

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Friday, 24<sup>th</sup> August, 2012

The House met at 2.30 p.m.

*[The Temporary Deputy Speaker  
(Prof. Kaloki) in the Chair]*

### PRAYERS

**The Temporary Deputy Speaker** (Prof. Kaloki): Ministers, do you have any Statements to issue?

Proceed, Mr. Kimunya.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, as the House will recall, this is a special sitting that was convened for purposes of doing the constitutional Bills. Therefore, we have not prepared to interrupt the wishes of the Members by issuing any Statements. Those will come on Tuesday and after.

**The Temporary Deputy Speaker** (Prof. Kaloki): All right.  
Next order!

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Temporary Deputy Speaker  
(Prof. Kaloki) left the Chair]*

### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Prof. Kaloki) took the Chair]*

### THE NATIONAL INTELLIGENCE SERVICE BILL

*(Resumption of consideration interrupted in  
Committee on 24.8.2012 – morning sitting)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members the House will be able to continue with consideration of the of the National Intelligence Service Bill, Bill No.31 of 2012. We will continue from where we left off before we took a break.

Hon. Members we are on Clause 37. I had proposed that clause and we were contributing to paragraph (a). If there is no other contribution, I will put the question.

Hon. Members, just to recap what we are doing; Mr. Baiya on behalf the Departmental Committee had moved the amendment we are deliberating on now.

**Mr. Kioni:** Mr. Temporary Deputy Chairman, Sir, thank you for jogging my memory.

I want to oppose that amendment. My reason is that as we continue deleting or amending the clauses in this Bill, and specifically what Mr. Baiya is proposing, it is as if we are really trying to legislate for criminals in this country. We have to be awake to the fact that we have more good people in this country than bad ones. When we deny this agency an opportunity to protect the many who are good in this nation, we will eventually give a lifeline to criminals. This amendment by Mr. Baiya, even if it was not intended to achieve the same, will actually help criminals thrive and have a longer time span within which to perfect their acts; we only move in when it is too late. For that reason, I oppose.

**Mr. Mbau:** Mr. Temporary Deputy Speaker, Sir, I want to support the opinion of Mr. Kioni because these freedoms, according to the Constitution---

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, Mr. Mbau! Let us see what Maj-Gen. Nkaisserry has.

**The Assistant Minister, Ministry of State for Defence** (Maj. Nkaisserry): On a point of order, Mr. Temporary Deputy Chairman, Sir. I think the amendment by Mr. Baiya actually satisfactory. We are not taking away powers from the Service or from the Director-General. We are actually empowering him, in view of the rights of the citizens, so that his does not become a rogue organization. We do not want a rogue organization. Somebody can wake up tomorrow and just walk in and search---

**An hon. Member:** Criminal!

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): No! No! Do not bring in the issue of criminals to try to pursue things. We want to make sure that this is an organization which can advance national security. It should not be a threat itself. I think this amendment is very good and it will give the Service the teeth to bite or to investigate so long as an investigation is based on Section 43.

Mr. Temporary Deputy Chairman, Sir, I have to speak from my heart, as somebody with security background.

**The Temporary Deputy Chairman** (Prof. Kaloki): Maj-Gen. Nkaisserry, since we are at the Committee Stage just---

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Temporary Deputy Chairman, Sir, I want to challenge some of my colleagues here. We are adjudicating on a very important issue, an issue which affects national security---

**The Temporary Deputy Chairman** (Prof. Kaloki): Maj-Gen. Nkaisserry, I think you stood on a point of order, right? You have made your point.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): I am on a point of order, trying to counter this gentleman.

**The Temporary Deputy Chairman** (Prof. Kaloki): I just want Mr. Mbau to complete his contribution.

**Mr. Mbau:** Mr. Temporary Deputy Chairman, Sir, I wanted to say that I oppose this particular amendment. According to Article 24, the Constitution allows freedom of expression and for the citizens to do whatever they want. However, it is not absolute.

Mr. Temporary Deputy Chairman, Sir, I said earlier on that we need to know what we are doing today will also catch up with us tomorrow. We need to legislate without having in mind some individuals. We need to know that we legislate for the long run. I want to oppose.

**The Temporary Deputy Chairman** (Prof. Kaloki): Members, can I put the question?

**Hon. Members:** Yes! Yes!

**The Temporary Deputy Chairman** (Prof. Kaloki): All right. Then let me get Capt. Wambugu.

**Mr. Wambugu:** Mr. Temporary Deputy Chairman, Sir, I am just going through the Order Paper; I think you can all refer to Mr. Baiya's amendment on page 4010. However, I think the amendment that most Members are trying to debate is on page 1005, which was raised by Mr. Keynan. I think we should be clear on that because these are two different amendments. You can go to page 4010, and see what the Member want is for Clause 37 to be amended in sub-clause (1) by deleting paragraph (c). That is what we are talking about. The other is deleting sub-clause 2, but we are discussing a completely differently amendment.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Wambugu, we are dealing with the amendment from hon. Baiya on page 4010. That is where we are. Do you have that document? That is what hon. Baiya had moved before we broke for lunch. So, I just want to put the question, so that we can put this to rest.

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

Clause 37(b) has already been resolved by hon. Keynan. Now we go to Clause 37(c)

*Clause 37(c)*

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

THAT Clause 37 be amended-

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

(3) The Service shall, prior to taking any action under this section, obtain a warrant under Part V.

The purpose for that is safe evidence.

*(Question of the amendment proposed)*

**Dr. Laboso:** Mr. Temporary Deputy Chairman, Sir, I wish to request the Chairman to make a clarification. We have already deleted the provision to search homes, properties and possessions. So we are getting a warrant to do what?

**Mr. Baiya:** Mr. Temporary Deputy Chairman, Sir, the amendment is with regard to (c). That is what we moved as a Committee to amend. The opening remarks still apply. This is Clause 37(1), namely, the right to privacy as set out in Article 31 of the Constitution may be limited in respect of where a person to whom this Act apply to the extent and so on. That means

that section is still operative. We are saying that where it is operative, if the rights are to be restricted, the warrant, in case of arrest, should apply. If it is with regard to the right to arrest, the Committee did not move amendments to that section. It was moved by another Committee.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I had seen earlier that point by hon. Laboso and I noted that we had deleted (a), (b) and (c). We deleted (a) and (b) by an amendment by the Chair of the Committee. By an amendment by the Chairman of the Justice and Legal Affairs Committee, we have now deleted (c), but (d) still remains. So, his amendment still applies. Because I have a similar amendment as his last, I wish to withdraw my amendment.

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

*(Clause 37(c) as amended agreed to)*

*(Clause 37 as amended agreed to)*

*Clause 38*

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

THAT Clause 38 be amended-

(a) in sub-clause (3) by deleting the words “The Cabinet Secretary may by Regulations” appearing at the beginning of the sub-clause and substituting therefor the words “Parliament may, by an Act of Parliament,”; and

(b) by deleting sub-clause (4).

The whole idea for the amendment in (a) is to bring this section to the general position with regard to delegated legislation. It is still subject to approval and oversight by Parliament. That is why we want the amendment to be effected.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, again, we are confusing two issues, namely, operations and oversight. Clause 38 is on operations. We are substituting Cabinet Secretary with Parliament. We are making this organization impotent. In Clause 37, we have already deleted (c) and (d), I wonder whom we are legislating for. I am beginning to wonder.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Githae, you have made your point!

**Mr. Keynan:** Mr. Temporary Deputy Chairman, Sir, I want to agree with the Minister that in terms of the sources of law, we have the Constitution and Acts of Parliament. We still have room for delegated legislation which can be by regulation just like our own Standing Orders. I want to agree with the Minister that there is no need to have these regulations through an Act of Parliament. It will be superfluous.

**Mr. Kioni:** Mr. Temporary Deputy Chairman, Sir, I want to agree with my Chair. The issue of Cabinet Secretary bringing him at this point or bringing Parliament in at this point, it is

like we have forgotten that we have a Committee of Delegated Legislation. We have ways through which all regulations will come to Parliament. We are confusing this. It is important that we pay attention to what we are doing to this law.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Kioni, just be brief.

**Mr. Kioni:** Mr. Temporary Deputy Chairman, Sir, I want to be brief if William would allow me to just have my say. I normally keep quiet when he is saying a lot of things. So, I want to disagree with that proposal because I think we are overstressing the role of Parliament. It is important that we allow Parliament to do what it should do; that is to look at delegated legislation, but not to formulate.

**Mr. Abdikadir:** Thank you, Mr. Temporary Deputy Chairman, Sir. I think those who want to support the Service, when you talk about legislation or regulation that is not the role of this Service. Lawmaking is the role of Parliament, whether it is delegated legislation or substantive legislation. So, we are just saying that Parliament, and this is per the Constitution, that all delegated legislation will have to be done by Parliament anyway. Why do you want the Cabinet Secretary to legislate over something very crucial as to determine the categories of security classifications? That is the whole essence of the Freedom of Information Law. It is all about that. A whole Act of Parliament will be on that. So, if you give the Cabinet Secretary the role to legislate on that without seeking parliamentary approval and without coming back to Parliament and you are saying this is the core operation of the Service is not true.

**The Attorney-General** (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I would like to support hon. Githae. It is important that we remember the distinction between Parliament enacting legislation through a Bill and Parliament approving regulations made by other bodies that the Constitution has permitted to do so. I think what we want to do is to have flexibility. We want the Cabinet Secretary to move with speed in order to assist the Service to do what it is required to do. We do not wish that in order to achieve classifications of this nature, a law will queue in the Parliamentary Calendar as the Finance Bill or any other Bill would because that would impair the operational efficiency of the Service. So, I will counsel that we reject this proposal from my very distinguished friend, Chairman, Baiya, and allow the provision to stay as it is.

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

**The Temporary Deputy Chairman** (Prof. Kaloki): We have another amendment from Mrs. Millie Odhiambo.

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

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Millie, could you switch on the microphone. I want to hear you!

*(Dr. Khalwale murmured something)*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, Dr. Khalwale is saying that I cannot stand the stiff opposition from him. I can take him *omundu khu mundu!*

*(Laughter)*

Having said that, I withdraw the amendment on Clause 38(3).

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

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Chairman, Sir, I seek your help. The Member across spoke in a language I did not understand. I believe that she is talking in tongues.

**The Temporary Deputy Chairman** (Prof. Kaloki): The Chair did not hear that. So, let us make progress. Hon. Millie has withdrawn that amendment.

*(Clause 38 agreed to)*

*Clause 39*

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

THAT, the Bill be amended in sub-clause (2) of Clause 39 by inserting the words “non-political social or” immediately before the words “professional association”.

My proposed amendment on Clause 39(2) helps us not to criminalize people who belong to small social *chamas*. So, I was saying we need to insert the words “non-political” or “social” before the word “professional”.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, the real intention of this clause, the way it was drafted, was to avoid members of the NSIS joining a trade union. So, if you say non-political, then you will be including trade unions. That is why professionalism is exempted. Therefore, I request my friend, Millie, to withdraw this amendment. Professionalism is allowed.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I am in a good mood. I withdraw the amendment.

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

*(Clause 39 agreed to)*

*(Clauses 40, 41 and 42 agreed to)*

*Clause 43*

**Mr. Duale:** Millie, withdraw it.

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Chairman, Sir. I can see that hon. Duale loves my name today. I withdraw.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Millie Odhiambo has withdrawn her amendment.

*(Proposed amendment by Mrs. Odhiamb-Mabona withdrawn)*

*(Clause 43 agreed to)*

*Clause 44*

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

THAT, Clause 44 of the Bill be amended by deleting the words “reasonably believes” appearing immediately after the words “if the judge” and substituting therefor the words “is satisfied”

There is one explanation; “reasonably believes”, I think a belief can be so subjective. It can be a religious issue. We just say the Judge “is satisfied.” So, there was not much. Again, on this, there was consensus.

*(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 44 as amended agreed to)*

*Clause 45*

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

THAT, Clause 45 of the Bill be amended by deleting the words “the judge shall” and substituting therefor the words “the judge may”

Mr. Temporary Deputy Chairman, Sir, again here, the word “shall” we felt it was so forceful and it makes it mandatory for the Judge to make decisions in a certain direction. Ideally, the issue of going to court is to allow the Judge to exercise discretion. So, instead of the word “shall”, it should be substituted with the word “may”.

*(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 45 as amended agreed to)*

*Clause 46*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, since we have already watered down quite a bit of the powers that most of my amendments are reacting to, I wish to withdraw my proposed amendment to Clause 46.

*(Mrs. Odhiambo-Mabona withdrew her proposed amendment)*

*(Clause 46 agreed to)*

*(Clauses 47, 48 and 49 agreed to)*

*Clause 50*

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

THAT, the Bill be amended by deleting 50.

Mr. Temporary Deputy Chairman, Sir, if you look again at this, it requires a bit of explanation. Taking into account the amendments that we have already made on clauses 18 and 37, and also taking into account the provisions of Part V in particular clauses 43, 44 and 45, the intention of this actually was to circumvent all those sections and provide an opportunity or a lacuna for the Service to act because anything that they do actually is an emergency. So, on this particular clause, because we have already dealt with other clauses, then it is inconsistent with the other sections. This clause was meant actually to support Clause 18 which initially gave them power like those of the police. But because we said that was likely to give some sort of jurisdictional conflict and deleted.

Taking into account again the provisions of Part V, this is inconsistent and, therefore, it should be deleted completely in its entirety.

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well. That is because Mr. Baiya's and Mrs. Odhiambo-Mabona's amendments were dropped. That is why Mr. Keynan is dropping his amendment.

**Mr. Baiya:** Mr. Temporary Deputy Chairman, Sir, I just wish to speak to my colleague. From the explanation or rationale he has given, it is misleading the House.

**The Temporary Deputy Chairman** (Prof. Kaloki): You mean hon. Mr. Keynan?

**Mr. Baiya:** Yes, he has moved an amendment to Clause 50 whose effect is to delete Clause 50. That is what he has done.

**The Temporary Deputy Chairman** (Prof. Kaloki): Order! I just want to go back to Mr. Keynan.

**Mr. Keynan:** Mr. Temporary Deputy Chairman, Sir, for the sake of time and clarity, Clause 50 should be deleted from the Bill. I have given the reason. This clause was meant actually to give teeth to the clauses that we have already deleted and Clause 18 and Clause 37,



and taking into account the provisions of Part V, clauses 43, 44, 45 and 46, this will be irrelevant. The basis for this clause was to circumvent all the processes clearly stated under Part V of getting a warrant, going through a judge, asking a judge to determine and use a clause called emergency and have---

**The Temporary Deputy Chairman** (Prof. Kaloki): Mr. Keynan, are you moving an amendment or you are withdrawing? Just be clear on that.

**Mr. Keynan:** Mr. Temporary Deputy Chairman, Sir, the proposed amendment is to delete the whole of Clause 50 from the Bill.

**The Temporary Deputy Chairman** (Prof. Kaloki): All right, you are deleting your amendment. Hon. Baiya, is your amendment now able to stand?

**Mr. Baiya:** Mr. Temporary Deputy Chairman, Sir, my point of order was based on the fact that the ground that hon. Keynan was trying to advance in support of the amendment to delete this clause was misleading the House. To that extent---

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Baiya, what do you want to do now, as the Chair of the Committee?

**Mr. Baiya:** Mr. Temporary Deputy Chairman, Sir, Clause 50 talks of “extreme emergency”. It seeks to create an opportunity or an opening or procedure by which the agency can institute measures without warrant of arrest on account of urgency but subsequently, ensure that they go to court for ratification, so to speak, of the action they would have taken. So, to that extent, it is not related to the other provision requiring them to acquire a warrant. This is exceptional on account of emergency.

For that reason, I oppose hon. Keynan’s amendment.

**The Temporary Deputy Chairman** (Prof. Kaloki): I will give the Floor to hon. Nderitu and then to hon. Githae.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, I oppose the proposed deletion. I want to support the position taken by hon. Baiya because what---

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Nderitu, are you contributing?

**The Assistant Minister for Industrialization** (Mr. Muriithi): Yes, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Prof. Kaloki): Let me propose the Question, so that you can properly contribute.

Hon. Members, I now propose the question, which is that Clause 50 be deleted as proposed by hon. Keynan.

*(Question of the amendment proposed)*

**The Assistant Minister for Industrialization** (Mr. Nderitu): Mr. Temporary Deputy Chairman, Sir, I oppose the deletion because, as explained by hon. Baiya, Clause 50 provides the agency with the mechanism that he has explained. Imagine a situation like the one we are in currently---

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Nderitu, you have made your point. Let me get one more hon. Member to contribute.

Yes, hon. Githae!

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, when we, initially, looked at Clause 50, we thought that there could be mischief, particularly bearing

in mind the way the former Special Branch used to behave. During that time, you would be arrested on Friday and taken to court on Saturday. However, we have discussed this matter with quite a number of Members of the Committee. We discovered that, under this clause, there is no power of arrest. The power that the agency is being given is basically on search, seizure and interception. Therefore, since it is necessary for the agency to have emergency powers, we agreed that this clause should remain the way it is.

**Mr. Duale:** Mr. Temporary Deputy Chairman, Sir, there is nothing worse than a seizure of your property. This is well covered under Clause 46. I do not see the relevance of the element of an emergency. We have a reformed and transformative Judiciary. People should go through the Judiciary as a safeguard. Furthermore, Clause 46 is there. So, Clause 50 is of no relevance.

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, I am on a point of clarification. What I get both sides to be saying is that we need this kind of clause for emergency. I also get hon. Keynan to be saying that the work of the NIS is to gather information. Why can they not give that information on an emergency to the police to deal with it? Can I get that clarification?

**The Temporary Deputy Chairman (Prof. Kaloki):** Hon. Midiwo, you have done well. Let me hear hon. Kathuri.

**Mr. Kathuri:** Mr. Temporary Deputy Chairman, Sir, let me start by complaining that it takes too long for you to notice some of us on your screen. I recommend that in future, we should have a screen facing us, so that we can know when you are discriminating against some of us.

**The Temporary Deputy Chairman (Prof. Kaloki):** Order! Order, hon. Kathuri! I have 22 Members willing to contribute to this particular amendment. I also have five requests for points of order, which I want to deal with. That is what the screen shows. So, please, you have to be fair.

Can you proceed, hon. Kathuri?

**Mr. Kathuri:** Mr. Temporary Deputy Chairman, Sir, that is the more reason why there should be a screen facing us, so that one can know how far one is on the queue because we are doubting your discretion. Nevertheless, I apologise for casting aspersion on the Chair.

**The Temporary Deputy Chairman (Prof. Kaloki):** Order, hon. Kathuri!

**Mr. Kathuri:** Mr. Temporary Deputy Chairman, Sir, I withdraw the phrase; "casting aspersion".

**The Temporary Deputy Chairman (Prof. Kaloki):** Hon. Kathuri, could you approach the Chair? Just come forward, please.

*(Mr. Kathuri approached the Chair)*

**The Temporary Deputy Chairman (Prof. Kaloki):** How many requests do I have here?

**Mr. Kathuri:** You have 24 requests, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman (Prof. Kaloki):** How many interventions are there?

**Mr. Kathuri:** There are six interventions, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman (Prof. Kaloki):** Okay, go back and proceed.

**Mr. Kathuri:** Mr. Temporary Deputy Chairman, Sir, I understand your predicament but that is the more reason why we should have a screen facing us; so that you do not have to call me tomorrow to ascertain what you are reading alone there.

**The Temporary Deputy Chairman (Prof. Kaloki):** Please, proceed, Mr. Kathuri!

**Mr. Kathuri:** Mr. Temporary Deputy Chairman, Sir, let me start by saying that emergencies are emergencies. Of course, the world is dynamic. Emergencies can come in a manner you cannot even imagine now. While we know that the NIS can also become law unto itself, it is good for us to remember that the NIS would rather be law unto itself than wait to be invaded by a foreign country. It is worse to deal with foreign law than internal law.

**The Temporary Deputy Chairman** (Prof. Kaloki): You have made your point, hon. Kathuri.

Yes, hon. William Ruto.

**Mr. Samoei:** Mr. Temporary Deputy Chairman, Sir, we need to apply ourselves in a very non-partisan way to this clause. We are coming from a history where NSIS has abused the powers that they have. We really must be careful because if you read this clause, it actually presupposes that the judge would grant the warrant automatically. I mean this clause, in fact, negates. What about if the judge was to make a decision that he was not going to grant a warrant? So, I really want to persuade hon. Members because it is not the business of NSIS to deal with crooks. We have our own police force which has all mechanisms to deal with crooks and, therefore, since NIS is supposed to gather intelligence, let them go to court.

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

**Hon. Members:** Division! Division!

**The Temporary Deputy Speaker** (Prof. Kaloki): Yes, there are more than enough Members seeking a Division. Ring the Division Bell. You have the numbers. Order, hon. Members! Hon. Members, please, resume your seats. Let us make progress. Log in since we are about to vote. Close the doors. Could the Bar be opened?

## DIVISION

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, hon. Members! Please, resume your seats, so that we can begin the voting process. We are on Clause 50. Let me explain to you. For those supporting the deletion of Clause 50, you will press “YES”. Those opposing the deletion, you will press “NO”. If you do not wish to vote, you abstain, and the key for that is there. I will now put the Question.

*(Question put and House divided)*

Hon. Members, you can cast your vote.

