

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 25th August, 2011

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Constitutional Implementation Oversight Committee on Ethics and Anti-Corruption Commission Bill, 2011.

(By Mr. Abdikadir)

Report of the Budget Committee on the Nomination for the Appointment of the Controller of Budget.

(By Mr. Mbau)

Report of the Departmental Committee on Labour and Social Welfare on the Amendments to the Employment and Labour Relations Courts Bill, 2011.

(By Mr. Noor)

Report of the Departmental Committee on Local Authorities on the Urban Areas and Cities Bill, 2011.

(By Mr. Ngugi)

Report of the Departmental Committee on Lands and Natural Resources on the amendments to the Environment and Land Court Bill, 2011.

(By Mr. Musyimi)

NOTICE OF MOTION

**ADOPTION OF BUDGET COMMITTEE REPORT ON
APPOINTMENT OF CONTROLLER OF BUDGET**

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

THAT, this House adopts the Report of the Budget Committee on the nomination for the appointment of the Controller of Budget laid on the Table of the House today, Thursday, 25th August, 2011.

POINT OF ORDER

RE-APPOINTMENT OF HON. WETANGULA AS MINISTER AND MR. THUITA MWANGI AS PS FOR FOREIGN AFFAIRS

Mr. Gunda: Mr. Deputy Speaker, Sir, I wish to seek a Ministerial Statement from the Leader of Government Business on the matter of the re-appointment of hon. Moses Wetangula and Mr. Thuita Mwangi as Minister and Permanent Secretary respectively, in the Ministry of Foreign Affairs.

The Report of the Departmental Committee on Defence and Foreign Relations which was adopted by the House on 27th October, 2010, made recommendations touching on the two which were the reason why hon. Wetangula and Mr. Thuita Mwangi stepped aside.

The Leader of Government Business should, in his Statement, confirm to the House whether the Kenya Anti-Corruption Commission and other investigative arms of the Government have completed their investigations as recommended to warrant the two for re-appointment. If so, could he table the report in the House? He should also confirm whether the appointing authority was advised that the conduct of hon. Wetangula is not compatible with that of a Minister as recommended in that report.

The Leader of Government Business should also confirm whether or not the appointing authority was aware that the House recommended that the Minister be severely reprimanded for breach of Section 21 of the National Assembly Powers and Privileges Act by deliberately misleading the Committee and that he was to be referred to the House Powers and Privileges Committee for action.

In seeking this Statement, I am aware that the appointing authority has the prerogative of appointing whoever he wants to serve in his Cabinet or Government, but the report of the Committee which was adopted by the House raised serious issues concerning acquisition and disposal of properties in Kenya missions abroad.

Mr. Deputy Speaker: Order, Mr. Gunda! You are seeking a Ministerial Statement. You are not giving a Statement. You have done that!

Mr. Gunda: I stand guided, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Can the Government side give an undertaking on Mr. Gunda's request?

(Mr. Keynan stood up in his place)

Mr. Deputy Speaker: Are you on a point of order, hon. Keynan?

Mr. Keynan: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Proceed!

Mr. Keynan: Mr. Deputy Speaker, Sir, I am sorry I came late. In light of the recall of the former Minister for Foreign Affairs and the former Permanent Secretary, I

rise to seek guidance from the Chair because in October last year, this House adopted the Report of the Departmental Committee on Defence and Foreign Relations---

Mr. Deputy Speaker: Order, Mr. Keynan! Mr. Gunda did seek a Ministerial Statement on a matter that also touches on the Minister. Can we dispose of that bit first before you raise your point of order?

Mr. Ojode, can you give an undertaking on when the Leader of Government Business will issue the Ministerial Statement?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, although the President has powers to appoint anybody into the Cabinet, and he has not breached any law in re-appointing the former Minister, I will ask the Leader of Government Business to issue the Ministerial Statement in regard to that on Thursday, next week.

Mr. Gunda: Mr. Deputy Speaker, Sir, this being an urgent matter, could the Ministerial Statement be issued on Tuesday?

The Deputy Speaker: Mr. Ojode, the matter concerns a Minister who has already assumed office. Would you be in a position to issue the Ministerial Statement on Tuesday, next week?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I will try to impress upon the Leader of Government Business to issue the Ministerial Statement on Wednesday.

Mr. Gunda: Wednesday will be a public holiday!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I will ask him to issue the Ministerial Statement on Tuesday because Wednesday will be a public holiday.

Mr. Deputy Speaker: Fair enough!

Yes, Mr. Keynan!

Mr. Keynan: Mr. Deputy Speaker, Sir, I was trying to say that in October, 2010, this House adopted the Report of the Departmental Committee on Defence and Foreign Relations which touched on our missions abroad. I would like to seek the guidance of the Chair on a number of issues.

Yesterday, the former Minister and other Ministry officials who have been on suspension have been recalled from that suspension. That Report had four components. The first component was for the individuals who had been mentioned to step aside, pending investigations by competent investigative agencies of the Republic of Kenya.

Mr. Deputy Speaker, Sir, the second component of the Report arises from the fact that the team from the Ministry had persistently misled Parliament in different forums. We were, therefore, persuaded that they were not fit to hold any public office.

Thirdly, the National Assembly (Powers and Privileges) Act says:-

“Part IV - Offences and Penalties

21. Any person who before the National Assembly or any committee intentionally gives a false answer to any question material to the subject of inquiry, which may be put to him during the course of any examination, shall be guilty of an offence under section 108 of the Penal Code and liable to the penalty prescribed by the appropriate section for that offence.”

Mr. Deputy Speaker, Sir, this aspect was also recommended. Surprisingly, to-date, there is no report which informs this House that the individuals have been cleared.

Prudent practice requires, under the current constitutional dispensation, that Parliament plays a fundamental role in the management of our democratic processes. Under Chapter Six of the Constitution, which is on Leadership and Ethics, Article 73(2)(c)(i) says that honesty must be the key determinant in the execution of public duties. I am not sure whether this has been adhered to.

Chapter Eight, Article 94(4) says:-

“Parliament shall protect this Constitution and promote the democratic governance of the Republic.”

This country practises representative democracy through this House. It is as a result of this law that all entities or individuals are accountable to the Constitution and Parliament. I am not sure whether this law has been followed.

Mr. Deputy Speaker, Sir, again, Article 125 of the Constitution gives Parliament and by extension, any Committee of Parliament, the same powers as those of the High Court of the Republic of Kenya. These are powers to call witnesses, ask for evidence and deal with any other issue. Unlike in the old Constitution, the role of Parliament has been elevated to that of the High Court. Because of this, any decision by this House is binding to the Executive. I also want to know whether the appointing authority has satisfied this Parliament and the Speaker that the individuals who have been suspended have been cleared by any competent investigative agency. That one should come from the Speaker. Secondly, I do not recall Parliament sitting down in any of its sittings to reverse its earlier decision that the conduct of those individuals was not compatible with the conduct of public officers.

Thirdly, there is an act of contempt on parliamentary procedures. Parliament is the Legislative Arm of the Republic of Kenya. Anything that shows some form of contempt to the institution of Parliament has no place in the Republic of Kenya. Since the sovereignty of our people is manifested through the Parliamentary representatives that we have here, what is the role of Parliament? Is it just to rubberstamp---

(Loud consultations)

Mr. Deputy Speaker, Sir, hon. Members are consulting loudly.

Mr. Deputy Speaker: Order, hon. Members! Order, Mr. Murgor and Mr. Litole! Proceed, Mr. Keynan!

Mr. Keynan: Mr. Deputy Speaker, Sir, what is the role of this Parliament? Is it just to rubberstamp? Is it just to raise issues? Are we here just to spend public money? We wasted a lot of public resources as a Committee to prepare the Reports so that action can be taken but two months down the line, when somebody feels that this matter has cooled down, he brings back the same individuals through the backdoor.

It is high time this Parliament puts its foot down and holds the Executive accountable. That is the only way we can make progress. I want to remind hon. Members that Standing Order No.198 gives Parliamentary Committees powers to investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of any assigned Ministries.

Mr. Deputy Speaker, Sir, therefore, any Committee, as an extension of the Kenya National Assembly, attempts to fulfill this mandate. The second function of any

Committee is to study the programme and policy objectives of any Ministry. The third objective is to study and review all legislation referred to it.

The fourth objective or function of any Committee is to study, assess and analyze the relative success.

