schedule.

Mr. Chairman, Sir, what I intend to achieve with this amendment is to bring the members of the selection panel also to take oath of office.

If you look at the oath of office prescribed in the Third Schedule, it is only the commissioners who are supposed to be subjected to oath of office. However, I am recommending that we also subject the members of the selection panel to the oath of affirmation of office because this is an important task that they are supposed to do.

I beg to move.

(Question of the further amendment proposed)

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

*(Paragraph 1 of the First Schedule as further
amended, put and agreed to)*

Mr. Chairman: Eng. Gumbo, it is presumed that you have withdrawn your amendment.

Eng. Gumbo: I have withdrawn mine, Mr. Chairman, Sir.

(Proposed amendment by hon. Gumbo withdrawn)

Mr. Chairman: Mr. Kioni, it is the opinion of the Chair that your amendment has been taken care of, but nonetheless proceed and explain why you think---

First Schedule

Mr. Kioni: On page 2447, this is the guidance I was seeking because the amendment by the CIOC to that First Schedule does not address the issues that I had intended to address through my amendment.

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

THAT, the First Schedule to the Bill be amended by deleting paragraph 1 and substituting therefor the following new paragraph-

“1(1) For the purposes of this Act, the Minister shall, within fourteen days of the commencement of this Act or within fourteen days of a vacancy arising in the Commission, with the approval of the National Assembly, appoint a Selection Panel comprising-

- (a) a person nominated by the Judicial Service Commission who shall be the chairperson of the Selection Panel;
- (b) five persons nominated by the political parties represented in the National Assembly according to their proportion of members in the Assembly; and
- (c) three persons nominated by the political parties represented in the Senate according to their proportion of members in the Senate.

(2) The appointment of a Selection Panel under sub-paragraph (1) shall be made in accordance with Article 250(4) of the Constitution.

(3) A Selection Panel shall not commence work until all members of the Panel have been appointed.

(4) The Selection Panel shall elect vice-chairperson from amongst its number who shall not be of the same gender as the chairperson.

(5) Subject to the provisions of this Schedule, the Selection Panel shall determine its own procedure”.

Mr. Chairman, Sir, this amendment provides that the appointment of a selection panel under sub-paragraph 1 shall be made in accordance with Article 254 of the Constitution. It also provides that the selection panel shall not commence work until all members of the panel have been appointed. The selection panel shall elect its chairman from amongst its members who shall not be of the same gender as the chairperson and finally. Subject to the provisions of this Schedule, the selection panel shall determine its own procedure.

Mr. Chairman, Sir, the reason for this approach is to appreciate that while others think that this country is not just for the political parties, but this brings in the key players – the players that would actually go into quarrelling as we have seen before. We will give the political party an opportunity to---

Mr. Chairman: Order, hon. Kioni! Whereas the Chair is inclined to give you a lot of leeway for you to exhaust what you are trying to advance, the House has already approved the First Schedule. You cannot seek an amendment to a schedule which has

already been approved. It means that any other amendment to that is rejected. So, what you are trying to do right now is to debate on a matter that has already been carried by the House.

Mr. Kioni: Mr. Chairman, Sir, I was seeking your guidance a little bit earlier and I did not get it. I still hold the view that this amendment does not address the issues that were raised by hon. Abdikadir. They may be to the same section but they---

Mr. Chairman: Yes, indeed, what you are trying to amend right now is the First Schedule which has already been carried in an amendment by hon. Abdikadir. So, basically you can only talk about any other, because you are now talking about the modalities, process or method of selection, which the House has already decided on.

Mr. Kioni: Mr. Chairman, this is the guidance I was seeking from you, so that we do not lose out on these other amendments that---

Mr. Chairman: We have the method to guide us. The Chair will gladly give you the guidance. Now, let me explain to you the practice for the benefit of all the Members of Parliament. When you have a raft of amendments that are suggested by the different Members of Parliament, and you think that the third or the fourth is the appropriate one, you defeat all the others. The moment you adopt or carry one, it means all the rest are defeated or eliminated. So, basically anything to do with the First Schedule is overtaken by events. It has been voided by the fact that the House has already adopted it.

Mr. Kioni: Mr. Chairman, Sir, I appreciate that guidance; it is the guidance we were seeking before; what now this amounts to is a legislation that does not take all of us on board.

Mr. Chairman: The Chair, as much as possible, tried to explain to you that this had been voided.

Hon. Members: On a point of order, Mr. Chairman!

Mr. Chairman: Order! What happens when you are all eager to say something? The Chair can only give you a little bit of time to say what you want to say. Even that is pure laxity on the part of the Chair; nonetheless, let us proceed. Under the circumstances, the one of Dr. Otichilo is also taken care of. Hon. Otichilo, withdraw yours.

Dr. Otichilo: Mr. Chairman, my amendment has been taken care of by the Committee.

*(Dr. Otichilo's proposed amendment
to the First Schedule withdrawn)*

Mr. George Nyamweya: On a point of order, Mr. Chairman, Sir. I think it is vital that we actually all understand the way we are proceeding. There are various proposed amendments, and I believe all of them have been done in good faith, with the intention of getting consensus from the whole House. Now, we did, indeed, seek guidance from you that if there were a raft of amendments dealing with the same subject matter, and we were told to stick to a particular one when you may have a preference for another one. Now, I think it is important to actually go out of your way, and reflect on the great importance, particularly of the next set of proposed amendments; if we had the time we could marry some of these amendments, so that we get consensus. This is because the way we are going now--- If we are told the House has already agreed on this one, then we go forward as a country where one will be saying, yes we agreed to that one but I did not

have my opportunity to have this one. We need your guidance on how we will deal with the next set of amendments because there are a number of them. Can we then understand that there is this one, that one and that one and then we address ourselves to all of them?

Mr. Chairman: Fair enough! For the benefit of all of you, hon. George Nyamweya, I do appreciate the fact that the bulk of Members of this House are freshmen. The practice we use here is not the one that is determined by the Chair. This is a practice that has been inherited from the Westminster system that we still use. When you have a raft of amendments on the same issue, if one of them is adapted, the others---

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Chairman, Sir. I just want to be of some assistance. Indeed, I did hear you say that the only way that hon. Kioni's amendments could have succeeded is by him rejecting the amendments proposed by hon. Abdikadir, the reason being that if you read the amendments that you are proposing to the First Schedule, that First Schedule as it exists in the Bill has already been amended. So, you would be talking about a clause that is already not part of the Bill, when it is finally proposed by the House. So, I think that was made quite clear at the beginning.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Chairman, Sir. We are dealing with a very delicate piece of legislation. We want to carry as many Members of Parliament as possible. That is because we know that disagreement in the last election is what brought us to our knees as a country. We tried actually from this side to seek guidance in relation to the other amendments, because people had different options. My suggestion is that if, indeed, procedure does not allow us to look at these options, then for me, all is not lost. This is an ordinary piece of legislation. Let us, as hon. Members, proceed with the others. Let us withdraw and agree, and then immediately bring an amendment.

Mr. Kioni: On a point of order, Mr. Chairman, Sir. I think this whole thing has nothing to do with being a fresher in this Parliament. Secondly, this whole exercise has nothing to do with defeating one another. We are trying to make sure that the country moves on. It is this same spirit of wanting to defeat one another that landed us where we were. I am a bit saddened that all these amendments--- There is a good number of people who would have gone "not squarley behind it". A merger of all these things would have helped us to move the country together. But you have the procedure and we have to go by it. I think it is unfortunate that this leaves us with some bad taste in our mouths.

Mr. Chairman: Order, hon. Members! I want to draw your attention to Standing Order No.116 (3). It reads:-

"No amendment shall be moved which is inconsistent with any part of the Bill already agreed or any decision already made by the Committee, and the Chairperson may at any time during the debate of a proposed amendment, withdraw it from the consideration of the Committee if in the opinion of the Chairperson, the debate has shown that the amendment contravenes this paragraph."

The presumption is that when you move an amendment and the House adapts a provision that essentially is inconsistent with the amendment that you are moving, then you withdraw the amendment. Even if you do not withdraw it, it clearly stands withdrawn. That is why the Chair says: "I now put the Question that clause so-and-so be part of the Bill." Once that has become part of the Bill, you cannot move anything else or

any other clause that contravenes that particular clause. That is the position, hon. Members.

Hon. Ruto, proceed! Mr. Ruto, move your amendment!

Mr. Ruto: Mr. Chairman, Sir, this is on page 2443. It is really with a heavy heart that we are stream rolling issues, we do not want to listen and yet this is a matter of great importance considering where we have come from. Nevertheless, let me attempt to move this amendment to the First Schedule.

Paragraph 2 of the First Schedule

I beg to move:-

THAT, the First Schedule be amended-
in paragraph 2, by-

(i) inserting the following new subparagraphs immediately after subparagraph (2)-
“(2A) The Selection Panel shall, after interviewing applicants pursuant to subparagraph (2), select and forward to the Parliamentary Committee for approval in terms of paragraph 3-

(a) the name of one applicant nominated for the position of chairperson of the Commission; and

(b) the names of eight applicants, at least five of whom were members of the former Boundaries Commission or the former Electoral Commission, if there are applicants who were members of those former Commissions, nominated for the position of member of the Commission.