Hon. Members, let us get the results of the Division. The total number present in the Chamber is 69. Sixty six Members voted and three did not vote; that is, the Chair and the Attorney-General. There is one who does not have the card and one did not vote. Those for the AYES are 32 and those opposing this particular amendment for deletion are 34.

*(Question negated by 34 votes to 32)*

**AYES:** Messrs. Affey, Anyanga, M.H. Ali, Cheptumo, Duale, Gitari, Hassan, Kaino, Kigen, C. Kilonzo, Dr. Kones, Messrs Koech, Kiptanui, Keynan, ole Lankas, Langat, Lessonet,

Letimalo, Magwanga, Mbadi, Midiwo, M. M. Muhammad, Mwaita, Mwathi, Nyambati, Nyamai, Mrs. Noor, Messrs Ogindo, Odhiambo, Ruto, Samoei, Mrs. Shebesh,

**NOES:** Messrs. Abdikadir, Baiya, Bett, Chachu, Gaichuihie, Githae, Kabogo, Kamau Irungu Jamleck, Kamau Maina James, Kathuri, Khalwale, Kapondi, Kioni, Kilimo, Kimunya, Dr. Laboso, Mrs. Leshoomo, Messrs. Mbai, Mbau, Mureithi, Muriithi, Mwangi, Capt. Wambugu, Messrs. Ngugi, Maj-Gen. Nkaisserry, Mrs. Odhiambo-Mabona, Messrs. Ndambuki, Ndeti, Omollo, Otieno, Ochieng, Dr. Otichillo, Messrs. Ruto, Wamalwa.

We will proceed now. Serjeant-at-Arms, open the door and the Bars.

Mrs. Odhiambo-Mabona, please, move your amendment.

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

THAT the Bill be amended in sub-clause (1) of Clause 50 by deleting the words “thirty six hours” and substituting therefor the words “twenty four hours”.

I wish to indicate that the reason I voted NO is because, as much as I do not think much of the National Security Intelligence Service (NSIS), we must build our institutions. What we are doing right now is that we are leaving an empty shell. We have not given them any police powers but if you look at what the amendment we were seeking to delete was doing, it was basically to give them powers in emergency situations to do something which does not require police power. It is to gather information about which there is a limitation under Clause 24 of the Constitution.

However, I do not want the NSIS to have powers that they can abuse. So, the amendment I am proposing is that even when they act in emergencies, we should not give them 36 hours. They must go to court which must approve what they want to do, if it is right. So, I am moving that we reduce it from 36 hours to 24 hours.

*(Question of the amendment proposed)*

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I stand to oppose this amendment, because the 36 hours are not imaginary. It is a practical calculation. For example, if a person who wants to commit a crime is discovered on a Saturday morning, and he is going to cause trouble on Sunday evening, surely, the NIS cannot wait until Monday when the judge is in the office for them to make an application. So, if you calculate, it will be 48 hours. So, if we give 36 hours--- The drafters have really bent backwards to give us this. We should support it.

**The Temporary Deputy Chairman** (Prof. Kaloki): Just be brief.

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, this is an extra ordinary situation and I am not a student of law. But I know for a fact that even at the School of Law, every student of law knows the basics that a good law must envisage all manner of scenarios and be sufficiently flexible to accommodate that.

**The Temporary Deputy Chairman** (Prof. Kaloki): You have done well.

**Mrs. Shebesh:** Mr. Temporary Deputy Chairman, Sir, I want to oppose what Mrs. Odhiambo-Mabona has said because what we have passed - whether we are on the yes or no - shows that clearly this is a method probably to deal with a problem that this country has been unable to solve for many years, effects of which we continue to see today. It could be that today cattle rustling will be dealt with like this, terrorism issues will be dealt with like this and if the country has never been able to deal with it, if it us giving away our sovereignty so that people can stop killing each other, then, maybe, this is the right way to go.

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I oppose the amendment by Mrs. Odhiambo-Mabona but not for the reasons that Dr. Khalwale has given. That is because when there is an emergency, courts operate even on a Sunday. The court is the judge; it is not the building. You can actually get those warrants issued at any time. But since we have already passed 36 hours and we have agreed that for building these institutions, we better err on the side of giving them the powers for the emergency and worry about abuse later, then let us do away with the 36 hours and bring it to 24 hours if it is splitting hairs.

**The Temporary Deputy Chairman** (Prof. Kaloki): Okay! Hon. Members, can I put the question?

**Hon. Members:** Yes!

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

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

*(Clause 50 agreed to)*

*(Clause 51 agreed to)*

*Clause 52*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I have seen this provision appears also and so, I withdraw.

*(Mrs. Odhiambo-Mabona withdrew her proposed amendment)*

*(Clause 52 agreed to)*

*Clause 53*

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

THAT, Clause 53 of the Bill be amended by deleting the words “to imprisonment for a term not exceeding two years or to a fine not exceeding three hundred thousand shillings or to both” and substituting therefor the words “to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or both”

Again, here, it was meant to annul the penalty and this was something that was agreed to.

*(Question of the amendment proposed)*

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, Sir, I support.

*(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 53 as amended agreed to)*

*(Clauses 54, 55, 56, 57, 58 and 59 agreed to)*

*Clause 60*

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

THAT, the Bill be amended by deleting Clause 60.

I know there is a further amendment by the Minister but what informed this was a situation where you can only imagine, I want us to read together the content of that particular clause and this is what it says:-

“Any person who, not being a member of the Service, obtains, attempts to obtain or is found in possession of any classified information, documents, records without the approval of the Director-General (DG), or without lawful authority or excuse, commits an offence and is liable for conviction to prison for a term not exceeding seven years.”

*[The Temporary Deputy Chairman  
(Prof. Kaloki) left the Chair]*

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

So, Madam Temporary Deputy Chairlady, basically, a number of Members of Parliament, in fact, from the Back Bench by now, would be in jail simply because of a classified document. It says that you only need to have a document marked “secret”. So, it is up to you to make a decision. That is what informed the Committee that, indeed, we did not need to legislate this. It is up to you to decide.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Chairlady, I have a solution to this very serious clause. Are you with me? The solution is this: I am proposing a further amendment that Clause 60 be amended by deleting the words “not being a member of the Service” and these are the words I would like you to consider to substitute with “with intent to aid a foreign power or commit any act prejudicial to national security”, so that restricts it. So, the issue of *pambana* and things like that are taken care of. That is the solution because somebody who is trying to aid a foreign power or commits any acts prejudicial to the security of the State, really, is our enemy. That is the person we need to deal with. It should not just be because you have been found with a document and you are not a member of the Service--- If you add this, it

takes care of those publications that you may be given as a Member of Parliament for you to deal with issues of your constituency. So, it will read like this:-

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Githae, allow us, first of all, to see whether the first amendment by the Chair is carried.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Chairlady, this is an amendment to an amendment. This sorts out the issue. We have discussed this and so let me read how it will be, so that people are aware. It will read: “Any person with intent to aid a foreign power or commit any act prejudicial to national security obtains, attempts to obtain or is found in possession of any classified information, documents, records without the approval of the Director-General (DG) or without lawful authority or excuse, commits an offence---” That is the person we are trying to get.

**Hon. Members:** No!

**The Temporary Deputy Chairlady** (Dr. Laboso): Okay, Mr. Minister, you have made your point allow the others. I have already proposed. What we are debating right now is the deletion. If that is not carried, we will listen to the Minister’s amendment.

**Mr. Chachu:** Madam Temporary Deputy Chairlady, I support the amendment by the Chairman of the Committee.

Mr. Temporary Deputy Chairlady, it is upon the intelligence service to ensure that they secure their documents. If they cannot secure documents in their position, Kenyans should not be harassed or be imprisoned just because they have access to that document.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, remember we need to dispose of one amendment after another. I know the Minister could have wanted to influence his amendment by informing you how intends to amend it. But in terms of dealing with the amendment, we will finish with the hon. Keynan’s and then if that does not pass then we move to the Minister’s. He has already made his point, you have heard. So, you can make your decisions with a point of knowledge.

Hon. Members, I have already given a chance to hon. Nyambati. Of course, if it is deleted, it means it is deleted. We cannot discuss the other amendments. Hon. Nyambati, where are you because I cannot see you on the system. I will give Mr. Kathuri a chance because I cannot get you on the system.

Mr. Kathuri, you have also switched yourself out.

**Mr. Kabogo:** On a point of order, Madam Temporary Chairlady.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Kabogo, what is your point of order? What is happening with the system? You touch it and it goes off. Hon. Kabogo, I am not getting you.

**Mr. Kabogo:** Madam Temporary Deputy Chairlady, it is just a question of procedure. You have just said that we deal with the deletion amendment and then we may come to this. I am saying, if it is deleted then there will nothing to amend. In my mind, we may carry amendment to an amendment and, if they fail, they fail together.

**The Temporary Deputy Chairlady** (Dr. Laboso): That is not the way we do it. That is why I gave him the latitude to actually explain his amendment and convince us whether it will be deleted or not deleted. That is why I gave you the opportunity.

**Mr. Kabogo:** Why do we not deal with it first?

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Mbadi, you seem to have an intervention. No, that is what is coming up.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, please, could you bring order so that we dispose of hon. Keynan' amendment? We forget about this amendment proposed by the minority, so that we finish these things. Even hon. Githae can see he is in the minority.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, these are important issues. The reason for the deletion from the Committee is understood. But hon. Githae has introduced an issue that requires a bit of attention of the House. The Minister does not need to give any notice on this amendment, consult so that we can come to a middle ground. Indeed, it is true that there is a risk to Members getting documents and being victimized. But on the other hand, it is true that there is a problem, where a Member of the service or somebody else could get access to documents prejudicial to national interest. So, if possible, they consult and come to middle ground.

**The Temporary Deputy Chairlady (Dr. Laboso):** Well, is that what is happening? Is the Minister going to consult with the Chairman of the Committee? In the meantime, could we hear hon. Kilonzo?

**Mr. C. Kilonzo:** Madam Temporary Deputy Chairlady, since the two parties have gone to consult, I want to remind hon. Members that particular proposed amendment by the Minister is being targeted at none other than Mr. Githongo and, perhaps, Mr. Miguna. It is targeting Mr. Githongo, when we look at it very carefully.

Madam Temporary Deputy Chairlady and Members here, you need to know, one way of fighting corruption is producing a dossier. People like Dr. Khalwale would not be in Parliament, he would be behind bars; not to mention me. Mr. Keter tabled a document last week here, he would be behind bars. So, in any other way, whatever form it can, it must be shot down.

*(Loud consultations)*

**Mr. Kapondi:** Madam Temporary Deputy Chairlady, could you protect me so that I make a contribution.

Madam Temporary Deputy Chairlady, I think we are taking the security of this country very lightly. If we are going to go by the deletion and not support the amendment by hon. Githae, it will be very easy for any foreign agent to access classified information through our civilians and without any penalty. If we do so, we shall be at risk all of us. We will live to regret the day we passed this kind of legislation.

*(Mr. Githae consulted with Mr. Keynan)*

**The Minister for Finance (Mr. Githae):** Madam Temporary Deputy Chairlady, following your instructions, we have consulted.

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Minister, allow hon. Konchella to contribute first. I can see that your consultations are still going on.

*(Loud consultations)*

**Mr. Konchella:** Please, let us listen to each other.

**The Temporary Deputy Chairlady (Dr. Laboso):** Order, hon. Members! Let us listen to each other.



**Mr. Konchella:** Madam Temporary Deputy Chairlady, sometimes we must realize, as a country that we can be in danger anytime. There are economic saboteurs. We have installations that can be destroyed. We are discovering oil. You can have somebody going to blow that oil and there is nothing you can do. This is because one of us is giving out the documents that would lead somebody to blow it up. We have power stations in this country which can be destroyed. So, let us agree that anybody aiding foreign powers for the sake of economic sabotage of this country must be dealt with. Surely, let us not open this county for anybody to---

*(Technical hitch)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, all of you are making requests at the same time. It is almost impossible to run the system. Some of you can just withdraw your requests to allow the system to work.

Attorney General!

*(Prof. Muigai walked to the Dispatch Box)*

**The Attorney General** (Prof. Muigai): Madam Temporary Deputy Chairlady, I think we need to take this matter extremely seriously. There is no democracy in the world in which information is not classified and its circulation restricted. That is why the Americans today are prosecuting persons who were involved with the wikileaks. We must classify information and contain its circulation. That is why we are developing a Freedom of Information Act, to create situations where members of the public can legitimately access information that is held by the Government. Today, we have our forces deeply inside Somalia. The military has been working for over a year to develop a roadmap to secure Kismayu. Can this House say that, that information is not classified and ought to be released to the media on the night of that military operation? Let us get the language correctly. We can change this language to say "any authorized person." Documents are brought to the House by the Director-General (DG) and the service, in answer to summons by the House and we are authorized to have that information. So, the only person who should---

**An hon. Member:** What about dossiers?

**The Temporary Deputy Chairlady** (Dr. Laboso): Order, hon. Members! Allow the Attorney General to complete his contribution.

**The Attorney General** (Prof. Muigai): Madam Temporary Deputy Chairlady, I seek to persuade Members. Let us not throw out the baby with the bath water. We must have a mechanism of punishing individuals who illegally, unprocedurally and with a threat to national security, access classified information.

**The Temporary Deputy Chairlady** (Dr. Laboso): Thank you, Attorney General. Chair of the Committee, hon. Keynan!

**Mr. Midiwo:** On a point of clarification, Madam Temporary Deputy Chairlady. So that we can all move together, I just wanted the Attorney General to clarify to us whether information such as the one which was tabled in this House, about Anglo Leasing, is classified information. How would it protect whistleblowers who detect cases of corruption? Would those people be criminalized for trying to protect the interests of the public? Even last week, there was the issue of the airport, when hon. Kimunya--- I want the Attorney General to clarify to us how we would deal such scenarios, so that we can move forward. I think that both concerns are genuine.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Madam Temporary Deputy Chairlady, any information touching on national security is important. That is what we are trying to cover here. In fact, the drafters are the ones who put this issue and made it controversial. I had told my colleague here that it should be “any unauthorized person with intent to aid a foreign power should obtain---” I think we will be in a position to safeguard our national security. Anglo Leasing is not a national security issue, but a corruption issue. If we can allow the Chair of the Committee to propose, I think we will be out of the woods.

**The Temporary Deputy Chairlady** (Dr. Laboso): Chair of the Committee, we need to make a decision. We still have before us the deletion, but you have been guided.

**Mr. Keynan:** Madam Temporary Deputy Chairlady, first of all, I think we need to appreciate that was not an individual position. This was as a result of the deliberative mechanism that we have put in place and consultations we have had, including public participation through the different groups that we have engaged. It will be morally wrong on my part, as an individual, because this is not my own amendment. If the Attorney General can put what he said in writing, because he is a seasoned lawyer - it is slightly different from what Maj-Gen. Nkaisserry has said – it is something that we can reflect on quickly and see whether we can accept it.

**Mr. Ogindo:** On a point of information, Madam Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Chair, hon. Ogindo wants to inform you. Are you willing?

**Mr. Keynan:** Yes, Madam Temporary Deputy Chairlady.

**Mr. Ogindo:** Madam Temporary Deputy Chairlady, in deliberating this we appreciated, as a Committee, that espionage had already been criminalized. What is left here now is a situation where now you are found in possession of classified information. There are two things that are clear. There is no information relating to corruption which is not classified. The whole oversight role of Parliament is to dig into this kind of information related to corruption. If we allow this to go on, then some of us, by the time we reach out, will find documents in our car boots.

**Mr. Keynan:** Thank you, hon. Ogindo. This is a critical issue that each individual Member must be prepared to make an informed decision on as a result of the vote that you are going to cast. My work was just to present the position by the different groups. Unless I see that particular amendment driven by the Attorney General, which we will share very quickly, as an individual, it will be immoral to withdraw the amendment as it is. I think you understand my position.

My concluding remarks are that it will be immoral for an individual to withdraw on the basis of something that is not very clear.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Chairlady, as you directed, we discussed this issue with the Chairman and other Members of the Committee. If only hon. Members could listen to me, I could give them the two alternatives. We have gone even further and this is now the agreed version of the amendment.

**Hon. Members:** Agreed with whom? Who did you approach?

**The Minister for Finance** (Mr. Githae): By the majority. It reads like this:-

“Any unauthorized person with intent to aid a foreign power, obtains, attempts to obtain or found in possession of classified information, documents, or records without the approval of the Director-General, or without lawful authority, or excuse commits an offence.”

There are two ways we can do this. *Si hiyo ni sawa?*

*(Loud consultations)*

**Mr. Keynan:** Madam Temporary Deputy Chairlady, I can see that the Attorney-General is whispering certain words. Could he put it in writing? It will not take long. We need to resolve and agree on this matter. Please, put it in writing. It will take you just one minute. Bring it and then we resolve this matter. It needs to be captured properly and we agree on the way forward.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Madam Temporary Deputy Chairlady, we all accept that both sides have a valid point.

*(Loud consultations)*

Madam Temporary Deputy Chairlady, I think I want to---

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Muriithi, your neighbour has been magnanimous.

**Mr. Mwangi:** Thank you, Madam Temporary Deputy Chairlady although it has taken me the whole day. I oppose the amendment proposed by hon. Githae. We should read this clause and continue. Those of you who have been here in the past regime know how many people suffered through this. Who says that this will not be repeated? We should go by the amendments brought by the Chair and delete this clause and continue.

**Mr. Kathuri:** Madam Temporary Deputy Chairlady, I am equally concerned with the consultations that are taking place. It appears that it is another meeting and yet we are busy on this Bill. While we appreciate the need to secure our nation and motherland, it is also important for us to realize that we have gone through regimes which have subjected Kenyans to a lot of harassment. This should not mean that we do not want a stable future in terms of security. I think the punishment should go to the person leaking the information and not the person holding the information. This will amount to gagging the media. The media will not be able to access information.

**The Temporary Deputy Chairlady** (Dr. Laboso): This is not debate time. Make your point quickly in summary form.

**Mr. Kathuri:** I want us delete this clause. If we have to insert another one, let it come through, but not this one.

**Mr. Koech:** Madam Temporary Deputy Chairlady, I was wondering whether I was in the system. So that we make progress, and I would love hon. Githae to listen, we have not come to this House to start making laws here. When I look at Clause 60, it has nothing to do with foreign power. It has just been introduced here. Is it an afterthought? For us to make progress, with your permission, let us recommit Clause 60 and then we can come back to it.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Keynan, are you now ready to give us your agreed version of the amendment?

**Mr. Keynan:** Madam Temporary Deputy Chairlady, one of the critical roles that I always play is to be a consensus builder. I want hon. Members to decide whether this amendment is acceptable or not. This is what we have put together with the able Attorney-General. The whole section should read, if that is acceptable:-

“Any unauthorized person with intent to aid foreign power or entity or endanger national security, obtains, attempts to obtain or is found in possession of classified information without the lawful excuse commits an offence and is liable

to a conviction in prison to a term not exceeding five years or a fine of Kshs5 million or both.”

The import is that we have removed the authority of the Director-General. Secondly, national security is not only within the purview of the Director-General alone, we have the Kenya Defence Forces, the Police Force and even the NSIS. So, is that acceptable so that we replace the entire section?

**Hon. Members:** Yes.

**The Temporary Deputy Chairlady** (Dr. Laboso): We need to make progress. I propose that Mr. Keynan you move the deletion and then put the new clause so that, that is what you will be voting on.

**Mr. Keynan:** You know I had to consult my conscience which I have done. Therefore, I wish to withdraw the amendment to delete Clause 60 and---

**The Temporary Deputy Chairlady** (Dr. Laboso): Order! Please, stand guided. You are moving the deletion of Clause 60 and the substitution of your new clause.

**Mr. Keynan:** Yes. As a result of consultations that we have had with the Minister---

**The Temporary Deputy Chairlady** (Dr. Laboso): There is a point of order, by the Chairman of the CIOC, Mr. Abdikadir.

**Mr. Abdikadir:** On a point of order, Madam Temporary Deputy Chairlady. Just on procedure, the Chairman of the Committee on Defence and Foreign Relations was moving a deletion. When you move an amendment to delete, there is no amendment that you can do. You are deleting. Secondly, the Chairman requires notice to move an amendment, but the Minister does not require notice. So, it is possible that the Minister moves the amendment?

**The Temporary Deputy Chairlady** (Dr. Laboso): Thank you. Of course, it is only the Minister who can make changes on the Floor. Again, on procedure, you need to withdraw your deletion, so that it is on record that it has been withdrawn and then the Minister can move the substitution.

**Mr. Ogindo:** On a point of order, Madam Temporary Deputy Chairlady. On procedure, I want to concur with the CIOC Chairman, that first of all, we need to deal with the amendments to Clause 60.

**The Temporary Deputy Chairlady** (Dr. Laboso): Once he withdraws, we are not dealing with it because he has withdrawn. That is the procedure.

**Mr. Ogindo:** Madam Temporary Deputy Chairlady, just listen to me so that I can make my point. If this is carried, then that dies naturally.

**The Temporary Deputy Chairlady** (Dr. Laboso): When an amendment is withdrawn, it is not there. Withdraw the amendment, hon. Keynan.