The fifth function is to investigate and inquire into all matters as the Committee may deem fit or as may be referred to by a Minister. The sixth and final one is to make reports.

Again, Standing Order No.198 clearly talks about the way Committees are supposed to report. Standing Order No. 183 requires the person responsible for this particular entity to make a periodical report after Parliament has made a decision and I want to read it.

Standing Order No.183 says:-

“(1) Within sixty days of a resolution of the House or adoption of any report of a select committee, the Minister under whose portfolio the matter raised in the report or contained in the assurances or resolution fall, shall provide a report to the House”.

Mr. Deputy Speaker, Sir, to the best of my recollection, I do not recall any report that has been made by the Minister for Justice, National Cohesion and Constitutional Affairs, the Attorney-General or any other person to the effect that this particular issue which had been decided by this House has had any progress or has had any problem.

Again, Standing Order No.97 clearly spells out the kind of action Parliament is likely to take when an individual is accused of disorderly conduct. This is the Report that this Parliament adopted. The issue is; has the Speaker had any contrary report to the resolution of the House? This requires your guidance.

Mr. Deputy Speaker, Sir, if we make it an issue that every time this Parliament makes a decision, we wait for two or three months then the same decision is reversed through the back door by the Executive, then there will be no need for Parliament, Committees and for us to waste public money. This is because our decisions are just thrown to the dustbin. This has been the trend. It is because of this that we feel as a Committee, that to date, nothing has come to our attention. I think less than three weeks ago, the Director of the Kenya Anti-Corruption Commission (KACC) was on record saying that they are still trying to liaise with the Government of Japan to get assistance. When has this suddenly happened?

It is because of this, notwithstanding the recall, that these individuals as far as the resolution of this House is concerned, remain suspended, unless we get a contrary report that will satisfy the Speaker and the entire House.

Mr. Deputy Speaker, Sir, it is because of this that I want to believe that these individuals should not be allowed to transact any business until the Speaker makes a determination. We will be dealing with strangers who have been suspended by the resolution of this House.

Finally, the law is an ass. It is not that the international community is against the people of Kenya or the Republic of Kenya; it is because impunity has become the facet of the leadership of the Republic of Kenya. It is high time this Parliament put its foot down and said no to some of these past practices. Kenyans do not have faith in our own institutions because of impunity. It is simply because of the circuses that we go through. As a nation, we require to hold the Executive to accountability.

Mr. Deputy Speaker, Sir, it is because of this that I believe, that until this issue is determined by your competent office, these individuals should not be allowed to transact any business.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I rise on the same issue that the hon. Member has just spoken about.

Mr. Keynan has raised a very important matter concerning the principle of separation of powers in the Government. That this Parliament can reach a resolution as an independent arm of Government and another arm of Government ignores or acts to suggest that they have reversed, is a serious threat to Parliamentary democracy.

The action yesterday to appoint the former Minister for Foreign Affairs raises very serious doubts in the minds of all Kenyans about the commitment of the President to the fight against corruption. As I comment on this, I feel very pained because yesterday I wanted to congratulate my brother Mr. Moses Wetangula about his appointment but asked myself; what is great, to congratulate a brother who has not been cleared or to demonstrate clearly that people must rise and fight corruption in this country?

Mr. Deputy Speaker, Sir, the resolutions of this House, as the Chair has said before, cannot be so in vain. This is not the first time the President is overlooking resolutions of the House. Hon. Members, the pain of preparing a Censure Motion, the hours a Member of Parliament puts in, the amount of research, the risk you go through and after you are successful in this House, all that is just reduced to an exercise in futility.

Mr. Deputy Speaker, Sir, I am requesting the Chair to think very hard about this particular point of order. This is because on the issue that I prosecuted in this House against Mr. Amos Kimunya which succeeded, subsequently, I came to this House and tabled a Report of the Cockar Commission which indicated that the then Minister had not been cleared of what the House found he had committed.

Therefore, I want to request the Chair that, so that Parliament is removed from the perception that we are part of an Executive that is not interested in fighting corruption, the Chair comes out clearly and demands that before Mr. Wetangula transacts business in this House, the Leader of Government Business comes here and tables a report showing that he has been cleared. What is more; use that opportunity to also tell the Republic on your ruling on the Report that I tabled in respect of the Cockar Commission that investigated Mr. Amos Kimunya. Kenya is bigger than the President, Kenya is bigger than this National Assembly and we must protect taxpayers' money.

Mr. Deputy Speaker, Sir, I beg that you rule.

Mr. Deputy Speaker: Hon. Members, the Chair is cognizant of the issues that have been raised and the seriousness with which Members are taking it. The Speaker is going to give a ruling on the same on Tuesday next week. Hon. Members, I say, "The Speaker" not "The Chair". The Speaker is going to give a ruling on the same.

Next Order!

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF BILLS

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion.

THAT, pursuant to the provisions of Standing Order 107, this House orders that the publication period of the Commission on Revenue Allocation Bill (Bill No. 42 of 2011) be reduced from 14 to 3 days, The National Government Loans Guarantee Bill (Bill No. 43 of 2011) and the Contingencies Fund and County Emergency Fund Bill (Bill No. 44 of 2011) from 14 to 1 day.

Mr. Deputy Speaker, Sir, in moving this Motion, let me first of all once again congratulate the Members for the time they put in yesterday when we had a record seven Bills passed. In addition to that, we already got nine having gone through the Second Reading and we will be looking at them in the Committee of the whole House, later this morning.

Mr. Deputy Speaker, Sir, the reason why these Bills were slightly delayed and would have come with the others is because of the consultative process that had to be undertaken between the stakeholders, including the Commission on the Implementation of the Constitution (CIC). The Bills are fairly straightforward. The relevant Committee of the House is already seized of the matter. I believe that it will only be better if we get these Bills to this House today so that hon. Members can deliberate on them starting from this afternoon and then we clear them tomorrow in the Committee of the whole House. I just want to seek the indulgence of this House that we appreciate the need for having these Bills in place so that they can unlock the flow of money into the new Constitution.

With those few remarks, I beg to move and ask the Minister for Justice, National Cohesion and Constitutional Affairs to second.

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

(Question proposed)

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, I really do not have anything new to say. We support the Minister but the Government, once again, should rise to the occasion. It should know that this Parliament has a responsibility. We will pass these Bills and it is time that Parliament was given ample time in future.

Mr. Deputy Speaker, Sir, I support.

Mrs. Noor: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to talk about “the Government” while he is in the Government? If he is out of the Government let him resign.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, you should know that “Government” is amorphous.

Mr. Deputy Speaker: Order, Mr. Kiunjuri! The Constitution is very clear. A Minister of the Government is the President, the Prime Minister, the Vice-President, Ministers and Assistant Ministers. So, you are a Minister in the Government and you are the Government. Clearly, you cannot talk of another Government unless you have resigned from the Government in the last couple of hours.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, you know that the sovereign power rests with the people of Kenya. All Kenyans

including the Members of Parliament are in the Government. I am also expressing the will of the Government.

Mr. Deputy Speaker: Order! You are out of order!

Mr. Njuguna: Mr. Deputy Speaker, Sir, while supporting this critical Motion, it is our responsibility, as a House, to be concerned about the national debt of this country which is almost Kshs1 trillion. We will ask the Minister to tell this House the steps that are being taken to reduce the national debt, otherwise, the future of this country must be secured.

With those few remarks, I support the Motion.

(Question put and agreed to)

BILLS

First Readings

THE COMMISSION ON REVENUE ALLOCATION BILL

THE NATIONAL GOVERNMENT LOANS GUARANTEE BILL

THE CONTINGENCIES FUND AND COUNTY EMERGENCY FUNDS BILL

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

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Before we go into the Committee of the whole House, I have looked at the Bills that we want to tackle. On Bills Nos.v and vi, we do not have attachments on the Order Paper for the amendments in respect of the suggestions we made when we were in the Second Reading. This is in respect to The Elections Bill and The Employment and Labour Relations Court Bill. I am confused. Does this mean that the suggestions we made have been ignored, and if they will be brought on board, how the hell will they be introduced when we are in the Committee of the whole House? Could you guide us?