(2B) For the avoidance of doubt, a person appointed under sub-paragraph (2A) may be a person who was a member of the former Boundaries Commission or the former Electoral Commission.

(ii) deleting sub-paragraph (3); and

(iii) deleting subparagraph (4);

(b) in paragraph 3, by deleting the expression “paragraph 2(4)” and substituting therefor the expression “paragraph 2(2A)”;

Basically, I am trying to propose that once this panel, however nominated has done its job, it should route those Commissioners through Parliament on their way for appointment by the President. That is only basically changing the route and taking into consideration the institutional memory that has been mentioned in the Constitution in Schedule Six. Basically, we are rerouting. In the other one, there was a different route. I am proposing a different route.

(Question of the amendment proposed)

Mr. Mbadi: Mr. Chairman, Sir, I stand to oppose this amendment for two reasons. One, this Parliament is supposed to vet and approve appointments from the President. We cannot approve then it goes to the President and then it again comes back to Parliament. The procedure has always been that appointment is made and then we approve as Parliament. I do not understand why this should be changed. More importantly, is the amendment proposed under (b). We had discussed this matter earlier. It is like we are again insisting that out of the nine Commissioners who will be appointed,

it is already decided that five of them must come from the former ECK and the existing Interim Independent Electoral and Boundaries Commission. This is taking us back to arguments we have had here before where we were saying: Let us open up appointments for these Commissioners.

So, I oppose.

Mr. Chairman: Since nobody else wants to contribute, the Chair can only put the question.

Mr. Ruto: Mr. Chairman, Sir, this would have gone well if the other amendment by hon. Kioni had been properly ventilated. Therefore, I think I should just withdraw because I am also not comfortable with the entire Clause as passed.

(Mr. Ruto's proposed amendment to paragraph 2 of the First Schedule withdrawn)

Mr. Chairman: I will now put the question that the First Schedule as amended be part of the Bill.

(Proposed amendment withdrawn)

(The First Schedule as amended agreed to)

Mr. Abdikadir: Mr. Chairman, Sir, I just want to confirm that the other amendments as far as the First Schedule is concerned have all been carried, because we had an amendment for Paragraph 10. I had only moved amendments to the first paragraph, which has taken all this time. Has it been carried?

Mr. Chairman: Yes. They have all been carried.

Mr. Abdikadir: Then, I am grateful, Mr. Chairman, Sir.

Mr. Chairman, Sir, I do not have any amendment on the Second Schedule.

Hon. Members: It is there!

Mr. Chairman: It is there on page 2432.

Paragraph 10 of the Second Schedule

Mr. Abdikadir: Yes, there is Paragraph 10 of the Second Schedule.

Mr. Chairman: Move that Paragraph 10 of the Second Schedule be deleted.

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-

THAT Paragraph 10 of the Second Schedule be deleted.

Let me just read for you what Paragraph 10 of the Second Schedule says. It says:-

“Unless otherwise provided by or under any law, all instruments made by and decisions of the Commission shall be signified under the hand of the Chairperson and Secretary”.

Mr. Chairman, Sir, assuming that the Commission wanted to sack its Secretary, would he require to sign that instrument too? Here we say all instruments. We do not think it is appropriate that we tie the Commission to the signature of the Secretary, who is an employee of the Commission.

(Question of the amendment proposed)

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

*(Paragraph 10 of the Second Schedule
deleted)*

(Second Schedule as amended agreed to)

Third Schedule

Mr. Mbadi: Mr. Chairman, Sir, I beg to move:-

THAT the Third Schedule be amended-

(a) in the title by deleting the word “Commission” appearing after the words “Secretary of the” and substituting therefor the words “Commission/Selection Panel;

(b) in the text of the oath by deleting the words “Independent Electoral and Boundaries Commission” appearing after the words “(the chairperson/member of/secretary to) the” and substituting therefor the words “(Independent Electoral and Boundaries Commission/Selection Panel)”.

Mr. Chairman, Sir, this is a very harmless amendment. Third Schedule prescribes the oath of office. Since my previous amendment had been approved, I have just amended to include “selection panel”, after “Commissioners” and the “Secretary”. So, members of the said selection panel will also be subjected to the oath. Basically, that is my amendment.

(Question of amendment proposed)

*(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)*

(The Third Schedule as amended agreed to)

Paragraph 1 of the Fourth Schedule

Dr. Otichilo: Mr. Chairman, Sir, I beg to move:-

THAT, Paragraph 1 of the Fourth Schedule to the Bill be amended by deleting the words “a member” appearing after the words “the functions of” and substituting therefor the words “the Commission”.

Mr. Chairman, Sir, Paragraph 1 reads:-

“Every member and employee of the Commission shall impartially and independently perform the functions of a member...”

So, I want us to replace the words “a member” with the words “the Commission” because these are functions of the Commission. Those functions shall be performed in good faith and without fear, favour, prejudice or influence.

Mr. Chairman: Dr. Otichilo, are you sure that it is not “the commission”?

Dr. Otichilo: Mr. Chairman, Sir, let me read out what this paragraph will be after it is amended. It will read:-

“Every member and employee of the Commission shall impartially and independently perform the functions of the Commission in good faith and without fear, favour or prejudice, and without influence from...”

(Question of the amendment proposed)

Mr. Mbadi: Mr. Chairman, Sir, I rise to support the amendment because the functions are those of the Commission, and not of an individual.

Ms. Karua: Mr. Chairman, Sir, I have a slight issue with this amendment. If you look at the heading, it says “Code of Conduct for Members and Employees of the Commission”. It then gives responsibility to every member or employee thus: “...shall impartially and independently perform the functions of a member...” So, it is the responsibility. It is just making it clear that there is a personal responsibility, so that people do not hide behind--- I would go with the text as it is. We need not add anything because it is a member and an employee. Even the Commission can name the same--- The proper wording should be “a member” or “employee”.

The Minister for Lands (Mr. Orenge): Mr. Chairman, Sir, in reality, this must have been a typographical error because, under the Constitution and in this Bill, the functions that are set out are the functions of the Commission. They are not functions of members of the Commission, individually or otherwise. Sometimes lawyers miss what planners see very clearly, and I thank Dr. Otichilo for this.

(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)

(Paragraph 1 of the Fourth Schedule as amended agreed to)

Mr. Chairman: Eng. Gumbo, could you, please, move your amendment?

Eng. Gumbo: Mr. Chairman, Sir, I beg to move:-

THAT the Fourth Schedule of the Bill be amended by deleting Subparagraph (3) of Paragraph 3.

My amendment is a small one, but it shows that sometimes engineers can see what lawyers cannot see. The same paragraph has been repeated. So, this amendment deletes the second repeat.

(Question of the amendment proposed)

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

(Fourth Schedule as amended agreed to)

Fifth Schedule

Mr. Abdikadir: Mr. Chairman, Sir, I beg to move:-
THAT, the Fifth Schedule be deleted and substituted with the following new
Schedule:-

(s.34)

PROVISIONS RELATING TO THE FIRST REVIEW

Resolution of issues
arising from the
first review

1. The Commission shall resolve all issues arising from the first review relating to the delimitation of boundaries of constituencies and wards and publish its final report within a period of four months of the date of its appointment under this Act.

Amendment of
Section 7 of
Cap. 102

2. (1) The Commission shall, in addressing the issues arising out of the first review-
- (a) use as its primary reference material the report of the former Boundaries Commission on the first review as tabled before the National Assembly; and
 - (b) use as its secondary reference material the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review.
- (2) The issues arising out of the first review are-
- (a) re-distribution of such wards or administrative units in the affected constituencies as may be appropriate;
 - (b) subject to the Constitution, addressing issues of new constituencies falling outside the population quota as provided for by Article 89(6) of the Constitution but at the same time ensuring that such a process shall-
 - (i) take into account the provisions of Article 89(7)(b) of the Constitution that requires progressive efforts and not instant demographic equality of all towards attaining the population quota in each constituency and ward for the purposes of the first review;
 - (ii) not be subject to new definitions of cities, urban areas and sparsely populated areas or to new population figures;

(iii) be subject to the use of enumerated national census figures and not projected figures.

(c) addressing the issue of progressively advancing towards the population quota in protected constituencies in relation to neighbouring constituencies where appropriate.

Delimitation
of electoral
units
outlining-

3. (1) The Commission shall prepare and publish a preliminary report

(a) the proposed delimitation of boundaries for constituencies and wards;

and

(b) the specific geographical and demographical details relating to such delimitation;

(2) The Commission shall ensure that the preliminary report is made available to the public for a period of twenty-one days and invite representations from the public on the proposals contained in the report during that period.

(3) Upon the expiry of the period provided for in sub-paragraph (2) the Commission, shall, within fourteen days, review the proposed delimitation of boundaries considering the views received under that sub-paragraph and submit the revised preliminary report of proposed boundaries to the Parliamentary Committee.

(4) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report under sub-paragraph (3), table the revised preliminary report to the National Assembly together with its recommendations.