**Mr. Keynan:** Madam Temporary Deputy Chairlady, I see sense in what has been suggested procedurally. Let us clear with our amendments, they go through and subsequently, I will withdraw the deletion. Can you proceed with the amendments as agreed and then it will be followed by the withdrawal of the deletion?

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Keynan, if we start voting, then we are taking the amendment. But if you withdraw, then we can proceed with the new amendment. Hon. Members, there is a problem with the system and we just have to be patient.

**The Minister for Finance** (Mr. Githae): On a point of order, Madam Temporary Deputy Chairlady. This is the amendment that we are thinking about and I beg to move. The Chairman should withdraw his amendment. There are still a few gentlemen left and I am one of them. If I

say that I am going to move an amendment, I will move an amendment. There is no need of giving a condition. So, the Chair should not worry that I will not move it.

**The Temporary Deputy Chair** (Dr. Laboso): Hon. Members, we are just getting bogged down with procedure, but just for us to make progress, we will allow the Chairman of the Committee to move the amended form of his amendment. Therefore, hon. Chairman, can you move your amendment in the amended form.

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

THAT, Clause 60 be deleted and substituted with following new Clause-

“Any unauthorized person with intent to aid foreign power or entity or endanger national security, obtains, attempts to obtain or is found in possession of classified information without the lawful excuse commits an offence and is liable to a conviction in prison to a term not exceeding five years or a fine of Kshs5 million or both.”

*(Question of the further amendment proposed)*

**Mr. Ngugi:** Madam Temporary Deputy Chairlady, here, we are looking at what is good for this country, not only for the immediate future, but also for long-term, whether this side is in the Government or the other. This is why I support the amended version by the Chair of the Committee.

I beg to support.

*(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 60 as further amended agreed to)*

**Mrs. Odhiambo-Mabona:** On a point of order, Madam Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Millie, our records show that if hon. Keynan’s amendment passed, then yours failed because it was to be deleted.

**Mrs. Odhiambo-Mabona:** Even if it was overtaken by events, do I not have a right to move it?

*Clause 61*

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

THAT, Clause 61 of the Bill be amended by deleting the words “misleads or unduly influences” appearing in the opening paragraph.

Here, again we were trying to improve on the wording. As it is now, it says; “any person who obstructs, assaults or hinders---”We have realized that with regard to the Director-General

or any Member of the service this is so subjective that in the evening, hon. Dr. Khalwale can meet a member of the service and have his engagement. The following day, the member can say that Dr. Khalwale hindered him in executing his duties. So, this amendment is meant to cure that. We are proposing to redraft this in a way that will allow them to function while making sure that they do not infringe on people's rights.

*(Question of the amendment proposed)*

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

*(Clause 61 as amended agreed to)*

*Clause 62*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Millie, you have an amendment.

**Mr. Baiya:** I also have an amendment.

**The Temporary Deputy Chairlady** (Dr. Laboso): If hon. Millie's amendment goes, then yours goes too.

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

THAT the Bill be amended in sub-clause (3) of Clause 62-

(a) by deleting paragraph (e);

(b) by deleting paragraph (f);

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Millie, assist hon. Members on what this amendment means. Give us the import of the amendment.

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

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

THAT, Clause 62 be amended by deleting paragraph (f) of sub-clause (3).

**Mrs. Odhiambo-Mabona:** We cannot go back to the same thing.

**Mr. Baiya:** That was her amendment and we cannot go back to the same thing. She did not even execute it. I am prosecuting mine on behalf of the Committee. This clause relates to a provision---

**Mrs. Odhiambo-Mabona:** But it has already been deleted.

**Mr. Baiya:** Let me have my say Millie.

**Mrs. Odhiambo-Mabona:** It is already deleted.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Baiya, you can only prosecute "a" because "f" has already been deleted.

**Mr. Baiya:** Madam Temporary Deputy Chairlady, there is a misunderstanding here. I thought that the amendment for hon. Millie was voted no.

**Mrs. Odhimbo-Mabona:** It was deleted.

**Mr. Baiya:** As a matter of procedure---

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Members, when hon. Millie's amendment came up, you rejected it.

**Mrs. Odhiambo-Mabona:** So, by inference they rejected his too.

**Mr. Baiya:** Madam Temporary Chairlady, the main challenge is that I was moving an amendment by the Committee. As a matter of procedure, I ought to have been given precedence because I was moving an amendment that had been considered by many Members of a joint Committee of which Millie Odhiambo is one of them. One of the reasons that it failed is because she did not prosecute it. I want to be given an opportunity to move this amendment.

**The Temporary Deputy Chairlady (Dr. Laboso):** It has passed, hon. Baiya. So, we cannot go back to what we have dealt with. So, that falls!

**Mrs. Noor:** On a point of order, Madam Temporary Deputy Chairlady. If a mistake comes from your side because hon. Baiya was moving an amendment of the Committee and you tell him that it is wrong, then there is no point of the Committee working overnight and you are not giving them a chance to express themselves.

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Members, the decision is based on the coverage of the amendment being brought. Therefore, Millie's carried more weight and that is why it was put first. If it did not fail, we would have moved to the next one. That is how the arrangement is done. Any time there is a deletion, it always comes first.

**Mr. Koech:** Hon. Madam Temporary Deputy Chairlady, please, guide us. When hon. Millie proposed her amendment, she did not prosecute. However, when you put it to vote, it was defeated. What hon. Baiya is proposing, and I want hon. Members to listen, is that we should delete "f" which says that any person who discloses any classified information to any person other than the person whom he or she is authorized to disclose commits an offence. This means that when I obtain a document to come and use it in this House, then that person commits an offence. It is a very important amendment.

**The Temporary Deputy Chairlady (Dr. Laboso):** Order, hon. Members! We cannot all speak at the same time. Hon. Millie Odhiambo's amendment was that we delete "e" and "f". So, when it came on the vote, you chose to negate it. To negate here is deletion. So, you cannot come back and say now we delete it again. We have already passed that it stays the way it is. It is not deleted. We can revisit it later, but we must move.

**Dr. Kones:** On a point of order, Madam Temporary Deputy Chairlady. I want you to really guide this House. This House has just made a decision on that provision, so it remains as it is. As much as the Chairman of the Committee has a point, I think it has been overtaken by events. So, let us move on.

**The Temporary Deputy Chairlady (Dr. Laboso):** Thank you. That is precisely what I have been trying to do. We must move on. There are always mechanisms and ways if you need to do recommitals. You have other options. Therefore, let us not continue to bog us down when you have other options.

*(Clause 62 agreed to)*

*(Clause 63 agreed to)*

**Mr. Ogindo:** On a point of order, Madam Temporary Deputy Chairlady. I just want your guidance as we move forward. The way this Order Paper has been arranged, we expect it to move sequentially so that we clear the amendments that come first before we go to the subsequent ones. I want your guidance on that so that we do not go back and forth and come back and sometimes skip amendments that have merit.

**The Temporary Deputy Chairlady (Dr. Laboso):** Mr. Ogindo, I think I had explained. Mrs. Odhiambo-Mabona's amendment carried two different clauses. The one of the Committee carried one clause. So, it had precedence over the other.

**Mr. Ogindo:** But it came after!

**The Temporary Deputy Chairlady (Dr. Laboso):** It does not matter. That is the way we prosecute business of the Committee of the whole House. It is not prepared by me, but by the clerks who have had experience over the years. Hon. Members, please, let us not revisit that again. We are moving on.

**Mr. Ogindo:** No, you are being misled by Mr. Kimunya!

**The Temporary Deputy Chairlady (Dr. Laboso):** We are now on Clause 64. Hon. Members, I want us to be clear here. Sometimes, you dispute even whatever is actually in our Standing Orders just because of partisan interests. Please, let us be guided by our Standing Orders. Standing Order No.53(7) says:-

“When two or more amendments are proposed to be moved to the same Motion, the Speaker shall call upon the movers in the order in which their amendments relate to the text of the Motion, or in cases of doubt in such order as the Speaker shall decide.

(8) No amendment may be moved which relates to any words which it has been decided shall not be left out of the Motion.”

So, hon. Members, there is an order in which these amendments are prepared and we are going by that order. It is not the way they are listed on the pages. There is a procedure that is being followed. So, allow us use the Standing Orders, so that we move forward.

#### *Clause 64*

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

THAT Clause 64 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause-

(1) A person who is or was a member of the Service shall not without the authority of the Director-General disclose or communicate, whether in Kenya or elsewhere, classified information or any information the disclosure of which is detrimental to national security.

Madam Temporary Deputy Chairlady, again, here we redrafted just to make it so specific and limited to only dealing with the issue of espionage as a crime. It talks about a member of the service. You can have a foreign agent or a foreign entity. You can use the expertise of a serving member or a former member. Therefore, again, this needs to be regulated. So, it is something that we had consensus.

*(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 64 as amended agreed to)*

Clause 65

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

THAT, Clause 65 of the Bill be amended-

- (a) in sub-clause (6) by deleting the words “sub-section (4)” and substituting therefor the words “sub-section (5)” ;
- (b) in sub-clause (7) by deleting the words “sub-section (4)” and substituting therefor the words “sub-section (6)”;

Madam Temporary Deputy Chairlady, again here, it was an issue of just re-drafting. There was not much. We had agreed basically on what was to be done.

*(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)*

**Mrs. Odhiambo-Mabona:** I have an amendment to Clause 65.

**The Temporary Deputy Chairlady** (Dr. Laboso): No, we do not have a record of an amendment to Clause 65. That had not been included in my list, but if you have an amendment go ahead.

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Chairlady, out of courtesy, I had originally intended to withdraw because according to the practice of this House, there are certain courtesies we extend to each other. But because this afternoon we are not extending them, I wish to prosecute each and every one that I was seeking to withdraw.

I cannot as a Member who has an amendment seek to get your attention to be heard for the last one hour we have been on this matter. The general courtesy is you give the hon. Members who have similar amendments a chance to speak. I even put a point of order until I got tired.

I beg to move:-

THAT the Bill be amended in sub-clause (1) of Clause 65 by inserting the following new paragraph immediately after paragraph (e)-

(f) until after the first general elections held under the Constitution, the Assistant Minister in the office of the Prime Minister.

*(Question of the further amendment proposed)*

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Chairlady, I oppose.

**Mr. Mbau:** Madam Temporary Deputy Chairlady, as at now we do not know what is in that Motion. So, I oppose that which is not there.

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

*(Clause 65 as amended agreed to)*

*Clause 66*

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

THAT, the Bill be amended by deleting Clause 66 and substituting therefor the following new Clause-

**Parliamentary  
oversight**

**66.** Parliament shall pursuant to Article 238 (2) of the Constitution exercise oversight over the Service through the relevant Committee.

This was, again, a critical issue and through the different interactive sessions that we had with different organisations and experts, it dawned on us that if this clause is left as it is, it will be an impediment and, indeed, roadblock to the constitutionally enshrined independence of the institution of Parliament. Therefore, we re-drafted it and, again, there was consensus. We proposed the insertion of new Clause 66.

As it is, the Bill is attempting to legislate for Parliament, including suggesting certain inclusions into the new Standing Orders, which we are about to address, as a House; and even sections that would have been within the purview of Parliament, on the National Assembly (Powers and Privileges) Act. So, we felt that this was unconstitutional and eventually, gladly, reason prevailed. Therefore, it was accepted.

*(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 66 as amended agreed to)*

*Clause 67*

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Keynan, your amendment is a deletion. Therefore, if yours passes, the Minister cannot move his.

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

THAT, the Bill be amended by deleting Clause 67.

Madam Temporary Deputy Chairlady, what informed this amendment is the fact that one of the things that contributed to even the challenges we experienced in 2007/2008 is not because we did not have institutions but it is because the institutions failed. What this amendment attempts to cure is that the Bill, as it is, again, attempts to limit the constitutionally enshrined mandate of Parliament. It even goes ahead and determines the *modus operandi* of Committee meetings. Therefore, if it is left the way it is, it would technically mean that the *modus operandi* for any Parliamentary Committee that will interact with the NIS has already been determined by the Service. Therefore, the Service becomes both the judge and the jury.

So, what we are saying is, can these aspects of this Bill be left to the Standing Orders? The Standing Orders are being addressed. More so, a Member of Parliament goes through several processes. This is something we need to appreciate. To be elected Member of Parliament is not a very easy job. It is one of the most difficult tasks an individual can ever go through.

To be voted for, elected, declared a winner and gazetted is not a mean achievement. What this clause, as it is, attempts to do is to circumvent that process and make sure that the hon. Member who is elected by the Kenyan people remains subservient to procedural issues that will impair his or her performance as far as any aspect relating to this particular entity is concerned.

Therefore, we are saying that these issues will be addressed in the Standing Orders, and went ahead to propose deletion of the entire clause, so that we are not seen to be trying to put roadblocks and even dealing with issues on which the Standing Orders Committee might have a different view.

So, I plead with the Minister to, kindly, accept the deletion of this Clause because the clauses he wants retained will curtail the independence of a Member of Parliament. The Constitution says clearly that the security organs are accountable to the Constitution and Parliament. Therefore, the very entity that is expected to legislate is the one in respect of which somebody is now trying to say that, in the process of exercising your constitutional mandate, you cannot do this or this or this.

Therefore, we should expand our horizon of thinking on this particular clause. Today you might be in this House. Tomorrow, you might be the Minister in charge of that particular entity. Let us think critically and accept that this particular clause, as it is, is not tenable. Therefore, we propose its entire deletion.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Chairlady, it is true that this is one of the clauses that had not been agreed upon because of the controversy surrounding them. However, I have a way out. If we delete this clause, the NIS will not be able to share information with Members of Parliament, particularly where a matter is secret. In other jurisdictions like the United States of America (USA), Members of the Intelligence Committee are sworn-in, so that they can receive secrets from the Director of the Central Intelligence Agency (CIA). This enables them to perform their role of oversight even better. Therefore, the proposal as discussed is that, instead of deleting the entire clause---

**The Temporary Deputy Chairlady** (Dr. Laboso): Minister, do not move your amendment at this stage.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Chairlady, I am not moving the amendment. I am just suggesting the way forward to hon. Members, so that they may know our position before we delete this clause.

So, instead of deleting the entire clause, we are saying that the Bill be amended by deleting Clause 67 and substituting therefor the following new clause---

**Mr. Kabogo:** On a point of order, Madam Temporary Deputy Chairlady.

**The Minister for Finance** (Mr. Githae): Let me finish, hon. Kabogo. So, it will read as follows---

**The Temporary Deputy Chairlady** (Dr. Laboso): No, Minister. We do not want to get into the kind of confusion we got into the first time. I want to give Millie an opportunity, because she had a similar amendment to that of hon. Keynan. Could we have---

What is your point of order, hon. Kabogo?

**Mr. Kabogo:** Madam Temporary Deputy Chairlady, we need to do business as we do business here every other time. We have an amendment seeking deletion of the clause. Until we deal with that amendment, we cannot take other side issues. So, let us deal with it first. If it carries the day, we deal with the Minister's proposals. In the event that the clause is deleted, the Minister can take the opportunity to propose the addition of a new clause to the Bill. He does not have to give notice. So, procedurally, we are just supposed to move on.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Kabogo, that is what I said. I did not allow him to move the new clause because I said we do not want to get into the issues that we got into earlier on. But the reason I am giving hon. Millie is because her amendment is similar to the Committee's. It is exactly the same as the Committee's. So, I am giving her an opportunity to say something before we make a decision on the deletion.

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Chairlady, even though I hear the Minister and I agree with what he is saying - which makes a lot of sense - but there are things that should go into Standing Orders of Parliament and not legislation. Otherwise, all the committees will have to look for the relevant legislation, be it justice, finance and all the others. Parliament needs to have its autonomy and be able to regulate how it works, but not by way of legislation. That is why I was proposing the deletion.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I absolutely agree with hon. Millie. I plead with the Minister to withdraw his amendment and let us move on the Chair's amendment.

**The Minister for Energy** (Mr. Murungi): Madam Temporary Deputy Chairlady, I just want to seek clarification. If we delete Clause 67 which provides for the functions of a joint parliamentary committee on intelligence, are you saying that Parliament is not going to have this joint parliamentary committee on intelligence? So, we need that clarification from the Chairman so that we can know how to vote. Could the Chairman make that clarification?

**Mr. K. Kilonzo:** Madam Temporary Deputy Chairlady, while supporting this amendment, what hon. Murungi is raising now has already been taken care of under Clause 66. Moreover, I want to also inform my friend, hon. Githae, that, we as a Committee, visited the Congress and we sat with hon. Members of Congress of a similar committee of intelligence. They said the only oath they take is the oath which they take when they are sworn in as Members of Parliament, but they do not go through vetting. We were there a month ago. So, your position

is actually misleading the House and I want to plead with the Minister to agree with the Chair and Committee that we delete this Clause.

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, I have a serious difficulty with what we are about to do. If we delete Clause 67, I would like hon. Members to look at what the clause is saying at the moment. If you look at Sub-clause 2, it is saying: “Notwithstanding Sub-section 1, the Committee shall not.” It prohibits the Committee in those many lines from indulging in operational issues of the Service. Let me make my point. I do not have to be right but you can hear me. So, the real success of the Service is housed in the fact, that it enjoys operational autonomy that not the President; not this Parliament and not the Judiciary can direct the Director-General (DG) on how to carry out operational activities. So, if you allow this amendment to go through, it means, therefore, that when the DG comes before Parliament, he has to disclose the intelligence gathering, the priorities he has and he is supposed to disclose sources of his or her information.

**Mr. Keynan:** On a point of order, Madam Temporary Deputy Chairlady. I must say I am extremely disappointed with my good friend and brother, hon. Khalwale. For once, I must say he is misleading the House, himself and he wants to mislead everybody else. In fact, he is canvassing for the deletion of this particular Clause 67. You are doing it in a very cheeky way. What we are trying to say is that we have dealt with that entity for the last five years. What the deletion of this Bill is going to cure is the *modus operandi* and engagement between any committee of Parliament and any other entity will be captured under two legislations or two subsidiary legislations. The first legislation is that we have the Powers and Privileges Act, which clearly, under Section 6(18), talks about what is supposed to be within the committee and what is not supposed to be released. Even there are instances where certain information has to be authorized by the President. Anything that touches on the navy, army and the air force has to be authorized by the President, as it is. We cannot legislate over what we are expected to include in the Standing Orders and, therefore, as much as I empathise with my brother, hon. Khalwale, please do not mislead this House for one reason or the other. I have served that Committee for the last five years. The rules are very clear. There are other subsequent sections that we are likely to pass. There are other sections that we have passed. They clearly demonstrate how the activities of that critical entity are supposed to be conducted.

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, I want to thank the hon. Member. I think he should have stood on a point of information but, unfortunately, that information is nothing new. The point I was trying to make is that the oversight role of Parliament is supposed to be limited to - in this particular respect - to the issue of overseeing administrative matters within the service and overseeing the expenditure of the service. But if you oversight operational issues, then you are operating outside the common parlance of Parliament. I do not have to be a lawyer to understand the Standing Orders of this House.

**Mr. Abdikadir:** On a point of order, Madam Temporary Deputy Chairlady. Let me read the Constitution for hon. Khalwale. Article 95(5) on the functions of the National Assembly says: “The National Assembly –

(a) reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office; and

(b) exercises oversight of State organs.”

Period. It does not say: “Exercises oversight of a State organ to this extent.” It is primary; “Exercises oversight of State organs.” Now, in terms of operations, you can come and say before the committee: “These are operational issues.” I have no problem looking through the Standing

Orders for a specialized organ, as the Minister has said. But hon. Khalwale must note that we cannot legislate to amend the Constitution. We cannot limit powers given by the Constitution to the National Assembly through an Act of Parliament, especially when that Bill has been produced by the Executive. The Executive cannot decide how Parliament runs its business. From the start, Parliament is the one that decides how to run its business. You are the Chair of a very important Committee and if you were to legislate what you want us to legislate for this institution, what about the other institutions that you oversight? You would have no role. All of them would want to limit your powers.

**Dr. Khalwale:** This matter is very important. It would help Mr. Martin if he accords me the respects that I give him.

I have seen these issues when political parties are in the Opposition and they want to make the party that is ruling to look bad. Does this House want to tell us that if you now have the power to interrogate operational issues, you can come and ask them to disclose their strategy on how to catch people who are posing a threat to security in the country?

**The Temporary Deputy Chairlady (Dr. Laboso):** Your point has been made.

**Dr. Khalwale:** Yes, there might be no Opposition now, but there will be one after the elections in 2013.

**The Minister for Nairobi Metropolitan Development (Mr. Jamleck Irungu Kamau):** Madam Temporary Chairlady, I understand where my colleagues are coming from. I know they want the whole clause to be deleted, but there is something new here, which if we look at clearly, it might solve the problem. I was suggesting that you allow the Minister to move an amendment to this amendment, so that he brings in the new information which will sort out all these problems and that is procedural.

**The Temporary Deputy Chairlady (Dr. Laboso):** We will dispose of the first amendment before we move on. Therefore I want to put the Question.

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

*(Clause 67 deleted)*

*Clause 68*

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

THAT Clause 68 of the Bill be amended in paragraph (b) of sub-clause (1)-

(a) by deleting subparagraph (i) of paragraph (b) and substituting therefor the following new subparagraph;

(i) one shall be a person nominated by the Kenya National Commission on Human Rights;

(b) by deleting the words “of integrity who has served with distinction” appearing in subparagraph (iv) and substituting therefor the words “who has at least seven years experience in public service”;

(c) in sub-clause (6) by inserting the words “on the recommendation of the Public Service Commission” immediately after the word “shall”.

