

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 7th February, 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: I direct that the Quorum Bell be rung.

(The Quorum Bell was rung)

I appreciate that now we have the requisite quorum. We can commence.

PETITIONS

Hon. Speaker: Let us have the Vice-Chair of the Departmental Committee on Finance, Planning and Trade.

We can move to the next Order. He can table his Report tomorrow.

PAPERS LAID

Hon. Speaker: Let us have the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House, today, Tuesday, 7th February 2017:

The Special Audit of the Auditor-General on the Lake Basin Mall Complex in Kisumu under the Lake Basin Development Authority, January 2017.

The Report of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2015 and the Certificates therein:

- (i) Egerton University Investment Company
- (ii) Eldoret National Polytechnic.

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

- (i) Karatina University
- (ii) Pwani University

Hon. Speaker: I will allot the Vice-Chair of the Departmental Committee on Finance, Planning and Trade to table a Report on a Petition regarding implementation of the 2009 Akiwumi Tribunal Report.

Hon. Gaichuhie: Thank you, Hon. Speaker. First, I apologise. We were in the Budget and Appropriations Committee meeting and that is why I am late.

On that note, I beg to lay the following Paper on the Table of the House, today, Tuesday, 7th February 2017:

The Report of the Departmental Committee on Finance, Planning and Trade on its consideration of the Petition on implementation of the 2009 Akiwumi Tribunal Report on minimum living pension for former Members of Parliament who served between 1984 and 2002, by Hon. (Eng.) Nicholas Gumbo.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, if you have listened to the Vice-Chair of the Departmental Committee on Finance, Planning and Trade, the Report he is tabling relates to implementation of the 2009 Akiwumi Tribunal Report on minimum living pension for former Members of Parliament who served between 1984 and 2002. The Petition was presented to the House by Hon. Nicolas Gumbo. It looks like there is no interest from Members to make comments. Members can debate when the Report is listed for debate.

Next Order!

BILLS

THE DIVISION OF REVENUE BILL

(Hon. Musyimi on 2.2.2017)

(Resumption of Debate interrupted on 2.2.2017)

Hon. Speaker: Hon. Mutava Musyimi, you are replying to what Members were saying in the debate.

Hon. Musyimi: Thank you very much, Hon. Speaker. I beg to reply. In doing so, I want to thank my honourable colleagues for their very positive contribution to the Division of Revenue Bill. Some vital points were made, but I would like to mention two points. One is the issue of ring-fencing the polytechnics and the Kshs2 billion that has been set aside. We think that is crucial. We look forward to the new administration in the counties and their support in our polytechnics because most of our kids did not make it to Form One.

Secondly, the monies that we are proposing that they be given to the county governments are more than enough. We have witnessed poor management of funds over the last four years. I hope that rather than spend time complaining that the money is not enough, I wish more effort would be put in place to ensure that those funds are properly used to benefit our people.

I beg to reply.

(Question put and agreed to)

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

Hon. Speaker: Next Order!

COMMITTEE OF THE WHOLE HOUSE

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

IN THE COMMITTEE

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

THE PUBLIC SERVICE COMMISSION BILL

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Members! We are now doing the Committee of the whole House on the Public Service Commission Bill, (National Assembly Bill No. 36 of 2016).

(Hon. ole Kenta consulted loudly)

Order, Hon. ole Kenta!

Clause 3

The Temporary Deputy Chairman (Hon. Cheboi): I can see there is an amendment by Hon. Duale, the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 3 of the Bill be amended by inserting the words “and section 28 of the Kenya Defence Forces Act” immediately after the words “of the Constitution”.

The Justification is that Section 28(2) of Kenya Defence Forces (KDF) Act provides that in developing the criteria for recruitment, promotion and transfer of members of the Defence Forces, the Defence Council shall consult with the Public Service Commission (PSC). This amendment, therefore, seeks to emphasise the scope and the application of the Bill once enacted to provide that it shall also apply to the recruitment and related processes of KDF. Mainly, they left it in the Bill. I just had to bring that out that KDF is also covered as per the Act.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see there are a few Members who are interested. Let us hear Hon. Kamama. Do you want to speak to this one?

Hon. Abongotum: No. I do not want to speak to this.

The Temporary Deputy Chairman (Hon. Cheboi): I see Hon. Mulu.

Hon. Mulu: Hon. Temporary Deputy Chairman, I think this is just a matter of aligning the Bill to the Constitution.

I support.

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

(Clause 3 as amended agreed to)

(Clauses 4, 5 and 6 agreed to)

Clause 7

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kamama, you have an amendment to that?

Hon. Abongotum: Thank you, Hon. Temporary Deputy Chairman. I beg to move: THAT, clause 7 of the Bill be amended in sub-clause (2) by deleting the word “youth”.

This amendment is necessary since the number of years of experience required as qualification for appointment as a member of the commission might result in the youth not being able to meet the minimum requirements. So, it is meant to cater for our youth so that anybody between the ages of 18 to 35 is eligible to become a commissioner.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see Hon. Member for Marakwet West.

Hon. Kisang: Thank you, Hon. Temporary Deputy Chairman. I rise to support what the Chairman has indicated. Our Constitution is very clear. We should not discriminate against the youth, persons with disability or anybody. So, it is clear that we remove it so that it is open to all.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Maanzo, Member for Makueni.

Hon. Maanzo: Thank you, Hon. Temporary Deputy Chairman. I want to support Hon. Kamama. It is a requirement of the Constitution that we take care of all. Just like the recent case we had of the Independent Electoral and Boundaries Commission (IEBC), you can see the youth have fitted very well and they are doing a great job in the country. We, therefore, want to encourage our youth in the country to participate in matters that are bigger than what was practised in the earlier years.

Thank you, Hon. Temporary Deputy Chairman. I support.

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

(Clause 7 as amended agreed to)

(Clauses 8, 9, 10, 11, 12, 13 and 14 agreed to)

Clause 15

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 15 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (8)–

“(9) The Secretary appointed under subsection (2) shall be a State officer.”

This amendment is in line with the existing Public Service Act which provides that the secretary to the commission shall be a State officer. So, it is quite in order.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the Floor to Hon. Birdi.

Hon. (Ms.) Sunjeev: Thank you, Hon. Temporary Deputy Chairman. It is pretty straightforward that you need a secretary in this position who has experience and so, stating that the person should be a State officer suffices.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

Hon. Busienei: Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity. I stand to support the amendment by Hon. Kamama that the Secretary of the State should be a State officer because of being the custodian of documents.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

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

(Clause 15 as amended agreed to)

*(Clauses 16, 17, 18, 19, 20, 21, 22, 23, 24,
25 and 26 agreed to)*

Clause 27

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 27 of the Bill be amended in sub-clause (1) by inserting the words “the authorized officer of” immediately after the words “written request by”.

This amendment seeks to give an authorised officer, who is normally the Principal Secretary (PS) or a Chief Executive Officer (CEO) of a parastatal, who is an officer appointed by the commission, the power to request for the establishment of an office in the Public Service.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Makau, Member for Mavoko.

Hon. King’ola: Thank you, Hon. Temporary Deputy Chairman. I support the amendment by Hon. Kamama. This will make sure that the person in power or the appointed authority is the one making decisions.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Rasso.

Hon. Dido: Thank you very much, Hon. Temporary Deputy Chairman. This provides clarity because it is ambiguous in the original Bill. It only says “written request” but from whom? It substantively adds meaning to the Bill by saying it comes from an authorized officer,

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

(Clause 27 as amended agreed to)

(Clauses 28, 29 and 30 agreed to)

Clause 31

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 31 of the Bill be amended—

(c) in sub-clause (2) by deleting the words “in person”;

(d) by deleting sub-clause (6).

This amendment is for the purpose of correcting some grammatical error since the Commission is not a person. So, it is meant to address that.

Hon. A.B. Duale: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Let me propose the Question then I give the chance to you, Hon. Leader of the Majority Party.

(Question of the amendment proposed)

Before we proceed, let us hear what the leader has to say on this one. What is your point of order?

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, Clause 31 has two amendments. I thought the Chairman of the Departmental Committee on Administration and National Security would deal with both (a) and (b) so that we read them together, procedurally.

The Temporary Deputy Chairman (Hon. Cheboi): I actually thought you would have done both.

Hon. Abongotum: Hon. Temporary Deputy Chairman, on Clause 31(b), Article 234(5) of the Constitution gives the Commission the power to delegate any of its functions or powers. Therefore, it is not necessary to re-state it and it is meant to address that.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. But in the future ones, once a clause is called, you will deal with all the sub-clauses in there so that it makes it tidy. So, you will explain both sides as it has rightly been pointed out by the Leader of the Majority Party.