Mr. Deputy Speaker: You could just have asked; “How will they be re-introduced?” Why go to hell when you are in town?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, indeed, Dr. Khalwale is right. We will propose, when we go into the Committee of the whole House that Bills Nos.iv and vi are brought in the afternoon so that we have the amendments in the afternoon’s Order Paper. Bill No.v will appear on tomorrow’s Order Paper. This will enable hon. Members to have more time to go through amendments. However, we wanted to raise this matter when we go into the Committee but since the matter has been brought up, and with the concurrence of the Chair, Bills Nos.iv and vi appearing on Order No.12 will be deferred to afternoon or appear on the afternoon’s Order Paper. So, we shall only consider Bills Nos.i, ii, iii,vii, viii and ix which are ready for debate.

Mr. Abdikadir: Mr. Deputy Speaker, Sir, I absolutely agree with the Deputy Leader of Government Business but in view of the fact that many chairpersons tabled amendments through reports this morning, could we be assured that all those amendments will appear on the Supplementary Order Paper this afternoon or tomorrow morning?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I want to assure the Chair of the Constitutional Implementation Oversight Committee (CIOC) that we will ensure that these amendments are on the Order Paper when the Bills come. This is because we have already finished them from our side and they are on the way.

Mr. Deputy Speaker: Are you sure that you have adequate time between now and this afternoon?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, Mr. Deputy Speaker, Sir, because I have signed them and they are available.

Mr. Deputy Speaker: Fair enough! Under the circumstances, the Chair directs that Bills Nos. (iv) and (vi) be deferred to this afternoon and Bill No.(v) be deferred to tomorrow.

(The Ethics and Anti-corruption Commission Bill, The Elections Bill, The Employment and Labour Relations Court Bill in Committee of the whole House deferred)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

[Mr. Chairman took the Chair]

THE NATIONAL POLICE SERVICE BILL

Mr. Chairman: Hon. Members, we shall start with the National Police Service Bill (Bill No.31 of 2011).

Clause 2

Mr. Kapondi: Mr. Chairman, Sir, I beg to move:-
THAT, Clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical sequence-
“Kenya Police Service” means the Service established under Article 243(2) of the Constitution.

Mr. Chairman, Sir, the justification for this amendment is that the definition was mistakenly omitted from the Bill. The other services like the Administration Police Service are defined in the Bill.

(Question of the amendment proposed)

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

(Clause 2 as amended agreed to)

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

Clause 10

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

THAT, Clause 10 of the Bill be amended in paragraph (m) of sub-clause (1) by deleting the words “including arranging to pay compensation to victims of police misconduct.”

Mr. Chairman, Sir, the justification for this amendment is that the payment of compensation to victims of offences, including the police misconduct shall be taken care of by a separate legislation to be enacted by Parliament, pursuant to Article 50(9) of the Constitution.

(Question of the amendment proposed)

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

(Clause 10 as amended agreed to)

Clause 11

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

THAT, Clause 11 of the Bill be amended by inserting the following words at the end of paragraph (b) of the sub-clause (2)-

“or equivalent qualifications.”

Mr. Chairman, Sir, the justification for this amendment is to give a chance to applicants for the position of Deputy Inspector-General who may have qualifications equivalent to a university degree. These qualifications include a Higher National Diploma from recognized institutions.

(Question of the amendment proposed)

(Question, that the words to be inserted

be inserted, put and agreed to)

(Clause 11 as amended agreed to)

Clause 12

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

THAT, Clause 12 of the Bill amended-

- (a) In sub-clause (1) by deleting the words “or Deputy Inspectors-General”;
- (b) by deleting sub-clause (5);
- (c) in sub-clause (13) by deleting the words “and the Deputy Inspector-General”

Mr. Chairman, Sir, the clause is being amended for two reasons. The first is to exempt the two Deputy Inspectors-General from Parliamentary approval of their appointments. The reason is to remove the selection panels and let the National Police Service Commission initiate the recruitment of the position of Inspector-General of Police.

(Question of the amendment proposed)

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

(Clause 12 as amended agreed to)

Clause 13

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

THAT, Clause 13 of the Bill be amended by inserting the following words at the end of sub-clause (7) -

“except that provisions in the Schedule requiring approval by Parliament shall not apply”

Mr. Chairman, Sir, the justification for this amendment is that the amendment seeks to exempt the two Deputy Inspectors-General from parliamentary approval of their appointments.

(Question of the amendment proposed)

Mr. Abdikadir: Mr. Chairman, Sir, approvals are done by the National Assembly and not by Parliament. Parliament is both the Senate and the National Assembly. Approvals are a constitutional function of the National Assembly. I think we need to have a further amendment to remove “Parliament” and put “National Assembly.”

Mr. Chairman: Hon. Abdikadir, are you moving another amendment after the amendment?

Mr. Abdikadir: Mr. Chairman, Sir, I am moving a further amendment to the amendment by deleting the word “Parliament” and replacing therewith “National Assembly.”

(Question of the further amendment proposed)

Dr. Khalwale: Mr. Chairman, Sir, I want to support the further amendment because the roles of the Senate and National Assembly are clearly defined. We know for a fact that it is only the National Assembly that can discharge this kind of role. So, if we leave it the way it is, obviously, we will run into constitutional problems.

Mr. Chairman, Sir, further to this, I want to propose that elsewhere in this Bill, where the word “Parliament” exists for purposes of approval, it should be replaced with the words “National Assembly.”

I beg to support.

Mr. Chairman: Hon. Members, are you sure that you want to pass this amendment now without further debate? The Chair, being also a Member of Parliament in the Back Bench, knows that in most Executive jurisdictions, the approvals for appointments are done by the senate sub-committees unless it is the American one which is more or less in line with ours. But, nonetheless, I would like to see further debate on this.

Mr. Abdikadir: Mr. Chairman, Sir, with your permission, the Constitution is very clear. Typically in most bi-cameral set-ups, approvals are done by the Senate. However, in our set-up, the functions of the Senate are four in Article 96 and they do not include approvals which were reserved for the National Assembly. That is why we have been handling all the approvals, including the ones for Attorney-General and later on for the Cabinet Ministers. That is a separate function of the National Assembly.

Mr. Chairman: The current handling, clearly, cannot be a case for that, because we do not have a Senate in place. I just want us to get sufficient inputs into this.

Mrs. Shebesh: Mr. Chairman, Sir, we understand your concern which is genuine. However, the Constitution says that the current Parliament plays both the role of the Senate and the National Assembly in the transition period.

Mr. Chairman: This law we are now making is not for the current situation. It is also for posterity.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Chairman, Sir, that is why we are replacing with “Kenya National Assembly (KNA)”. We are going to have a law which is specifically for vetting. It is going to be done by the KNA as opposed to the Senate.

Mr. Abdikadir: Mr. Chairman, Sir, the role of the Senate is given by Article 96 of the Constitution. The role of the Senate is to represent the counties and serves to protect the interests of the counties and their governments. It participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties. The Senate determines the allocation of national revenue among counties and also participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office. Those are the only four functions. If you look at the functions of the National Assembly, you will see that part of the functions is to vet---

Mr. Chairman: Which Article is that?

Mr. Abdikadir: Mr. Chairman, Sir, the one I read now is Article 96.

Mr. Chairman: And the other one on the National Assembly?

Mr. Abdikadir: The KNA functions are in Article 95. It is supposed to deliberate and resolve issues of concern to the people. It enacts legislation. It allocates national revenue. It exercises oversight over national revenue and expenditure. It reviews the conduct in the office of the President, the Deputy President and State officers and initiates the process of removing them from office. It exercises oversight of State organs.

Mr. Chairman: So, clearly it is mum on both! On matters of approval of appointments, it is mum on both.

Mr. Abdikadir: No, it has---

Mr. Chairman: It does not have! If you look at the role of the National Assembly under Article 95, 1 to 6 up to the one that says---

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, could I be of assistance? I thank you for raising this matter because it is important. The approval for the people we are talking about is provided for in Article 245. Article 245 is talking about the approval of Parliament. Parliament is defined in the Article that my good friend read, Article 86. If you look at Article 93 at page 63, it reads: "There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate. The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution". But approvals are under Article 124 (4) at the top of page 78. I am just trying to demonstrate that you are right; the Constitution contemplates, "When a House of Parliament considers any appointment for which its approval is required under this Constitution or an Act of Parliament –

(a) the appointment shall be considered by a committee of the relevant House."

So, the design of this particular Act is to require approval of the Inspector-General and his deputy by the National Assembly and not by the Senate.