First, I wish to thank the Minister before I go ahead. That was a good one by the Minister.

Again, I want to take the hon. Members through. This is the formation of the Intelligence Service Complaints Board. If you look at Clause 68(i)(b) it says that the chairperson who shall be qualified to be a judge of the High Court and four other members, of whom one shall be a person who has knowledge and experience in human rights. What we did was to define this and to include an entity called “a representative of the Kenya National Human Rights Commission,” so that it is definite who represents the human rights fraternity, instead of just picking an individual with no experience. We agreed on this.

The fifth section talks about one person of integrity, who has served with distinction. Again, we realized that this is so subjective. What we said is that a person who has experience in public service. When you talk about distinction and integrity, that is not something that can easily be quantified. So, we said that the person should be experienced in public service. We did that to remove ambiguity and make it clearer, so that it is implementable.

The Intelligence Service Complaints Board is meant to cover both the public and members of the service, in case somebody has any legitimate concerns about the operations or activities of the service. This is going to be the legitimate board that will handle public issues or complaints of any person who has issues with the service.

*(Question of the amendment proposed)*

**The Minister of State for Public Service** (Mr. Otieno): I was going to say that I support because these are harmless amendments; they just refine the clause and improve it.

**Mrs. Odhiambo-Mabona:** I withdraw my amendment.

*(Proposed amendment by Mrs. Odhiambo-Mabona withdrawn)*

**Mr. Kioni:** I support.

**The Minister for Finance** (Mr. Githae): I was just saying that put the Question because we have agreed with this amendment.

**The Temporary Deputy Chairlady** (Dr. Laboso): This is a pleasant surprise; you are all in agreement.

*(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 68 as amended agreed to)*

*Clause 69*

**Mr. Keynan:** Madam Temporary Deputy Chairlady, I beg move:-

THAT Clause 69 of the Bill be amended-

(a) in paragraph (a) of the sub-clause (1) by deleting the word “officer” and substituting therefor the word “member”;

(b) in sub-clause (5) by deleting the word “officer” and substituting therefor the word “member”;

(c) in sub-clause (6) by deleting the word “officer” and substituting therefor the word “member”;

This is just to address the issues to do with consistency and relevance and how some of the terms are used. Again, there is consensus.

*(Question of the amendment proposed)*

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

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

*(Clause 69 as amended agreed to)*

*(Clauses 70 and 71 agreed to)*

*Clause 72(4)*

**The Temporary Deputy Chairlady** (Dr. Laboso): We have three amendments and we shall start with the Committee.

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

THAT the Bill be amended in Clause 72 by deleting sub-clause (4).

What informed this is that if you look at Clause 72(4) the agency proposes that the service shall maintain and operate a one line budget. This is a ridiculous proposal, because the Service gets money which is divided into two portions, development money and operations money. If we legislate on this blanket section, then it means that no member will have the audacity or the right to question any financial provisions of the service. I think that will be very wrong and will defeat the oversight role of Parliament. Therefore, we are suggesting that, that aspect should be deleted, so that the Service can brief any entity as required by law on the need to know basis. Sometimes they might have developmental issues which they want to share, and others are operational issues which are classified. Therefore, there is no need to legislate on this.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, we support that Committee, and this other Committee had a similar amendment; exactly the same. We believe if this is legislated, it will be contrary to the Constitution in terms of Parliament’s role in appropriating funds for expenditure by the national Government and other State organs, and by exercising oversight over national revenue and its expenditure. So, if the Chairlady is moving, we will withdraw ours so that we execute hers.



**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Chairlady, I have a similar amendment, save that you need to guide me on how we move because my amendment has another ambit. That is because I am seeking to delete 72(1)(c) and (4); and (4) is the one line budget which is similar to the amendments by the two Committees. But I am also seeking to delete 72(1)(c) which states that:- The funds of the Service shall consist of all monies from any other source provided or donated to the Service. That means that we will be giving leeway to our intelligence services to receive money even from foreign authorities whom they will be beholden to. What we are saying is that the source of funds for intelligence services should be Kenyan money and should be given by the Parliament of Kenya.

**The Temporary Deputy Chairlady (Dr. Laboso):** So can we just prosecute the amendment on sub-clause 4 because it is similar to all of you?

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, I rise to support the Chairlady's amendment. But I want to say that it is not just enough when a matter like this comes up for us to just talk about the law. We need to spend a little more time to look at the substance itself. This substance is about how the community of nations of the world handles matters of state security. The reason why in some jurisdictions they have one line budgets---

**The Temporary Deputy Chairlady (Dr. Laboso):** If you are in agreement, Dr. Khalwale---

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, may I make a point? It is important! The reason why they do this is because they want to offer operational flexibility for the Service so that it is more effective. I am supporting because the Chairman has said that this matter will only be interrogated when they come to Parliament on a need-to-know-basis.

**The Minister for Finance (Mr. Githae):** Madam Temporary Deputy Chairlady, in fact, I just wanted to say that we are lucky in this country because we have only one line budget. In other jurisdictions like the USA, they even put money in other Ministries but for the national intelligence service in order to give them more flexibility for covert activities. So, they do not know what is being done. But we agree that this is allowed even under the Public Finance Management Bill.

**Mr. Mbadi:** On a point of order, Madam Temporary Deputy Chairlady. Is the Minister for Finance in order to say that in Kenya, unlike other places, the only money available for the NSIS is that which we vote as a one line budget for them yet, the Minister is very much aware that they load money in parastatals to be given back to the NSIS? This is something we know. If the Government thought we do not know, I think the Minister should know that we know. He should not---

**The Minister for Finance (Mr. Githae):** Madam Temporary Deputy Chairlady, the only comment I had was on Mrs. Odhiambo-Mabona's amendment. We are allowed as the Government to accept donations and assistance from other governments. Once we get money from the Ministry of Finance, we can give it to the intelligence department.

**Mr. Hassan:** Madam Temporary Deputy Chairlady, on the amendment by Mrs. Odhiambo-Mabona---

**The Temporary Deputy Chairlady (Dr. Laboso):** Order! The one we are executing right now is on the deletion of Sub-clause 4. That is the one from the Chairman of the Committee. There is one from Mr. Baiya and also from you.

**Mr. Hassan:** Madam Temporary Deputy Chairlady, so we shall revisit it when it comes up.

**The Temporary Deputy Chairlady** (Dr. Laboso): Okay! Therefore, we want to dispose of this amendment on Sub-clause 4. I will, therefore, propose the Question that Clause 72 Sub-clause 4 be amended as proposed by the Chair, the Chair of the Committee on the Implementation of the Constitution (CIOC) and Mrs. Odhiambo-Mabona. So, I will put the Question that Clause 72 be amended as proposed by those three entities. The three entities are Chair of the Committee, the Chair of CIOC and Mrs. Odhiambo-Mabona. I beg to put the Question, that Clause 72 of the Bill be amended by deleting Sub-clause (4).

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

**The Temporary Deputy Chairlady** (Dr. Laboso): Mrs. Odhiambo-Mabona, please, give your further amendment.

*Clause 72 (1)*

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Chairlady, technically, we would have moved but I think I extend courtesies.

So, I beg to move:-

THAT, the Bill be amended in Clause 72-

(a) by deleting paragraph (c) of Sub-clause (1);

The reason I am moving that it be deleted is that we have already provided for (a) that our intelligence services shall have monies allocated by Parliament for purposes of the Service. But when we put (c) that we get money from any other source, we are really making our intelligence services subservient even to foreign bodies. That is not good for our own security. So, what I would suggest is, usually, we give NSIS very generous amounts. The last time we added them Kshs3 billion after giving them - I do not know how many billions - even though teachers wanted their salaries increased and we did not. So, if they need money, as Parliament, we are willing to give them as much money as they want. But we do not want our security bodies subservient to other countries.

*(Question of the further amendment proposed)*

**Mr. Chachu:** Madam Temporary Deputy Chairlady, I oppose that amendment. The security threats that we face in the world are global. Our troops are in Somalia; they are there, not only to defend our sovereignty and our national security, but also to fight global terrorism. When we work with friendly nations and they are willing to support our security--- More than that, they want to support us in combating shared security threats which are global, I do not see any reason as to why we should not get funds from those forces. I oppose that amendment.

**The Minister of State for Public Service** (Mr. Otieno): Madam Temporary Deputy Chairlady, honestly, intelligence service is globally interconnected and networked. At any time, resources can flow right across to strengthen operations even of our own agencies. We may not need it and we may always allocate enough resources for our own, but we should not, nevertheless, block it completely; the law says no. So, it is an un-necessary prohibition for resource to flow in the course of intelligence. That is because some new equipment may come

and we may not have budgeted for it. But the collaborating intelligence agencies are willing to fund the installation of such equipment. Again, on regional intelligence services, you cannot quite say: "These resources are only from Kenya. These are only from Rwanda". We should allow co-operation and partnership in those efforts.

**Mr. Kapondi:** Madam Temporary Deputy Chairlady, the money allocated for intelligence by the Government is not enough. Given emerging threats and their complexities, it requires support across the board.

Therefore, I support what hon. Chachu and Otieno have said.

**Mr. Wambugu:** Madam Temporary Deputy Chairlady, I also rise to oppose the proposed amendment by hon. Millie because our country is under threat from foreign powers---

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Madam Temporary Deputy Chairlady, it is important to know that in the current situation, we have certain serious covert operations which require some funding even from external sources. Therefore, we cannot limit or put our security organs at loggerheads against receiving such assistance. Some of the money can be donated to fight cyber terrorism within the region. We are a super power in this region.

So, I think, you just put the Question.

**The Temporary Deputy Chairlady** (Dr. Laboso): Members, we have ventilated on this enough. We must now move on.

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

*(Clause 72 as amended agreed to)*

### Clause 73

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

THAT the Bill be amended by deleting Clause 73.

Again, this is because the same thing that this particular clause attempts to do is already covered in the Public Management Financial Act of 2012. So, it is just a repetition.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Githae): That has been agreed upon. You can put the Question.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Martin Ogindo, you have---

**Mr. Ogindo:** Madam Temporary Deputy Chairlady, I want to support. If they agreeable to this, then I do not want to revisit the first one.

**Mr. Ruteere:** Madam Temporary Deputy Chairlady, I oppose the amendment given the fact that it does not make much difference from the original version which was in the Bill.

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

*(Clause 73 deleted)*

*Clause 74*

**Mr. Keynan:** Madam Temporary Chairlady, I beg to move:-

THAT the Bill be amended by deleting Clause 74.

Again, looking at our own Constitution, the Budget cycle is likely to change after the next General election. Therefore, what this particular clause has still in mind is the old Budget cycle. You know right now, we are operating in transition. So, if we legislate the way it is then it means, after the next General election this has to be amended. So, we suggest the deletion of this.

*(Question of the amendment proposed)*

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

*(Clause 74 deleted)*

*Clause 75*

**Mr. Keynan:** Madam Temporary Chairlady, I beg to move:-

THAT the Bill be amended by deleting Clause 75.

Again for the same reasons, the issues it attempts to address are already captured in the Public Financial Management Act of 2012.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Githae): I confirm. You can put the Question.

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

*(Clause 75 deleted)*

*Clause 76*

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

THAT the Bill be amended by deleting Clause 76 and substituting therefor the following new clause-

**Accounts and**

## **Audit**

**76.** The Service shall cause to be kept all books and records of account of its revenue and expenditure in accordance with the Public Financial Management Act, 2012.

Madam Temporary Deputy Chairlady, again, this is more relevant the way it is.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Githae): I can confirm and you can put the Question.

**Mr. Ogindo:** On a point of order, Madam Temporary Deputy Chairlady. It is a small thing. It is a typo. The Public Finance Management Act; that title was amended to Public Finance Management Act and not financial.

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

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

*(Clause 76 as amended agreed to)*

*Clause 77(1), (4) and (5)*

**The Temporary Deputy Chairlady** (Dr. Laboso): We have the amendment by hon. Keynan and Millie. We will start with hon. Keynan and then hon. Millie.

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

- THAT Clause 77 of the Bill be amended –
- (a) in sub-clause (1) by inserting the word “declassification” immediately after the word “classification”;
  - (b) by deleting sub-clause (4);
  - (c) by deleting sub-clause (5);

In particular, I would like the Members to look at Clause 77(4). It says:-

“Any person who fails to destroy, transfer information as required by sub section 3 commits an offence and 5, any person who fails to comply with sub section 2 or 3 commits an offence and shall on conviction be liable to imprisonment for a term not exceeding three years or to a fine not exceeding Kshs300,000 or both.”

Again, this criminalizes the many innocent Kenyans. Therefore, amending this section now will insulate the public. What can happen is that an ordinary farmer in Meru can land on a newspaper and that newspaper might be classified. So, we do not need to punish Kenyans because of their innocence. This is something that you do not have to legislate on.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Millie, could you make a comment, because you had also proposed to delete the two sub-clauses 4 and 5?

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Chairlady, they are saying I am in a good mood. Yes, I am. This is putting an onerous task on members of the public. But you can never tell when something is classified and I will be moving for the deletion of the other two other clauses, which I think have similar provisions. So, that is really in essence the gist of my amendments.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairlady** (Dr. Laboso): There is a further amendment by hon. Millie, with respect to “a”, “b” and “c.”

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Chairlady, first of all, I want to say that I had an amendment to Clause 77(1) which I withdraw.

*(Proposed amendments by Mrs. Odhiambo-Mabona to  
(Clause 77(1) withdrawn)*

I wish to move the amendments to Clause 77(2) and (3), because they are similar to the ones we have talked about.

*Clause 77(2) and (3)*

Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 77 of the Bill be amended –  
(b) by deleting sub-clause (2).  
(c) by deleting sub-clause (3).

If you actually read it says:-

(2)“Subject to subsection (1) any person who obtains or seizes any classified information, material, record, document or other thing for the purposes of this Act shall, as soon as reasonably practicable after he or she has obtained or seized it, destroy any copy that he or she may make of it or any part thereof, and any record thereof, whether in writing or otherwise.”

(3) Where a person innocently comes across classified information which is detrimental or would have effect to the national security, that person shall immediately destroy such information.”

Madam Temporary Deputy Chairlady, failure to do that, you will be jailed for three years or have a fine not exceeding Kshs300,000 or both. If you actually look at those provisions, it is very difficult for an ordinary Kenyan to know what is classified, unless the Government decides

that they will be writing on all their documents “classified by Government.” So, unless that amendment is done, the same provisions are as dangerous as (3) and (4).

*(Question of the further amendment proposed)*

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

*(Clause 77 as amended agreed to)*

#### *Clause 78*

**Mr. Kabogo:** Madam Temporary Deputy Chairlady, as much as it is wrong to anticipate debate, I have seen the amendment proposed by the Committee and, therefore, would wish to withdraw my amendment, hoping that hon. Keynan will bring in the amendment which quantifies actually the word “*bona fide*,” because that is what I had a problem with.

*(Proposed amendments by Mr. Kabogo withdrawn)*

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

THAT, Clause 78 of the Bill be amended by deleting the words “anything done *bona fide*” and substituting therefor the words “any lawful act done in good faith.”

Madam Temporary Deputy Chairlady, again, here it reads:-

“(1) The proceedings shall not lie against the Director-General or any member of the Service in respect of anything done *bonafide* in the performance of the functions”---

Therefore, the word “*bona fide*” has different interpretations. So, we felt that we should replace it with “any lawful act done in good faith.”

*(Question of the amendment proposed)*

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, first of all, that has a structural problem. If a matter is lawful, it does not need good faith. Good faith comes in when you do something wrong or unlawful. But you have done it in good faith and that is what we are trying to cover. If it is lawful, you do not need to be covered, which is why instead of *bonafide* we are substituting therefor the words “or omitted to be done in good faith” and, therefore, removing the lawful bit. This is because if it is lawful then you do not need any protection. You do not need to be indemnified from something that is lawful. But we also have a second amendment, which is deleting sub-clause (2). So, probably, we should deal with sub-clause (1) first.

**The Temporary Deputy Chairlady** (Dr. Laboso): Can we executive Keynan’s amendment and then allow hon. Abdikadir’s amendment, unless he withdraws?

**Mr. Keynan:** Madam Temporary Deputy Chairlady, procedures allow it. I think the suggestion by the Chairman of the Constitution Implementation Oversight Committee (CIOC) is a better version than this. Therefore, I can withdraw mine and have the one of the Committee.

*(Mr. Keynan's amendment withdrawn)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Thank you, hon. Keynan. Chair of CIOC, can you move your amendment?

*Clause 78(1)*

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

THAT, Clause 78 be amended-

(a) in sub-clause (1) by deleting the word "*bonafide*" and substituting therefor the words "or omitted to be done in good faith";---

**Mr. Kabogo:** On a point of order, Madam Temporary Deputy Chairlady. I do not agree that "in good faith" may be "unlawful" also. So, I would insist that what hon. Keynan had put in to be replaced with what the Chair has said, is to put "lawful" and leave it at that. This is because anyone would argue that anything is good faith, but that, no one would be prosecuted for doing anything lawful. So, I would insist that we leave the word "lawful" and forget about the issue of good faith. This is because good faith may be unlawful.

**Mr. Abdikadir:** Madam Temporary Deputy Speaker, Sir, I thought that, that is the whole point why we are indemnifying them. If it is lawful, they do not need to be indemnified. They have acted within the law. It is where, maybe, they might have transgressed, but in good faith, that we are saying they are covered.

Madam Temporary Deputy Chairlady, can I move the second one?

**The Temporary Deputy Chairlady** (Dr. Laboso): Yes, please.

*Clause 78(2)*

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

THAT, sub-clause (2) of Clause 78 be deleted.

Madam Temporary Deputy Chairlady, let me read sub-clause (2). This is where the Service is being shielded for appearing in Commissions of Inquiry and giving information. It says:-

"(2) Except as otherwise provided under this Act or by an order of the High Court, the Director-General or any member of the Service shall not be compelled in any proceedings in a court, tribunal or commission of inquiry to produce any document or to divulge or communicate any matter or thing relating to the exercise of the powers or performance of the functions of the Service under this Act."

Madam Temporary Deputy Chairlady, I believe that if you have a Commission of inquiry, when it is done under the Commission of Inquiries Act, that is a very important institution and you are inquiring into critical things. The Tribunal itself has the ability to accept not to push this institution. So, why are we covering the institution from giving any information? It is really critical and the Committee says that we delete.

**Mr. Mureithi:** Thank you, Madam Temporary Deputy Chairlady, for seeing me after the last couple of days.

*(Laughter)*



Madam Temporary Deputy Chairlady, I would like to support the amendment which has been proposed by the Chair of CIOC. This is because in any establishment, the indemnity clause is usually put there. This is actually an indemnity clause.

Madam Temporary Deputy Chairlady, I support his amendment.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Madam Temporary Deputy Chairlady, I support the amendment. Put the Question.

**The Temporary Deputy Chairlady** (Dr. Laboso): I believe that the right position is that the Chairman of the Committee withdrew in favour of the Departmental Committee on Justice and Legal Affairs. Therefore, what we are voting on is on the Departmental Committee's amendments.

**Hon. Members:** Yes.

*(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 78 as amended agreed to)*

Clause 79(2)

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

THAT Clause 79 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

(2) It shall be the duty of every state organ, state department, state agency or public entity that is in possession of national security intelligence or other intelligence related information which may be of value to the Service for the purposes of performing its functions under this Act to transmit that intelligence and information to the Service without delay.

Here there was a drafting problem and an editorial issue. We have decided to delete Sub-clause 2 and substitute with the following new sub-clause so that it is very clear to those who are expected to comply with what this particular section requires. This was as a result of an agreed position. It only serves to improve on the section.

*(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 79 (3), (4), (5) and (6)

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

THAT clause 79 be amended by deleting sub-clauses (3), (4), (5) and (6).

If you look at those sections, for example, sub-clause 3 says that it shall be the duty of every State organ, State department, or agency or public entity that receives intelligence from the Service to comply with it or otherwise utilize such intelligence. This gives this institution oversight over how its services are utilized by other institutions. These other institutions like the Kenya Defence Forces are intelligence services. The President might decide not to utilize that information and use something else.

Sub-clause 4 is even worse because it says that if as a result of failure by a State organ, State department, or agency or public entity to comply with the advice of the service and harm or prejudice is occasioned to national security, the head of that State organ, State department or agency or public entity shall be held personally liable for the harm or prejudice.

Now, if the President decides that he is not going to utilize the information, is he going to be held personally liable? What if there was a bigger and more critical issue? Would the Service itself be happy with a mirror clause that says: "If they fail to provide, their head will be personally held liable?"

Essentially, this is really over kill. Of course, it is important for institutions to utilize the information given. They will also be happier when they are given information. Of course, there have been failures because of situations where the Service has given information and the user organs have failed to utilize it, but this is not the way to cure it.

We propose for a deletion.

**Mr. Koech:** Madam Temporary Deputy Chairlady, I have listened to the Chair of the CIOC and I am not fully convinced on the reasons behind the deletion of this Clause. In fact, some of us have been accusing some Government departments for not utilizing very important information that they receive from NSIS and we have been looking for a way in which they should become accountable to the reports that are given to them. We have seen the massacres in this country. Sometimes when you talk to the NSIS or NIS for this matter, they will always tell you, "We gave them information."