I will give two Members. Well, I see no major interest and so, I will put the Question.

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

(Clause 31 as amended agreed to)

(Clauses 32, 33, 34, 35, 36, 37, 38, 39, 40, 41)

and 42 agreed to)

Clause 43

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 43 of the Bill be amended in sub-clause (3)–

(a) by deleting the words “the transfer shall not be arbitrary” appearing immediately after the opening sentence; and,

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

(b)–

“(c) the transfer shall not be arbitrary”

Both (a) and (b) are meant to address the issue of numbering the paragraphs. So, that is the rationale.

Hon. Wakhungu: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Let me propose the Question and then I will give you a chance.

(Question of the amendment proposed)

What is it the Deputy Whip of the Minority Party?

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairman. Is Hon. Kamama in order to mislead the House by saying that the import of the amendment on Clause 43 is just an issue of numbering and yet, it clearly says: “by deleting the words “the transfer shall not be arbitrary”? I think the import should be based on this aspect of this arbitrary transfer. It is not just an issue of numbering. Maybe, he could clarify further so that he can inform Members. It is not just an issue of numbering.

I thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear Hon. Kamama. That seems to me a valid concern.

Hon. Abongotum: Hon. Temporary Deputy Chairman, I accept that apart from the issue of numbering, it is also meant to address the issue of arbitrariness.

The Temporary Deputy Chairman (Hon. Cheboi): We are on some consultation, Hon. Kamama. Really, there is the issue of numbering because there is one which is hanging; the first one. Is that what you are seeking to--- You have to be a bit clear.

Hon. Abongotum: Hon. Temporary Deputy Chairman, if you look at the Bill, it is meant to address issues of numbering. If you look at the proviso, it is already provided for in the Bill. Most of what we are doing here is numbering. The provision is actually in the Bill.

The Temporary Deputy Chairman (Hon. Cheboi): Are you renumbering or deleting?

Hon. Abongotum: We are addressing the issue of numbering, Hon. Temporary Deputy Chairman. The provision is already there.

The Temporary Deputy Chairman (Hon. Cheboi): I can see there is no interest, but the explanation is not very clear to me. I will leave it to the House to make their decision. I wanted to give Members opportunity but none has placed a request.

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

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

(Clause 43 as amended agreed to)

Clause 44

The Temporary Deputy Chairman (Hon. Cheboi): I see Hon. Kamama has an amendment to this clause.

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 44 of the Bill be deleted and substituted therefor the following new clause—

“44. The Commission shall prescribe the terms and conditions for employment of casual employees within the public service.”

This amendment seeks to ensure that the Commission shall have the powers to make regulations for the terms and conditions of employment of casual employees within the public service.

(Question of the amendment proposed)

I give the first opportunity to the Member for Mombasa, Hon. Mishi.

Hon. (Ms.) Khamisi: Thank you, Hon. Temporary Deputy Chairman. I want to support this amendment by the Chair because most of the times the casual employees are denied their salaries and are frustrated. Having the terms and conditions will help in catering for their welfare.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear Hon. Wamalwa. Do you want to speak to this?

Hon. Wakhungu: Hon. Temporary Deputy Chairman, casual employees in many cases are subjected to very difficult conditions. By bringing this aspect of the Commission prescribing the terms and conditions, at least it is going to be very clear. We have seen Government policies saying if you have been a casual employee for a particular timeframe, you are supposed to be absorbed on a permanent basis, but a lot has not been followed. With this being put in place for purposes of clarity, I think it is going to be followed. I support.

Thank you.

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

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

(Clause 44 as amended agreed to)

(Clauses 45 and 46 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Order Members! Order Hon. Ntutu and the Chair of the Committee! You cannot be prosecuting an amendment and you cannot even take a decision. I want Members to concentrate. I understand that this is the tail end of the House and the concentration of Members is elsewhere, but we still have our job to do. Let us proceed in that manner. Let us be careful as we make decisions.

Clause 47

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, before we transact that clause, I want to guide the House that we will consider sub-clauses (2), (3) and (4) first. Even in sub-clause (2), we will go to parts because there is an amendment by Hon. Kamama and another proposal by the Leader of the Majority Party. Let us start with Hon. Kamama's. We will start with sub-clause (2)(iii) and (iv). I hope, Members, that is clear.

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 47 of the Bill be amended in sub-clause (2)–

(i) by deleting paragraph (iii);

(ii) in paragraph (iv) by deleting the word “fifteen” and substituting therefor the word “ten”;

This amendment seeks to eliminate the requirement--

The Temporary Deputy Chairman (Hon. Cheboi): We are dealing with sub-clause (2) (iii) and (iv). For the time being, that is what we are handling, Hon. Kamama, so that we can move in an orderly manner. If you look at the Order Paper, it will be very clear to you. It is sub-clause (2) (iii) and (iv).

Hon. Abongotum: Hon. Temporary Deputy Chairman, this amendment seeks to eliminate the requirement of a master's degree from the qualifications for appointment as a Principal Secretary. Part two of the amendment seeks to reduce the number of years required as professional experience for appointment as a Principal Secretary. The amendment reduces the years from 15 to 10. This was agreed after a lengthy debate between the Committee and the Commission. Instead of 15 years, even 10 years' experience can also work.

Part (b) of the amendment seeks to include the constitutional principal of affirmative action in the nomination of persons as Principal Secretaries.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kamama, you have handled what we wanted to deal with for the time being. We wanted you to deal with sub-clause (2) (iii) and (iv) so that we can have Hon. Duale then we proceed to the next.

(Question of the amendment proposed)

I will give opportunity to two Members, starting with Hon. Lentoimaga then Hon. Tim Wanyonyi.

Hon. Lentoimaga: Thank you, Hon. Temporary Deputy Chairman. I support this amendment, especially on the issue of reducing the number of years of experience for those Kenyans who want to become PSs. In most cases, youth have been locked out from employment on the basis of years of experience. When they say 15 years, it locks out so many youth. The amendment goes a long way in giving the youth an opportunity to serve as senior civil servants.

The Temporary Deputy Chairman (Hon. Cheboi): Can we now have Hon. Wanyonyi?

Hon. Wetangula: Hon. Temporary Chairman, I support this amendment. However, I wanted to speak to sub clause (3).

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us have Hon. Rasso.

Hon. Dido: Thank you, Hon. Temporary Deputy Chairman. I want to support this amendment grudgingly. When we introduce amendments to laws, we need to have clarity in terms of why, for instance, we want to expunge certain parts of this law. Sub clause (2) talks about a person holding a degree from a university recognised in Kenya. We could have merged Sub clause (3) and Sub clause (2) to say “holds a degree or a higher academic qualification.” This would mean that such a person is really competitive.

The paragraph on the proposed amendment on 15 years says that one should have been in leadership position or at top management level in the public service. I want to know, because we all live in Kenya, how many people will be top civil servants by the time they will have served for 10 years? If we proceed this way, we are likely to pass a contradictory law that may not help this country.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I can see Members saying that they want to oppose. Let me give the last opportunity to Hon. Makali Mulu and then Members will make their decision. The amendment is about reducing the period of experience and the academic qualifications from a Master’s degree to an undergraduate degree.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. While I support the proposed experience of 10 years, I oppose the amendment regarding academic requirements. It is unfortunate that we want to reduce the academic requirement for appointment as Principal Secretary (PS) to Bachelor’s Degree. In the Civil Service, there are certain careers where you cannot progress to the next job group if you do not have a Master’s degree. You can imagine of a situation the PS is in charge of people who have higher academic qualifications than him. This country is not short of Master’s degree holders. Currently, almost everybody has a Bachelor’s degree. We are talking about filling up technical positions in the public service. Why should we want technical positions to be taken up by people with Bachelor’s degree qualifications? Why should such people be senior to people with Master’s degrees? Of course, the issue of inferiority complex will arise. If one finds himself in such a situation, one is likely to feel insecure. Such situation will not help the Civil Service.

With those remarks, I oppose the particular amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, you should now make your decisions.

*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)*

Hon. Members, let us proceed to Paragraphs (v), (vi) and (vii) of Sub clause (2), which are being handled by the Leader of the Majority Party. Please, deal with the three paragraphs.

Hon. A.B. Duale: I will deal with the first section, which is Sub clause (2)?

The Temporary Deputy Chairman (Hon. Cheboi): No, it is Sub clause (2)(v), (vi) and (vii).

Hon. A.B. Duale: What about paragraphs (i) and (ii)?

The Temporary Deputy Chairman (Hon. Cheboi): Deal with the amendments you have proposed to Sub clause (2) only.

Hon. A.B. Duale: I do not go to (b) and (c)?