(5) The National Assembly shall, within seven days of the tabling of the revised preliminary report, consider the revised report and forward its resolutions to the Commission.

(6) Within fourteen days of the expiry of the period provided for in sub-paragraph(5), the Commission shall, taking into account the resolutions of the National Assembly under sub-paragraph (5), prepare and submit its final report outlining the matters set out in sub-paragraph (1)(a) for publication in the Gazette.

(7) Any person who, being responsible for the publication in the Gazette of the final report submitted under this paragraph fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and shall be liable to imprisonment for a term of one year.

(8) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of sub-paragraph (6) the Commission shall, within seven days of submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the gazette.

Review of decision
of Commission

4. A person may apply to the High Court for review of a decision of the Commission made under the Constitution and this Act.

Application for review

5. An application for the review of the decision made under sub-paragraph(4) shall be made within thirty days of the publication of the decision in the Gazette and shall be heard and determined within thirty days of the date on which it is filed.

Sensitization on the Proposed boundaries

6. The Commission shall, upon publication of the boundaries referred to in paragraph 3 facilitate sensitization of the public on the boundaries for a period of thirty days.

Maintenance Records

7. The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by members of the public.

Mr. Chairman, Sir, essentially, it means that the Fifth Schedule be deleted and substituted with the following new Schedule. This schedule was as a result of the matrix produced by the Justice, National Cohesion and Constitutional Affairs as a result of the agreement by the stakeholders. I could not agree more with that characterization. This matter was debated very seriously. It has to deal with the Interim Independent Boundaries Review Commission Report. It is important that I give a bit of background starting with Clause 27 of the Sixth Schedule of the Constitution. It states as follows:-

“The Boundaries Commission established under the former Constitution shall continue to function as constituted under the Constitution and in terms of Section 41B and 41C but-

- (a) it shall not determine the boundaries of counties established under this Constitution;
- (b) it shall determine the boundaries of constituencies and wards using the criteria mentioned in this Constitution;
- (c) members of the Commission shall be subject to Chapter Seven of this Constitution.

(3) The requirement in Article 89(2) that a review of constituency and ward boundaries shall be completed at least twelve months before a general election does not apply to the review of boundaries preceding the first elections under this Constitution.

(4) The Boundaries Commission shall ensure that the first review of constituencies undertaken in terms of this Constitution shall not result in the loss of a constituency existing on the effective date.”

Mr. Chairman, Sir, the important thing is that the first review has been undertaken, but as we did amend earlier, it has major issues arising and matters that have not been concluded. That is why we carried an amendment to say that the first review

means the review conducted by the former boundaries commission taking into account any outstanding work of that commission and issues arising from that review.

As a result of that, we, in the Committee, through this Fifth Schedule, which really was handled by the Justice and Legal Affairs Committee, and which was debated by this House in a *Kamukunji* and finally adopted by this House in a motion, intended to effect the conclusion of that work.

Mr. Chairman, I have heard in discussions that we might be tying the hands of the new institution, and whether Parliament has those powers. In view of that, I wish to read Article 82 of the Constitution which deals with the new institution, the Independent Electoral and Boundaries Commission (IEBC), and the powers of Parliament as far as legislation for the IEBC is concerned. Article 82(1) says:

“Parliament shall enact legislation to provide for -

(a) the delimitation by the Independent Electoral and Boundaries Commission of electoral units for election of members of the National Assembly and county assemblies.” This House, indeed, has all the powers to pass legislation to tell this institution how to do its work. That is not interfering with its mandate. It is just like when we pass laws or traffic rules; although the Commission is independent it has to follow those laws. When we pass financial management legislation, the Commission, though independent, has to follow those laws. When it comes to delimitation of boundaries, the Commission must follow the laws that are passed by this House subject to the Constitution. Our laws are subject to the Constitution. So, the Constitution delimitations are clear.

Our view, as the committee on the implementation of the Constitution, if we say that this institution will have to be given a free hand to do delimitation of boundaries now, it will not be the first review of boundaries. It will be another review of boundaries; the issues that have been coming are if ten years have to pass before another review is done. That is one. Two, if the Constitution in the transitional clauses says that the first review will be done by the Interim Independent Boundaries and Review Commission, will we be in breach of the Constitution if we give the function of solving that problem to a new institution? We have decided that the first review has been done but there are outstanding issues, or uncompleted functions. We are now, through legislation, which is the legitimate function of this House, telling this institution how to handle that unfinished business.

Mr. Chairman, finally, this was negotiated very strenuously between the political parties, parliamentary parties and in a *Kamukunji* of this House and approved. It was approved by a parliamentary committee earlier. It is now accepted by consensus by the CIOC.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, allow me to say that this amendment reflects the agreement between all stakeholders; it also reflects the advice of the CIOC. Thank you.

Mr. Bahari: Mr. Chairman, Sir, I completely disagree with this. This is partly because in the first instance, the defunct IIBRC has not completed a process. The process was in the making and a review has not been done. It would be wrong for anybody, and I want to be on record, because this is not a question of numbers; it is a question of views. I

want my views to be heard on this so that it goes on record that that was just a process, which was never completed. It cannot constitute a first review for all purposes.

Mr. Chairman, Sir, if we are going to impose views---

(Loud consultations)

I need your protection from hon. Mbadi.

Mr. Chairman: Order! Hon. Mbadi, if you wish to stay in this House until this matter is concluded, you may as well begin behaving like an hon. Member of Parliament. Proceed!

Mr. Bahari: Mr. Chairman, Sir, thank for that protection. We came from a very difficult process in 2007. Some of the things that we rush through in anticipation that we are the beneficiaries are the things that are going to sow seeds of discord in this country. There is one such amendment that has been brought here. The review by the defunct Interim Independent Boundaries Review Commission will not constitute a complete process. It was in the making and was never completed. Everybody knows very well what happened to that. It was also based on population census and I want to remain on record that, that has not been adequately verified. That forms the basis on which some of those proposals were made. In my view, if we are going to impose this on the new Independent Electoral and Boundaries Commission, then we will be very unfair on this Commission.

Mr. Chairman, Sir, I have an amendment to replace the word “shall” with “may”, so that they can take into account both the Interim Independent Boundaries Commission views and the views that they may have as an institution. Otherwise, then that should be passed as it is and there is no point involving the new Independent Electoral and Boundaries Commission.

Mr. Chairman: Hon. Bahari, you had an opportunity to move your amendment in accordance with the laid-down procedure. There could be ten “mays” and 20 “shalls”. You have to be specific and say, line that, paragraph that and everything else. Do not just stand up there and say “shall” and “may”.

Mr. Bahari: Mr. Chairman, Sir, I have an amendment that is before you. I am contributing to this debate, but if you are asking that I move my amendment, I will do so.

Mr. Chairman: That is the essence of being given an opportunity.

Mr. Bahari: Mr. Chairman, Sir, thank you for your guidance. I oblige.

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

THAT, Paragraph 2 of the Fifth Schedule be amended in the first line by deleting the word “shall” appearing after the word “Commission” and substituting therefor the word “may”.

Mr. Chairman: I now propose that the Fifth Schedule be further amended as proposed by hon. Bahari. We are now debating the amendment by hon. Bahari.

(Question of the further amendment proposed)

Yes, hon. Duale!

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Chairman, Sir, I stand to oppose the further amendment of the amendment. We have been sitting here for the last five or six hours building consensus. This august House has adopted the

first review, plus the Report of the Committee on Justice and Legal Affairs. If you look at Section 27 of the Constitution, there are some constituencies that have been protected. If we open up and deny that the first review has not taken place, then some of our 27 Members of Parliament will lose their seats. We have to go by the law.

Mr. Chairman, Sir, the amendment that hon. Bahari has brought is one that we have lived with, of “shall” and “may” for the last five hours. We are not ready to change the law by removing “shall” and putting “may”. The Fifth Schedule, which has been completely replaced by hon. Abdikadir, is what is before us and the Minister for Justice, National Cohesion and Constitutional Affairs has confirmed that he has no problem with it.

Mr. Chachu: Mr. Chairman, Sir, I support the amendment by hon. Bahari. It is a fact and I want to be on record that the first review was never concluded. There is no way I can stand on the Floor of this House and argue that it was concluded when it was never gazetted.

Mr. Chairman, Sir, secondly, if those ones were negotiated, then you were negotiating an illegality. That can never hold water because, at the end of the day, we know for sure that it was unconstitutional. More than that, that is an Independent Electoral and Boundaries Commission.

Mr. Chairman, Sir, Article 249 clearly states that:-

“(2) The commissions and holders of independent offices-

(b) are independent and not subject to direction or control by any person or authority”.

While stating that, this Commission “shall” - which is mandatory, imperative and an obligation - use the work of the Ligale Commission as primary material. So, we are dictating to and controlling this Independent Electoral and Boundaries Commission, which is unconstitutional. The Constitution is very clear on this issue and if it will not be decided on the Floor of this House, it will be done by the constitutional court of this land.