I really want to be fully convinced on this matter.

**Mr. Ngugi:** Madam Temporary Deputy Chairlady, I am of the same view with my namesake there. For example, during the post-election violence, the NSIS had warned the other security organs of what was likely to happen. They were ignored. Take the case of drugs infiltrating this country. We have been told by the DG in conferences where MPs are present that they have warned the police that this and that is likely to happen, but the police have always ignored them. Even if not in the same wording, we must have a clause which asks the other agencies to take action.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I understand the concerns of my colleagues. If it is a question of some State organs not acting on reports, I think the best thing to do is to legislate on those pieces of legislation governing those institutions. However, it will be wrong for us as a country to create a body that has more powers than the President of this country. The moment you say that any State organ or State officer is bound to accept all the advice from the NIS, then what you mean is that whatever they give the President he must act on. To me, I find that to be creating a superior body above the President of the country. This is not acceptable.

**Mr. Lessonet:** Madam Temporary Deputy Chairlady, I equally want to support the Committee's recommendations. This is because if we are to allow it to go as proposed, definitely NIS will become a supervisor of Government.

I support the Committee.

**Mr. James Maina Kamau:** Madam Temporary Deputy Chairlady, you have spotted me at long last. We have been blaming the NSIS for a long time. I think when they give information, it is important we know if the information was, indeed, passed and what happened to the information that was given to the user. If we do not support this, it will be very dangerous for us. So, we have to be very careful because this is really a matter of security.

**Mr. Gaichuhie:** Madam Temporary Deputy Chairlady, those amendments should not be deleted. I want to inform hon. Members, that it is not the NIS that is going to act on those State organs. Sub-clause 6 says that it is in the National Security Council that those State organs shall be referred to and not NIS. We should not delete these clauses. After all, we are spending a lot of money on the Service.

**Mr. Keynan:** Madam Temporary Deputy Chair, it is also good for us to take into account the provisions of Article 239 of the Constitution which clearly spells out the organs that constitute the national security organ. It says the national security organs are the Kenya Defence Forces, the National Intelligence Service and the National Police Service. Listening to the Chairman of the CIOC, in particular on Clause 4, I foresee that we are going to have a very serious jurisdictional conflict in particular between the NIS and the KDF. For example, if as a result of failure by a State organ, the State Department or agency or public entity to comply with the advice of the Service and harm or prejudice is occasioned to national security, the head of that State organ, State Department or agency or public entity shall be held personally liable for the harm or prejudice. Take this hypothetical scenario that the Commander of the KDF accepts information from the Military intelligence and disregards information from the NIS - we have legislated this and this is why I am persuaded by what the CIOC has recommended to even make it better on addition to what we have recommended - he issues a warrant that the Commandant of the KDF has failed to comply with or failed to use information provided by the agency, then you can see the kind of jurisdictional conflict they are likely to create. That aspect must be cured right now and I want to accept what has been suggested by the Chairman of the CIOC.

**The Minister for Finance (Mr. Githae):** Madam Temporary Deputy Chair, I am begging the Chairman of the Committee on Justice and Legal Administration to, at least, leave (3) and (6). Section (3) basically says that it shall be the duty of every State organ, State Department or agency or public entity that receives intelligence from the Service to comply with or otherwise. It is just a duty, so that it cannot just be ignored, but without taking personal liability. I beg that (3) be retained.

**The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry):** Madam Temporary Deputy Chair, you have heard what the Chairman has said. When you look at (5), which is very clear also, the KDF has an intelligence core; to collect information. For example, now we are in Somalia. Do you want to tell me that before it receives information, it must request for the authority of the NIS? So, we have to delete all this (3) immediately.

**Mr. Abdikadir:** Madam Temporary Deputy Chair, to try and calm those Members who feel that we are removing everything, Clause 79(1) still remains, which says that:-

“It shall be the duty of every person, State organ, State Department or agency or public entity to afford the service, the co-operation and assistance necessary to enable it perform its functions under the Constitution, this Act or any other written law”.

So, once you have that and obviously information comes, in the event that that has not happened, it is then up to the other organs; the policy organs, namely, the National Security and Intelligence Council and the other councils of the national security apparatus, to then decide that this particular officer has failed in his duty because he failed to undertake the advice given. But if you say that you must comply and you will be held personally liable, who will decide whether that complying has come or not? You give this entity oversight over the police and the KDF – something which is not envisaged in the Constitution - including President or Parliament. Supposing they say that there is going to be riots unless we pass a certain Bill, will we then drag the Speaker, because Parliament has failed to pass that Bill? It is indeed, going beyond the requirement.

**The Minister for Roads** (Mr. Bett): Madam Temporary Deputy Chair, the Chairman of the CIOC has done very done. Please, put the question.

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

*(Clause 79 as amended agreed to)*

*Clause 80*

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

THAT, Clause 80 be amended by deleting the words “five years” appearing immediately after the words “not exceeding” and substituting therefor the words “three years”.

We are seeking that Clause 80 provides for a general penalty of imprisonment for a term of five years and a fine of Kshs500,000. We find this penalty a bit harsh, more so, for an offence not specifically created under the Act. It is a general offence and we are proposing that we reduce that to three years.

*(Question of the amendment proposed)*

**The Assistant Minister for Industrialization** (Mr. Muriithi): Madam Temporary Deputy Chair, hon. Baiya looks different from when he was moving the previous amendment as the Committee Chair. Is he the same?

**The Temporary Deputy Chair** (Dr. Laboso): Or it is because there are two Chairs who were chairing. Therefore, either of the two can move the amendments.

**Mr. Kapondi:** Madam Temporary Deputy Chair, I had earlier requested to comment on Clause 79, but you objected. So, basically, I was consulting with the hon. Abdikadir and you decided to finally see me.

**An. Member:** It is too late.

**Mr. Kapondi:** Madam Temporary Deputy Chair, it is too late and I am very unhappy about it.

**The Temporary Deputy Chair** (Dr. Laboso): I am very sorry, not everything in life comes as you would wish. Sorry, hon. Kapondi, but let us not hope it is not a major disaster that

we have caused you. Hon. Odhiambo-Mabona, did you have something on this? You have a similar amendment to change it to three years.

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Chair, because my reasoning is the same as the Chair's, I support his and withdraw mine.

*(The proposed amendment by Mrs. Odhiambo-Mabona was withdrawn)*

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

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

*(Clause 80 as amended agreed to)*

*(Clause 81 agreed to)*

*Clause 82*

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

THAT Clause 82 of the Bill be amended-

(a) by renaming the existing provision as sub-section (1) and inserting the word "Parliament" immediately after the words " Cabinet Secretary";

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

(2) Despite sub-section (1), the Director-General shall from time to time report to Parliament on the activities of the Service through the relevant Committee.

We did not see any harm in this because this will be at the end of the financial year. The same clause is also captured under the Kenya Defence Forces Act. So, the Service is expected three months after the end of each financial year. It should be taken into account, as Mr. Abdikadir said, because Parliament is part and parcel of the medium-term review framework. You know the stages of the budget making process. So, they are expected, in addition to provide some reports to Parliament on the financial situation because through the Committee, Parliament will be the route through which the Committee will be seeking their budget. It is fair that after three months, that aspect is put under this section.

Secondly, we are also proposing a new subclause which will require, again, the leadership of the Service to once in a while, through the relevant Committee, which makes Section 66 better as and when required to share the relevant Parliamentary Committee with the necessary information. Again, this was something that was agreed.

*(Question of the amendment proposed)*

**The Minister for Energy (Mr. Murungi):** Thank you, Madam Temporary Deputy Chairlady. I have noted what the Chairman said, that this was agreed. However, I think it is a

dangerous course and we should oppose this amendment. This is not just about financial reports. The clause reads:-

“The Director-General shall within three months, at the end of each calendar year furnish the President, Cabinet Secretary and the National Security Council with a report of the activities of the Service----“

The key word is “activities”. There are some activities which are secret in nature. There are certain activities of this organization which cannot be contained in a report to Parliament because every report that comes to Parliament becomes a public report.

Madam Temporary Deputy Chairlady, since the report is being made to the Cabinet Secretary who will be reporting to the relevant Committees of this House, I propose that we leave Parliament out of Clause 82. I know that we want to empower ourselves but I do not think this is the kind of report, in the interest of this country, that should be brought to Parliament.

**Mr. Kapondi:** Thank you, Madam Temporary Deputy Chairlady. I am of the same view that this should not be allowed because intelligence gathering takes a bit of time. To put somebody on surveillance can take a year or so. Consider, for example, the case of what the Americans did with Osama Bin Laden. It took them 13 years to get exactly where this man was hiding. So, if after every three months, you want to expose the activities and make them come to this House, then you are making a big joke.

**Mr. Keynan:** Thank you, Madam Temporary Deputy Chairlady. I have looked at what we did to Clause 66. I wish to withdraw this clause.

**The Temporary Deputy Chairlady (Dr. Laboso):** We do not need any further discussions because the amendment has been withdrawn.

*(Proposed amendment withdrawn)*

*(Clause 82 agreed to)*

*Clause 83*

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

THAT, Clause 83 be amended in sub-clause (1) by deleting the words “the Director-General” appearing immediately after the words “in consultation with” and substituting therefor the words “the Council”.

Madam Temporary Deputy Chairlady, we are seeking to amend Clause 83 by deleting the word “Director-General” and in place of it put the word “Council”.

This is about regulation making. We are saying that the Cabinet Secretary, in consultation with the Council, be the one to make the regulations which, of course, have emanated from the Director-General. The whole idea is that the main recipient or the main user of these regulations will be the Director-General. It is only proper that we delegate this power, as Parliament, to higher institutions that are not involved in the day to day operations of the institution.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Githae): Thank you, Madam Temporary Deputy Chairlady. I am just wondering whether we are not giving ourselves too much power and authority making us even become---

*(Laughter)*

Put the Question!

**The Assistant Minister for Industrialization** (Mr. Muriithi): Madam Temporary Deputy Chairlady, we support this position.

*(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 83 as amended agreed to)*

*Clause 84*

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

THAT, Clause 84 be amended-

(a) in sub-clause (1) by deleting the words “the Director-General” appearing immediately after the words “section 83(1)” and substituting therefor the words “the Council”; and

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

(2) Regulations made under sub-section (1) shall not take effect until the regulations have been approved by the National Assembly.

On part “a”, we are seeking to make the amendment for the same reasons we have done in Clause 83. For part “b”, we require a new subclause to provide that regulations made under subclause 1 shall not take effect until the regulations have been approved by the National Assembly.

The main reason we are doing this, hon. Members, is that under the Constitution, Parliament has the sole responsibility to make laws and where it delegates, it is supposed to also supervise. Even for regulations, incidentally, there is power to make them. We are, therefore, saying that the regulations, being in the form of laws, at least, follow the procedure of other laws subject to supervision by Parliament.

*(Question of the amendment proposed)*

**Mr. Baiya:** Madam Temporary Deputy Chairlady, I am wondering whether the two can be voted separately because they do not appear to receive similar response from the House.

**The Temporary Deputy Chairlady** (Dr. Laboso): Let us hear a few comments and then we will go to the vote.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Chairlady, for the first one, I have no problem in substituting the Director-General with the council. This is because the formulation of administrative regulations still falls under the council. But on the other one, those regulated must then be approved by Parliament. I think it is overkill because we have enough on our plate. We do not need to micro-manage this institution. We do not want to formulate rules and regulations for them or be involved in what they wear and eat. We have better things to do.

**Mr. Mbau:** Madam Temporary Deputy Chairlady, I feel the question of regulations is better left to the implementing agencies and departments. Many times we have made laws, but left regulations to be made by the implementing Ministries.

I beg to oppose.

**Mr. Chachu:** Madam Temporary Deputy Chairlady, this is legislative overkill. Once we have created the enabling legislation, that is enough. Regulations are an administrative issue and that should be handled at the level of the council.

I beg oppose.

**Mr. Mwangi:** Madam Temporary Deputy Chairlady, on the second one, regulations made under subclause 1 shall not take effect until the regulations have been approved by the National Assembly. The Committee on Delegated Legislation is required to do so. So, when any organisation makes regulations, it will eventually end up in Parliament through this Committee.

I support the amendment.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Chairlady, I think we have made very good progress. We are very happy with substituting Director-General with the council. I would like to just draw the attention of the Chair of the Committee that the regulations we are talking about are regulations that relate to members of the Service and not general regulations. Since they need to organize how they need to conduct themselves, let us not then micro-manage them. Having removed the powers from the Director-General to consulting the Cabinet Secretary and elevated the Council, I would be happy with that. We are also creating the Council to give it some certain supervisory powers as a State organ.

**Eng. Rege:** Madam Temporary Deputy Chairlady, I want to contribute similarly with my colleagues. Surely, you cannot entrust all of these regulations to one individual. How about if you have rogue Director-General? So, we had better leave it to the Council.

**The Temporary Deputy Chairlady** (Dr. Laboso): I think our responses are now becoming similar. Can we put it to the vote, but split it? We will split the vote.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I support the whole amendment both (i) and (ii). If it is administrative procedure, it is administrative procedure. We need to understand that because these are regulations. Regulations by law are delegated legislations. Right now, we are waiting in this Parliament to receive rules and regulations from the Independent Electoral and Boundaries Commission (IEBC) because we legislated that those rules and regulations must pass through Parliament.

**The Assistant Minister for Industrialization** (Mr. Muriithi): On a point of information, Madam Temporary Deputy Chairlady. Thank you---

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, he cannot inform me. This guy is an economist or industrialist! Why is he informing me and I have not allowed him to do so. The



rules are that I have to say “yes” when I am to be informed. I have not said “yes”. Therefore, I do not want any information.

Anyway, let me allow him to inform me.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Thank you, Mr. Mbadi, for accepting the information. The regulations that we are talking about relate to operational matters of the Service, personal and document security, protective and physical security, training of members of the Service and discipline. So, they are administrative in nature. They are internal to the organization.

**The Temporary Deputy Chairlady** (Mr. Mbadi): Hon. Members, we will split it, so that we have the first part and the second part.

*(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 84 as amended agreed to)*

*(Clause 85 agreed to)*

#### *Clause 86*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, we have four amendments to this clause. We have Mrs. Odhiambo-Mabona’s, Mr. Mbadi’s, Mr. Linturi’s and then the Committee Chairman. Could we start in that order?

**Mr. Keynan:** Madam Temporary Deputy Chairlady, I wish to propose that clause.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Keynan, I think we are starting with Mrs. Odhiambo-Mabona. That is the order that has been given on the list I have with me.

**Mrs. Odhiambo-Mabona:** Procedurally, it is the Committee’s amendment which should be first.

**Mr. Koech:** On a matter of procedure.

**The Temporary Deputy Chairlady** (Dr. Laboso): I already explained earlier on, Mr. Koech. It is the same. It applies as we had said in the earlier version.

**Mr. Koech:** It is a matter of procedure. You have not proposed the question.

*(Question of the amendment proposed.)*

#### *Clause 86(1)*

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

THAT, the Bill be amended in sub-clause (1) of Clause 86 by inserting the words “after going through a vetting process by a process established by the National Assembly” after the words be deemed to be an officer or employed in the service.

Madam Temporary Deputy Chairlady, the reason I am proposing this is that we are transiting the employees of this body. We are enabling them to move on. But we are enabling them to move on by transforming the body because we are actually seeking to re-energize and give them a new mandate to these bodies, but with the old employees. But, for me, I am comfortable doing that if I know that we have vetted the employees who are there, so that we are not merely passing a law and having the same old institution. It is about transforming institutions. It is all within the spirit of reforming our institutions.

I beg to move.

**The Attorney-General** (Prof. Muigai): Madam Temporary Deputy Chairlady, thank you for giving me the chance to contribute. I would like to oppose that amendment in the strongest possible language.

First of all, we must treat all institutions in the same way. If we have no precedent of subjecting an entire service other than provided for by the Constitution which we did. The reason we have vetted the Judiciary is because the drafters of the Constitution, in their wisdom, singled out that institution specifically. That is point number one.

Point number two, an intelligence service is precisely that. It is intended that the persons working in that service remain largely anonymous, because that is the nature of intelligence work. I do not believe that anything would be gained by trying to subject him to vetting.

The next argument would be, let us subject the Army and the police to the same process. If the Constitution had intended that we do so, it would have said so in the manner it said with the Judiciary.

I oppose the amendment.

**Mr. Midiwo:** On a point of order, Madam Temporary Deputy Chairlady. Of all the people, the Attorney-General should remember that we enacted The Ethics and Anti-Corruption Commission Act, which says that, because we were transiting their employees, upon the constitution of the body, those employees would be vetted, so that the Commission could keep employees who are fit, so that we can go through some transformation.

Furthermore, the vetting we are asking for must not be public. We know that this is a secret service. There must be something that the Director-General can come up with, which he can do it, so that Kenyans can have confidence in the intelligence service. What are we doing? We are passing this law because we want some kind of transformation.

I beg you, the hon. Attorney-General, please.

**Mr. Kiptanui:** Madam Temporary Deputy Chairlady, I stand to oppose the amendment. We all need to understand that we are preparing for THE Director-General.

With those remarks, I beg to oppose.

**Mr. Keynan:** Madam Temporary Deputy Chairlady, while empathising with the Mover of this particular amendment, it is practically impossible to subject the entire membership of the service through a vetting process. This is the ideal thing that we would have liked taking into account the fact that we are just about five months to the election. We are certain that we are going to have a new president.

I believe that this would have been a very ideal thing to do if this was the beginning of a new term but subjecting the entire membership of the Service through a vetting process would be very risky. It is not tenable and is not in the national interest of the Republic of Kenya. Therefore, I want to plead with hon. Millie Odhiambo that she withdraws the amendment for the sake of the security of the Republic of Kenya.

Madam Temporary Deputy Chairlady, we must appreciate the fact that because of our failure to do certain things in the process of police reforms, our police officers are not motivated and are not working as expected. If we had the same issues in the NIS, we would have crippled the entire security sector. Therefore, I want to plead with my sister that we delete this amendment, so that our intelligence officers can continue serving this country. Those who have disciplinary issues and other challenges will be sorted out in due course.

**Mr. Wambugu:** Madam Temporary Deputy Chairlady, I also want to join my friends, who are in support of deleting this amendment. We are all aware of what we are going through currently, with the security issues in Somalia, and the election process we are supposed to go through in the next few months.

If we try to go through the line that is being suggested – of putting members of the NIS through a vetting process – we might get into a big problem because part of the information that could be available might not help this country much.

I beg to request hon. Millie to withdraw the amendment.

**The Temporary Deputy Chairlady** (Dr. Laboso): Millie, you have an intervention.

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Chairlady, I want to indicate that if you listened to me throughout, I have been very fair because I come from a human rights background, and I believe in reforming institutions. I would rather be defeated on the ground, but I believe that we must reform our institutions.

So, I am not withdrawing the amendment.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, you have started saying similar things. In that regard, I put the question, which is that Clause 86 be amended as proposed by hon. Millie Odhiambo.

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

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Mbadi, what is your amendment?

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, after serious consultations with the Chair of the Constitutional Implementation Oversight Committee (CIOOC), the Chair of the Defence and Foreign Relations Committee, who are my good friends; and my Chief Whip and the Minister for Finance and, surprisingly, the Minister for Transport; I wish to withdraw the amendment, so that I can leave the in-coming president to deal with the current office holder of the NIS.

*(Mr. Mbadi withdrew his amendment)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Kabogo, I see that you have made an intervention.

**Mr. Kabogo:** Madam Temporary Deputy Chairlady, I am just wondering whether it is in order for hon. Midiwo to suggest that there is money from the National Security Intelligence Service (NSIS) flying in the House.

**An hon. Member:** Where is it?

**Mr. Kabogo:** Madam Temporary Deputy Chairlady, I am just asking whether that is in order. You can see for yourself who is talking. You do not need to be told.

**The Temporary Deputy Chairlady (Dr. Laboso):** Thank you, hon. Kabogo.

Can we have the next amendment, hon. Linturi? Hon. Members, it appears that hon. Linturi is not in the House. So, the amendment shall be dropped.

*(Mr. Linturi's amendment dropped)*

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Members, finally, we have an amendment by hon. Keynan.

*Clause 86(9)*

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

THAT, Clause 86 of the Bill be amended by inserting the following new sub-clauses immediately after Sub-Clause (9)-

(10) The Provisions of section 7 are suspended until the expiry of the term of office of the person who was a Director-General of the Service at the commencement of this Act.

(11) The provisions of section 15 (2) (b) are suspended until the expiry of a period of five years from the date of commencement of this Act.

(12) The provisions of this Act shall apply without prejudice to the appointment and terms and conditions of service of the Director-General and members of the Service in office at the commencement of this Act.

Madam Temporary Deputy Chairlady, the new proposed sub-clause 10 should read "The provisions of Section 7 are suspended until the expiry of the term of the office of the person who was a Director-General of the Service at the commencement of this Act."

The import of this is that we have allowed the next president to have latitude to appoint his new Director-General. We have also allowed for a parliamentary vetting process. Since we have only five months to the next general election, and we are going to have a new president, it is only fair to allow the serving Director-General to continue with his work until the next president is elected, who will decide whether to work with that person or fire him.