Mr. Chairman: So, clearly, we only have one Parliament now. That is the law we are making and so, it would be clearly, in the opinion of the Chair, given the fact that the Chair is also a Member of Parliament--- Fortunately, the Speaker is not here so that the Chair can take the Floor. It must be appreciated that the Chair is of the view that you leave it as Parliament because Parliament essentially means the House that we are in now.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, personally I stand guided. It does not change anything.

Dr. Khalwale: On a point of order, Mr. Chairman, Sir. I do not want to sound like I was sleeping, but because this is a very important matter, could you kindly allow the Minister for Justice, National Cohesion and Constitutional Affairs to repeat his argument?

Mr. Chairman: You probably did not hear him very well. So, I will let him repeat his argument.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, let me begin again then. Listen to this: At page 157, you will find the position of Inspector-General. It is Article 245. It says: "There is established the office of the Inspector-General of the National Police Service.

(ii) The Inspector-General is appointed by the President with the approval of Parliament." So, I left that. If you can keep Parliament in one corner of your big brain and

I take you now to page 63 where it says in Article 93: “There is established a Parliament of Kenya which shall consist of the National Assembly and the Senate.” both of them comprise the Senate. Then it continues:-

(2)“The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.” Then when you go to Article 124(4) which talks about approvals, you will find it at page 78(4), it says: “When a house of Parliament considers any appointment for which its approval is required under this Constitution or an Act of Parliament, the appointment shall be considered by a committee of the relevant House.” Therefore, the authority as to which house will vet appears in the Act. This Bill contemplates the approval being in the National Assembly and not in the Senate. I can even go further and say that, even if the Act was not contemplating that, to the extent that the Senate has not yet been established, you will have to come to this House and so, to the National Assembly.

(Dr. Khalwale nodded)

I can see you nodding. I always convince you easily!

(Laughter)

(Ms. A. Abdalla and Mr. Otieno stood up in their places)

Mr. Chairman: Mr. Otieno, please allow Ms. A. Abdalla!

Ms. A. Abdalla: Mr. Chairman, Sir, I am unable to be convinced by why we should be specific on the National Assembly given that, so far, without the Senate, we have been able to deal with the matters in the House. So, I think the amendment called for is actually unnecessary, unless you want to prescribe things that might need to be further legislated upon once the Senate is formed.

The Minister of State for Public Service (Mr. Otieno): Mr. Chairman, Sir, I think the Constitution and the specific clause stating the approval of Parliament comes after the approval clauses of the two Houses. There is absolutely nothing wrong with both Houses being allowed to process approvals of any appointment. All it means is that the National Assembly and the relevant committee will convey the approval. But, similarly, the Senate will also have its correct committee deliberating on that approval. So, you need a double approval. We do not have to be jealous on a matter like appointment of the Inspector-General, if it is Parliament, let it be Parliament. Both houses should convey their satisfaction with that particular appointment. If there is disagreement in the two approvals, there is a mechanism in the House for the two Houses to discuss a particular approval and clear the names. So, I do not see any conflict leaving it as it is. It should be with the approval of Parliament as the Constitution says and that, within the two Houses, they sit jointly. The two relevant committees can convey their different opinions and if there is a conflict, they will resolve it. So, we leave it as Parliament the way you had indicated.

Mr. Abdikadir: Mr. Chairman, Sir, first of all, we are talking about the Deputy Inspector-General. I agree with you because if it was the Inspector-General - since the Constitution talks about Parliament - there is nothing we can do as far as the Bill is concerned. That, I grant. Vetting is part of oversight. Since oversight of State organs is

exercised by the National Assembly, and since it is cumbersome to have both Houses handling vetting of the Deputy Inspector-General, I think it would be better to leave it to the National Assembly.

Mr. Chairman: The oversight role is clearly for both Houses. The point is that in matters of delineation like that, it is the Chair's opinion that this is not the right time. We should wait until we have the Senate. Let the delineations be met between the roles either jointly or separately, otherwise, it will look a bit selfish on the part of the National Assembly now. It will seem like we are not doing it for the country but for ourselves.

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

The further amendment has not been taken in. The Chair is dealing with the amendment by hon. Kapondi now.

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

(Clause 13 as amended agreed to)

(Clauses 14 and 15 agreed to)

Clause 16

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

THAT, Clause 16 of the Bill be amended by deleting the words "twenty eight days" and substituting therefor the words "three months"

The amendment seeks to provide ample time for the appointment of Inspector-General of Police since the 28 days can elapse before the Inspector-General is back in office.

(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 16 as amended agreed to)

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

Clause 24

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

THAT, Clause 24 of the Bill be amended by deleting paragraph (h).

This is meant to avoid overlap with the functions of the Administration Police Service who are tasked with the function of preventing stock theft under Section 27(f) of the Bill.

(Question of the amendment proposed)

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

(Clause 24 as amended agreed to)

(Clause 25 agreed to)

Clause 26

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

THAT, Clause 26 of the Bill be amended in paragraph (f) by deleting the words “to the Independent Police Oversight Authority”

This is meant to harmonize the provision of Section 26(f) of the Bill where there is no such requirement.

(Question of the amendment proposed)

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

(Clause 26 as amended agreed to)

(Clauses 27 and 28 agreed to)

Clause 29

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

THAT, Clause 29 of the Bill be amended-

(a) by deleting sub-clause (2) and substituting therefor the following new sub clause-

“The Commission shall set the term of office of the Director of Criminal Investigations”;

(b) by deleting paragraph (b) of sub-clause (8);

Mr. Chairman, Sir, providing for a term of office for the Director of Criminal Investigations may curtail the career prospects of the officer who may in future seek to be a Deputy Inspector-General. Further, the Accounting Officer in (b) should be appointed under a separate legislation as envisaged under Article 226 of the Constitution.

(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 29 as amended agreed to)

Clause 30

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

THAT, Clause 30 of the Bill be amended by inserting the following words at the end of Sub-clause (7)-

“except that provisions in the Schedule requiring approval by Parliament shall not apply”.

The amendment seeks to exempt the two Deputy Inspectors-General from Parliamentary approval for their appointment.

(Question of the amendment proposed)

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

(Clause 30 as amended agreed to)

(Clauses 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 agreed to)

Clause 41

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

THAT, Clause 41 be amended-

(a) in sub-clause (1) by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) county representatives appointed by the Inspector-General, who shall comprise the heads of the National Police Service, the National Intelligence Service and the Director of Criminal Investigations at the County level.

(c) in sub-clause (3) by deleting the words “County Assembly for vetting” and substituting therefor the words “County Security Committee for vetting and subsequent thereto, the County Assembly for approval.”

Mr. Chairman, Sir, the reason why I am proposing the amendment is to remove the designation as representatives of the Inspector-General at the county level and provide more explicitly for the participation of the National Intelligence Service member in the County Policing Authority.

It is also meant to provide for the vetting of the members of the County Policing Authority by the County Security Committee.

(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 41 as amended agreed to)

*(Clauses 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55,
56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73,
74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90,
91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104,
105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115,
116, 117, 118, 119, 120, 121 and 122 agreed to)*

Clause 123

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

THAT, Clause 123 of the Bill be amended in sub-clause (3) by deleting the words “Eighth Schedule” and substituting therefor the words “Fifth Schedule”

Mr. Chairman, Sir, this is meant to correct a referencing error during the drafting of the Bill. The Fifth Schedule is the correct reference reflecting the procedure for arrest and detention at police facilities.

(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 123 as amended agreed to)

*(Clauses 124, 125, 126, 127, 128, 129,
130, 131 and 132 agreed to)*

(First Schedule agreed to)

(Second Schedule agreed to)

Third Schedule

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

THAT, the Third Schedule of the Bill be amended-

(a) in paragraph (5) by deleting the words “and Deputy Inspectors-General”

(b) in paragraph (8) by deleting the words “and Deputy Inspectors-General”
Mr. Chairman, Sir, the justification for this is that the amendment seeks to exempt the two Deputy Inspector-Generals from parliamentary approval to their appointment as earlier approved.

(Question of the amendment proposed)

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

(Third Schedule as amended agreed to)

(Fourth Schedule agreed to)

(Fifth Schedule agreed to)

(Sixth Schedule agreed to)

(Seventh Schedule agreed to)

(Eighth Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister of State for Provincial Administration and Internal Security
(Prof. Saitoti): Mr. Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the National Police Service Bill (Bill No.31 of 2011) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

Mr. Chairman: We will now move on to the second Bill.