The Assistant Minister for Energy (Eng. M.M. Mahamud): Mr. Chairman, Sir, I stand to oppose the amendment by hon. Bahari. This matter of the first review has been discussed at length in this House and in various fora. I do not think it is fair for us to start going back and negating the gains we have made. The first review has been done by the IIBRC. If you want us to start doing a fresh review, as hon. Duale has said, we start afresh and then we will have a problem with all the constituencies which are now protected.

I, therefore, oppose the amendment.

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Chairman, Sir, I appreciate the concerns of hon. Chachu and the concerns of my friend, hon. Bahari, but the word “shall” comes from the first paragraph, which states that:-

“The Commission shall resolve all issues arising from the first review...”

Precisely because hon. Bahari and hon. Chachu realize that there were still issues pending from the earlier review, the Commission is being given the responsibility to complete this process, but that does not mean, however, that the Commission is only confined to that review. That is why the first paragraph is very important. It says that the Commission shall resolve all issues arising from the first review relating to the delimitation of boundaries of constituencies and publish its final report. In other words, the issues also include the concerns by hon. Chachu and hon. Bahari.

So, do not think that those concerns are excluded from the word “shall”. Those concerns are the wider framework which the IIBRC Report is being used as a source material. I really think that by using the word “may”, you are not improving your argument. The word “may” is just weaker than the word “shall”. The word “shall” is strong in the first paragraph which includes the Members’ views as well as those of the defunct IIBRC. Then this particular body is being given the responsibility to make sure that all the issues are addressed.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Chairman, Sir, I stand to oppose the amendment and I have reasons for doing that. When the Ligale Report was tabled in the House, we really opposed it, but all the same it was passed by the House. That is the truth of the matter. The former President gerrymandered constituencies and at the end of the day, lost those constituencies. The fact that somebody might think that the Commission did something queer by gerrymandering or not balancing, we should know that by now, political support has changed and will continue changing forever. Secondly, there will be other reviews.

Mr. Langat: On a point of order, Mr. Chairman, Sir. Hon. Kiunjuri has said that the former President did gerrymandering of constituencies. Could he name the constituencies which were gerrymandered?

Mr. Chairman: Hon. Kiunjuri, we have a business and a matter to be transacted by the House. The former President is a former President of the Republic of Kenya. Under the circumstances, you cannot take on somebody who cannot defend himself here.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Chairman, Sir, I withdraw. But anybody who has a feeling that maybe the Ligale Committee did not do its work the right way, should know that already the last few months can tell you how political support has been going on. The country is not stagnating. We shall have other reviews in future. As a way forward, therefore, it is only important that we support this amendment.

Lastly, in the case of distribution per province, nobody can claim that their province was denied the rightful share. We can argue of other cases, but for now, we are comfortable with these amendments and I support them.

The Minister for Public Health and Sanitation (Mrs. Mugo): Mr. Chairman, Sir, let me say that my first feeling was to support this amendment. I was on record as opposing very strongly what the Ligale Commission did. I still do, because it did not act impartially. In many constituencies, we complained. There were no reasons for their delineation the way they were.

Despite the fact that the first paragraph says that the Commission shall resolve all issues arising from the past review relating to delimitation of boundaries of constituencies and wards, and publish its final report within a period of fourth months, I still decline to support this amendment. The Ligale Commission must not assume that it had finished its work. We are on record in this House saying that we only approved the Committee Report. We were not approving Ligale Report as such.

Therefore, I want to put a very stronger rider that even in supporting this amendment---

Hon. Members: Are you supporting or opposing the amendment?

The Minister for Public Health and Sanitation (Mrs. Mugo): No, No! Okay, I am supporting the former amendment and opposing the current one. I am doing so on the

strength that this will not mean that we go along with what was presented by Ligale. We expect that the new Commission will correct all what was protested and give us new boundaries.

Mr. Chairman: Hon. Members, usually, if there is an amendment being discussed, that amendment is disposed of. The tradition is that you do not allow debate by more than two or three people. So, I will now put the Question on the further amendment to the Fifth Schedule, as proposed by hon. Bahari.

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

Hon. Members, let us now revert to the original amendment Motion by hon. Abdikadir.

Mr. Ogindo: On a point of order, Mr. Chairman, Sir. I wish to bring to your attention the fact that I had a small further amendment to move to the amendment that has been proposed by hon. Abdikadir. It is a small amendment which does not improve much what has been done by such a brilliant fellow. It is found on page 2442 of the Order Paper.

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

THAT, the Fifth Schedule to the Bill be amended in paragraph 2(a) by deleting the words “tabled before” appearing after the words “former Boundaries Commission as” and substituting therefor the words “adopted by”.

Mr. Chairman, Sir, I am not bringing anything new by moving this amendment. Hon. Abdikadir used these same words. So many other speakers have used the same words. My amendment is only intended to bring consistence with our past.

I beg to move.

Mr. Chairman: Hon. Members, indeed, the amendment sought by hon. Ogindo and the amendment that has been moved by hon. Abdikadir are very similar. Under the circumstances, as tradition dictates, we will go by the amendment whose notice has been given and which, essentially, is very different.

Hon. Members, there is a further amendment by hon. Keynan.

Mr. Keynan: Mr. Chairman, Sir, this is a tradition because once a report has been “tabled” and “adopted”--- That remains the parliamentary language.

(Question of the further amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I want to plead with the House to remember the remarks I made. The Fifth Schedule as tabled by the Chairman of the CIOC has received enormous stakeholder consultation and each word has been debated for a very long time. I would like to propose that changing some of these words like “adopting” may create problems for us. There were issues even in “adopting”. My recommendation is that this House bears in mind the enormous consultations. I alerted the House from the beginning that the Fifth Schedule is the beginning and the end.

Ms. Karua: Mr. Chairman, Sir, that amendment is actually not telling the truth. I want to oppose it for some reasons. What was tabled in this House was not the Ligale

Report; it was the Report of the Departmental Committee on Justice and Legal Affairs with the Ligale Report as an annexure. This House can never adopt something that is not before it. So, you cannot cure that because the HANSARD is there. Which Motion was moved? It was a Motion to adopt the Report of the Departmental Committee on Justice and Legal Affairs. I, therefore, plead that we retain the language of the Abdikadir amendment. However, if we refuse to retain it, the HANSARD is there in case of an interpretation. You cannot purport to have done something that was not done by sneaking it into the law.

I oppose.

Mr. Keynan: Mr. Chairman, Sir, let me make the work very easy.

Mr. Chairman: Order, Mr. Keynan! You rose on a point of order and you want to use the Floor to consult with the whole House.

Mr. Keynan: Mr. Chairman, Sir, what I wanted to say is that what was adopted was the Report of the Departmental Committee on Justice and Legal Affairs. I am making reference to that particular Report and this is the reality. The Departmental Committee on Justice and Legal Affairs tabled the Report and it was adopted. I am not making reference to the Ligale Report. I am talking about that particular Report.

The Assistant Minister for Industrialization (Mr. Muriithi): On a point of order, Mr. Chairman, Sir. As we debate this matter, is it really not in order for us to stick to the truth? If you read Section 2(a), you will find that it talks about the report of the former Boundaries Commission as a primary reference material which Ms. Karua is right to say was never tabled in this House and we did not adopt it.

Mr. Mbadi: Mr. Chairman, Sir, the Ligale Report was annexed to the Report of the Departmental Committee on Justice and Legal Affairs which was tabled here. We debated and adopted the Report. So, you cannot, again, say that the Report was just tabled. If it was tabled, it means that it is awaiting adoption. However, what we are saying is that the Report was adopted together with the Report of the Departmental Committee on Justice and Legal Affairs.

Mr. Chairman, Sir, I support the amendment fully. This is because saying, "...the boundaries on the first review as tabled before the National Assembly" gives the impression that this Report was tabled and has not been adopted, but the truth is that it was tabled together with the Report of the Departmental Committee on Justice and Legal Affairs which we adopted.

The Minister for Lands (Mr. Orengo): Mr. Chairman, Sir, if I have an opportunity to speak on this matter, I do not think there should be so much worry whether or not the report is approved. What is important is that this proposed amendment to the Fifth Schedule by the Chairman or by the Committee is telling us what will be used as primary material and that primary material is before the House. I think that the approval or otherwise is not a critical issue for me.

Mr. Keynan: Mr. Chairman, Sir, considering what Mr. Orengo has said and bearing in mind that I hardly agree with the Minister for Justice, National Cohesion and Constitutional Affairs, I wish to withdraw this amendment so that we can proceed with what Mr. Abdikadir has done.

(Mr. Keynan's proposed amendment withdrawn)

Mr. Kioni: On a point of Order, Mr. Chairman, Sir. I just want to draw the House to the fact that I had also proposed an amendment to the Fifth Schedule which is actually the same as what Mr. Abdikadir has done and going by your earlier direction, it would certainly fail. Let me just say that in the past, we have celebrated pieces of advice given to us by the Commission on Implementation of the Constitution. I just want to put it on record that (CIOC) has given an indication to us that we have to be very careful that even as we agree with this negotiated position by this House, the position that we are about to take could easily be unconstitutional.