The Temporary Deputy Chairman (Hon. Cheboi): No, no.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I thank you for your good guidance.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 47 of the Bill be amended—

(a) in sub-clause (2)—

- (i) by inserting the word “general” immediately after the word “possesses” appearing in paragraph (v);
- (ii) by deleting paragraph (vi);
- (iii) by deleting the word “thorough” appearing in paragraph (vii) and substituting therefor the word “an”;

In paragraph (i) of part (a), the amendment seeks to provide for eligibility criterion for appointment of PS, specifically the requirement for one to have general knowledge of the organization and functioning of government. A candidate for the position of PS will be required to have general knowledge of the functioning of government. I am saying so because somebody from the private sector, or the world of academia, may apply for position of PS. There should not be requirement for one to have deep knowledge in order for one to qualify for appointment to that position. If one has general knowledge of the functioning of government, that alone will help. That is the justification for that particular amendment.

In paragraph (ii) of part (a) of the amendment, I am deleting paragraph (vi) of Clause 47 of the Bill, which requires a candidate for the position of PS to have thorough knowledge of the structural and legislative regulatory framework of the public service. This is because candidates with private sector background might be disadvantaged in terms of that requirement as they may not have been in a position to be familiar with the structural and regulatory framework of the public service. We do not want to limit recruitment of PSs to only people with public service background. There are Kenyans who are working in the NGO and the academia world as well as in the private sector. That condition is limiting appointment of PSs from people with public service background. It makes it look like if you have no knowledge of the structural and regulatory framework of the public service, you are knocked out from the race. I am, therefore, deleting that particular requirement. I am sure that the Chairman will agree with me. We want as many Kenyans as possible to apply for the job, as long they have the basic qualifications.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Speaker (Hon. Cheboi): I can see that a few Members want to speak to this amendment. Let us hear Hon. Wanjiku Muhia, the Member for Nyandarua.

Hon. (Ms.) Muhia: Thank you, Hon. Temporary Deputy Chairman. I am a Member of the Departmental Committee on Administration and National Security. I support Hon. Duale.

First and foremost, we need to open up the vacancies available to everyone from the public sector and the private sector. Secondly, the word “thorough” is not appropriate because we cannot measure the level of thoroughness of somebody. Let us use the word “general” so that

anybody with basic qualifications can apply. We know very good persons who can take good ideas from the private sector to the public sector.

With those remarks, I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear Hon. Gaichuhie.

Hon. Gaichuhie: Thank you, Hon. Temporary Deputy Chairman. I would like to differ with the Leader of the Majority Party. If one wants to apply for the job of PS, one should be versed with the requirements of the job because it is not a small job. One should not just have general knowledge. There is no provision in the Bill requiring one to have been a civil servant. The Bill only says that one needs to have thorough knowledge because a PS is not a junior official in the Ministry. If you want to apply for a job, why should you not have thorough knowledge of what you want to do?

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

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

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

I am sorry, Departmental Committee Chair; I assumed that since you are seated next to the Member for Nyandarua – who is a Member of your Committee – you had consulted before she spoke. I took it that the Committee had spoken.

Let us now go to the amendment to Sub clause (3). We will start with Hon. Duale's amendment and then proceed to Hon. Kamama's.

Hon. A.B. Duale: **Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 47 of the Bill be amended–

(b) in Sub clause (3) by deleting the words “three nominees for every position” and substituting therefor the words “a list of nominees”; and,

The Justification is that the amendment further seeks to eliminate the actual number of nominees for appointment to be submitted to the President. This is because in certain instances the Commission may have more than three nominees who may be eligible for appointment and further the Commission may present the actual number of nominees. What I am trying to say is that when you limit the number of nominees at three, the essence of corruption comes in. The commissioners can sit and agree on one, two, three persons, but if you give the appointing authority a list of nominees, then he can use a better rationale in looking at factors such as regional balance and gender. What happens if the fourth or fifth person had the same marks as the third person? Just because you have been told to submit three names you have to submit the three names. So, I am opening the list. In Sub Clause 4, I am deleting the words “for the rejected position or positions”.

The amendment seeks to eliminate the repetition as currently stated in the Bill. It is, therefore, for purposes of clarity. The second one is to make clarifications to ensure that the Commission submits, to the President, a list of nominees already interviewed by the Commission. However, the first one is fundamental.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chanzu.

Hon. Chanzu: Hon. Temporary Deputy Chairman, I wanted to support the earlier amendment. Experience has shown us a lot. There are a number of commissions that the Government put in place. There was a time when people came from the private sector and Government improved except one time when we had the Dream Team. The country was undergoing tough times and they gave conditions which the Government could not bear with. However, because of the bureaucracy that is in Government--- The private sector exposes workers to various aspects of work and this cannot happen in Government because it has so many people. So, we need to have diverse ways of dealing with this. If you look at, for example, this gentleman who was having this Vision 2030--- The young fellow who graduated in Electrical Engineering from--- This Mugo Kibati--- You see that is---

The Temporary Deputy Chairman (Hon. Cheboi): You are taking too long, Hon. Chanzu.

Hon. Chanzu: Yes, but I am making my point. Thank you, Hon. Temporary Deputy Chairman, 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)*

The Temporary Deputy Chairman (Hon. Cheboi): Let us listen to Hon. Kamama.

Hon. Abongotum: Hon. Temporary Deputy Speaker, I beg to move:

THAT, clause 47 of the Bill be amended—

(b) in Sub-clause (3) by inserting the words “paying attention to inclusiveness in terms of gender, Kenya’s diverse communities, persons with disabilities and the youth” immediately after the words, “for every position for appointment”.

This amendment is to include the constitutional principle for affirmative action in the nomination of persons as Principal Secretaries. You all know that we have disparities in this country. We have those who come from the most developed areas and those who come from marginal areas. It is meant to address those regional imbalances.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Muhia and Hon. Mishi Juma.

Hon. (Ms.) Muhia: Thank you, Hon. Temporary Deputy Chairman. I am an affirmative action seat holder having been given that opportunity by the Constitution. I am a beneficiary. So, it is good to acknowledge that affirmative action group should be catered for in any employment opportunity in this country.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us hear another beneficiary. Hon. Mishi.

Hon. (Ms.) Khamisi: Thank you, Hon. Temporary Deputy Chairman. I support this amendment. It is in line with the Constitution according to the Bill of Rights in terms of gender parity, people living with disabilities and the youth. This is also a way of minimizing tribalism in terms of Government appointments. It will ensure fair distribution of Government positions, especially when it comes to decision-making. It will also ensure that we are one country and people.

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

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Duale, Sub-clause 4.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move:

THAT, Clause 47 of the Bill be amended—

(c) in sub-clause (4) by deleting the words, “for the rejected position or positions.”

This is basically for clarity. The amendment is to ensure that the Commission submits to the President a list of nominees already interviewed. So, if the appointing authority rejects the nominees, they go back to the list of those who were interviewed and not outside the list of interviewees.

(Question of the amendment proposed)

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

((Clause 47 as amended agreed to)

*(Clauses 48, 49, 50, 51, 52, 53, 54, 55, 56,
57, 58, 59, 60, 61 and 62 agreed to)*

Clause 63

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kamama, you will be dealing with two new sub-clauses, that is, the insertion of sub-clauses (3) and (4).

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 63 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (2)—

“(3) The Commission shall communicate to an authorized officer or public body on instances of non-compliance with values and principles stipulated in Articles 10 and 232 of the Constitution, and require such compliance within a specified period.

(4) Any authorized officer or public body who refuses, fails or neglects to comply with the national values and principles shall be liable to

disciplinary action in accordance with the applicable laws including removal from office.”

The two amendments are to ensure that implementation and enforcement of national values and principles of governance as enshrined in the Constitution are adhered to.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see Hon. Wanyonyi.

Hon. Wetangula: Hon. Temporary Deputy Chairman, I had wanted to speak to the earlier amendment by Hon. Kamama, which has already passed.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. That is water under the bridge.

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

(Clause 63 as amended agreed to)

Clause 64

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 64 of the Bill be amended—

(a) by inserting the following new sub-clause as sub-clause (1)—

“(1) The power to exercise disciplinary control within the public service shall vest in the Commission”;

(b) by renumbering the subsequent sub-clauses accordingly.

This clause is ---

(Hon. Members consulted loudly)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Members! Order, Hon. Millie Odhiambo and the Member for Ravine! You are interfering with Temporary Deputy Chairman’s concentration. Let us proceed, Hon. Kamama.

Hon. Abongotum: That is hilarious! This amendment is in line with the provisions of Article 234(2)(b) of the Constitution, which provides that:

“The Commission shall—

(b) exercise disciplinary control over and remove persons holding or acting in those offices.”