Madam Temporary Deputy Chairlady, the new proposed sub-clause 11 says that the provisions of section 15 (2) (b) are suspended until the expiry of a period of five years from the date of commencement of this Act. Again, we need to look at Sub-Clause, which concerns the directors that work under the Director-General. We look at their qualifications. Intelligence is a unique field, which requires a lot of experience, training and expertise.

He is a guy who is the best intelligence officer in Germany. He is a Form Two leaver if you compare his education. That is because that person is ably trained and, therefore, education should not be the only consideration when it comes to the appointment of the Director. However, what we are saying is: Can we allow those who are disadvantaged for one reason or the other to struggle in the next five years and to allow also the Service to prepare the other officers who will take over in case that individual will not be in a position to continue serving because of education?

Thirdly, Madam Temporary Deputy Chairlady, Clause 12 immediately after Clause 9 states that “The provisions of this Act shall apply without prejudice in the appointment and terms and conditions of the service of the Director and members of the Service in the office at the commencement of this Act.” Again, this is only fair. Even we, Members of Parliament, have been struggling to do so, so that we do not lose what we are earning right now. I think that has been the reason. I know that certain aspects of this clause will be addressed by the Salaries and Remuneration Commission. But for now again, the terms and conditions enjoyed by members of the Service must continue to remain in place until another competent entity, maybe, the Salaries and Remuneration Commission or other authorized entities will address that particular issue.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Chairlady, again, let me say that, that has been an agreed position because it was discussed by the Service and the Committee. It is straightforward. It will be dangerous to start having new people when we are just going for elections. Let the new President make his own decision in March next year. Again, even for the other employees, I think they will be able to work harder. Again, even for the qualifications, we have given them five years to attain the qualifications. So, I support and you can put it to vote.

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): Madam Temporary Deputy Chairlady, I also support the stand taken by hon. Keynan that the new President can appoint new officers as per his wishes.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I stand to oppose this amendment. I want us to listen. This is a very dangerous amendment. First of all, Clause 86(2) has already saved the current Director-General (DG) and it says: “Subject to Section 31(2) of the Sixth Schedule to the Constitution, a person who immediately before the commencement of this Act was a Director-General of the National Security Intelligence Service shall continue to hold office for the unexpired period of the term.”

Madam Temporary Deputy Chairlady, if you suspend Section 7 which says: “There shall be a Director-General of the Service who shall be appointed by the President”, what you are saying is that you are conditioning the President to have that Director-General for his entire period of an unexpired term. That is wrong. A new President who comes in can choose to replace the Director-General. There is no reason why he should, for example, bar Martha Karua after winning the presidency from replacing the current Director-General.

**Mrs. Shebesh:** On a point of order, Madam Temporary Deputy Chairlady. I was rising on a point of order because of the comments from the Minister who says that any new people could be dangerous. I think it is only fair that whatever time it is, anybody who is coming in would be a person who is being employed and that person does not need to be viewed dangerously. That is because even, currently, those who are in practice can be viewed the same.

So, if we want to go together as one country, let us give everybody a chance without even thinking that you can imagine that the next ones who will come will be worse than those who are there. That is my point of order.

**Prof. Kaloki:** Madam Temporary Deputy Chairlady, I am also supporting hon. Keynan's amendment for the simple reason that it will provide stability at NIS. That is to make sure that in the agency, members lacking degrees will be able to attain them. There will be a transition to make sure there is stability. The key thing there is stability for that particular department. Thank you.

**Mr. Midiwo:** Madam Temporary Deputy Chairlady, I want to support hon. Keynan on Clause 86(10) and (12), but I want to plead with this House: If you go to Clause 86(15)(2)(b) which requires those directors to have certain levels of education, some wisdom went into that. We sought to reform the integrity of that body. This House wants to say that even a Class Seven person, because we do not know their qualifications today because it has never been a requirement, can and must continue to be in office for five years. I think that is ridiculous. Every law that we have made has taken effect immediately. We have consistently met this country half way. We will let the D-G continue, but I want to plead with people who think like me that all is lost. We shall come back here in March and we shall mutilate the Act and chase them away.

**Dr. Kones:** Madam Temporary Deputy Chairlady, I also have a feeling like hon. Midiwo that the provisions we have in Clause 86(1) and (12) do not really add value, particularly given what has been provided for in Clause 86(1) and (2) where these officers have been saved really. Then I also do not understand why you want to create a security of tenure of the directors. Suppose they make mistakes now and they have to be disciplined? Are we not restricting the Director-General even to take action?

**The Temporary Deputy Chairlady** (Dr. Laboso): Let me put the question. Now, do we need to separate the different sections?

**Hon. Members:** No.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, we will split it and I will put the question.

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

*(Clause 86 as amended agreed to)*

*(Clause 87 agreed to)*

#### *First Schedule*

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

THAT the First Schedule to the Bill be amended-

(a) by deleting the title of the Schedule and substituting therefor the following new title-

“USE OF FIREARMS”

(b) by deleting Part A of the Schedule (Use of Force);

(c) by deleting Part D of the Schedule (Preventing Escape).

This is again for consistence. The title of the First Schedule reads “Use of Force and Firearms”. Therefore, since we deleted the provisions relating to the use of force by the Service, then the title should be amended to read “The Use of Firearms” because we have allowed them to use firearms.

Secondly, the whole of Part A of the First Schedule should be deleted because it is not consistent with the clauses that we passed. Part D of the First Schedule “Preventing Escape” should be deleted because it is not their work. Both subclauses should be deleted, so that the First Schedule is consistent with other clauses of the Bill.

*(Question of the amendment proposed)*

**Mr. Mwangi:** I support.

**Mr. Kioni:** As I support, let me also put it on record that those with Standard Seven education, or those who are not educated are Kenyans. We do not legislate to punish them but help them become better.

I support.

**The Minister for Finance (Mr. Githae):** I am just saying that since there seems to be consensus, you can put the question on the First Schedule.

**Mr. Baiya:** Mr. Midiwo, could you let me be heard also?

I am also supporting the amendment on behalf of the Committee. It relates to the use of force by the police, and we have already denied them legislation to that effect.

**Mrs. Odhiambo-Mabona:** I was moving an amendment to delete because we do not want to leave firearms in the wrong hands. I also wish to note that what Mr. Kioni is saying basically means in the other laws that we have passed we have had no reason to put in educational standards.

I also want to observe that, curiously, after we passed the part on giving security of tenure to the directors and the staff, there was a sudden exodus from the House. That is a curious observation.

**Dr. Eseli:** Mine is just an observation. We are actually talking about intelligence, yet somebody says that education might not be an issue. How do you equate intelligence to education?

**The Minister for Finance (Mr. Githae):** On a point of order, Madam Temporary Deputy Chairlady. Although it has been overtaken by events, I wanted to inform Mrs. Odhiambo-Mabona that we are Members of Parliament and are entitled to leave and come in or go out and come in at any time.

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Members, I think it is time to put the question. All those are irrelevancies.

*(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)*

*(First Schedule as amended agreed to)*

*Second Schedule*

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

THAT the Second Schedule to the Bill be amended by adding the following new paragraph:

8. Any person dissatisfied with the findings of the Public Service Commission may appeal to the High Court.

*(Question of the amendment proposed)*

**Mr. Wambugu:** Madam Temporary Deputy Chairlady, I think my amendment list is missing some part. I will log in again when I get that part because I do not have the exact amendment.

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

*(The Second Schedule as amended agreed to)*

*(Third Schedule agreed to)*

*(Fourth Schedule agreed to)*

*Fifth Schedule*

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

THAT the Bill be amended by deleting the Fifth Schedule.

This, again, was an offshoot of Clause 67 and since that clause was deleted in its entirety, then this provision has no place and, therefore, should also be deleted.

*(Question of the amendment proposed)*

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

*(Fifth Schedule deleted)*

*(Title agreed to)*

*(Clause 1 agreed to)*



**The Temporary Deputy Chair** (Dr. Laboso): Mr. Minister, even as you move, remember the request to recommit Clause 62.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Chair, I beg to move that the Committee doth report to the House its consideration of the National Intelligence Service Bill and its approval thereof with amendments, subject to recommitment of clauses 16, 23 and 62.

*(Question proposed)*

*(Question put and agreed to)*

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

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

#### THE NATIONAL SECURITY COUNCIL BILL

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! We are still continuing with the Committee of the Whole House. We have already disposed of up to Bill No.5, except for the re-commitments. We are now concluding with the National Security Council Bill, Bill No.32 of 2012.

*(Clause 2 agreed to)*

*(Clauses 3 and 4 agreed to)*

*Clause 5*

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

THAT, the Bill be amended in Clause 5 by deleting sub-clause (3).

The rationale is that the amendment allows the Council to co-opt someone for a specific purpose.

*(Question of the amendment proposed)*

**The Minister for Medical Services** (Prof. Anyang-Nyong'o): Mr. Temporary Deputy Chairman, Sir, I would really like the Member proposing the amendment to explain it further why that amendment is being proposed. I do not understand its import by deleting the power to co-opt which is pretty humble or very polite power we are giving. If, indeed, the Committee needs to co-opt somebody whose service they need, I do not understand why that should be disallowed. Maybe the Member has better reasons for that.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Kapondi! I have yet to give you the chance. Let us hear from a few more and then I will give you the final chance.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I was actually surprised by the deletion because Clause 5(2) is giving powers to the Council to co-opt. Once a person has been co-opted, they can participate as an expert or bring whatever reasons they are being co-opted. But they are not part of the Council and should never have a voting right. Clause 5(3) is basically stating their status in terms of how they can participate, but should not have a voting right. So, if we delete it then, a co-opted member will have the same rights as the other members.

I oppose the amendment.

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Chairman, Sir, I am not very persuaded by this amendment because if you co-opt a person and you give them the powers to vote--- What if you co-opt a 100 people and you give them the powers to vote, they will have taken over the body. So, really, I think, we need to leave it as it is, so that the persons who will be co-opted will not take it over.

I oppose.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Githae, or has your status changed now?

**The Minister for Finance** (Mr. Githae): No, Mr. Temporary Deputy Chairman. Sir. I stand to oppose this amendment.

The people who are being co-opted are what we call “in attendance”. People in attendance are basically experts. They are invited to give specific advice. They do not vote. They only give their advice. After the advice, they get out and the members remain.

I oppose this amendment.

**The Temporary Deputy Chairman** (Mr. Ethuro): Then, last contribution hon. Kapondi.

**Mr. Kapondi:** Mr. Temporary Deputy Chairman, Sir, I did not want to take that route of argument initially and that is why I was very brief. I thought Members were tired. I will have gone further to explain, but because the position of the mood of the House will not really make any serious change, I withdraw the amendment.

*(Mr. Kapondi's Proposed amendment to Clause 5 withdrawn)*

*(Clause 5 agreed to)*

*(Clauses 6, 7, 8, 9, 10, 11 and 12 agreed to)*

*Clause 13*

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

THAT the Bill be amended in Clause 13 by deleting sub-clause (2).

The rationale is that regulations made by the Council should not be subjected to approval by Parliament. This is because they will be classified council documents and will not be opened to public scrutiny.

*(Question of the amendment proposed)*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I do not know how regulations can be classified because regulations are not basically giving you intelligence information or anything that is secretive. But it is merely regulating the way you work as officers and all that. So, I am not convinced because by law we have agreed; that is, delegated legislation must be passed by Parliament.

So, I do not support.

**The Temporary Deputy Chairman** (Mr. Ethuro): The hon. Professor Anyang'-Nyong'o. I will really appreciate if you are brief.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): I will be very brief, Mr. Temporary Deputy Chairman. I think by submitting these regulations to the House, really is not submitting them to the public. This House through the Committees of Parliament deals with extremely sensitive information. I do not think that regulations will be any less sensitive than those issues that this House already handles. It is very important that when it comes to the classification of information, this House should be in a position to look at those regulations. Remember, the Constitution gives the people of Kenya the right of access to Government information. So, I think this is a case where the amendment should not be allowed.

I oppose.

**Mr. Ruteere:** Mr. Temporary Deputy Chairman, Sir, I support the amendment because the regulations which are coming to the House are coming to the public. Everything done here is done in public. Committees are open to public scrutiny. So, I beg that since we are talking about a Security Council for the country, these things should not be exposed.

**The Minister of State for Defence** (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, I think reports that are submitted to Parliament, I do not know whether these regulations are confidential and that hon. Members of the various Committees of this House have taken Oath of Secrecy.

**Dr. Kones:** Mr. Temporary Deputy Chairman, Sir, when you look at Clause 13(1), it just talks about regulation on the procedures for the management, classification and declassification. It is not on the contents of the information that we have. So, I do not see any problem when we have those regulations passed by this House.

So, I oppose the amendment.

**Mr. Mwangi:** Mr. Temporary Deputy Chairman, Sir, I think if we consider the Council and what they will be discussing and it is brought to the House, it is no longer a secret. Even if they were regulations, regulations are by laws.

I oppose.

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

*(Clause 13 agreed to)*

*Clause 14*

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

THAT the Bill be amended in Clause 14 by deleting the words “of which” appearing in sub-clause (2) immediately after the word “disclosure”.

Not to elicit any adverse criticisms or contribution in that case, this is basically a typo issue.

**The Temporary Deputy Chairman** (Mr. Ethuro): It is on the Order Paper. Typos should really be an argument between the Mover of the amendment and the Minister. I take silence to be consent.

*(Question of the amendment proposed)*

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

*(Clause 14 as amended agreed to)*

*(Clauses 15 and 16 agreed to)*

#### *Clause 17*

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

THAT, the Bill be amended by deleting Clause 17 and substituting therefor the new Clause-

#### Regulations

17. The Cabinet Secretary may, with the approval of the Council, make regulations prescribing anything required by this Act to be prescribed or generally for the better carrying out of the provisions of this Act.

Mr. Temporary Deputy Chairman, Sir, the rationale in this case is that the power to make regulations on proscription should be vested on the Cabinet Secretary, who is essentially the one who is answerable for the actions and decisions of the Council. So, basically, being an administrative issue, that is why we are putting that amendment.

*(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 17 as amended agreed to)*

*First Schedule*

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

THAT, the First Schedule to the Bill be amended-

(a) in paragraph (4) by deleting the word “seven” and substituting therefor the word “five”;

(b) in paragraph (7) by deleting the words “and voting” appearing at the end of the paragraph;

(c) in paragraph (9) by deleting the words “but shall have no right to vote at the meeting” and substituting therefor the words “but shall not participate in the making of decisions by the Council”.

Mr. Temporary Deputy Chairman, Sir, the rationale for this amendment is that we considered the quorum of seven to be too high, given the fact that the Council may sometimes hold emergency meetings, hence, the need to scale the quorum down to five.

*(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)*

*(First Schedule as amended agreed to)*

**Mr. Kapondi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I think there are amendments that we have skipped. You have been in a rush because we have been here for too long. I wish that we go back to what we had proposed to move as amendments on the First Schedule.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Kapondi, it is already passed and we actually carried the amendment that you had given us. It is “a”, “b” and “c.”

**Mr. Kapondi:** Mr. Temporary Deputy Chairman, Sir, we had amendments in “a”, “b” and “c.”

**The Temporary Deputy Chairman** (Mr. Ethuro): We have carried all of them.

**Mr. Kapondi:** Then that is okay, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Ethuro): It is not okay, because you are not following. We carried your amendments.

**Mr. Kapondi:** Mr. Temporary Deputy Chairman, Sir, at times you have to consider the law of diminishing returns.

**The Temporary Deputy Chairman** (Mr. Ethuro): I wish to consider, but I know that you are misconstruing my own profession. That is not necessarily the law of diminishing returns. It means other things. But I hear you.

*(Second Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The National Security Council Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! We had other Bills which had recommittals. So, before we report to the House, we will have to go back to the Bills that had recommittals, so that we conclude the Committee of the whole House stage. We will take them in the order in which they appear in the Order Paper.

## CONSIDERATION OF RECOMMENDED CLAUSES

### THE ASSUMPTION OF THE OFFICE OF PRESIDENT BILL

#### *Recommittal of Clauses 4 and 5*

#### *Clause 4*

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Midiwo, I know that the Whip must whip. We are back to The Assumption of the Office of the President Bill. You had a request for recommittal of Clauses 4 and 5.

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, the Chair of the Committee, hon. Kapondi, has the amendment which he is supposed to move on Clause 5. On Clause 4, we had agreed to drop and I had informed the Table. So, it is only Clause 5 which is being moved by hon. Kapondi.

**The Temporary Deputy Chairman** (Mr. Ethuro): So, we will put to register that the recommittal of Clause 4 has been withdrawn.

*(Recommittal of Clause 4 withdrawn)*

#### *Clause 5*

**Mr. Kapondi:** Mr. Temporary Deputy Chairman, Sir, I wish to move the amendment.

**The Temporary Deputy Chairman** (Mr. Ethuro): Since it is not published, you will need to read it.

**Mr. Kapondi:** Mr. Temporary Deputy Chairman, Sir, can I have a copy?

**The Temporary Deputy Chairman** (Mr. Ethuro): Can I assist you? The amendment to Clause 5 is by adding the following:-

“q” Principal Secretary for the Ministry in charge of Culture and Social Services;

“r” Cabinet Secretary in charge of Registration of Persons and Immigration.”

You need to give a justification. For the benefit of the hon. Members, make sure that you have a copy of the Bill itself. Clause 5 is: “Establishment of the assumption of the Office of the President Committee.” This is the composition of the Committee; where the hon. Member is adding a few more names.

Hon. Kapondi!

**Mr. Kapondi:** Mr. Temporary Deputy Chairman, Sir, first, given the nature of transitions, having more numbers is always better. Secondly, the Cabinet Secretary in charge of Culture and Social Services, whatever transpires during that handing over ceremony, has a cultural perspective. So, after consultation, we felt that to have the two will really not do any harm, but provide comfort.

*(Question of the amendment proposed)*

**Mr. Kiptanui:** Mr. Temporary Deputy Chairman, Sir, I wish to support the amendment. By expanding the composition, we shall avoid a situation whereby we have members from the same community being in that Committee as it is at the moment.

**The Minister for Medical Services** (Prof. Anyang’-Nyong’o): Mr. Temporary Deputy Chairman, Sir, I stand to support the addition of the Cabinet Secretary for the time being responsible for culture. This is because we tend to do these things---

**The Temporary Deputy Chairman** (Mr. Ethuro): Prof. Anyang’-Nyong’o, did the Chair hear deletion or inclusion?

**The Minister for Medical Services** (Prof. Anyang’-Nyong’o): Mr. Temporary Deputy Chairman, Sir, I am supporting the inclusion of the Cabinet Secretary for the time being responsible for culture. This is because I would like us to have some cultural content in the manner in which we treat such offices. For example, one of the things we should do, even these robes that we wear have nothing to do with our cultures. All those sheep skin that our Speaker puts on his head have nothing to do with our culture. So, I think there should be an input during this transition so that the handing over ceremony is accompanied, or the content has relevance to our culture. The symbols should be cultural symbols.

**The Attorney-General** (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, we need a rational explanation as to why we need immigration and registration. Culture makes a lot of sense. We must make law that is consistent. This assumption of office is for all time; after the next election and the other one into the future. So, if we could get that explanation, we can move forward.

**Mr. Kapondi:** Mr. Temporary Deputy Chairman, Sir, I think the hon. Attorney-General should know that the Ministry of State for Immigration and Registration of Persons is one of the security infrastructure Ministries. It is extremely relevant that it is part of the transition process.

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, the Chairman of the Committee has taken words out of my mouth. The Minister in charge of immigration and registration of persons

is generally a security Minister. He sits in security meetings. He is, probably, the only ordinary Minister who does.

**The Temporary Deputy Chairman** (Mr. Ethuro): The Chair just wishes that we would have been more candid than we have supported but that is up to you.

*(Laughter)*

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

*(Clause 5 as amended agreed to)*

**The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth Report to the House its consideration of the Assumption of the Office of the President Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Let us move to the next Bill, which is the Kenya Defence Forces Bill (Bill No.35 of 2012).

#### THE KENYA DEFENCE FORCES BILL

##### *Recommittal of Clause 28*

##### *Clause 28*

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Keynan is not present.

*(Mr. Haji stood up in his place)*

Hon. Minister, it is not really for you. In fact, you do not have to. If the author of the recommittal is not there, then it is dropped. The status quo remains and so there is no reporting, again.

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, you will recall that this amendment was brought by hon. Konchella. We talked to him and he has written to withdraw the amendment. Therefore, I recommend that it be withdrawn.

**The Temporary Deputy Chairman** (Mr. Ethuro): We have a letter and the Chair is alive to that information. There were many amendments that were requested. The one I was privy to was by hon. Konchella, but the Table was also talking about re-committal by hon. Keynan. So, there was confusion between hon. Keynan and hon. Konchella. This has been clarified.

So, there is no amendment to Clause 28 and there will be no report. Then we will go to the next Bill, namely, The Leadership and Integrity Bill, Bill No.33 of 2012.



THE LEADERSHIP AND INTEGRITY BILL

*Recommittal of Clauses 16 and 17*

*Clause 16*

**The Temporary Deputy Chairman** (Mr. Ethuro): There was an amendment by hon. C. Kilonzo. If he is not present, we will assume that he has withdrawn the amendment. Had he delegated the amendment to someone?