Since in the past we have celebrated advice by CIOC, it is important that we remain consistent. But I am not trying to persuade hon. Members to move away from where they are because I can see the mood of the House is just to get done with this. However, it is important that it goes on record that we could easily face a constitutional challenge on this Fifth Schedule that we are pushing through. I do not intend to vote against it but I will allow it to pass with that reality in mind.

Mr. Ogindo: On a point of order, Mr. Chairman, Sir. I rose on a point of order to bring an amendment and if I heard you right, my amendment had been captured in Mr. Keynan's amendment but he has since withdrawn it but I still maintain mine. The reason I want to maintain mine is that this document was before this House and according to the traditions of this House, every time we do not approve of anything, we expunge it from the report. What we have on record is that the Report of the Committee on Justice and Legal Affairs and its annexure, which was the Ligale Report were adopted by this House and that is what my amendment was seeking. I seek your guidance on my amendment.

Mr. Chairman: Can you move your amendment? In any case, Mr. Keynan withdrew his.

Mr. Ogindo: Mr. Chairman, Sir, I beg to move:-

THAT, the Fifth Schedule to the Bill be amended in paragraph 2(a) by deleting the words "tabled before" appearing after the words "former Boundaries Commission as" and substituting therefor the words "adopted by".

Mr. Chairman, Sir, on page 2442, I want to propose a further amendment to the amendment brought by Mr. Abdikadir on paragraph 2(a).

Mr. Chairman: The same matter has been adequately ventilated and maybe just need to put the Question.

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

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

Mr. George Nyamweya: On a point of order, Mr. Chairman, Sir. I have continuously stood up to address myself to that issue. I have noticed that you have maybe, perhaps, overlooked this side or overlooked me. However, I wish to address myself to it. I also want to be on record, therefore, that although you have carried out a debate and called it to vote, I was not given an opportunity to contribute to it.

Mr. Chairman: You realize that this is a House of 222 Members of Parliament. This is a further amendment on an amendment. The tradition of the House is that you

allow two or three people to contribute and not the whole House. If everybody is given a chance to contribute on an amendment to an amendment then the process of legislation will take centuries in this country.

(Mr. George Nyamweya stood up in his place)

Order, Mr. George Nyamweya! You have made your point.

Mr. Affey: On a point of order, Mr. Chairman, Sir. Just like Mr. Nyamweya, I want to protest. I stood, but I was not given an opportunity to address that issue. As you know, on the Order Paper, I have a similar amendment on this Fifth Schedule. I was supposed to be given an opportunity to contribute to this matter at least in terms of the record.

Mr. Chairman: It is still coming.

Mr. Affey: Thank you, Mr. Chairman, Sir.

Mr. Chairman: Mr. Musila, move your amendment.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Chairman, Sir, I essentially support everything that Mr. Abdikadir has proposed. However, hon. Members will appreciate that time is of essence in the provisions relating to the first review. I was concerned that in paragraph 3(6) within 14 days of the expiry of the period provided for in sub-paragraph 5, the Commission shall take into account the resolution of the National Assembly under sub-paragraph 3 to prepare and submit its final report outlining the matters set out in sub-paragraph 1(a) for publication in the Gazette.

In the recent past, there have been stalemates in this House. It is possible that after the Commission submits to us we may not be able to deliver within the 14 days that are stipulated. So, I have consulted Mr. Abdikadir and a few hon. Members and I thought it would be prudent to introduce a proviso right there after the full stop and after the word "Gazette".

Under the principle of collective responsibility, since the Minister for Justice, National Cohesion and Constitutional Affairs has agreed to this, if the Chair allows, I can ask him to move this slight amendment simply to improve on this so that if we fail to produce the report that is required by the Commission and the 14 days are over, then the Commission will be at liberty to proceed and gazette the report which they have other than just keeping it like that. If 14 days are over, the Commission may wait, but if we do not agree, what will they do?

I propose they should proceed and that we should make that small amendment.

Thank you, Mr. Chairman, Sir.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I beg to move:-

THAT the proposed amendment be further amended by inserting a new sub-paragraph 6(a) in Paragraph 3 immediately after sub-paragraph 6 reading as follows:- "Where the National Assembly fails to make a resolution within the period specified in Sub-paragraph 5, the Commission shall proceed to publish the preliminary report in accordance with Sub-paragraph 5."

(Question of the further amendment proposed)

The Assistant Minister for Industrialisation (Mr. Muriithi): Mr. Chairman, Sir, I want to oppose. If you look at what we have done in the last one hour, we have consistently prepared the ground for another stalemate such as the one which occurred in the previous commission.

Hon. Members: How?

The Assistant Minister for Industrialisation (Mr. Muriithi): Mr. Chairman, Sir, protect me. Am I not entitled to have a view? We have insisted on this amendment by the hon. Abdikadir on Sub-paragraph 2, that the Commission shall use--- This is forcing the Commission to use the report that was generated by the previous commission. Most people agree that there was something wrong with the product; it was not complete and had faults, and then you create a circumstance--- You see in the first Article we say that the Commission shall resolve all the issues, and then we proceed to tell the Commission that it must use the faulty product that will be before it. Then we go further and say that when those matters are brought to the National Assembly, if we do not agree, the Commission shall proceed. You will see in subsequent articles that we are actually creating a proviso for liability, or an offence if whatever report the Commission may have is not gazetted. So, what we are trying to do is to go back to the problematic thing that we had under the previous Commission, and ensure that nobody can then correct any wrong that will be done.

Mr. Chairman, Sir, therefore, I want to oppose strenuously. I think we owe it to this nation. We know it for a fact.

Hon. Members: Relax!

The Assistant Minister for Industrialisation (Mr. Muriithi): I am quite relaxed. You must know that even if the majority have their say or their way, the minority must have their say.

Mr. Chairman: Hon. Muriithi, conclude!

The Assistant Minister for Industrialisation (Mr. Muriithi): Mr. Chairman, Sir, I was just trying to conclude, but for a multitude of interruptions. We have consistently insisted that the Commission will use whatever product will be on the table; we are binding it that way, and then trying to create an offence, if the matter is not concluded or gazetted. What we are really trying to do is to create a path, so that the faulty kind of work that was done by the previous Commission will find its way into this law; we are creating the reason for---

I oppose.

Dr. Eseli: Mr. Chairman, Sir, I support the Minister's amendment. That is because what has happened in this House is that while we are a post-conflict Parliament, we sometimes tend to be a conflicting Parliament. That kind of amendment will tend to unlock that kind of stalemate. So, what the Minister has done is to ensure that this Parliament is bound to actually move instead of pussyfooting, delaying things and eventually running out of time. I think the Minister's amendment should be supported by all of us.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, before you put the question, it is sub-paragraph 6 at the end and not 5.

Ms. Karua: Mr. Chairman, Sir, just one word. I support the Minister's proposal and want to assure the colleague who says the Commission is being forced to use a

record, that even for the Constitutional review, we relied on the work that had been done by Constitution of Kenya Review Commission (CKRC). We cannot discard work that has been commissioned. We cannot prevent that body from improving on it.

I beg to support.

Mr. Chairman: The Chair has consistently been looking on the side where hon. Nyamweya and hon. Affey are. I do not see them seeking an opportunity to contribute to this and yet, you complained that I do not give you an opportunity.

(Mr. Affey stood up in his place)

Do you expect to catch the Chair's eye by sitting down on your butt?

Proceed, hon. Affey!

Mr. Affey: Mr. Chairman, Sir, I did not understand that you were that generous. Thank you very much. We cannot celebrate an illegality. What we are doing here are friends and colleagues who are beneficiaries of a system that--- The Report that the Chairman of CIOC, hon. Abdikadir, has submitted before us purely goes contrary to our Constitution both in letter and spirit.

Hon. Members: How? Which section?

Mr. Affey: Mr. Chairman, Sir, I want to read just one. This Constitution gives this Commission absolute independence. It says:-

“This Commission shall not be subject to---

Mr. Chairman: Hon. Affey, if you understand – and I believe you have been here long enough to understand – we are disposing of an amendment by the Minister for Justice, National Cohesion and Constitutional Affairs. Do you wish to give your position on that?

Mr. Affey: Mr. Chairman, Sir, I reject that one!

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

Mr. Chairman: Hon. Affey, you did give a notice of moving an amendment, but the Chair wants to inform and educate you on that. You should be seeking an amendment to the amendments that were proposed by hon. Abdikadir.

Proceed!

Mr. Affey: Mr. Chairman, Sir, because I understand the mood of this House which is hostile and against---

(Loud consultations)

Mr. Chairman: Order! Order, hon. Members! We have reverted back to hon. Abdikadir's amendment and I will now put the Question.

(Fifth Schedule as amended agreed to)

Mr. Chairman: You will realize that all those other amendments that were sought under the same Schedule have become void. They have expired.

(Title agreed to)

(Clause 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I beg to move that the Committee do report to the House its consideration of The Independent Electoral and Boundaries Commission Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(Several Members stood up in their places)

Mr. Chairman: Hon. Members, you are not going anywhere! You forgot that the House had already given leave for the other Bill also to be exhausted, namely, for all the business listed on Order No.8 on today's Order Paper. Therefore, you are not going anywhere! You stick around!

We will proceed to the next Bill.