So, it is meant to give powers to the Commission in line with these provisions.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give Hon. Muhia

Hon. (Ms.) Muhia: Thank you, Hon. Temporary Deputy Chairman. These amendments belong to our Committee. It is good that you have given me a chance to speak on them. On matters of discipline in every sector, the buck has to stop somewhere. In most times, the people

in the public service do not get an opportunity because of lack of clarity on who should handle the issue of discipline. So, this is giving powers to the Commission and making it clear who is responsible on matters of discipline.

Thank you, I support.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, Hon. Members. I will give Hon. Mishi Juma an opportunity again. These two ladies are very active this afternoon. Are you also a Member of the Committee or by association?

Hon. (Ms.) Khamisi: No! I am not a Member. This is a good amendment because we need to have somebody liable for everything and for accountability purposes. I support it.

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

(Clause 64 as amended agreed to)

(Clauses 65 and 66 agreed to)

Clause 67

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kamama.

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 67 of the Bill be amended in sub-clause (1)–

(a) by deleting the word “inflicted” and substituting therefor the word “imposed”; and

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

(e)–

“(f) reduction in rank or seniority.”

Just before this, we had something on Clause 64(b) which entailed the renumbering of subsequent sub-clauses. I am happy it has gone through, because it was meant for correction purposes.

Clause 67 (a) seeks to correct a grammatical error and (b) seeks to include the words “reduction in rank or seniority” as one of the sanctions that may be imposed on a public officer. This is because Clause 64 of the Bill provides for the reduction in rank or seniority as a possible sanction. It is one of the disciplinary measures which can be taken by the Commission. So, this is the rationale.

(Question of the amendment proposed)

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

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

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

(Clause 67 as amended agreed to)

(Clauses 68, 69, 70, 71, 72, 73 and 74 agreed to)

Clause 75

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 75 of the Bill be amended by deleting the words “Guidelines issued by the Commission” and substituting therefor the words “Regulations made by the Commission”.

This amendment is for purposes of using the commonly used term while referring to delegated legislation which is “Regulations.” It is meant to address this.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): The only person interested in this is the Member for Nyandarua.

Hon. (Ms.) Muhia: Thank you, Hon. Temporary Deputy Chairman. I stand to support. It is good to have clarity of terms which are commonly used in legislation.

*(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 75 as amended agreed to)

(Clauses 76, 77, 78, 79, 80 and 81 agreed to)

Clause 82

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 82 of the Bill be amended in paragraph (b) by deleting the words “prescribed in a special retirement scheme” and substituting therefor the words “of the contract”.

This clause is necessary for purposes of clarity.

(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 82 as amended agreed to)

(Clauses 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102 and 103 agreed to)

New Clause 57A

The Temporary Deputy Chairman (Hon. Cheboi): I call the Mover to move Second Reading of Clause 57 A.

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 57—

Organization of the public service. 57A.(1) In this Act, “organization of the public service” means the organizational structures and establishments of departments or divisions, directorates, units, sections and other organizational or governance arrangements in the public service.

(2) The Commission shall investigate, monitor and evaluate the organization of the public service with respect to any public body and make recommendations to the public body, the President and Parliament.

(3) The recommendations of the Commission under subsection (2) may include —

- (a) establishment of any public body including a state department;
- (b) amalgamation of any public bodies including a state department;
- (c) addition to or subtraction from a department or division, directorate, unit, section or other organizational arrangement;
- (d) naming or renaming of any public body, department or division, directorate, unit, section or other organizational arrangement; or,
- (e) abolition of any public body, department or division, directorate, unit, section or other organizational arrangement

(4) Where the Commission is vested with the constitutional function to abolish the public offices that would be subject to a recommendation under subsection (3), instead of making the recommendation, the Commission shall take the necessary action.

(5) Where the Commission’s recommendations under subsection (3) (a) are addressed to the President, such recommendations may be construed to be recommendations for establishment of an office in the public service within the meaning of Article 132 (4) (a) of the Constitution.

This seeks to introduce a New Clause 57 A in the Bill to provide for the organization of the Public Service to give full effect to the provisions of Article 234(2)(d) of the Constitution, which gives the Commission the powers to:

“(d) investigate, monitor and evaluate the organization, administration and personnel practices of the public service.”

The Bill currently lacks provisions on the organization of the public service. It is meant to address that.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to the Hon. Member for Kathiani.

Hon. Mbui: Thank you, Hon. Temporary Deputy Chairman. This is a very good new clause. Any organization requires an organizational structure and this will go a long way in ensuring that the organization of the public service is properly done.

I support the new clause.

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

(The new clause was read a Second time)

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

The Temporary Deputy Chairman (Hon. Cheboi): Before we move to the next item, I want to recognize the presence of students from Bukunye Primary School from Bomet East Constituency in Bomet County, who are present in the Public Gallery. That is a constituency that is ably represented in this House by Hon. Bernard Bett. They should feel welcome.

New Part

The Temporary Deputy Chairman (Hon. Cheboi): The new Part V is supposed to be moved by Hon. Kamama. Let us have Hon. Kamama move it.

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following sub-title to the part appearing immediately after Clause 30—

“PART V- DELEGATION”

Part V is on delegation. This amendment is for purposes of creating a new part for Clause 3 which deals with delegation of powers by the Public Service Commission. It is meant to address the issue of delegation in the public service.

(Question of the new part proposed)

(New part read the First Time)

*(Question, that the new part be read a Second time,
proposed)*

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

(The new part was read a Second Time)

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

(First Schedule agreed to)

(Second Schedule agreed to)

(Third Schedule agreed to)

(Fourth Schedule agreed to)

Clause 2

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended—

(a) by deleting the definition of the term “affirmative action” and substituting therefor the following new definition—

“affirmative action” means any measure designed to overcome or ameliorate an inequity or the systemic denial of opportunities;

(b) by deleting the definition of the term “authorized officer” and substituting therefor the following new definition—

“authorized officer” in relation to the Commission, means any officer, body or authority appointed by the Commission to perform its delegated functions in a Ministry or State department, or any member of the Commission;

(c) by deleting the definition of the term “casual service”;

(d) by deleting the definition of the term “publicize” and substituting therefor the following new definition—

“publicize”, in relation to a document, means to make known to the public, through the national, local media and other lawful means;

(e) by deleting the definition of the term “reprimand” and substituting therefor the following new definition—

“reprimand” means a form of disciplinary action imposed after formal charges that declares an officer’s conduct improper;

(f) by deleting the definition of the term “transfer of service” and substituting therefor the following new definition—

“transfer of service” means the movement of appointment of a pensionable employee from one public service organization to another, which has reciprocal pension arrangements and has been declared a “Public Service” for purposes of preserving the employee’s previous pensionable services; and,

(g) by inserting the following new definition in proper alphabetical sequence—

“casual employee” has the meaning assigned to it in the Employment Act.

The amendment to Clause 2 (a) seeks to conform to the definition of the Constitution.

In Clause 2(b), the amendment seeks to give better clarity as well as to align it with Article 234(5) of the Constitution which gives the Commission the power to delegate its functions and powers.

In Clause 2(c), the definition of the term “casual service” is deleted so as to have the definition of the term “casual employee” as provided for in the Employment Act. This is in line with the Employment Act.

The amendment to Clause 2(d) is meant for the purposes of better clarity of the definition of the term “publicize”.

The amendment in Clause 2(e) on reprimand is for purposes of better clarity of the term “reprimand”.

In Clause 2(f) on the definition of the term “transfer of service”, this amendment is for purposes of better clarity of the definition of the same term.

In Clause 2(g), the term “casual employee” is more generally recognised and is provided for in the Employment Act. Therefore, the amendment is necessary for purposes of aligning the Bill with the provisions of the Employment Act. This is meant to realign it with the provisions of the Employment Act.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to Hon. Ogalo, Member for Rangwe.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Chairman. I support the amendment. This clarifies those definitions and most importantly introduces the definition of the term “casual employee” which is necessary in this realm.

The Temporary Deputy Chairman (Hon. Cheboi): Lastly on this one, we will have the Hon. Member for Nyandarua.

Hon. (Ms.) Muhia: Thank you, Hon. Temporary Deputy Chairman. Clarity is important in law. All these definitions are trying to align the Employment Act with the Constitution. I support the amendment.

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

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

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Mover to move reporting.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Public Service Commission Bill (National Assembly Bill No.36 of 2016) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

We will now proceed to the next Bill.

*[The Temporary Deputy Chairman
(Hon. Cheboi) left the Chair]*

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Shebesh) took the Chair]*

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we are in the Committee of the whole House on the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, National Assembly Bill No.64 of 2015.