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

THAT, Clause 16(1), (2), (3), (5), (6) and (7) be amended by inserting the words “or a public officer” after the words “a State officer” wherever it appears .

This is just a simple thing to net everybody who may be involved in duties of the State, so that they do not misuse their offices, and the law does not target the Members of Parliament and leave out the rest.

*(Question of the amendment proposed)*

**Mr. Ruto:** Mr. Temporary Deputy Chairman, Sir, that is a wonderful amendment and I support it.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, in supporting, I am just wondering why hon. Ruto is on his third suit today.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Members! Hon. Odhiambo-Mabona, while I appreciate that we need light moments considering what hon. Kapondi talked about, namely, diminishing returns, you must be alive to the Standing Orders. You must remain relevant to the amendment. I will now put the question.

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

*(Clause 16 as amended agreed to)*

*Clause 17*

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Charles Kilonzo, you had an amendment. Order, hon. C. Kilonzo! We also have another amendment by hon. Langat which takes precedence because he is asking for a deletion. If you have a copy of the amendment, read it out.

**Mr. Langat:** Thank you very much, Mr. Temporary Deputy Chairman, Sir. I beg to move the following amendment to the one that was carried yesterday on Clause 17:-

THAT, clause 17 be deleted and the following new clause substituted in place thereof.

“A state officer or a public officer shall not participate in a tender for the supply of goods or services to a public entity in which he or she is serving or is otherwise, similarly associated, but holding of shares by a state officer or a public officer in a company shall not be construed as participating in the tender of a public entity unless the state officer or the public officer has majority shareholding in the company.”

The amendment that was carried yesterday generalized that all state officers will not trade in all public entities. I think the intention was to remove conflict of interest and it is only in where you work where conflict of interest can arise.

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

*(Question of the amendment proposed)*

**The Attorney-General** (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I recommend that we drop “majority” and work with “controlling”. If you have a controlling---

**The Temporary Deputy Chairman** (Mr. Ethuro): Mr. Attorney-General, I know that you are an *ex-officio* Member but that does not exclude you from learning the ropes in the House. Do a further amendment by deleting the word “majority” and inserting the word “controlling.”

**The Attorney-General** (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, a majority shareholding is a very high threshold. So, I propose a further amendment that we stay with the language of controlling interests. The Aga Khan controls The Nation Media Group with a 30 per cent interest or 24 per cent interest. The word “controlling” is important.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! I will help the Attorney-General. His proposed amendment should read as follows:-

THAT, the amendment by hon. Lagat be further amended by substituting the word “majority” with the word “controlling”.

*(Loud consultations)*

Those issues will come once the Question has been proposed so that you can seek more clarifications from the author of the amendment.

*(Question of the further amendment proposed)*

**Dr. Kones:** Mr. Temporary Deputy Chairman, Sir, I stand to support the further amendment.

**Mr. Ruto:** Mr. Temporary Deputy Chairman, Sir, yesterday we had serious issues with these two words, “substantial” and “control”. It is hardly definitive or clear. I am persuaded to go by hon. Lang’at’s specific word, that is, “majority”. This is because if you are a majority shareholder in a private company, it means that it is yours; it hardly belongs to anyone else. However, “controlling” is debatable. Having a shareholding of 15 per cent could be construed to mean controlling shares and so is a 25 per cent shareholding. So, it is a highly debatable issue. If you are a majority shareholder then you should not trade with the organization where you work. Yesterday’s provision was worse such that a lot of hon. Members were itching towards deleting the entire Clause 17.

The Attorney-General should do us a favor and forget about this word, “controlling”.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I want to go by the amendment as proposed by the Attorney-General. Let us support the further amendment. What we want to cure here is where I would be working for an organization and have a company closely associated with me in a way that I can control that company and at the same time I can control the organization that I work for. Therefore, I will be able to influence the tendering.

“Controlling interest” in financial parlance is very clear. It means that if there is no other person having an interest more than yours, then you have a controlling interest. I want to give an example. If I have, say, 30 per cent and no other single entity or individual has 30 per cent or anything above, then I have a controlling interest in that company.

Therefore, I may not be a majority shareholder, but I would still have controlling interest in that company, therefore, benefiting more than any other person. I am very comfortable with the amendment by the Attorney-General.

**The Temporary Deputy Chairman** (Mr. Ethuro): Since the interest is immense, I will just take two and I would like hon. Members to be brief. Hon. Lang’at!

**Mr. Langat:** Mr. Temporary Deputy Chairman, Sir, I want to accept what the Attorney-General has said because I am also an accountant and I know there is a definition of “controlling interest” regarding the shareholding of companies. So, I would want to support the Attorney-General, so that we do not extend this matter too far.

**Mr. Kioni:** Mr. Temporary Deputy Chairman, Sir, I want to support that further amendment. What Mr. Mbadi has done has made it easy for the Standard Eight dropouts and also the uneducated. Now we are completely in the loop, all of us.

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

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

*(Clause 17 as further amended, agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): In the light of the resolution of that amendment, then that negates the amendment by Mr. C. Kilonzo. So that amendment is dropped.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Leadership and Integrity Bill, Bill No. 33 of 2012 and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, we now move on to the final Bill for recommittal, the National Intelligence Service Bill, Bill No. 31 of 2012. There are three clauses.

THE NATIONAL INTELLIGENCE SERVICE BILL

*Recommittal of Clauses 16, 23 and 62*

*Clause 16*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, after consulting over lunch time we realized that we could have made a mistake. Clause 16 is on a purely administrative matter which should be best handled by the Director-General and not the council. So, I am proposing to amend it as follows:-

THAT, Clause 16 be amended in sub-clause 1 by deleting the words “the council” and substituting it with “the Director-General may in consultation with the council” appearing at the beginning of sub-clause 1.

As I said, this is purely administrative.

**Hon. Members:** No!

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members. The Minister has a right to be heard.

Proceed, Mr. Minister.

**The Minister for Finance** (Mr. Githae): I have finished, Mr. Temporary Deputy Chairman, Sir.

*(Question of the amendment proposed)*

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaiserry): Mr. Temporary Deputy Chairman, Sir, it is criminal to allow an individual to determine the number of personnel in a service. That individual can wake up one morning and say that a certain portion of the service staff is no longer required. Therefore, this must read “the Council may appoint such a number of members of the service as may be necessary for the proper and efficient discharge of functions of the service”. We cannot give this responsibility to an individual.

So, I oppose.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I would like to inform hon. Members that the members of staff that this Clause has in mind are a category of people which the service calls “informers, sleepers, moles---“ You cannot refer this category of workers to the Council. This is done by the Director-General.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, the Minister of State for Internal Security is very competent. That is why he is running two Ministries. Why has he given this responsibility to hon. Githae, the Minister for Finance, who is causing confusion in this House? Could we demand that the substantive Minister – the real Minister for internal security – who knows what security is all about, takes over and runs this business?

**The Temporary Deputy Chairman** (Dr. Ethuro): Order, hon. Mbadi! You are completely out of order. You should have raised that point at the time when hon. Githae was acting for various Ministries.

I will, therefore, put the Question.

**The Minister for Finance** (Mr. Kimunya): Put the Question.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Kimunya! You are already accused of confusing the Chair. I am not going to grant people their own feelings. I will, therefore, put the Question, which is that Clause 16 be amended as proposed.

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

*(Clause 16 agreed to)*

### *Clause 23*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23 be amended in Sub-Clause (1) by deleting the words “the Council” and substituting thereof the word “Director-General”.

Mr. Temporary Deputy Chairman, the Clause we have in mind, Clause 23, deals with the discipline of the personnel in the service. Discipline is better performed by the Director-General (DG) and not by the Council. This is what happens. The commander of the army is given powers to discipline the officers. The Inspector-General is given powers to discipline. This is a disciplinary matter.

**Mr. Ogindo:** On a point of order, Mr. Temporary Deputy Chairman. Is it in order for the Minister to mislead this House by proposing that amendment, knowing very well that we are seeking to separate the functions of the two officers? Let the Council do the recommendation and let the DG do the implementation. Things work well that way.

**Mr. C. Kilonzo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the Minister, my very good friend in the Ministry of Finance, in order to keep on consuming the time of this House while these recommendations were brought into the Committee by none other than the Major-General sitting next to him, Maj.Gen. Nkaisserry? These recommendations did not come from us; they came from the Government – from a Minister who is a colleague of yours; a very competent Major-General. So, rather than consume a lot of our time, can you take it upon yourself to withdraw all the other amendments on this matter?

**Mr. Kapondi:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members. I was entertaining points of order. I can see the only request. You can only contribute after the Question has been proposed. Hon. Kapondi, I announced your name. I have not yet given you the chance to talk because I must also capacitate you. I have just realized that since you are dealing with a request, that request can only come after the Question has been proposed. So, I want to lead the way for you.

*(Question of the amendment proposed)*

**Mr. Kapondi:** Thank you, Chair, for that guidance. I want to support the amendment by the Minister for the simple reason that I think hon. Members who are opposed to this---. In terms of administering discipline, when you talk of the Council, you are talking about members from different ministries and putting them together to make an administrative decision which, really,

is very cumbersome. We are setting a precedent that would make the Service not really deliver and work in a flowing manner. That is it. So, that is my contribution.

**The Attorney-General** (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I wanted to inform the House, with your permission, if I may, that the council that we are talking about is the National Security Council.

I have two points; the functions of the council are already defined in the statute. The definition that we have made of the functions that we have set out for the council, and the assignment that we are now giving to it are not included; for that reason, unless we also intend to amend Section 4---

I think I have made my point.

**The Temporary Deputy Chairman** (Mr. Ethuro): Attorney-General, I have given you the Floor; proceed.

**The Attorney-General** (Prof. Muigai): I have made my point.

**The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, following the insinuation by Mr. Mbadi on my experience in discipline, I want to tell the hon. Members that if we leave discipline to the council, it will mean that you have to call a meeting whenever somebody becomes indisciplined; I think that way, we are going to bog down the service.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I agree with hon. Members in terms of the first one on recruitment but on matters of maintaining discipline and maintaining the code--- If you look at the composition of the National Intelligence Service Council, we are talking of the Cabinet Secretary for Foreign Affairs, the Cabinet Secretary for Finance, the Attorney-General and the Director-General. So, you are saying that every time there is a disciplinary issue the council will have to meet to agree whether an officer was found drunk. We are saying that there will be consultation with the council, and the Director-General shall be reporting to the council, shall be reporting to Parliament and so on. For God's sake if you give somebody the responsibility of being the Director-General of a service, give him the authority to also instil discipline so that you can hold him to account for the performance of the staff. If you give somebody a responsibility then deny them the authority, you cannot demand accountability from that person. So, it is important that we know that we are giving somebody responsibility and demanding accountability from them. So, we must also give them the authority to demand performance from the people working under them.

On this one, let us support that the Director-General will have oversight over disciplinary matters in consultation with the council. That is the minimum we can give. Otherwise, we are creating a lame duck to sit there and in case of anything, we have to wait for the council. I want to persuade the House to support the amendment by the Minister and we make some progress.

**Mr. Midiwo:** Madam Temporary Deputy Chairman, Sir, regarding the duties of the council, one of them is administration of the Service. That is fundamental. It arises from our experience and our fears. So, I plead with my colleagues, because I know we are in this together. The fears are that this force, which we did not fundamentally change--- We have all agreed that because we are facing elections, we keep the personnel but some of them are political. Our fears can only be addressed by this council. I can tell you that the immediate deputy to the Director-General is at home somewhere in Kimilili today. He was summarily dismissed not too long ago. If this council was there, he would have somewhere to go. He was dismissed a few months ago. He is jobless and has nowhere to go. That is why the wisdom of this council will be so important.

Note that you are living in Kenya where there is so much mistrust. Do not trust one person. Let us have a Council; we have defined them and if you did that, it negates Section 65. Look at Mr. Kimunya---

**Mr. Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Midiwo!

**Mr. Chachu:** Mr. Temporary Deputy Chairman, Sir, this clause is about discipline and a disciplinary court. It is purely administrative. If the Director-General (DG) is to have authority and, be effective and make his staff accountable, he must have authority to enforce what he is supposed to do. I do not think it is necessary for a whole council to be involved with issues such as discipline. I think it is important for us to support the amendment; it is purely administrative and the DG should be given the powers to play that role.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, let me put it this way: My understanding is that if you give the council the power to discipline and all this, it does not mean that the council will always be sitting there to do discipline. What it, therefore, means is that the council will be responsible for these procedures. I want to give you an example and I am sure many of us have passed through public universities. For example, in the University of Nairobi (UoN), the discipline of staff is the function of the council, but the DVC A&F, disciplined staff on daily basis but the council has a responsibility. Therefore, you can give these functions to a council and the council will delegate the procedures - the day to day running of all that to the DG or any other body. So, I do not see any conflict. By giving it to the council, you are just saying that responsibility is given to a higher authority, so that you do not allow a single individual to be deciding on disciplinary matters.

**The Minister of State for Public Service** (Mr. Otieno): Thank you, Mr. Temporary Deputy Chairman, Sir. Mr. Kimunya is too close and interfering with my contributions. I want to say that it is a bad governance structure to give the chief executive the power to make the rules. In this case it would mean the he issues and maintains the code himself. It is a bad governance structure to give the chief executive the power to issue the disciplinary code. If he is the one issuing and maintaining the disciplinary code, he can change it at his pleasure depending on the issues before the Service. So, it is important that in terms of issuing, updating and maintaining the code of conduct for the Service, the CEO will prepare it and get it approved by the council. It is up to the council to ensure that in exercising and implementing that code, the chief executive conforms to the code in full. So, in this case, it should be the council in consultation with the Public Service Commission (PSC) that will issue that code of discipline and supervise the CEO in managing and exercising that code throughout.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Minister, it is not the Second Reading, I think you have done your bit.

**The Assistant Minister for Co-operative Development and Marketing** (Mrs. Kilimo): Mr. Temporary Deputy Chairman, Sir, I support the amendment by hon. Githae, so that the Director General can have the powers.

Mr. Temporary Deputy Chairman, Sir, the work of the Council is like duplicating the work of the Public Service Commission (PSC). If there is any disciplinary case and somebody is not satisfied, then they can be referred to the PSC. Otherwise, the Director-General will not control. We are also not going to change overnight because people will start lobbying. If somebody makes a disciplinary case against them, they will go, who is that? If it is the Secretary to the Cabinet, I can lobby. So, it will increase indiscipline among the people.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Members, I just want finalize with two, because I am hearing loud protests from hon. Anyang'-Nyong'o and then Baiya and, finally, hon. Muriithi.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Chairman, Sir, I want to make one thing clear, if the House could give me the chance to speak.

Mr. Temporary Deputy Chairman, Sir, I want to make one thing clear. The word "consultation" does not mean that the Director-General will act under the directive. Consultation is really different from directive.

Secondly, we should not fear the Council or the Commission being consulted because apparently the amendment gives the impression that if we consult, the disciplinary course will not be taken. I think that is a wrong assumption. It is very important that in matters of discipline the Director-General should check and find out whether what he is doing is in line with the PSC regulations and that his own Council also approves. It is very important that we give credence to the word "consultation" because it is very important in issues of discipline.

So, I would like to oppose the amendment and urge my colleagues to agree with me.

**Mr. Baiya:** Mr. Temporary Deputy Chairman, Sir, I will also want to make some clarification, which may possibly allay the fears behind this amendment. Clause 9 of this Bill is still very clear: The Director-General shall:-

(a) Be responsible for all management and administration of the Service.

That includes discipline and the list is endless.

(b) But Clause 23 is actually giving the Director General the responsibility of coming up with the disciplinary code, that is, the regulations.

It is dangerous to mix those two responsibilities. We want to separate them. It enhances responsibility when we confer them on the higher level of the Council. The Director-General will only be implementing. Even in this House---

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Baiya you have made your points. Finally, hon. Nderitu.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, I think then we will have to make further amendments. If you look closely at Clause 23, if you substitute the word Council for Director General, for example, in part (c), it says, provide for the delegation by the Director -General to any Director, or a Member of the service, such disciplinary powers, as he or she may consider necessary. So, if you substitute Director-General there with Council, then the clause is going to read something like this:

"The disciplinary code may provide for the delegation by the Council to any Director or member of the service."

In my humble view, that will completely destroy it. So, I will be willing to concede that on the first part of Clause 23(1) on issuing and maintaining of the code, I will agree that, perhaps, that should be done by the Council. If you substitute part (c), then you will actually be giving the Council direct operational authority far below in the organization.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order! Order, hon. Members! I used the word "finally" when I gave hon. Nderitu the opportunity and it shall remain final. I, therefore, wish to put the Question.

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



*(Clause 23 agreed to)*

Clause 62

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

THAT, clause 62 be amended by deleting paragraph (f) of sub-clause (3).

Mr. Temporary Deputy Chairman, Sir, what we sought to amend is Clause 62(3)(f). It reads:-

“(3) A person who-

(f) discloses any classified information to any person other than the person whom he or she is authorized to disclose it to, commits an offence.”

Mr. Temporary Deputy Chairman, Sir, the kind of information that goes to journalists and even Members of Parliament on daily basis is certainly covered here. Therefore, we are proposing that this paragraph be deleted.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, in the morning we had actually discussed this issue and decided to reverse it. I think we will be treading on dangerous grounds if we allow classified documents to be spread everywhere and anywhere or be carried by anybody to anybody. We will actually be threatening the security of this country and State.

Mr. Temporary Deputy Chairman, Sir, I oppose. Let this clause remain the way it is.

**Mr. Kathuri:** Mr. Temporary Deputy Chairman, Sir, while I understand why the Minister may be making those comments, it is also good for us to realize that some of the information which actually leaks, is for the benefit of the public. While we appreciate why we may have to safeguard, I think it is for the better good that we also do not pin down the person who is found with the information.

Mr. Temporary Deputy Chairman, Sir, I do not support hon. Githae.

**Prof. Kaloki:** On a point of order, Mr. Temporary Deputy Chairman, Sir. We are dealing with The National Intelligence Service Bill and if you look at the screen, it is showing that we are dealing with The Leadership and Integrity Bill. Could you do something about that?

**The Temporary Deputy Chairman** (Mr. Ethuro): It is so ordered! Professor, you will help us in monitoring.

Hon. Attorney General!

**The Attorney-General** (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I think we should go back. There is a definition of “classified information” in the Bill. “Classified information” means information of particular security classification whose unauthorized disclosure would prejudice national security. It is not everyday information to a journalist that would prejudice national security. I think the point is well made.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Temporary Deputy Chairman, Sir, we oppose this amendment.

You want to tell me that you want to remove--- You want the service to be giving classified information to any person? I think you should put the Question.

**Hon. Members:** No!

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! The tendency to think that because you have spoken others should not, cannot be entertained by the Chair.

*(Laughter)*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I just want to draw the attention of the House. If you look at the Bill at Clause 62(3), it starts by indicating a person who discloses and then parts (a), (b), (c), (d) are directed at people who are in service. That means that it places that burden on people who are in NSIS. However, when it comes to part (e) and (f) you are actually criminalizing a member of the public who has received that information and you are saying that as a member of the public if I receive information not knowing that the information is classified, I must give it to the Director-General. First of all, even in terms of implications, I must be arrested on my way to giving it to the Director-General. This is putting an onerous task – I had actually moved this amendment for those reasons in relation to the others it attaches to the people who are serving as officers and members. However, this (e) and (f) are putting an onerous task on members of the public and we have actually deleted similar amendments in this Bill.

Mr. Temporary Deputy Chairman, Sir, while I support, I wish your direction on what has been recommitted, that is, the whole of Clause 62. If it is the whole of it that has been recommitted then I want to also move an amendment to delete part (e).

**The Minister for Medical Services** (Prof. Anyang’-Nyong’o): Mr. Temporary Deputy Chairman, Sir, I would like to plead with the House not to make this amendment for the reasons given by the Attorney-General, Maj-Gen. Nkaisserry and also the Minister for Finance. I am appealing precisely because we are dealing with national security. If information lands in your hands and you are a Kenyan citizen---

**An hon. Member:** But how do you know it is classified?

**The Minister for Medical Services** (Prof. Anyang’-Nyong’o): Because classified information is always stamped “CLASSIFIED” in Government. That is true.

Secondly, indeed, some classified documents may come from the NIS, but through dubious channels. In the world we live in today, we have a lot of security issues. We have a lot of security issues in this country and I would like to appeal to the House to just be cautious especially because classified information is defined in the Bill. Even the public should be protected from committing this crime. So, I appeal to the House not to make this amendment. It is very important.

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, I am surprised that Prof. Anyang’-Nyong’o who brought the Freedom of Information Bill to this House is now fighting to conceal information. It is very interesting that these Ministers know that there are only five months and we will be discovering the Anglo-Leasings in their closet. The only way people get information is through leakage. Anglo-Leasing was a security matter and it would never have nailed the culprits if this Bill was not in place. Just to finish, there was *Mwakenya*. Not too long ago, to hold the earlier version of KANU Manifesto, the 1962 version was a national threat. Who decides this classification and the un-classification of it? This is the most dangerous thing. This is draconian. I want to plead with this House that for us to fight corruption, we must let Kenyans receive information and give it. We are sane people and we will not betray our own country.