THE SALARIES AND REMUNERATION COMMISSION BILL

Clause 2

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, with your kind permission and after very careful consideration and consultations, I wish to withdraw the proposed amendments in (i) and (ii) in Clause 2 and prefer the proposal of the Committee in (iii). I wish to withdraw all the amendments in Clause 2.

(Proposed amendments withdrawn)

Mr. Chairman: Hon. Okemo!

Prof. Kaloki: Mr. Chairman, Sir, it is not hon. Okemo, I am Prof. Kaloki!

Mr. Chairman: Are you moving the amendments on behalf of your Chairman?

[Mr. Chairman left the Chair]

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

Prof. Kaloki: Yes. I beg to move:-

THAT, Clause 2 be amended—

(a) in the definition of the expression “salary and remuneration”, by inserting the words “and benefits” immediately after the word “emoluments”;

(b) by inserting the following new definition in its proper alphabetical sequence—
“State officer” has the meaning assigned thereto in the Constitution.

The definitions for that include “the State officer” which means a person holding a State office as defined under Article 260 of the Constitution. The reason for that is that the public officer should, therefore, be defined for clarity. We have been enabled to do so.

Mr. Temporary Deputy Chairman, Sir, also we have been able to include at “benefits” at the end. This is also to bring clarity on the same.

The Temporary Deputy Chairman (Mr. Ethuro): Order Members!

Hon. Kaloki you are doing the amendments for hon. Okemo or your own, because there is also one under your name?

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I am the Vice-Chair representing my Committee---

(Mr. M. Kilonzo stood up in his place)

The Temporary Deputy Chairman (Mr. Ethuro): Order, Minister for Justice, National Cohesion and Constitutional Affairs! I was asking the Member who does not happen to bear your name!

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, thank you for the opportunity to represent the Committee. We have already presented our amendments pertaining to Clause 2. The Minister withdrew his amendments. So, we are getting our amendments from the Committee.

Mr. Temporary Deputy Chairman, Sir, we are on definitions. The definitions include the State officer---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Kaloki! Just a clarification; there are two amendments, one by hon. Okemo and one by yourself. So, we just want to know which one you are moving. Are you starting with hon. Okemo’s amendment before yours?

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, there are two amendments here from the Committee.

The Temporary Deputy Chairman (Mr. Ethuro): I just wanted a small clarification first.

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I am moving both of them. I am moving one on behalf of Mr. Okemo. The other one, I will also move it.

The Temporary Deputy Chairman (Mr. Ethuro): You have moved both! You can only move one amendment at a time.

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I am beginning with amendment---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Professor!

Let me guide you! Just start with hon. Okemo’s amendment! Then we will come to yours!

Mr. Langat: On a point of order, Mr. Temporary Deputy Chairman, Sir. I think hon. Okemo’s amendment and his amendment are just the same!

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Langat, you are not helping us! That is why I wanted him to tell us which one he will move first. So, let him move one then the other one is negated by the first one.

Prof. Kaloki: Temporary Deputy Chairman, Sir, let us begin by Clause 2, item No.1 and item No.2. My version is more summarized. This is hon. Okemos's amendment. On the issue of State officer, it has been captured in the amendment. It has been defined to reflect Article 260 of the Constitution. That amendment is there. So, after that I will go to Clause 5.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! Messrs. Orenge and Bett! You have not caught the Chair's eye although I saw you walking.

An hon. Member:--- (*Off-record*)

The Temporary Deputy Chairman (Mr. Ethuro): That is exactly the dilemma the Chair was in when asking the professor which one he was moving. Since the answer to that question is not forthcoming, the Chair will give direction. He is here for both amendments, which are on the Order Paper. So, I want to believe that the amendment he is moving first is that by the Chairman of the Committee, hon. Okemo. That is the amendment we will deal with first.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): On a point of order, Mr. Temporary Deputy Chairman, Sir. I am seeking some clarification. Were the amendments by Mr. Okemo brought in his capacity as the Chairman of the Departmental Committee on Finance, Planning and Trade?

The Temporary Deputy Chairman (Mr. Ethuro): Yes.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): If that is the case, is Prof. Kaloki the Vice-Chairman of that Committee?

The Temporary Deputy Chairman (Mr. Ethuro): Yes.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Why are they treating it this way? As Chairman and Vice-Chairman of the Committee, they should have put their amendments together.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Order! First and foremost, you are anticipating debate. Let us dispose of one amendment and then that matter will be material in their subsequent amendment.

Mr. Koech: On a point of order, Mr. Temporary Deputy Chairman, Sir. The concerns raised by hon. Musila are genuine and---

The Temporary Deputy Chairman (Mr. Ethuro): Indeed, they are genuine, hon. Koech. We are in the Committee Stage. We cannot spend time on concerns which the Chair has already appreciated, and is giving the way forward. There is no amount of ventilation on this matter that will resolve it.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I was going to make a proposal.

The Temporary Deputy Chairman (Mr. Ethuro): No! Order, hon. Members! I propose that Clause 2 be amended as proposed by the Chair of the Departmental Committee on page 2452 of the Order Paper.

For the understanding of those hon. Members who are vexed, the amendment by Prof. Kaloki himself is on page 2453. But we are referring to the amendment on page 2452 by hon. Okemo.

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Mr. Ethuro): Prof. Kaloki, arising from this resolution, you have to withdraw your amendment, because it is similar to the one that has just been agreed to!

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I withdraw my amendment because, as you have correctly noted, it is similar to that of the Chairman of the Committee.

(Prof. Kaloki's proposed amendment withdrawn)

(Clause 2 as amended agreed to)

(Clauses 3 and 4 agreed to)

Clause 5

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT Clause 5(1)(b) be amended by deleting the word "fifteen" and substituting therefor the word "ten".

This is to merely reduce the period from "fifteen" to "ten", as proposed by hon. Members during debate at the Second Reading.

I beg to move.

(Question of the amendment proposed)

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I just want to support the Minister. We felt that ten years' experience is adequate.

So, I support.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, unless you have a contradictory opinion, for purposes of making progress, allow us to move on.

Mr. Kioni: Mr. Temporary Deputy Chairman, Sir, a few hours ago we said that this requirement of ten years' experience is discriminatory. If we are to be consistent then we should allow five years just like we did in the other Bills.

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

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

The Temporary Deputy Chairman (Mr. Ethuro): Prof. Kaloki, subsequent to that resolution, your amendment and that of the Departmental Committee Chairman have

to be withdrawn. However, you are left with Subclause 5(3). If you withdraw the two, I will allow you to move the other one.

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, we withdraw that and wait for the other portion when we get to it.

(Proposed amendments withdrawn)

The Temporary Deputy Chairman (Mr. Ethuro): Proceed and move the amendment on Subclause 5(3).

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

THAT, Clause 5 be amended-

(a) in Subclause (3) by inserting the following new paragraph immediately after paragraph (e)-

“(f) has not met his or her statutory tax obligations.”

Mr. Temporary Deputy Chairman, Sir, we wanted to make sure that the people who apply for these particular positions also comply with the tax obligations as true Kenyan citizens.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I want to oppose this proposed amendment because the qualifications for some of these commissions are already in the Constitution. If you are putting additional qualifications, then issues of interpretation would arise. What is a statutory tax obligation? Sometimes you find a situation where KRA may impose a tax obligation and you are opposed to it. Litigating over such an issue – I have done some tax cases – could take even ten years. I had a situation where the KRA imposed a tax bill of over Kshs1 billion on some companies when it was not justified under any circumstances. I do not think we should put additional qualifications that do not exist in the Constitution.

Mr. Oyongo Nyamweya: Mr. Temporary Deputy Chairman, Sir, I want to support the inclusion of the proposed amendment. It is very critical that the officers we will have elected meet tax obligations. This is because for you to have a case with the KRA, it does not happen in one day. If there is a dispute, there is a tribunal to handle it. So, it is not an issue that will happen once. In any case, that is one man. There are other men who meet their tax obligations who can be considered. So, this should be included. I support this amendment.

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

(Clause 5 as amended agreed to)

(Clauses 6, 7, 8, 9 and 10 agreed to)

Clause 11

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I beg to move:-

(i) THAT Clause 11(a) be amended by deleting the whole Subclause (a) and substituting therefor a new Subclause (a) as follows –

(a) Inquire into and advise on the salaries and remuneration to be paid out of public funds.

(ii) THAT Clause 11(b) be amended by inserting the phrase “and county” after the word “public” appearing in the clause.

(iii) THAT Clause 11(f) be amended by inserting the phrase “and county” after the word “public” appearing in the clause.

(iv) THAT Clause 11(g) be amended by inserting the phrase “and county” after the word “public” appearing in the clause.

Mr. Temporary Deputy Chairman, Sir, this issue has raised a lot of concern particularly among other constitutional offices. So, we want to remove the word “determine” and change it to “advise”.

I also want to withdraw sections (ii), (iii) and (iv) partly because they are covered by the proposal of the Committee.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Minister! You proposed the first part (i) then wait for us to dispose it before you can propose the others.