(Clause 3 agreed to)

Clause 4

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): There is an amendment by the Hon. Vice-Chair of the Departmental Committee on Finance, Planning and Trade. Yes, Hon. Gaichuhie.

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 4 of the Bill be amended—

(a) in the proposed section 24B—

(i) in subsection (1), by—

- (a) deleting the words “on conviction to a fine” in the proposed paragraphs (a) and (b) and substituting therefor the words “to a monetary penalty”;
- (b) deleting the words “on conviction to an additional fine” in the proposed paragraph (c) and substituting therefor the words “to an additional monetary penalty”;
- (ii) in subsection (2), by—
 - (a) deleting the word “fine” appearing immediately after the words “before imposing a” and substituting therefor the words “monetary penalty”;
 - (b) deleting the words “seven days” and replacing therefor with the words “fourteen days”;
 - (c) deleting the word “fines” appearing immediately after the word “prescribed” and substituting therefor the words “monetary penalty”;
- (iii) in subsection (3), by—
 - (a) deleting the word “fine” appearing immediately before the words “is prescribed under” and substituting therefor the words “monetary penalty”;
 - (b) deleting the word “fine” appearing immediately after the expression “section, such” and substituting therefor the word “penalty”;
 - (c) deleting the word “ten” in paragraph (b);
 - (d) deleting the word “fine” appearing in paragraph (c) and substituting therefor the words “monetary penalty”;
- (iv) by deleting subsection (4) and substituting therefor the following new subsection (4)—

“(4) A monetary penalty imposed on a person under this section shall be a debt due to the Centre and shall, after it becomes due, be recoverable at any time through proceedings in a court of competent jurisdiction”;
- (b) in the proposed section 24C, by—
 - (i) renumbering the existing provision as subsection (1);
 - (ii) inserting the word “or” immediately after the word “institution” appearing in paragraph (a);
 - (iii) inserting the words “instruction or” immediately before the word “direction” appearing in paragraph (b);
 - (iv) inserting the words “or individuals” immediately after the word “individual” appearing in paragraph (c);
 - (v) deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) issue an order to a competent supervisory authority requesting the suspension or revocation of a license, registration, permit or authorization of a specified reporting institution whether entirely or in a specified capacity or of

- any director, principal, officer, agent or employee of the reporting institution”;
- (vi) inserting the following new subsection immediately after the renumbered subsection (1)—

“(2) Before taking administrative action imposed against any person or reporting institution under this section, the Centre shall give the person or reporting institution a written notice of not less than fourteen days requiring the person or institution to show cause as to why the prescribed administrative action should not be taken”.

This amendment actually originated from the Financial Reporting Centre (FRC). It is an introduction of monetary penalties instead of fines. When you do this, you enhance the powers of the FRC and it is in line with the international standards of combating money laundering and financing of terrorism and proliferation as set out in the Financial Action Task Force.

(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 4 as amended agreed to)

Clause 5

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have an amendment from the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 5 of the Bill be amended by inserting new paragraphs immediately after paragraph (b) as follows-

- (c) inserting the words “public administration, management, international relations” immediately after the word “law” appearing in paragraph (a) of subsection (4);
- (d) deleting the words “seven years work experience in the relevant field” appearing in paragraph (b) of subsection (4) and substituting therefor the words “ten years work experience in the relevant field, of which at least three, shall be in senior management”.

The justification of this amendment is that it expands the list of disciplines from which the director-general or the deputy director-general may be recruited. Previously, only persons who held a degree in law, economics or finance from recognised institutions qualified for that appointment. So, we are just making sure that we give a chance to many Kenyans to apply for that job.

(Question of the amendment proposed)

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

(Clause 5 as amended agreed to)

(Clauses 6 and 7 agreed to)

Clause 8

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have an amendment from the Vice-Chair.

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 8 be amended in paragraph (a) by deleting paragraph (c) of the proposed new subsection (2) and substituting therefor the following paragraph—

“(c) taking all decisions of the Centre in the exercise, discharge and performance of the Centre’s objectives, powers, functions and duties”.

The justification of this amendment is that it clarifies that the director-general is responsible for all decisions made by the Centre. This is in line with the best Financial Action Task Force requirements and international best practices which require that the powers of the Centre must be vested with operational independence.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Chairlady. This is a good amendment because you realise that, in so far as the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill is concerned, both the regulator, which in this case is the Central Bank of Kenya (CBK) and financial institutions, are actually affected by this law. Therefore, without operational independence, it becomes difficult for the director-general to rein in malpractices that, for instance, may emanate from the regulator. This is a good amendment.

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 8 as amended agreed to)

(Clauses 9 and 10 agreed to)

Clause 11

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Vice-Chair.

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 11 of the Bill be amended in the proposed Section 31 by inserting the words “specific act or” immediately before the word “function” appearing in sub-section (3).

The amendment seeks to exclude the Centre from the ambit of the State Corporations Act as it has the potential to interfere with the operational independence of the Centre, which is a key requirement and the best practice for financial intelligence units. You know that when the Centre is in the State Corporations Act, it means that it will be guided by it. We want FRC to be very independent. That is the import of this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Gumbo.

Hon. (Eng.) Gumbo: The proposed amendment is good, but the problem that has been there with FRC is that, up to now, and the Chair will agree with me, it is more or less a department within the CBK. Whereas it is good to give it operational independence, I would have been happier with an amendment that proposes outright autonomy. Right now, if you look at the constitution of the FRC at it is, all its officers are seconded from CBK. If you look at the FRC, it actually ought to even supervise the reporting, especially on accounts of Government, which are domiciled within the CBK; where the CBK acts as the source institution. We have had cases where monies go to other banks and those monies originate from accounts held in the CBK. Therefore, the levels of responsibility, culpability and even to some extent malpractice, ought to cover both the origin and the destination. Therefore, I would have been happier if the amendment was stronger than it is now to provide autonomy as opposed to operational independence. But, as far as it is, it is a good start.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Leader of the Majority Party.

Hon. A.B. Duale: That institution cannot be autonomous. In fact, as we continue, we will find that the Board will comprise of many stakeholders like the Kenya Bankers Association and CBK. It involves many other stakeholders in the management of finances in our country. But, I agree with Hon. Gumbo. For now, this is a very good start. We support.

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

(Clause 11 as amended agreed to)

(Clauses 12, 13, 14, 15 and 16 agreed to)

Clause 17

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting clause 17 and substituting the following new clause—

Amendment of 17. Section 49 of the principal Act is amended—
section 49 of Cap 59B.

- (a) in subsection (1) by—
- (i) deleting the word “Director” wherever it appears and substituting therefor the word “Director-General.”
 - (ii) inserting the following new paragraphs immediately after paragraph (h)—
 - (ha) the Director General of the National Intelligent Service;
 - (hb) the Director, Asset Recovery Agency;.”
- (b) by deleting subsection (2) and substituting therefor the following new subsection—
- “(2) the members under paragraphs (b) to (i) may attend in person or through a designated representative.”

If you look at Section (a)(i) and (ii), it is basically dealing with the words “Director” and “Director-General.” Section (a)(ii) is basically a minor amendment. Immediately we increase the Board, we must have the Director-General of National Intelligence Service and the Director of Asset Recovery Agency to sit in that Board.

The second amendment is very important. They need the services of our intelligence. The Assets Recovery Director needs that institution. It is from this institution that you can recover assets. The amendment gives an alternative to members. The last one is that when the Director-General is absent, then his representative can attend.

(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)

(Clause 18 agreed to)

New Clause 19

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting a new clause 19 immediately after clause 18 as follows-

19. Section 53 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection-

(1) There is established a body to be known as Assets Recovery Agency, which shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name, be capable of-

- (a) suing and being sued;
- (b) holding and alienating movable and immovable property;
- (c) borrowing and lending money;
- (d) doing and performing all such other acts or things as may be lawfully done by a body corporate.

The justification for this amendment is that the Proceeds of Crime and Anti-Money Laundering Act, 2009 establishes the Asset Recovery Agency as a semi-autonomous body under the office of the Attorney-General. The establishment of this Agency as body corporate means that the Agency will be more independent and self-governing. I am happy the Chairman of Public Accounts Committee (PAC) is sitting here. The Asset Recovery Agency is a very important institution. It cannot just be a small department under the office of the Attorney-General. We want to create the Financial Reporting Centre as an independent institution by having a body called Asset Recovery Agency in the war against corruption.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Gaichuhie: This is a very important amendment because when the Agency gets independence, instead of working under the Attorney-General, it will be more effective. I support the Leader of the Majority Party.