**Mr. Njuguna:** Mr. Temporary Deputy Chairman, Sir, classified information is critical to the survival of any nation. The US Government would not have eliminated Osama Bin Laden if

the classified information went a different way. It was direct to President Obama. The survival of this nation depends on directing that intelligence report to the President. Therefore, it should not be released to any other person. That is my view.

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

*(Clause 62 agreed to)*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I want to seek your direction because I had said that if you had recommitted Clause 46, I wanted to seek a third amendment by proposing to delete part (e). This is because both (e) and (f) are unconstitutional. Article 35 of the Constitution which is on the right to information provides that you cannot gag Kenyans. Even as we have passed (f), mercifully and thankfully, we are not the ultimate in terms of decision making. We have a reformed Judiciary and I am going to ask the International Commission of Jurists and the Law Society of Kenya to go to court and seek the court's interpretation that this is unconstitutional.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Millie Odhiambo! Of course, as any Kenyan, you are entitled to go to the High Court directly or indirectly.

**Mr. Midiwo:** Even a Kangaroo Court!

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Millie Odhiambo! The Chair listened to you attentively and it is now responding to your request. When Clause 62 was being recommitted, this was with a specific request from hon. Baiya. You had not put a request then, and you cannot put a request now. This is why by the time the Chair of the Committee reads, he always says, "subject to recommittal". That means that you requested and you could have taken advantage of that time to bring an amendment as you wished. So, it is time barred.

I am not saying that the amendment has been carried. So, there is no change on Clause 62. Hon. Minister, all the recommittal clauses were negatived and, therefore, we did not carry any. So, you do not have to report to the House again.

**The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its considerations of the National Intelligence Bill, Bill No.31 of 2012 and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, we have concluded the business of the Committee of the whole House. Therefore, the Speaker will resume and then we will report to him.

*(The House resumed)*

*[Mr. Deputy Speaker in the Chair]*

## REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

### THE ASSUMPTION OF THE OFFICE OF THE PRESIDENT BILL

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Assumption of the Office of the President Bill, (Bill No.30 of 2012) and approved the same with amendments.

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Finance** (Mr. Githae) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Deputy Speaker, Sir, I beg to move that The Assumption of the Office of the President Bill, (Bill No.30 of 2012) be now read the Third Time.

**The Minister for Finance** (Mr. Githae) seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

### THE PETITIONS TO PARLIAMENT (PROCEDURE) BILL

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the Whole House has considered The Petitions to Parliament (Procedure) Bill (Bill No.34 of 2012) and approved the same with amendments.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. 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 Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Deputy Speaker, Sir, I beg to move that The Petitions to Parliament (Procedure) Bill, Bill No.34 of 2012, be now read the Third Time.

**The Attorney-General** (Prof. Muigai) seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

#### THE KENYA DEFENCE FORCES BILL

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Kenya Defence Forces Bill, Bill No.35 of 2021, and approved the same with amendments.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Finance** (Mr. Githae) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I beg to move that The Kenya Defence Forces Bill, Bill No.35 of 2012, be now read the Third Time.

**The Minister for Finance** (Mr. Githae) seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

#### THE LEADERSHIP AND INTEGRITY BILL

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Leadership and Integrity Bill, Bill No.33 of 2012, and approved the same with amendments.

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

**The Attorney-General** (Prof. Muigai) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Deputy Speaker, Sir, I beg to move that The Leadership and Integrity Bill, Bill No.33 of 2012, be now read the Third Time.

**The Attorney-General** (Prof. Muigai) seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

#### THE NATIONAL INTELLIGENCE SERVICE BILL

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The National Intelligence Service Bill (Bill No.31 of 2011) and approved the same with amendments.

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. 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** (Maj-Gen. Nkaisserry) seconded

*(Question proposed)*

*(Question put and agreed to)*

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Deputy Speaker, Sir, I beg to move that The National Intelligence Service Bill(Bill No.31 of 2012) be now read the Third Time.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry) seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

THE NATIONAL SECURITY COUNCIL BILL

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The National Security Council Bill (Bill No.32 of 2011) and approved the same with amendments.

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. 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** (Maj-Gen. Nkaisserry) seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

**The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Deputy Speaker, Sir, I beg to move that The National Security Council Bill be now read the Third Time.

**The Minister for Finance** (Mr. Kimunya) seconded.

*(Question proposed)*

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, thank you for this opportunity. I would like to take this opportunity on behalf of the Government to record special thanks to the Speaker's Office and the Speakers who have been with us during this process. We particularly want to pay special tribute to the Committees that have looked at these six Bills, including the negotiations that have taken place to give Kenyans the quality of legislation that they need. Also, I extend thanks to the stakeholders like the Commission on Implementation of the Constitution (CIC), the Kenya Law Reform Commission and all the others that we have worked with to produce these Bills. It is a record that we are setting in this Parliament. This is the last batch of constitutional Bills that we are passing before the general election.

I also want to pay special tribute to the Members of this House. When we appealed to you after you nudged us to move and take action, we noted a point and asked you to stay behind so that we can do it together; you were willing to do it and you sacrificed your Wednesday, Thursday and Friday nights. I know when you go to your constituencies tomorrow, you will be feeling proud that you have done a national service.

I also want to take this opportunity to thank my colleagues in the Cabinet for working together on this, and for being here to work with hon. Members in terms of getting these Bills to

go through. It is collective responsibility. So, if you see two or three gathered, the rest are also there.

Let me also take this opportunity to record thanks to the staff working for the National Assembly. I know it is their time we have been taking from their families and themselves; after we leave here tonight, they will be left behind putting together everything over the weekend to ensure that the Bills can be assented to, so that the Kenyan people can have them.

Mr. Deputy Speaker, Sir, I would basically say thank you to everyone for this journey we have travelled together. I also note that we will continue working even on other constitutional Bills that are not scheduled on a deadline between now and the time we break, so that we can actually show the Kenyan people that this House can do a lot and meet the expectations of the Kenyan people.

With those few remarks, I beg to support.

**The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Deputy Speaker, Sir, I want to join Mr. Kimunya in thanking, first and foremost, Members of Parliament, the Chairmen, especially the Chairman of the Committee on Defence and Foreign Relations, together with his Committee. I also thank my colleagues and Ministers who stood in for me when I was away in Nyeri; I also thank your office and members of staff of the National Assembly. I think we have proved to Kenyans today that Members of Parliament are above board, and once required, they are prepared to sacrifice for the interest of this nation. For them to have stayed here for three nights without any rest is a clear manifestation of their willingness to serve this nation. We have proved to those who have been criticizing this House tonight and the previous night that we are equal to the task.

Thank you very much.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to thank my colleagues, Members of the Tenth Parliament. The Speaker, Mr. Marende, once said that history was beckoning us to enter its annals. I think tonight we have, as a House--- Kenyans expected us to go the extra mile to ensure that we beat the 27<sup>th</sup> August deadline. Tonight, I must say that we have gone beyond the extra mile. I want to thank hon. Members for the long hours they have put in. I also want to thank the Committees for the long hours they have put in and also for the consultations. We want also want to thank Members of the Back Bench for their patience. We know at times, the Front Bench looks like they are dragging their feet, but thank you for your patience. Thank you for the sobriety, thank you for the quality of debate and your input.

We also want to thank the CIC, though we had a bit of a problem with the Leadership and Integrity Bill. But we thank Mr. Nyachae and his team, the Law Reform Commission (LRC) - Mr. Kathurima M'Inoti and his team and the CIOC. Hon. Members have done a fantastic job. We have shown that when we work together and we stay focused, we can achieve a lot for this country. I think the Tenth Parliament has gone down in history as the House that saw the new Constitution passed. It is also doing everything to ensure implementation of this Constitution. I just wanted to take this opportunity to thank everybody and to also invite hon. Members on Monday, 27<sup>th</sup> August. We will be having the National Conference on Peaceful Elections. We want to urge all of us to make time to join us. We will be at Bomas of Kenya with His Excellency the President and the Right Hon. Prime Minister. This is a culmination of the efforts we have taken since April when we last met in Mombasa. You will remember the passionate speech by the late Prof. Saitoti, a plea for peace; peaceful elections and a peaceful transition. On



27<sup>th</sup> and 28<sup>th</sup>; Monday and Tuesday, we will be meeting together as Kenyans from all walks of life; from all sectors of our society to put our heads together to see what we can do to put the feet of this nation on the path of peace, healing and reconciliation. I urge you - though you are tired after these long hours - to make time after the weekend to come and join us so that we may be together at Bomas of Kenya.

Thank you, Mr. Deputy Speaker, Sir.

**The Minister for Finance** (Mr. Githae): Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. Let me also join my colleagues in congratulating all the people who were involved in this momentous task. I have said before and I am going to say again that if there is one Parliament that has really sacrificed, it is the Tenth Parliament. If there is one Parliament that has worked really very hard in passing Bills, it is the Tenth Parliament. If there is one Parliament that has gone the extra mile, it is the Tenth Parliament. If there is one Parliament that has when required to sit even at night and has done so without complaining, it is this Parliament. Therefore, even the new Constitution was given by this Parliament. So, this Parliament will go in the annals of history as the most hardworking and articulate. It is a Parliament that was prepared to go the extra mile. I would, therefore, like to take this opportunity to thank the Chairman of the Departmental Committee on Defence and Foreign Relations, his team and all the other Committees; Justice and Legal Affairs and Energy, Communications and Information for a job well done.

**Mrs. Odhiambo-Mabona:** Energy? What did they do?

**The Minister for Finance** (Mr. Githae): Mr. Deputy Speaker, Sir, they give us power. It shows that when the Committees and the Front Bench work together, there is nothing that we cannot achieve. I would really like to say that we continue with this bipartisan approach.

**Mr. Keynan:** Mr. Deputy Speaker, Sir, I want to spoil the mood because the Ministers have said many positive things.

*(Messrs. Wamalwa, Jamleck Maina Kamau and Prof. Kamar  
withdrew from the Chamber)*

**Mrs. Odhiambo-Mabona:** They are walking out!

**Mr. Keynan:** Mr. Deputy Speaker, Sir, I really want them to hear especially---

**Mr. Deputy Speaker:** Order, Messrs. Wamalwa and Jamleck Maina Kamau. Listen to what the Members have to say about your side of the divide. Proceed, Mr. Keynan.

**Mr. Keynan:** Mr. Deputy Speaker, Sir, including my former Professor, the gracious Prof. Kamar. She should have some patience and listen to her former student. It is good that we talk about some of these things. But the reality must dawn on us. What has made us sit here over the last three days it not because the Tenth Parliament has failed to do anything that is dependent on its constitutional obligations!

We have been here for the last three days because of some Ministers who failed to do what is required of them. I know we have sincere Ministers here and I would like them to pass our displeasure as institution to His Excellency the President and the Rt. Hon. Prime Minister. How long are we going to work on crash programme? For how long are we going to sit here at the wee hours of the night to do something that we ought to have done 12 months ago? The constitutional implementation process is a very difficult exercise. However, we have no option because Kenyans expect us to domesticate it.

We take all the compliments you have expressed. We have also gone an extra mile under difficult circumstances to make sure these Bills are passed. We had to go through two Bills within four days. In fact, I want to thank the membership of the Defence and Foreign Relations Committee for interrogating these Bills. During interrogation of these Bills, we made sure that there was public participation.

I can see the Minister for Finance, Mr. Haji is here with us. I can also see the hon. Attorney General, hon. Kimunya and my good professor. We want you to go back and organize your house, so that we do away with this crash programme. If that happens, the quality of the Bills that we pass here will greatly be enhanced and the hon. Members will legislate in a very conducive atmosphere without straining themselves and the staff of the Kenya National Assembly.

Mr. Deputy Speaker, Sir, finally, I know we are in the last leg of the life of the Tenth Parliament. This is the time when we really need to bond more. I will not want to do the Shikuku way of saying, “look at the four corners of the building”. That is not the way we want to do it. The only way we can appreciate our togetherness is if we do what we are required to do on time. Do it procedurally and lessen the task and the burden of those who you expect to work with you. Look at the staff here, they have worked very hard for those three days. This evening most of us would have gone to our villages, but because as hon. M.Y. Haji and hon. Githae have rightly pointed out, what we are doing also will greatly contribute to our national well being as a country.

I want to say thank all hon. Members for your support. We have enjoyed every speaker. It was a learning process for us. We have enjoyed every bit of your participation. All the amendments that you brought forward have been highly appreciated. I thank all the Members that we interrogated. I hope collectively we have passed Bills that will ensure that we are safer, have functioning institutions and we have put in place legislative mechanism for posterity for today, tomorrow and for our children.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I will be brief. First of all, I want to thank the members of the Back Bench for doing an excellent job in difficult circumstances and with a lot of harassment from the Front Bench. I want to thank the Speaker’s panel. I want to thank the staff. You have done an excellent job.

Mr. Deputy Speaker, Sir, I cannot waste any energy thanking the Front Bench for making us to go without sleep for days, for being lazy and not doing their work. I will not give you any thanks for not doing a very good job. We cannot thank you for doing your work poorly. We want to tell you, pull up your socks. Every week, when the Leader of Government business gives us the business of the following week, we have always challenged him---

*(Mr. Jamleck Kamau stood up in his place)*

**Mr. Deputy Speaker:** Order! Hon. Jamleck Kamau and others, this Bill has not being disposed of. The Question has not been put. It will only be taken for an assent after the Question is put. So, if you deplete your own numbers in the Government side here, then do not blame somebody else if you fail to get this done.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, that is exactly what I am talking about. They are not taking their work seriously. As the Vice-Chair of the Constitutional Implementation Commission, we have actually given a notice that we will bring more Bills to this House for enactment. I want to remind the Leader of Government business that the Bills are not over. You are only talking of the ones in the schedules. We still have a lot of Bills that we

need for effective transition. We still have the one on the one-third gender rule, which is not yet before the House. So, please, note that if you do not bring them, we will bring them. We will not wait for you to bring them, so that we pass things which ordinarily we would not pass.

Mr. Deputy Speaker, Sir, finally, I want to thank myself for keeping the hon. Members on check. I am told there are Members who were not here yesterday but came today because I was “bringing baby back home.” Since they were panicking that hon. Millie was “bringing baby back home,” they were all worried and came back. “Come baby come.”

Mr. Deputy Speaker, Sir, if there is one thing that we do excellent in this House is that whenever we are passing any laws, I have often observed – and I am saying this without prejudice – that many times we take certain positions. It will be along party, regional and sometimes religious lines. But I am always amazed that if there is one thing that all the men take one position on, it is on the issue of women.

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. You heard my very good friend, hon. Millie. As she thanks herself and rightly so, she needs to acknowledge that she also engaged those ones who were presiding over the Committee of the whole House. But more fundamental, as the “new” Members came and became “come baby come,” then she became “run baby run.”

**Mr. Deputy Speaker:** Hon. Millie, conclude!

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I just want to conclude with what I was saying when he interrupted me. What amazed me is that the one thing that I have seen the male Members united on is when I bring something that protects our women folk. Yesterday, you almost ate me alive.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Ogindo:** Mr. Deputy Speaker, Sir, allow me to thank my colleagues for this dedication that they have shown at this hour. Allow me also to thank my Chairman, Committee on Defence and Foreign Relations, colleagues in the Committee and the entire membership of the Back Bench. Allow me also to thank the Cabinet. They have also worked tremendously hard. I think it is because the Cabinet is getting younger by the day. We also appreciate the wisdom of the grey-haired *Waziri*, Yusuf.

Mr. Deputy Speaker, Sir, I think you also deserve a pat on the back with your entire panel and, of course, the staff.

Thank you all.

**Mr. Kioni:** Mr. Deputy Speaker, Sir, I just want to go on record also. I will start by thanking my Chair who has been able to put us together and deal with those Bills that we have dealt with.

Mr. Deputy Speaker, Sir, I also want, specifically, to thank the Ministers who are here tonight. They are only ten out of 93. They have been with us for the last three days without fail. I also want to thank the Clerks, and those who have presided over this exercise, because without that guidance, perhaps, we would not have gotten where we are.

Mr. Deputy Speaker, finally, I want to thank the Back Bench because for those who were watching us, there was less of party thinking and more of the national good. If this is what we will carry on to the election, then this country will have a good future.

**The Minister for Higher Education, Science and Technology (Prof. Kamar):** Mr. Deputy Speaker, Sir, may I join my colleagues in thanking the Back Bench more than anything, for the engagement that they had with the Front Bench. I want to thank my colleagues, the Ministers, for a sterling job. I want to agree with hon. Millie that the Bills that we have

concluded are the ones that had the deadline of 27<sup>th</sup> August, 2012. However, we have a lot of Bills that are coming up which are aligning our various Ministries to the Constitution. In fact, in the education sector we have five Bills that are ready and they are coming very soon. I would like to encourage us that we continue in the same mood so that we do this country proud because we have a lot at stake.

The Universities Bill is ready. The Science Technology and Innovations Bill is ready. The Bill on the alignment of the education sector is ready. The Kenya National Examinations Bill is ready. This is a very urgent Bill because we want the exams to be done using the new laws to avoid these problems that we have had with the Kenya National Examinations Council (KNEC). I want to thank hon. Members. The commitment we have seen, if we work together, I think, we can achieve a lot.

**Mr. Deputy Speaker:** Finally, Mr. Njuguna and then we will have to adjourn the House. Hon. Members, you must realized that the staff of the Clerk's Department have been working their backs off the whole day. If it is a matter of giving yourselves a pat on the back, for God's sake you can do it outside there.

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, let me very heartily thank the entire House for real commitment demonstrated. I want to urge the very hardworking Acting Minister of State for Provincial Administration and Internal Security to immediately stop the shedding of blood in some parts of this country.

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, I appreciate that you have given me this opportunity. Actually we have really been sacrificing our time. I think sacrificing five more minutes would not do us more harm. I have three comments to make. One thing that impressed me in discussing these Bills was the kind of objectivity that this House exhibited in all the six Bills. In the past, I used to see this House divided along party and ethnic lines, but today, for the last three days, many a times we showed that we were arguing objectively.

Secondly, let me thank the Front Bench. There are some Members of the Front Bench who are really consistent in this House. I think we need not lump them with the rest. Hon. Kimunya has always been here. Hon. Githae and hon. Maj-Gen. Nkaisserry have also always been here. The others need to increase the tempo. The Attorney-General is fairly okay. Hon. Eugene Wamalwa needs to be coming to the House more frequently. We can excuse hon. Haji, but he is also making serious attempts. So, we expect hon. Kamar who is younger to be coming frequently. We need to thank this Tenth Parliament. For the first time we have made history in this country. For the first time, this country had money before 1<sup>st</sup> July, 2012.

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, we must do what the monkey did. One time the monkey descended a tree at an alarming speed. When it got down there was nobody to clap for it. So, since there is nobody to clap for us, we must thank ourselves and praise ourselves. It is not all days that the Government is bad. I think today the Government has tried. The Leader of Government Business has been here throughout and so was the Attorney-General and most of you. Even the Acting Minister of State for Provincial Administration and Internal Security has been here. Make a plea to the Government about the killings that are taking place. Please, be ruthless even with Members of Parliament and anybody else. I was told of a story of a mother who was killed whilst holding her baby in the clashes in the Coast Province. Both of them were killed and they were buried. So, we need to have an undertaking from you and the Government that you are going to ensure that anybody who is behind the incitement faces the full force of the law.

**Mr. Ruteere:** Thank you, Mr. Deputy Speaker, Sir. While I appreciate the Ministers who are present here, I know soon we shall be having drought in this country and the people who are supposed to address climate change issues, namely, the Minister for Forestry and Wildlife, the Minister for Water and Irrigation and the Minister for Environment and Mineral Resources have not been here and they do not know the kind of laws that we have passed. We are also asking for the fast-tracking of the Wildlife Bill which has been lying at the Cabinet. This is a very important Bill. However, I want to thank the Ministers who are here because they have worked tirelessly, for example, hon. Kimunya, hon. Githae, hon. Haji and we Backbenchers, even those who had not had enough chances to speak even though we have been seated here.

**Mr. Gaichuhie:** Thank you, Mr. Deputy Speaker, Sir. I also want to join my colleagues in thanking everybody because of the hard work. We have resisted a lot of resistance. We have wanted to contribute, but due to time, we were not able. If we told the Deputy Leader of Government Business, hon. Kimunya, to come here on a Sunday, he would not come. So, I want to thank my Muslim brothers, who forewent their Friday, which is their prayer day and sat here the whole day. If you ask hon. Kimunya to come here on a Sunday, he will never agree. So, I want to tell hon. Kimunya that Friday is a day that we also respect. It is a day for our Muslim brothers and he should not bring us here again on a Friday.

**The Minister for Higher Education, Science and Technology** (Prof. Kamar): On a point of information, Mr. Deputy Speaker, Sir. I just wanted to give some information to the Members. I want to inform our colleagues from the Back Bench that when Ministers are here, they are very busy. At 7.00 o'clock today, I was in Bondo for a university function and here I am at 7.00 p.m. I am saying this not just for me, but for the other Ministers also. Sometimes we are not understood. So, it is not so much a point of order, but a point of information that we are always very responsible and we are in places.

*(Question put and agreed to)*

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

## **ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, it is now time to adjourn the proceedings of the House. The House stands adjourned until Tuesday, 28<sup>th</sup> August, 2012, at 2.30 p.m.

The House rose at 9.30 p.m.