(Question of the amendment proposed)

The Minister for Education (Prof. Onger): Mr. Temporary Deputy Chairman, Sir, this particular clause has brought a lot of pain and agony to the Teachers Service Commission (TSC) and you might have been privy to the protestations that they have made in public. Therefore, the word “determine” has been very provocative to them. Therefore, I agree and concur with the new word because TSC has the mandate to determine. Therefore, you cannot have another commission determining on their behalf. So, we would be quite happy with that amendment which is proposing to “inquire and advise” as opposed to “determine.” This would remove the conflict between the two commissions.

I support the amendment.

Mr. Langat: Mr. Temporary Deputy Chairman, Sir, I support the amendment because the way it was, initially, was against the Constitution. In the Constitution, the role of the Salaries and Remuneration Commission is to determine the salaries of State officers and to advise on the salaries of other public officers. So, I support this amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, with your kind permission, I wish to withdraw sections (ii), (iii) and (iv) of the proposed amendment as appears in the Order Paper under Clause 11 because it is catered for elsewhere.

(Proposed amendments to sections (ii), (iii) and (iv) withdrawn)

The Temporary Deputy Chairman (Mr. Ethuro): Those amendments have been withdrawn! Let us now go to paragraph (b) and still on part (iii) and subsequent to the passage of the earlier one, you may have to withdraw that one.

Prof. Kaloki: Mr. Chairman, Sir, if you are talking about Clause 11, the Minister dealt with it and the Committee did not consider any other amendment in that particular clause.

The Temporary Deputy Chairman (Mr. Ethuro): That amendment is also withdrawn! Then on paragraph (b), Prof. Kaloki, you had an amendment on that paragraph which was proposing a deletion.

(Proposed amendment withdrawn)

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, we are withdrawing that one.

(Proposed amendment withdrawn)

(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 11 as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! Although we are aware you have an amendment, if you do not rise, we can move on.

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, what clause is that? I stand guided!

The Temporary Deputy Chairman (Mr. Ethuro): Clause 12!

Clause 12

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

THAT, Clause 12 be amended by-

- (a) deleting the word “equal” appearing immediately before the word “remuneration” and substituting therefor the word “equitable”;
- (b) re-numbering the existing provision as subclause (1);
- (c) inserting the following new subclause immediately after the renumbered subclause (1)-

“(2) Without prejudice to subsection (1), the Commission shall take into account the recommendations of previous commissions established to inquire into the matter of remuneration in the public service.

Mr. Temporary Deputy Chairman, Sir, for the Commission to recommend equal payments, it will be very difficult in the light of existing---

The Temporary Deputy Chairman (Mr. Ethuro): Order! Since it is already on the Order Paper, all you need to do to save time is to say “as on the Order Paper” then maybe give one line for justification and we proceed!

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I have already moved my amendment as it appears on the Order Paper. As you can see there are a lot of

differences and disparities in the employment sector. Therefore, it will be very difficult to use the word “equal”. It should be “equitable”.

(Question of the amendment proposed)

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Chairman, Sir, in pay review, the principle we really use is equal pay for work of equal value. This is because “equitable” has a different meaning. So, equal pay for work of equal value is what harmonized pay reviews refer to as the principle in this case instead of equitable.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Minister! Are you supporting the amendment or opposing?

The Minister of State for Public Service (Mr. Otieno): I am opposing the replacement of word “equal” with “equitable” because that is not the description of the known principle in pay harmonization and reviews.

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

(Clause 12 (a) agreed to)

(Clauses 13, 14 and 15 agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Yes, Hon. Okemo!

Prof. Kaloki: On a point of order, Mr. Chairman, Sir. We had already recommended that I move that to include 12(1).

The Temporary Deputy Chairman (Mr. Ethuro): Prof. Kaloki, you brought that amendment and it was negated. Move on to Clause 16!

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Chairman, Sir. There is an amendment under Clause 12(c) by hon. Kaloki, which I did not hear him move! The only amendment we disposed of was at Clause 12(a). This is a completely different subject.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! When Prof. Kaloki moved the amendments, he literally read out all of them and we told him to just say “as per the Order Paper”. So, you know what the Order Paper contains. So, he moved all of them in their entirety and that is the matter we disposed of.

Eng. Rege: On a point of order, Mr. Temporary Deputy Chairman, Sir. There was---

The Temporary Deputy Chairman (Mr. Ethuro): Order! In any case, that matter has been determined. We cannot go back to it. We can only deal with issues to do with Clause 16.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Chairman, Sir. When we were actually looking at Clause 12, hon. Kaloki moved Clause 12(a) and that was the same one that hon. Dalmas Otieno spoke about. So, we have not moved 12(b) and 12(c). We have actually skipped 12(b) and 12(c). We have only dealt with 12(a) because we were actually talking about what “equitable” and “equal” mean;

they are what we have addressed our minds. Even if they are irrelevant, we have not dealt with them. We have only dealt with 12(a); we have not dealt with 12(b) and 12(c). I appreciate that Parliament has not provided food, although it is around 11.00 p.m., but we have not dealt with 12(b) and 12(c).

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I just want to plead with you to let us deal with the amendments in 12(c) and 12(b), because they have not been dealt with.

Mr. Lessonet: On a point of order, Mr. Temporary Deputy Chairman, Sir. What we did in the earlier Bill where there was an issue like this was to go to the end and come back to those which we skipped. If we have already passed it, we should go to the end and then come back to it.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! I appreciate that there is a bit of a mix-up. I do not want to call it confusion. No wonder, some hon. Members felt that there was vexation of their spirits. But, procedurally, we cannot go back at this point. But when we are reporting, we will revisit that particular clause, so that we just move in a neat manner. But we will be able to come back to 12(b) and (c). We have a window of opportunity that we can use when we are reporting, and we must do that before midnight.

Clause 16

The Temporary Deputy Chairman (Mr. Ethuro): There is an amendment to Clause 16, Subclause 2. In fact, there are three of them. Minister!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, Clause 16(2)(c) be amended by deleting the word “fifteen” and substituting therefor the word “ten”.

Mr. Temporary Deputy Chairman, Sir, we are reducing the number of years, as we have done in the past; from 15 to ten.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Ethuro): Vice-Chairman of the Committee, you will note that arising from the Minister’s amendment, you can only move part “a” and withdraw part “b”.

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

THAT, Clause 16 be amended-

(a) in Subsection (1), by inserting the words “and the prior approval of the National Assembly” immediately after the word “process”;

(b) in Subsection (2), by deleting the word “fifteen” appearing in paragraph (c) and substituting therefor the word “ten”.

The Temporary Deputy Chairman (Mr. Ethuro): You cannot move both! That is because part “b” does not arise after the amendment by the Minister was carried. Just move part “a” only.

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

THAT, Clause 16 be amended-

(a) in Subsection (1), by inserting the words “and the prior approval of the National Assembly” immediately after the word “process”;

The Minister for Medical Services (Prof. Anyang’-Nyong’o): On a point of order, Mr. Temporary Deputy Chairman, Sir. Could we seek guidance from you? I do believe that we are in Clause 16.

The Temporary Deputy Chairman (Mr. Ethuro): We are in Clause 16(2), the amendment by the Chair of the Committee.

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Temporary Deputy Chairman, Sir, in this Order Paper, page 2454, it reads: -

“THAT Clause 16 be amended-

(a) in subclause (2)---”

The hon. Member is talking about “a”.

The Temporary Deputy Chairman (Mr. Ethuro): We are on page 2452.

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Temporary Deputy Chairman, Sir, are we going back?

The Temporary Deputy Chairman (Mr. Ethuro): No!

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Temporary Deputy Speaker, Sir, in fact, we are on hon. Okemo’s amendment and Prof. Kaloki’s.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Professor! It is good to listen to the Chair! I was very careful and kept referring to “the Chair of the Committee”, so that you could make that clear distinction between Prof. Kaloki and hon. Okemo!

The Minister for Medical Services (Prof. Anyang’-Nyong’o): My sincere apologies, Mr. Temporary Deputy Chairman, Sir.

(Question of the amendment proposed)

Dr. Eseli: Mr. Temporary Deputy Chairman, Sir, I would like to seek your guidance. I do not think that the other Secretaries of the other various Commissions have had to go through parliamentary approval. So, we are creating a different kind of Secretary to that Commission, compared to the other Commissions. I do not know whether we are being consistent in our actions there.

Mr. Temporary Deputy Speaker, Sir, I oppose that amendment.

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

The Temporary Deputy Chairman (Ethuro): Order! Order Members! There was an amendment by Prof. Kaloki which, according to the Chair, should be thrown out in the light of Mr. Okemo’s amendment being carried.

Prof. Kaloki, do you want to insist on it?

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, on Clause 16(1), there is a proposal that requires that we insert the following words at the end: “Approval by the National Assembly.”

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Kaloki, you had no amendment on Clause 16(1). However, yours is in Subclause 16(2). Just withdraw it, so that we can make progress!

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, before I withdraw, that is where we are reducing the years of experience from 15 to ten. That is also there.

The Temporary Deputy Chairman (Mr. Ethuro): That is the reason we are asking you to withdraw. We carried the amendment by the Minister on the same.