[Mr. Chairman left the Chair]

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

THE COMMISSION ON ADMINISTRATIVE JUSTICE BILL

Clause 2

Mrs. Shebesh: Madam Temporary Deputy Chairlady, on behalf of the Committee, I beg to move:-

THAT, Clause 2 be amended in the definition of the term “Cabinet Secretary” by deleting the word “justice” and substituting therefor the words “public service”.

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

Clause 3

Mrs. Shebesh: Madam Temporary Deputy Chairlady, on behalf of the Committee, I beg to move:-

THAT, Clause 3 be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) The Commission shall be the successor to the Public Complaints Standing Committee existing immediately before the coming into force of this Act”.

The justification of course is that there has been a Public Complaints Standing Committee of which this will be the successor.

(Question of the amendment proposed)

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

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

(Clause 3 as amended agreed to)

Clause 4

Mrs. Shebesh: Madam Temporary Deputy Chairlady, on behalf of the Committee, I beg to move:-

THAT, Clause 4 be amended by deleting the words “as a successor Commission shall, pursuant to Article 59 (5) (c) of the Constitution” and substituting therefor the word “shall”.

Again, this is the same reasoning; a successor to 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 word to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 4 as amended agreed to)

Clause 5

Mrs. Shebesh: Madam Temporary Deputy Chairlady, on behalf of the Committee, I beg to move:-

THAT, Clause 5 be amended by deleting the word “successor”.
This is with the same justification.

(Question of the amendment proposed)

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

(Clause 5 as amended agreed to)

Clause 6

The Temporary Deputy Chairlady (Dr. Laboso): We have a proposed amendment to this Clause by hon. Mungatana. Has anybody been given that amendment? Okay, if hon. Mungatana is not here, the amendment is dropped since nobody has been detailed to give us that amendment.

*(Mr. Mungatana’s proposed amendment to
Clause 6 was dropped)*

(Clause 6 agreed to)

(Clause 7 agreed to)

Clause 8

Mrs. Shebesh: Madam Temporary Deputy Chairlady, on behalf of the Committee, I beg to move:-

THAT, Clause 8 be amended by—

- (a) inserting the word “the” immediately before the word “Commission”;
- (b) deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) report to the National Assembly bi-annually on the complaints investigated under paragraphs (a) and (b), and the remedial action taken thereon;”

(c) inserting the following new paragraph immediately after paragraph (k)—
“(ka) work with the Kenya National Commission on Human Rights to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration”.

(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 8 as amended agreed to)

The Temporary Deputy Chairlady (Dr. Laboso): Do we have the amendment by hon. Mungatana? Minister are you aware of his whereabouts?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I have not seen it and it is not on the Order Paper and so I cannot know his whereabouts.

The Temporary Deputy Chairlady (Dr. Laboso): It is apparently on the Order Paper .

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Okay. Leave it out.

The Temporary Deputy Chairlady (Dr. Laboso): Okay. Hon. Members, since hon. Mungatana is not here and he has not detailed anybody to move his amendment on his behalf, the amendment will be dropped.

(Mr. Mungatana’s proposed amendment to Clause 8 was dropped)

Clause 9

Mrs. Shebesh: Madam Temporary Deputy Chairlady, on behalf of the Committee, I beg to move:-

THAT, Clause 9 be amended by deleting the word “four” and substituting therefor the word “two”.

On this one, we agreed that we reduce the number of commissioners from four to two who will serve in this particular commission.

(Question of the amendment proposed)

(Question, that the word to be left out

be left out, put and agreed to)

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

(Clause 9 as amended agreed to)

Clause 10

Mrs. Shebesh: Madam Temporary Deputy Chairlady, on behalf of the Committee, I beg to move:-

THAT, Clause 10 be amended—

(a) in sub-clause (1), by deleting the words “human rights and administrative justice” appearing in paragraph (a), and substituting therefor the words “human rights, law, conflict resolution, arbitration or administrative justice”;

(b) in sub-clause (2) (b), by—

(i) inserting the words “or finance” immediately after the word “economics” appearing in subparagraph (iii);

(ii) inserting the following new subparagraph immediately after subparagraph (v)—

“(vi) conflict resolution”;

(iii) renumbering subparagraphs (vi) and (vii) as subparagraphs (vii) and (viii), respectively.

We have added the component of finance and conflict resolution as part of those requirements that we will be seeking.

(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 10 as amended agreed to)

Clause 11

The Temporary Deputy Chairlady (Dr. Laboso): Again, we have an amendment by hon. Mungatana. Anybody with that amendment? He is not there and, therefore, his amendment is dropped.

*(Mr. Mungatana’s proposed amendment to
Clause 11 was dropped)*

The Temporary Deputy Chairlady (Dr. Laboso): Again, we have an amendment by the committee on this same clause.

Mr. Shebesh: Madam Temporary Deputy Chairlady, on behalf of the Committee, I beg to move:-

THAT, Clause 11 be amended—

(a) in sub-clause (2) by deleting paragraph (f).

(b) in sub-clause (5), by deleting the word “eight” appearing immediately after the words “chairperson and” and substituting therefor the word “five”;

(c) in sub-clause (6), by deleting the word “four” and substituting therefor the word “two”.

The reason of course is to align clause with the new numbers of commissioners that we have therefore recommended in terms of who the President will be giving for final consideration.

(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 11 as amended as agreed to)

(Clauses 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 agreed to)

Clause 38

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

THAT, clause 38 be deleted and replaced with the following new clause—

Hearings of Commissions 38. The hearings of the Commission during an inquiry shall be open to the public, except where the Commission otherwise decides.

Madam Temporary Deputy Chairlady, I am proposing this amendment just to keep it in line with the Constitutional requirements. Therefore, we have given proviso that inquiries be open unless the Commission decides to go in camera.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, are you okay with the amendment?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, Madam Temporary Deputy Chairlady.

(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 38 as amended agreed to)

(Clauses 39, 40 and 41 agreed to)

Clause 42

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 42 be amended by deleting subclause (4) and substituting therefor the following new subclause—

“(4) If there is failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit to the National Assembly a report detailing the failure or refusal to implement its recommendations and the National Assembly shall take appropriate action.”

Madam Temporary Deputy Chairman, the justification of proposing this clause is that we do not want reports to be lying in shelves. We want implementation of the same. We want Parliament to ensure implementation of these reports.

(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 42 as amended agreed to)

*(Clauses 43, 44, 45, 46, 47, 48, 49, 50,
51, 52, 53, 54 and 55 agreed to)*

Clause 56

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 56 be amended by inserting the words “relating to maladministration” immediately after the word “complaints”.

Madam Temporary Deputy Chairlady, the reason for our amendment is to ensure that it is only complaints related to maladministration which is the core business of this Commission.

(Question of the amendment proposed)

(Question, that the words to inserted be inserted,

put and agreed to)

(Clause 56 as amended agreed to)

Clause 57

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 57 be amended by deleting the words “Kenya National Human Rights and Equality Commission” and substituting therefor the words “Public Complaints Standing Committee”.

I propose the amendment as per the justification given earlier.

(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 57 as amended agreed to)

Clause 58

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 58 be amended—
(a) in paragraph (c), by deleting the words “Kenya National Human Rights and Equality Commission” and substituting therefor the words “Public Complaints Standing Committee”;
(b) in paragraph (d), by deleting the words “Kenya National Human Rights and Equality Commission” and substituting therefor the words “Public Complaints Standing Committee”.
(c) by inserting the following new paragraph immediately after paragraph (d)—
“(e) all assets and liabilities which immediately before the commencement of this Act were vested in, or enforced against, the Public Complaints Standing Committee shall, by virtue of this paragraph, vest in 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)*

(Clause 58 as amended agreed to)

New Clause 54A

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

THAT, the following new clause be inserted immediately after clause 54—

**Review of
mandate**

54A. Parliament shall, upon expiry of five years from the date of commencement of this Act, and pursuant to Article 59 (4) of the Constitution, review the mandate of the Commission with a view to amalgamating the Commission with the commission responsible for human rights.

Inclusion of this new clause is to take into consideration the issues that were raised about too many commissions and that we will be able to review this. We thought it was important to put this, so that Kenyans know we are committed to reviewing the status of commissions.