Hon. (Eng.) Gumbo: Again, this is a very good amendment to make it a body corporate with perpetual succession and a common seal. It is very important to do that. One of the biggest problems that we have had in the fight against corruption is recovery of assets. In fact, some of the people who are involved in corruption have networks that make it virtually impossible to recover assets. As PAC, we have had people appearing before us where assets have been identified but they make it impossible for the Agency, using the *lacuna* in law, for it to recover. So, we are not just looking at operational independence, but also looking at capacitating it so that it can enforce the process of asset recovery. This is a good step.
I support.

Hon. B.K. Bett: Hon. Temporary Deputy Chairlady, I support the amendment because it will improve the capacity of that institution for the purpose of asset recovery.

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

(The new clause was read a Second Time)

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

New Clause 20

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting a new clause 20 immediately after clause 18 as follows-

THAT, the principal Act is amended by inserting a new section immediately after section 53 as follows-

Staff of the
Agency 53A (1) Despite the provisions of section 53, the agency may, for the proper discharge of its functions, appoint professional and technical staff and other staff, upon such terms and conditions as the Attorney General, in consultation with the Salaries Remuneration Commission, approve.

(2) The staff referred to in subsection (1) may include deputy directors, assistant directors, forensic and financial investigators, asset managers and other staff as the Agency may determine.

(3) In determining the terms and conditions of service for the Agency Director and staff, the Attorney General shall be guided by the following principles-

(a) that asset recovery falls in a strategic sector in the administration of justice process of the country and the nature of the service entailed requires commensurate compensation; and,

(b) that the nature of the operations of the Agency requires probity, integrity and incorruptibility.

(4) The Agency shall, with the approval of the Cabinet Secretary for finance, establish a suitable social security scheme for the Agency Director and staff of the Agency.

(5) For the purposes of their functions under the Act, the Agency Director, certified forensic and financial investigators, shall have all the powers, privileges and immunities of a police officer in addition to any other powers they may have under the Act.

(6) Any public officer who is transferred or seconded to the Agency under section 53(4) shall be regarded as a member of staff of the Agency and subject to the control and direction of the Agency.

(7) The Agency may, with the approval of the Attorney-General, make regulations for the better management, administration and operations of the Agency.

This amendment again seeks to strengthen the Asset Recovery Agency by empowering it to appoint professional and technical staff, including having certified financial investigators with all the powers, privileges and immunities of a police officer. Proper investigations are very critical for the implementation of the Agency's mandate. This means that the Agency may independently identify and appoint persons with specialised skills that they require.

Asset recovery is a very tedious and technical matter. You cannot leave it to our normal police officers to go and follow people with billions of shillings. This amendment is giving the Agency the power to appoint a professional and technical team with certified financial investigators. It gives them the powers, privileges and immunities that a police officer enjoys. This is part of the capacity building of the Asset Recovery Agency.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I see the Member for Baringo Central, Hon. Mwaita. Do you want to speak on this?

Hon. Mwaita: Thank you, Hon. Temporary Deputy Chairlady. I wish to support because getting professional staff especially with the relevant skills like forensic studies is very critical, especially in asset recovery.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I see the Member for Rangwe.

Hon. Ogalo: I oppose. This idea of creating a special category of public servants for certain public functions is what caused the Ethics and Anti-Corruption Commission (EACC) to take people from the Directorate of Criminal Investigation and elevated them. They ended up being sabotaged by other police officers and peers in other sectors of the public service. What we are trying to do here is saying that asset recovery falls in a strategic sector in the administration of justice process of the country and the nature of the service entailed requires commensurate compensation. Of course, every task requires commensurate compensation. Why should this one be different? We have just passed the Public Service Commission Bill here at the Committee of the whole House. We are saying that the Public Service Commission should oversee and investigate all public service organisations. Why can we not have the Public Service Commission and the Salaries and Remuneration Commission (SRC) to deal with the salaries and terms of service for those people? Why are we creating a special category of public servants? The forensic experts are at the Directorate of Criminal Investigation Headquarters. They will not do anything different from those who are already there.

I oppose this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Vice-Chairman, would you like to speak to this amendment?

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I want to support the Leader of the Majority Party because the police are already overwhelmed. People working for that Agency will be under the SRC and the Cabinet Secretary (CS) for the National Treasury will approve their appointment. It is a good clause.

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

(The new clause was read a Second Time)

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

New Clause 21

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting a new clause 21 immediately after clause 18 as follows-

THAT, Section 54 of the principal Act is amended by inserting a new subsection immediately after subsection (1) as follows-

(1A) Notwithstanding any provisions in any other written law, all cases of recovery of the proceeds of crime or benefits accruing from any predicate offence in money laundering, shall be handled by the Agency, in accordance with this Act.

Hon. Temporary Deputy Chairlady, the justification for this amendment is to promote efficiency and accountability. The Agency is being granted exclusive powers to handle all cases of recovery of proceeds of crime or benefits accruing from any predictable offences in money laundering. This is just for efficiency. There will be a fund that will handle all the money recovered. The fund will be part of what Parliament will manage. We do not want to hear stories of Mr. Ben Gethi and Ms. Kabura. After assets have been recovered, what happens? The amendment is just for efficiency and accountability.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 22

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, the consultations are too loud.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Is it a Meru County meeting or are we in the House?

Hon. A.B. Duale: It is a Mount Kenya meeting.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): There are Mount Kenya, Murang'a, Meru and Kiambu meetings going on. Hon. Members, please consult in low tones.

Hon. A.B. Duale: They should follow the Bill because we might soon start recovering assets from Members of Parliament. This law is very important.

Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting a new clause 22 immediately after clause 18 as follows-

THAT, the Bill be amended by inserting new clause 22 as follows-

22. The principal Act is amended by inserting new sections 54A, 54B, 54C, 54D, 54E and 54F immediately after section 54 as follows-

Funds of the
Agency.

54A.(1) Parliament shall allocate adequate funds to the Agency to enable the Agency perform its functions under the Constitution, this Act and any other written law and the budget shall be a separate vote in accordance with Article 249 (3) of the Constitution.

(2) The funds of the Agency shall consist of -

- (a) monies provided for by Parliament for the purposes of the Agency;
- (b) a percentage of the total proceeds recovered or realized from any property seized or forfeited to the Government, as may be prescribed, from time to time, with the approval of the Cabinet Secretary for finance;
- (c) such monies or assets as may accrue to the Agency in the course of the exercise of its powers or the performance of its functions under this Act; and
- (d) all monies from any other source provided, donated or granted to the Agency towards the achievement of the objects of the Agency.

(3) The Agency shall not accept any grant, gift, donation or bequests made on condition that the Agency performs any function or discharges any duty or obligation other than duties under the Constitution or this Act.

(4)The Agency shall disclose any grants, gifts, donations or bequests made to it in each financial year.

(5)The Agency Director shall, subject to the law, be charged with the responsibility of accounting for state monies received or paid out or on account of the Agency.

(6)The receipts, earnings or accounts of the funding and balance of the funding at the close of each financial year, shall not be paid into the Consolidated Fund, but shall be retained for the purposes of the Agency.

Bank
accounts.

54B. The Agency shall open and maintain such bank accounts as are necessary for the exercise of the functions of the Agency.

Estimates of
expenditure.

54C. (1) The financial year of the Agency shall be the period of twelve months beginning first July and ending on the thirtieth June in each year.

(2) The Agency shall within three months before the commencement of the financial year, prepare annual estimates of the expenditure of the Agency for that financial year.

(3) The annual estimates shall make provisions for all the estimated expenditure of the Agency for the financial year concerned and in particular, shall provide for -

- (a) the payment of salaries, allowances and other charges in respect of the Agency Director and other staff of the Agency;
- (b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Agency;
- (c) the maintenance of the buildings and grounds of the Agency;
- (d) the funding of training, research and development of activities of the Agency; and
- (e) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Agency may deem expedient.

(4) The annual estimates shall make provisions for all estimated expenditure of the Agency for the financial year to which they relate, including of reserve fund to provide for contingency in the event of an unforeseen increase in expenditure and other emergencies not contemplated at the time of making the estimates.

(5) The Agency shall review the estimates forwarded under subsections (2) and (3) and may make such alterations thereto as it may consider necessary, and shall forward the same to the National Assembly for approval.

(6) Upon approval of the estimates by the National Assembly, all monies from time to time required for the purposes of this Act shall be paid from the Consolidated Fund into the Agency's bank account.

Accounts and
audit.

54D. (1) The Agency shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Agency.

(2) Within a period of three

months after the end of each financial year, the Agency shall submit to the Auditor-General the accounts of the Agency in respect of that year together with a –

- (a) statement of the income and expenditure of the Agency during that year; and
- (b) statement of the assets and liabilities of the Agency on the last day of that financial year.