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I withdraw.

(Proposed amendment withdrawn)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Kaloki, you have another amendment on Subclause 4. Do you still want to carry it?

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I withdraw that one also.

(Proposed amendment withdrawn)

Dr. Eseli: On a point of order, Mr. Temporary Deputy Chairman, Sir. The good Professor cannot possibly withdraw that because the Secretary has to get Parliamentary approval. Therefore, it is only right that he is a State Officer.

The Temporary Deputy Chairman (Ethuro): Order! If the amendment has been withdrawn, then it is not before the House. So, we will proceed!

(Clause 16 as amended agreed to)

Clause 17

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

THAT, Clause 17 be amended in Subclause (1) by deleting the words “incompetence or” appearing in paragraph (c).

Mr. Temporary Deputy Chairman, Sir, we are not withdrawing this amendment. There are two sections there.

The Temporary Deputy Chairman (Mr. Ethuro): For the benefit of the Members, it is on page 2454 and there are no two sections, hon. Kaloki. It is on the Order Paper. So, I do not even need to read them. You can read for yourselves.

(Question of the amendment proposed)

The Minister for Medical Services (Prof. Anyang-Nyong): Mr. Temporary Deputy Chairman, Sir, I oppose the amendment because if you delete the words “incompetence or”, it means the clause would read the Secretary may be removed from

office by the Commission in accordance with the terms and conditions of service for negligence of duty.

Mr. Temporary Deputy Chairman, Sir, “negligence of duty” and “incompetence” are two different misdemeanors or misconduct. So, you cannot really say that incompetence is not a good reason to discipline somebody. I think both incompetence and negligence of duty should be there. So, I do not see the rational of the Vice-Chairman of the Committee---

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Professor, let us not debate; we have heard you!

The Minister for Medical Services (Prof. Anyang-Nyong’o): Okay, thank you very much, Mr. Temporary Deputy Chairman, Sir.

I oppose the amendment.

Mr. Lessonet: Mr. Temporary Deputy Chairman, Sir, I also oppose the amendment for the same reasons.

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

(Clause 17 agreed to)

Clause 18

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Vice-Chair, you move the one of the Chairman first before yours.

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

THAT, the Bill be amended by deleting Clause 18.

Hon. Members: Why are you deleting it?

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, for me to explain a little bit further, it is the issue of seconding staff to the Commission. We felt, as a Committee that, that would be a loophole whereby many employees would be seconded there and those employees would not be able to get permanent employment. The Commission would not be able to discharge its duty without permanent employees.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, allow me to persuade the hon. Professor to borrow a little from my own experience.

These Commissions we are setting up are sometimes ending up spending up to six months, sometimes four months without staff. This is partly because, either they are appointed in between Budget or some other circumstances that force us to, in fact, rely on secondment. It is a fundamental facility for all these Commissions and, therefore, to remove this clause would mean that we are handicapped. Sometimes, the other one is if the funds are not available and therefore the secondment would not necessarily cause the mischief that the hon. Professor has in mind.

I beg to oppose.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members! I am really pleading with you because of time consideration. We still have to come back to Clause 12. So, unless it really critical!

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I wish to support the amendment. There is a very bad and dangerous trend being created in these proposed independent commissions. In the Departmental Committee on Finance, Planning and Trade, we already have a scenario where the Resource Allocation Commission is invaded by the Treasury through the so-called “seconded officers”. The reason as to why we have done this, as a Committee, is to set precedent, so the commissions can truly become independent in everything.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Midiwo! That is sufficient.

Yes, hon. Otieno!

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Chairman, Sir, this is one of the Commissions that will be covering a highly specialised area, where it will take time to train officers. This Commission will require officers who have been doing this job in the Government, and who have gone through very long periods of training. Secondment is a short-term measure taken to avoid cases where one would lose his years of service and pension, if one were to resign from his job in Government and take up a new appointment in the Commission. So, it is really a provision to provide for flexibility for known staff within the country to support these Commissions for short periods while they hire and train their own staff. It is not---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Minister! This is not debate. Hon. Members, I wish to put the Question,

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

Hon. Members, hon. Kaloki has an amendment to this clause, but it is similar to the one we have just disposed of. So, we do not have to go that route. Therefore, I wish to put the Question.

(Proposed amendment withdrawn)

(Clause 18 agreed to)

(Clause 19 agreed to)

Clause 20

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 20(2) be deleted.

(Question of the amendment proposed)

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, I stand to oppose the amendment by the Minister. Clause 20(2) should not be deleted. If the money is unspent, it should be carried forward to the next financial year.

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

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! Since the Departmental Committee's amendments and those of Prof. Kaloki have the same effect, we will not carry them.

(Proposed amendments withdrawn)

(Clause 20 agreed to)

(Clauses 21, 22, 23, 24, 25, 26, 27 and 28 agreed to)

Mr. Mwadeghu: On a point of order, Chairman, Sir. We were supposed to go back to Clause 12.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members! The Chair had already ruled on how we will proceed. We will go through and then do Report Progress. We will come back to conclude that one and that is why we want to expedite the process.

(First Schedule agreed to)

Second Schedule

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

THAT, the Second Schedule be amended in paragraph 2 by deleting subparagraph (1) and substituting therefor the following new subparagraphs-

“(1) If a member or an employee is directly or indirectly interested in any contract, proposed contract or other matter before the Commission and is present at any meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, the member or employee shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to such contract or matter or be counted in the quorum of the meeting during consideration of the matter.

“(1A) A member or employee whose personal interest conflicts with their official duties shall-

(a) declare the personal interest in writing to their supervisor or other appropriate person or body and comply with any directions given to avoid the conflict;

(b) refrain from participating in any directions with respect to the matter.”

Mr. Temporary Deputy Chairman, Sir, here we are trying to avoid conflict in the contract in a case where a member or an employee might have interest in a contract before the Commission.

(Question of the amendment proposed)

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Chairman, Sir, forgive me, but I would like to draw the attention of the Vice-Chairman of that Committee that this amendment may prove superfluous. This is because if you look at conflict of interest under paragraph 2, you will find that it deals with the issues being raised in that amendment unless of course I am having a different version of the Bill. What the hon. Member is trying to deal with is to lay rules of conflict of interest in the Second Schedule. I do not understand how that will make the situation any better.

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, I just want to point out that the original clause is better. It talks about a person and the person's spouse directly or indirectly. If you look at this other one, you will find that it removes the spouse. If we are removing conflict of interest, let us retain the original clause which is stronger than the proposed one.

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

(Second Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its consideration of The Salaries and Remuneration Commission Bill and its approval thereof with amendments subject to recommittal of Clause 12(b) and 12(c).

The Temporary Deputy Chairman (Mr. Ethuro): I hope that hon. Members are now happy!

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

THE SALARIES AND REMUNERATION COMMISSION BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered The Salaries and Remuneration Commission Bill and approved the same with amendments subject to recommittal of Clause 12(b) and 12(c).

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Lands (Mr. Orengo) seconded.

(Question proposed)

(Question put and agreed to)

IN THE COMMITTEE

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

THE SALARIES AND REMUNERATION COMMISSION BILL

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, you will remember that we reported progress subject to recommittal of Clause 12(b) and 12(c) so we are back to your Order Paper. Look at the amendments as pertaining to Clause 12.

Therefore, I wish to ask Prof. Kaloki to move.

Clause 12

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

THAT, Clause 12 be amended by-

(b) re-numbering the existing provision as subclause (1);

(c) inserting the following new subclause immediately after the renumbered Subclause (1)—

“(2) Without prejudice to subsection (1), the Commission shall take into account the recommendations of previous commissions established to inquire into the matter of remuneration in the public service.”

(Question of the amendment proposed)

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

(Clause 12 as amended agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do

report to the House its consideration of The Salaries and Remuneration Commission Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL

Mr. Farah: Madam Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered The Independent Electoral and Boundaries Commission Bill and approved the same with amendments.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister for Public Works (Mr. Kiunjuri) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, I beg to move that the Independent Electoral and Boundaries Commission Bill be now read the Third Time.

The Assistant Minister for Public Works (Mr. Kiunjuri) seconded.

(Question proposed)

(Question put and agreed to)

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

THE SALARIES AND REMUNERATION COMMISSION BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Salaries and Remuneration Bill and approved the same with amendments.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

The Minister of State for Public Service (Mr. Otieno) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, I beg to move that The Salaries and Remuneration Commission Bill be now read the Third Time.

The Minister of State for Public Service (Mr. Otieno) seconded.

(Question proposed)

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, allow me to, on behalf of the Government, record thanks to the Members of this House for having stayed this long to demonstrate that this is a working Parliament, and is not an impediment to passing of Bills to implement the Constitution. This has happened ahead of Madaraka Day tomorrow; also wish hon. Members a happy Madaraka Day. Thank you.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, I also want to congratulate Members. Ordinarily, we are told that we do not work. We have worked until almost midnight. Congratulations to all hon. Members!

(Question put and agreed to)

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

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, it is now time to adjourn the House. The House stands adjourned until Thursday, 2nd June, 2011, at 2.30 p.m.

The House rose at 11.48 p.m.