(Question of the new Clause 54A proposed)

(New Clause 54A read the First Time)

*(Question, that the new Clause 54A be read
a Second Time, proposed)*

*(Question, that the new Clause 54A be read
a Second Time, put and agreed to)*

(The new Clause 54A was read a Second Time)

*(Question that the new Clause 54A be added
to the Bill, put and agreed to)*

(First Schedule agreed to)

Second Schedule

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

THAT, the Second Schedule be amended in paragraph 2(4) by inserting the words “directly or indirectly” immediately after the words “trade with the Commission”.

(Question of the amendment proposed)

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

(Second Schedule as amended agreed to)

Long Title

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, the long title be deleted and replaced with the following new long title—
“AN ACT of Parliament to restructure the Kenya National Human Rights and Equality Commission and to establish the Commission on Administrative Justice pursuant to Article 59(4) of the Constitution; to provide for the membership, powers and functions of the Commission on Administrative Justice, and for connected purposes”

(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)*

(Long Title as amended agreed to)

Title

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, the title be amended by deleting the word “of” appearing immediately after the word “Administrative”.

(Question of the amendment proposed)

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

(Title as amended agreed to)

(Clause 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Commission on Administrative Justice Bill, Bill No.21 of 2011 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairperson (Dr. Laboso): Hon. Members, we will now move on to the Power of Mercy Bill, Bill No.35 of 2011.

THE POWER OF MERCY BILL

Clause 2

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 2 be amended by—
(a) deleting the definition of the term “Commissioner”;
(b) deleting the definition of the term “felony” and substituting therefor the following new definition—
“felony” has the meaning assigned to it in the Penal Code;
(c) deleting the definition of the term “pardon officer” and substituting therefor the following new definition—
“pardon officer” means a person appointed as such under section 17;
(d) deleting the definition of the term “Principal Secretary.”

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

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

Clause 8

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 8 be amended—
(a) in subclause (2), by—
(i) deleting paragraphs (b), (c) and (d) and substituting therefor the following new paragraphs—
“(b) the Principal Secretary in the Ministry for the time being responsible for matters relating to justice or his or her representative appointed in writing;
“(c) the Principal Secretary in the Ministry for the time being responsible for correctional services or his or her representative appointed in writing;
“(d) the Commissioner of Prisons or his or her representative appointed in writing;
(ii) deleting paragraph (g) and substituting therefor the following new paragraph—
“(g) the joint forum of the religious organizations described in subsection (3);
(b) by deleting subclause (3) and substituting therefor the following new subclause—
“(3) The joint forum of religious organizations referred to in subsection 2)(g) shall consist of representatives of—

- (a) the Supreme Council of Kenya Muslims;
- (b) the Kenya Episcopal Conference;
- (c) the National Council of Churches of Kenya;
- (d) the Evangelical Fellowship of Kenya; and
- (e) the Hindu Council of Kenya.”

(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 8 as amended agreed to)

Clause 9

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

THAT, Clause 9 be amended in Subclause (2) by—

- (a) deleting paragraph (e);
- (b) deleting the words “at least fourteen” appearing in paragraph (f) and substituting therefor the word “ten”.

(Question of the amendment proposed)

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

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

(Clause 9 as amended agreed to)

(Clause 10 agreed to)

Clause 11

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

THAT, Clause 11 be amended by inserting the words “and secretary of the Committee” immediately after the word “members”.

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

(Clauses 12, 13 and 14 agreed to)

Clause 15

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 15 be amended in Subclause (2), by deleting paragraph (a) and substituting the following new paragraph—

“(a) may, subject to this Act, determine its procedure.

That is just to clean up the language.

(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 15 as amended agreed to)

Clause 16

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 16 be amended by deleting Subclause (2) and substituting therefor the following new subclause—

“(2) There shall be a secretary to the Committee who shall be a public officer nominated by the Public Service Commission through a competitive process and appointed by the President.”

We have added the phrase “ a competitive process”.

(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 16 as amended agreed to)

(Clauses 17, 18 and 19 agreed to)

Clause 20

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 20 be amended by deleting subclause (1) and substituting therefor the following new Subclause—

“(1) An application for the exercise of the power of mercy shall be by a petition in the prescribed form”.

In this amendment, we want to clarify how a petition shall be exercised.

(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 20 as amended agreed to)

Clause 21

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 21 be amended in subclause (2), by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) any other matter that the Committee may consider necessary”.

(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 21 as amended agreed to)

Clause 22

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 22 be amended in subclause (1) by inserting the words “where applicable” immediately after the word “victim” in paragraph (1).

(Question of the amendment proposed)

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

(Clause 22 as amended agreed to)

*(Clauses 23, 24, 25, 26, 27, 28, 29, 30,
31, 32 and 33 agreed to)*

Clause 34

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 34 be amended in subclause (1) by deleting the word “appeal”.
We want to delete the word “appeal” and leave the work of the Cabinet Secretary to filing petitions and relevant notices.

(Question of the amendment proposed)

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

(Clause 34 as amended agreed to)

(Clauses 35 and 36 agreed to)

First Schedule

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, the First Schedule be amended by inserting the word “secretary” immediately after the word “chairperson” wherever it appears.

(Question of the amendment proposed)

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

(First Schedule as amended agreed to)

Second Schedule

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, the Second Schedule be amended—
(a) in paragraph 1(a) by deleting the word “have” and substituting therefor the word “hold”;
(b) in paragraph 2, by deleting the words “half of the total members” and substituting therefor the words “five members”.

(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)*

(Second Schedule as amended agreed to)

Third Schedule

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

THAT, the Third Schedule be amended—

(a) by deleting paragraph (1) and substituting therefor the following new paragraphs—

“1. Particulars of the petitioner.

“1A. Particulars of the convicted criminal offender, the subject of the petition, if different from the petitioner.”

(b) in paragraph 2, by deleting the word “seriousness” and substituting therefor the word “particulars”;

(c) in paragraph 5, by inserting the words “and at the time of making the petition” immediately after the word “offence”;

(d) in paragraph 12, by inserting the words “on the advice of the Committee” immediately after the word “Secretary”.

(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)*

(Third Schedule as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Power of Mercy Bill, 2011 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we will defer Bills Nos.(iv), (v) and (vi). We will now move to Bill No.(vii) - The Environment and Land Court Bill.

DEFERMENT OF BILLS

THE ETHICS AN ANTI-CORRUPTION COMMISSION BILL

THE ELECTIONS BILL

THE EMPLOYMENT AND LABOUR RELATIONS COURT BILL

(Bills deferred)

THE ENVIRONMENT AND LAND COURT BILL

(Clauses 2, 3, 4 and 5 agreed to)

Clause 6

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 6 be amended in sub clause (3) by deleting the words “be answerable” and substituting therefor the words “shall report.”
Madam Temporary Deputy Chairlady, this is in the interest of draftmanship and clarity.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I accept and welcome the amendment.

(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 6 as amended agreed to)

Clause 7

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 7 be amended by re-numbering the existing clause as sub clause (1) and inserting the following new sub clause-

7. (2) The Chief Justice on the recommendation of the Judicial Service Commission may transfer a judge who meets the qualifications set out at subsection (1) to serve in the Court.

Madam Temporary Deputy Chairlady, this is just for tidiness in the administration of justice.

(Question of the amendment proposed)

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

(Clause 7 as amended agreed to)

(Clauses 8, 9, 10 and 11 agreed to)

Clause 12

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

THAT, Clause 12 be amended in subclause (1) by inserting the words “of this Court” immediately after the words “by a Judge.”

Madam Temporary Deputy Chairlady, this is in the interest of clarity.

(Question of the amendment proposed)

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

(Clause 12 as amended agreed to)

Clause 13

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

THAT, Clause 13 be amended-

(a) in subclause (2) by inserting the following new paragraph immediately after paragraph (b)-

(ba) relating to land administration and management;

(b) in subclause (3) by inserting the words “relating to the environment and land” immediately after the words “fundamental freedom.”

Madam Temporary Deputy Chairlady, this amendment is in the interest of consistency.

(Question of the amendment proposed)

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

(Clause 13 as amended agreed to)

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

Clause 18

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

THAT, Clause 18 be amended in subparagraph (a)(i) by inserting the words “and land” immediately after the words “management of the environment.”

Madam Temporary Deputy Chairlady, I propose this amendment in the interest of consistency and cementry.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairman, Sir, I accept the amendment.