(3) The annual accounts of the Agency shall be prepared, audited and reported upon in accordance with the provisions of the Constitution and the Public Audit Act.

Annual
reports.

54E. (1) The Agency shall within four months after the end of each financial year, make a report on its activities and operations during the financial year, and submit the report to the Attorney-General.

(2) The Attorney-General shall within fourteen days after

receipt of the report from the Agency, submit the report to the President.

The common seal of the Agency.

54F. (1) The common seal of the Agency shall be such device as may be determined by the Agency Director.

(2) The common seal of the Agency shall be kept in such custody as the Agency Director shall direct and shall not be used except on the order of the Director.

(3) The common seal of the Agency when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Agency under this section shall be presumed to have been duly given.

Hon. Temporary Deputy Chairlady, the justification for this is to grant the Agency the operational independency through direct budgetary allocations. The Agency should not share the same budget with the Attorney-General. The agency shall have accounts annually presented to Parliament. The Agency shall submit its report of activities and operations to Parliament. The amendment provides that:

- (i) Parliament shall, through a separate vote, allocate adequate funds to the Agency to enable it to perform its functions under this Act.
- (ii) The Agency shall open and maintain such bank accounts as necessary for the exercise or functions of that agency.
- (iii) All the monies approved by the National Assembly shall be paid from the Consolidated Fund to the Agency's Bank account.
- (iv) The Agency shall make a report on its activities and operations during a financial year and submit a report to the Office of the Attorney-General. The Attorney-General shall within 14 days after receipt of the Agency's Report, submit it to the President and Parliament.

The proposed amendments in 54A to 54F will largely strengthen the legal framework and promote effective anti-money laundering strategies. These amendments are establishing the operation and the financial capacity of the Agency as an institution. It will also give some independence to the Agency.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Member for Igembe Central.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairlady. I support the Mover because in establishing the Agency. It is important to keep it as independent as possible so that it can work autonomously without any undue influence. That is because the resources recovered will be channelled back to the Attorney-General either for prosecution or other functions. When it comes to funding, the Agency will be more strengthened and autonomous.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I can see a lot of interest on this clause.

I want to recognise Kingussie Primary School from Bomet East. It looks like all schools from Bomet East Constituency are in Parliament today. Let us now have Hon. (Eng.) Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, I want to thank the Leader of the Majority Party for including this clause which makes financial provision for the running of the Agency. We have done many Bills here giving bodies' autonomy and independence, but we forget about financial provisions. You cannot guarantee independence and autonomy without financial provision.

I want to ask Hon. A.B. Duale to look at Clause 54B. This is a problem we are facing as the Public Accounts Committee (PAC). Clause 54B states that the Agency shall open and maintain such bank accounts as are necessary for the exercise of the functions of the Agency. That is a good provision. The Public Finance Management (PFM) Act gives guidelines on how State agencies can open bank accounts, but that is overlooked all the time. You may recall the scenario when we did the reports on the Judicial Service Commission (JSC) and the Judiciary. Even though the PFM Act clearly provides that before you open that account, the CS in charge of Finance must approve; without express provision, that is overlooked. We demonstrated here that the Judiciary had some accounts which had single signatories. Moving forward, I want to ask the Leader of the Majority Party to add a provision that the Agency shall open and maintain such bank accounts as are necessary for the exercise of the functions of the Agency with authority from the Cabinet Secretary in charge of Finance.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. A.B. Duale, let us have the Chairman of the Committee so that you can incorporate his comment in your response. Hon Gaichuhie, are you okay on the new clause? Leader of the Majority Party, let him comment and in case he has something, I will give you a chance to respond.

Hon Gaichuhie: Hon. Temporary Deputy Chairlady, even though we say that it is independent, it is very important that the Cabinet Secretary of the National Treasury is involved when it comes to opening of accounts. That is according to the Public Finance Management (PFM) Act. The National Treasury should know all the accounts that are opened. We are just trying to avoid very many accounts being opened without the authority of the CS of the National Treasury.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Leader of the Majority Party, you can respond to those two.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, the concern of Members, and more so the Public Accounts Committee (PAC) Chair, are very valid. The PFM (Amendment) Act is coming to the House for the Third Reading next week. I think we need to put that to cover all the agencies and parastatals and not just this Agency. I agree with him. When Chase Bank went under, it went down with billions of taxpayers' money. We must make it. So, I will pick that with the Legal Department of Parliament that when we are dealing with the PFM (Amendment) Act next week, we strengthen that position very clearly and we do not just put it for this Agency alone for now. We do not want to put this provision in every Act of every parastatal. Let us make it seen more in the PFM (Amendment) Act, which is coming next week.

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

(The new clause was read a Second Time)

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

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the Mover.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 64 of 2015) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORTS

PUBLIC SERVICE COMMISSION BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will start with the Public Service Commission Bill. Let us have the chairperson.

Hon. Nooru: Hon. Temporary Deputy Chairlady, I beg to report that a Committee of the whole House has considered the Public Service Commission Bill (National Assembly Bill No. 36 of 2016) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us now have the Mover of the Bill.

Hon. A.B. Duale: It is becoming a Somali affair. He happens to be the Chair of Departmental Committee on Agriculture, Livestock and Cooperatives.

Hon. Temporary Deputy Chairlady, I beg to move that the House doth agree with the Committee in the said Report. I request Hon. Oner to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Ogalo: I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will put the Question at the right time for reasons that are obvious to everybody.

We will go to the next one, the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill. I will start with the Chairman to report.

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL

Hon. Nooru: Hon. Temporary Deputy Chairlady, I beg to report that a Committee of the whole House has considered the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 64 of 2015) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have the Mover to move the agreement with the Report.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Oner to second the Motion for the agreement with the Report of the Committee of the whole House.

Hon. Ogalo: Hon. Temporary Deputy Chairlady, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): We will put the Question at the right time. I think we are done with the Committee of the whole House on those two Bills.

Next Order!

MOTION

ADOPTION OF THE REPORT ON RATIFICATION OF THE AGREEMENT
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE U.S.A

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, this Report is to be presented by the Chair of the Departmental Committee on Health, but I do not see her here. Do I see her Vice-Chair? Is there any member of the Departmental Committee on Health? I see Hon. Gakuya, Member of Parliament for Embakasi North. There is a Report we should be debating that should be brought by the Chair of the Departmental Committee on Health. Can you speak on behalf of your Committee on whether you are ready to proceed? You are the only member I can see who I know is a very active member of the Departmental Committee on Health.

Hon. Gakuya, we have a Report on an agreement between the Government of Kenya and the USA. Are you ready to move this Report?

Hon. Gakuya: Hon. Temporary Deputy Speaker, let me say I am not ready in the meanwhile. I urge that we be given one more chance so that we can respond to it.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Okay, Hon. Member. When we have a Motion on the Order Paper, it really behoves that Committee to be ready in whichever manner. This is an important Report for the country. I will ask the Leader of the Majority Party: "Where is your Chairperson? Why is this Committee not ready?"

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, one time, the late Kivuitu was asked where his Returning Officers were and he said he could not trace them. I do not know where the Chair is, but this is a very important ratification to both the Kenyan Government and the US. It is

very important to institutions like the Kenya Agricultural Research Institute (KARI), the Kenya Veterinary Vaccines Production Institute (KEVEVAPI), the Ministry of Health and Ministry of Agriculture, Livestock and Fisheries.

Hon. Temporary Deputy Speaker, you need to read the riot act and tonight, we will discuss in the House Business Committee that the Chair must be in this House tomorrow afternoon to move this important piece of Government business.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Please make it possible to do that, Leader of the Majority Party. Let the Chair of the Departmental Committee on Health or her deputy know that they must bring this Report to the Floor. Too many things are being held up because of it. Next Order!

BILL

Second Reading

THE PREVENTION OF TORTURE BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we are at the Second Reading stage of the Prevention of Torture Bill (National Assembly Bill No.47 of 2016). The Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. I beg to move that the Prevention of Torture Bill 2016 be now read a Second Time.

I hope somebody will help me. The Member for Kibra wanted to second this Bill and I hope he is around.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): We can ask the Serjeant-at-Arms to locate the Member for Kibra. I saw him walking out a few minutes ago.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. The object and purpose of this Bill is to give effect to Article 25(a) and Article 29(d) of the Constitution which deals with prohibition of any form of torture, cruelty, inhuman and degrading treatment or punishment and gives effect to Kenya's obligation as a state party to the United Nations (UN) Convention against Torture and other cruel, inhuman or degrading treatment or punishment. We draw this from our Constitution and our obligation as a state party to the UN Convention. The development of this legislation is a testimony and an affirmation by the State and the Government, led by President Uhuru Kenyatta, that it recognises the inherent dignity of a human being; the right to dignity. That dignity must be respected and protected.