(Question of the amendment proposed)

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

(Clause 18 as amended agreed to)

(Clause 19 agreed to)

Clause 20

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

THAT, clause 20 be amended in sub clause (1) by inserting a comma and the words “with the agreement of,” immediately after the words “on its own motion.”

Madam Temporary Deputy Chairlady, I propose this amendment in the interest of clarity.

(Question of the amendment proposed)

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

(Clause 20 as amended agreed to)

Clause 21

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

THAT, Clause 21 be amended in sub clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) concerning impact on the environment and land.

Madam Temporary Deputy Chairlady, this amendment is in the interest of neatness and consistency.

(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 21 as amended agreed to)

(Clauses 22 and 23 agreed to)

Clause 24

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

THAT, Clause 24 be amended by inserting the following new subclause immediately after subclause (2)-

(2A) The Chief Justice shall in consultation with the Court make rules for the determination of admissibility by the Environment and Land Court of proceedings pending before any court or local tribunal.

Madam Temporary Deputy Chairlady, I propose this amendment to give the Chief Justice guidance in the exercise of their discretion on this matter.

(Question of the amendment proposed)

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

(Clause 24 as amended agreed to)

(Clauses 25, 26, 27, 28, 29, 30 and 31 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, with the permission of my colleague, Mr. James Orengo, I beg to move that the Committee doth report to the House its consideration of The Environment and Land Court Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

THE ENVIRONMENT AND LAND CONTROL COURT BILL

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we are now moving to the next Bill which is The Urban Areas and Cities Bill (Bill No.38 of 2011).

Mr. Ngugi: Thank you, Madam Temporary Deputy Chairlady---

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Ngugi, I think we have not called you yet. Do you have some comments on a particular clause? We have not started on the clauses.

Mr. Ngugi: Madam Temporary Deputy Chairlady, I will hold my horses.

The Temporary Deputy Chairlady (Dr. Laboso): Okay. Let us proceed!

(Clauses 2, 3, 4 and 5 agreed to)

Clause 6

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

THAT, clause 6 be amended in sub clause (6) by deleting the expression “subsection (3)” and substituting therefor the expression “subsection (5)”.

This is basically to correct a typo.

(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 6 as amended agreed)

(Clause 7 agreed to)

Clause 8

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

THAT, Clause 8 be amended in subclause (3)—

- (a) by deleting the word “Institute” appearing in paragraph (a) and substituting therefor the word “Institution”;
- (b) by deleting paragraph (b) and substituting therefor the following new paragraph—
“(b) the Kenya Institute of Planners”; in paragraph (f), by inserting the word “Certified” immediately before the word “Public”

This is basically to label the institutions thereof with their correct names. We have agreed on this with the Minister.

(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 8 as amended agreed)

Mr. K. Kilonzo: On a point of order, Madam Temporary Deputy Chairlady. We are moving on very well but just on a matter of procedure; now that the proposer of the amendments to Clause 6 which we have just passed is an Assistant Minister, what is the direction of the Chair? Do we need to amend it so that it can appear that the Vice-Chairman is the one who has moved it? What appears here is Mr. Gabbow who is now an Assistant Minister. I seek your direction.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Member, I am sure these are amendments by the Committee. They were agreed on in the Committee. Therefore, the Vice-Chairman or even any Member of the Committee can present them.

Mr. K. Kilonzo: Madam Temporary Deputy Chairlady, granted. I have no issues with that. What I am saying is; in the records---

The Temporary Deputy Chairlady (Dr. Laboso): That will be corrected.

If you note, I have not been calling names. I have been calling the Committee or the Committee Chair". This is because these are amendments from the Committee.

*Clauses 9, 10, 11, 12, 13, 14, 15,
16, 17, 18, and 19 agreed to)*

Clause 20

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

THAT, Clause 20 be amended in subclause (1), by deleting the word "parks" appearing in paragraph (d) and substituting therefor the expression "(other than national parks)".

This amendment was brought about when we invited stakeholders. The Kenya Wildlife Services (KWS) came to make their presentation and wanted their national parks to be outside this Bill.

The Minister has some views.

(Question of the amendment proposed)

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I would like to appeal to Mr. Ngugi to drop this proposal. There is a misinterpretation. Planning as presented under Clause 20 is important even when we are talking about our national parks. I think there was a

misconception by the KWS thinking that we were taking over their parks. That is not the case. We are not taking over the parks belonging to the KWS. I would request that if the hon. Member can agree we can drop this particular proposal so that we retain the clause as is.

Mr. Ngugi: Madam Temporary Deputy Chairlady, my only predicament is that these were amendments of the Committee. If they were personal amendments, I would have no problem in granting the Minister his request. However, we can canvas the House.

The Temporary Deputy Chairlady (Dr. Laboso): Are you persuaded on behalf of the Committee?

Mr. Ngugi: Personally, I am persuaded.

The Temporary Deputy Chairlady (Dr. Laboso): So, if you are persuaded, then you can drop your amendment. You have to state that you are withdrawing.

Mr. Ngugi: Madam Temporary Deputy Chairlady, I am persuaded by the Minister's argument.

The Temporary Deputy Chairlady (Dr. Laboso): Therefore, I withdraw this amendment.

(Proposed amendment to Clause 20 withdrawn)

(Clause 20 agreed to)

Clause 49

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

THAT, Clause 49 be amended by deleting the words "the existing pension scheme determined by the board" and substituting therefor the words "an existing pension scheme approved by the Retirement Benefits Authority".

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I concur.

(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 49 as amended agreed to)

(Clauses 50, 51, 52, 53, 54, 55, 56, 57, 58 and 59 agreed to)

New Clause

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

THAT, the following new clause be inserted immediately after Clause 59—

Municipalities of Mombasa and Kisumu. 60. Notwithstanding any other provisions of this Act, the municipalities of Mombasa and Kisumu existing immediately before the commencement of this Act shall be deemed to be cities established under this Act.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I wish to state that I concur with this because these two cities had been pronounced much earlier incidentally by both Heads of State; that is, the retired President Moi and also the current Head of State. In fact, this proposal was in the amendment that we had brought forward to Cap.265 but after the consultation, we had to retrieve it to bring it in consonance. So, we concur with this proposal.

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

(The new clause was read a Second Time)

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

(First Schedule agreed to)

(Second Schedule agreed to)

Third Schedule

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

THAT, the Third Schedule be amended in paragraph (a) by inserting the word “cultural” immediately before the word ‘economic’.

Madam Temporary Deputy Chairlady, this only expounds the paragraphs and we have agreed with the Minister.

(Question of the amendment proposed)

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

(Third Schedule as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Urban Areas and Cities Bill, Bill No.38 of 2011, and its approval thereof with amendment.

(Question proposed)

(Question put and agreed to)

THE KENYA CITIZENSHIP AND IMMIGRATION BILL

(Clauses 2, 3, 4, 5, 6, 7, 8 and 9 agreed to)

Clause 10

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

THAT, Clause 10 of the Bill be amended in sub-clause (1) by deleting the words “before the effective date of the Constitution”

Madam Temporary Deputy Chairlady, the words sought to be deleted are unconstitutional since Article 14(5) of the Constitution does not impose any conditionality for regaining lost Kenyan citizenship.

(Question of the amendment proposed)

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

(Clause 10 as amended agreed to)

*(Clauses 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 agreed to)*

Clause 31

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

THAT, Clause 31 of the Bill be amended by deleting sub-clause (5) and substituting therefor the following new sub-clause-

(5) A person who is aggrieved by the decision to suspend or confiscate their passport may, within fourteen days of the receipt of written notice of such suspension or confiscation, file an appeal to the High Court.

Madam Temporary Deputy Chairlady, the clause is being redrafted for consistency of language used in the whole statute.

(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 31 as amended agreed to)

(Clause 32 agreed to)

Clause 33

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

THAT, Clause 33 of the Bill be amended in sub-clause (2) -

(a) by renumbering paragraphs (g) and (h) as sub-clauses (3) and (4) , respectively;

(b) by renumbering sub-clauses (3), (4), (5) and (6) as sub-clauses (5), (6), (7), and (8), respectively.

Mr. Temporary Deputy Chairlady, the clause is being re-drafted to correct the numbering errors made during the drafting of the Bill.

(Question of the amendment proposed)

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

(Clause 33 as amended agreed to)

(Clauses 34, 35, 36, 37, 38 and 39 agreed to)

Clause 40

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

THAT, Clause 40 of the Bill be amended-

(a) in sub-clause (3) by deleting the word “undesirable” and substituting therefor the word “inadmissible” ;

(b) in sub-clause (6) by deleting the words “forty five days” and substituting therefor the words “fourteen days”;

(c) in sub-clause (8) by deleting the words “ninety days” and substituting therefor the words “fourteen days”.

Madam Temporary Deputy Chairlady, the first amendment to the clause is for consistency of the language used in the whole statute. The second amendment is to reduce the period within which the Director of Immigration may approve issuance of a work permit from 45 to 14 days. The third amendment is to reduce the period within which the Committee must report its findings to the Director from 90 to 14 days.

(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 40 as amended agreed to)

(Clauses 41, 42, 43, 44, 45, 46, 47 and 48 agreed to)

Clause 49

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

THAT, Clause 49 of the Bill be amended in sub-clause (5) by-

(a) deleting the opening statement and substituting therefor the following new statement-

(5) The Court shall not order the release of a permanent resident or a foreign national unless satisfied that the permanent resident or foreign national shall present himself on being required to do so by an immigration officer or a police officer and taking into account the following factors-

(b) by deleting paragraph (a) and substituting therefor the following new paragraph-

(a) whether he is a danger to the public and whether or not he is carrying or conveying any documents;

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

(b) whether he is unlikely to appear for examination or an admissibility hearing or a hearing regarding his removal from Kenya or a hearing to determine whether he should be permitted to remain in Kenya or whether there are pending proceedings that could lead to the making of a removal order;

(d) by inserting the word “where” immediately before the words “the Cabinet Secretary” appearing in paragraph (c);

(e) by inserting the word “where” immediately before the words “the Cabinet Secretary” appearing in paragraph (d);

(f) by renumbering paragraphs (e) and (f) as sub-clauses (6) and (7), respectively;

(g) by renumbering sub-clauses (6), (7) and (8) as sub-clauses (8), (9) and (10), respectively.

Madam Temporary Deputy Chairlady, the amendment seeks to redraft the clause to make it logical. It also seeks to correct the numbering errors made during the drafting of the Bill.

(Question of the amendment proposed)

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

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

(Clause 49 as amended agreed to)

(Clauses 50, 51 and 52 agreed to)

Clause 53

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

THAT, Clause 53 of the Bill be amended in sub-clause (1) by inserting the words “or inadmissible person” immediately after the words “prohibited immigrant” appearing in paragraph (c).

Madam Temporary Deputy Chairlady, the clause is being re-drafted for consistency of language used in the whole statute.

(Question of the amendment proposed)

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

(Clause 53 as amended agreed to)

*(Clauses 54, 55, 56, 57, 58, 59, 60,
61, 62, 63, 64 and 65 agreed to)*

(Title agreed to)

(Clause 1 agreed to)

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Citizenship and Immigration Bill, Bill No.40 of 2011 and its approval thereof with amendment.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Dr. Khalwale) in the Chair]*

REPORTS AND THIRD READINGS

THE NATIONAL POLICE SERVICE BILL

The Temporary Deputy Speaker (Dr. Khalwale): Order, hon. Members! We are dealing with quite a number of Bills. We will start with The National Police Service Bill, Bill No.31 of 2011.

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The National Police Service Bill and approved the same with amendment.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, 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)

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I beg to move that The National Police Service Bill, Bill No.31 of 2011, be now read the Third Time.

The Minister for Lands (Mr. Orengo) seconded.

(Question proposed)

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, I want to say that the House has made history by passing The National Police Service Bill. We intend to reform the police and must ensure that the Bill that we have passed is implemented. During our contributions, we expressed a lot of concern about the present status of the Kenya Police.

We hope that when the Act becomes operational, the necessary steps will be taken to ensure that the police force is properly reformed. The rampant corruption that is in the police force must be eliminated if Kenyans have to have confidence in the Kenya Police Force.

Finally, we are about to appoint the new Inspector-General of Police. This time round, we want no horse trading in the appointment of the very important position of the Inspector-General.

(Applause)

We must ensure that we get the right person who is going to undertake proper reforms in the police force and not persons selected through the system now called “horse trading”.

With those few remarks, I beg to support.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, we now move to the Commission on Administrative Justice Bill.

THE COMMISSION ON ADMINISTRATIVE JUSTICE BILL

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Commission on Administrative Justice Bill and approved the same with amendments.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Commission on Administrative Justice Bill House be now read a Third Time.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Hapana! That is very rare for you!

The Temporary Deputy Speaker (Dr. Khalwale): Mr. M. Kilonzo, you seem to have missed a step. Just come back to the microphone and repeat it.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I sincerely apologize. It is very rare for me as Mr. Musila has said.

Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Environment and Mineral Resources (Mr. Michuki) Seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Temporary Deputy Speaker, Sir. You are directing the Ayes on what to say but you are not directing the Noes on what to say. You are leaving it hanging and so, it may create the impression that the Chair is biased. So, please, could you give sufficient directions on either side?

(Laughter)

The Temporary Deputy Speaker (Dr. Khalwale): Mr. Orengo, the point is noted. But all hon. Members have now since gathered sufficient experience in matters of this House.

(Laughter)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Commission on Administrative Justice Bill be now read a Third Time.

The Assistant Minister for Information and Communications (Mr. Godhana) Seconded.

(Question proposed)

(Question put and agreed to)

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

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, we will now move on to The Power of Mercy Bill.

THE POWER OF MERCY BILL

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Power of Mercy Bill and approved the same with amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister, Ministry of State for Defence (Mr. Musila) Seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Power of Mercy Bill be now read a Third Time.

The Minister for Lands (Mr. Orengo) Seconded.

(Question proposed)

(Question put and agreed to)

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

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, we will now move to The Environment and Land Court Bill.

THE ENVIRONMENT AND LAND COURT BILL

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Environment and Land Court Bill and approved the same with amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Environment and Mineral Resources (Mr. Michuki) Seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Environment and Land Court Bill be now read a Third Time.

The Minister for Lands (Mr. Orengo) Seconded.

(Question proposed)

(Question put and agreed to)

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

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, we will now move to The Urban Areas and Cities Bill, Bill No.38 of 2011.

THE URBAN AREAS AND CITIES BILL

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the Whole House has considered The Urban Areas and Cities Bill, Bill No.38 of 2011, and approved the same with amendment.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Transport (Mr. Kimunya): Seconded.

(Question proposed)

(Question put and agreed to)

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Urban Areas and Cities Bill, Bill No.38 of 2011, be now read a Third Time.

The Minister for Lands (Mr. Orengo): Seconded.

(Question proposed)

(Question put and agreed to)

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

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, we will now move to the final one, which is The Citizenship and Immigration Bill, Bill No.40 of 2011.

THE CITIZENSHIP AND IMMIGRATION BILL

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the Whole House has considered The Citizenship and Immigration Bill, Bill No.40 of 2011, and approved the same with amendment.

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

The Minister for Transport (Mr. Kimunya): Seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Citizenship and Immigration Bill, Bill No.40 of 2011, be now read a Third Time.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Seconded.

(Question proposed)

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, as this is the last Bill we are processing through this House this morning, I would like to take this opportunity, on behalf of the Government, to record our thanks for the efforts put by hon. Members to pass a record six Bills and, more importantly, for the work that took place in the Committees overnight to bring all these amendments. I would also like to record my thanks to the staff of the National Assembly who have worked right through the days and nights to ensure that this business is completed and the people of Kenya can have the Bills to implement in the new Constitution.

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Deputy Leader of Government Business, you have forgotten to extend the same congratulations to the Speaker!

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, my apologies for that oversight. I would also like to extend many thanks to the Chairs of the Committees and to Mr. Speaker for a wonderful delivery of this process.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I just noted that probably hon. Kimunya did not thank the Temporary Deputy Speaker because he is sitting in half the Chair. Could you sit in the Chair fully?

The Temporary Deputy Speaker (Dr. Khalwale): I welcome your remarks but you should know that I am a sharp shooter. I am sitting in a shooting position.

(Laughter)

(Question put and agreed to)

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

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, it is now a few minutes to noon. As you may have realized, there is no further business on our Order Paper. It appears as if the Tenth Parliament works best when it is under pressure. Let us continue congratulating ourselves. The House, now, stands adjourned until this afternoon at 2.30 p.m.

The House rose at 11.50 a.m.