Thank you, Hon. Temporary Deputy Speaker. I can see the Hon. Member for Kibra is around. According to the Constitution of Kenya and the UN Convention, freedom from any form of torture, cruelty, inhuman or degrading treatment is a non-derogable right. It is one that cannot be suspended or waived at any particular time or in any circumstance. You cannot wave your right to dignity. That is basically what the Constitution and the Convention state. However, acts of torture continue to be perpetuated by state agencies against civilians. This is according to reports emanating from within the country and internationally.

This Bill reminds me of the 10th Parliament when I was a Member of Parliament for Dujis. In 2010, I was sacked by the then Prime Minister from being a Deputy Minister for Livestock. One time, the Kenya Defence Forces decided to do all forms of torture to the great residents of Garissa Town and this has a mark in my life. Torture exists. It exists in everyday

life. It is perpetuated by state agencies, non-state actors and militia groups, some owned and run by political leaders. The object of this Bill is to give effect to the provision that the sanctity of life and dignity must be preserved, respected and protected.

That is the genesis. Let me now go to the highlights of the Bill. Part I of the Bill provides for the definition of terms and application of the Bill. Clause 3 provides for the scope of the application. How far can we apply this piece of legislation? We can apply by clearly stating that this law applies to the citizens of Kenya or persons under the jurisdiction of Kenya at the time of the commission of the offence. So, this law is applicable on torture against our citizens or other people who live within our jurisdictions. For instance, this House passed the Kenya/UK Defence Agreement. We have forces who conduct military exercises in our country. In the event they commit torture or inhuman and degrading punishment to any of our citizens, then this piece of legislation once assented to law, will apply. That is what Clause 3 of the Bill says and the commission becomes an offence.

Part II of the Bill covers the nature of torture and cruelty. It defines the various types of degrading treatments and torture. Clause 4 defines the term “torture”. This definition is in line with the definition provided under the UN Convention against Torture and inhuman or degrading treatment or punishment in which Kenya is a state party. By virtue of Article 2(6) of the Constitution, it forms part of Kenya’s law. Being a signatory to the UN Convention, that section becomes part of our laws. So, the convention against torture includes acts perpetuated by a limited class of persons, namely, public officials or persons acting in official capacity, whose definition is found in this clause which provides public officials or those acting in public capacity who commit such offences.

Clause 5 of the Bill creates the offence of torture and its penalty. If you commit torture, what are the penalties? A person who tortures another person shall upon conviction be liable to imprisonment of a term not exceeding 20 years. I want to plead with the House not to reduce that penalty. There are many acts you can commit, but when you torture another human being and degrade him or her, or do inhumane things to that human being, you must suffer a sentence not exceeding 25 years. In the event the victim you have tortured dies, the person is liable to conviction to life imprisonment. I really do not want the House to amend that. If a person dies through torture and pain, the offender must face life imprisonment.

Clause 6 of the Bill states that there is no justification whatsoever for torture. It is very clear and it is in line with Article 25(a) of the Kenyan Constitution, which lists freedom from torture as one of the rights that may not be limited. This is what many key leaders and many people went through during agitation for the new Constitution and new democratic space. There were many Kenyans including Hon. Koigi Wamwere, Hon. Raila Odinga, my former party leader and our competitor right now, Hon. James Orengo, my current lawyer and many people who were tortured because they wanted to have a better Kenya.

Clause 7 creates an offence where one is liable. Clause 9 renders as inadmissible evidence any information obtained through torture. If you use torture to retrieve information that you want to use in a court of law, this legislation says that, that evidence is inadmissible because it is obtained through torture. This is what the people of northern Kenya went through. I am sure my late dad and many people during the 1960s and 1970s in the times of the *Shifty* wars or *Mau Mau* and even during the *Mungiki* uprising, were tortured. Many people were tortured for them to speak and give information. So, Clause 9 deals with that. It further creates the offence of using information obtained through torture and its penalty. If you torture a person and it is found that you tortured to get information or evidence, you also have to face the law.

Clause 10 of the Prevention of Torture Bill provides that there shall be no immunity and amnesty granted through torture. If you torture another citizen, do not expect immunity or amnesty granted to you as the person accused of torture.

Clause 11 of the Bill prescribes the matters to be taken into consideration by courts during sentencing of persons convicted under this Act. It includes the duration of torture, the victim's state of health, gender and religion. Let me talk about gender. You have seen the way many women in this country suffer from their husbands, political competitors and boyfriends. If you torture somebody, the victim's state of health, gender and religion must be taken into consideration when that person is being convicted under this Act.

Part III of the Bill confers the Kenya National Commission on Human Rights (KNCHR) to, among other things, investigate alleged violation of the provisions of the Bill and to advise the Government on matters relating to prevention of torture. So, the KNCHR has an obligation to conduct civic education and make sure that the Government gets advice on matters on how to prevent torture, inhuman and degrading treatment and punishment of citizens. This mandate is also in line with the Kenya National Commission on Human Rights Act and Article 59 of the Constitution that talks about how we prevent torture.

Part IV of the Bill provides remedies available to victims of torture. What are the remedies? You were tortured, so what? What are the compensations? How do you deal with the accuser? Part IV deals with it.

Clause 13 provides for the procedure of reporting and registering offences created in this Bill. We must find a way. How do you report and register complaints when you are tortured by both state agencies and non-state actors? Clause 14 applies to the Criminal Procedure Code when it comes to investigation of offences related under this Act. Clause 15 provides that victim's impact statement can be adduced as evidence. These are statements given by victims of torture. They can be used or adduced as evidence by the prosecutor during criminal proceedings. Clause 16 defines the vulnerability of a witness. It sets out the procedure to be followed where a person has been declared a vulnerable witness. If you are tortured by your husband and your clan or family members want to cover that, or you are tortured and you become a victim of further torture when you report, Clause 16 deals with how a vulnerable witness or a person who saw when a person was tortured should be treated. He becomes a vulnerable witness. This procedure includes the protection of the witness and the use of an intermediary.

Clause 17 sets out the remedies available to victims of torture. They include reparation. How do we do reparation? How do we compensate? Above all, how do we rehabilitate that person who is a victim of torture?

Clause 18 provides for an avenue to institute civil proceedings for compensation for a person who went through torture. If the person tortured feels that what the courts have granted him is not sufficient, this piece of legislation allows him to institute criminal or civil proceedings for compensation.

Clause 19 places an obligation on the Cabinet Secretary (CS) in charge of justice, who in our case is the Attorney-General (AG), to develop plans and put in place programmes to ensure that we give support and assistance to victims of torture.

Clause 20 provides that the court may, at the request of a victim of torture, grant an order for medical treatment. So, once they assess the person tortured, they can grant an order for medical treatment or professional counselling whose expense will be charged to the Victim Protection Trust Fund which is established under the Victim Protection Act.

This is a very important Bill. Clause 21 of the Bill seeks to bar the transfer of detainees to any place if there are reasonable grounds to believe they are likely to be subjected to torture or cruelty. As we move this Bill, I am sure our security agencies must know that it is not at their pleasure to torture citizens in the course of their duty. Those who do so will carry their own crosses. This is not found in the National Police Service Act, National Intelligence Service Act, Kenya Defence Forces Act or in any other state agencies.

Clause 23 provides that the detaining authority shall provide for persons in custody. In case the person needs to be detained for safety, they need assistance to communicate with family members or a representative of the State.

I am going to the last part, which is Part V. Part V starts with Clause 24, which places the obligation on the CS to make regulations. So, we expect the CS in charge of justice to bring regulations for the administration of the Victims Protection Trust Fund in relation to the implementation of the Act.

Clause 25 of the Bill provides for general penalties. Clause 26 provides for the amendment of the Schedule to the Act. Clause 27 seeks to amend the Schedule of the Extradition (Contiguous and Foreign Countries) Act to include the offence of torture, inhuman and degrading treatment or punishment. If you commit a crime against a citizen, you can be extradited within the Extradition (Commonwealth Countries) Act.

So, the Bill seeks to make consequential amendments to the Chiefs Act and the Children Act, so that offences of torture in all cases are prosecuted under one law. The Chiefs Act and the Children Act have been harmonised now.

Clause 31 of the Bill seeks to exclude the Limitations of Actions Act in relation to torture to the extent that the action for reparation for an act of torture, cruel treatment or punishment may be brought to court any time within a period of six years. Even if the torture took place four, five or six years ago, one can still go to court.

Clause 32, which is the last, provides that where there is conflict of law, the provisions of this Act will prevail.

The Prevention of Torture Bill, which is a Government Bill, clearly shows the commitment of this administration, as one of its achievements, that President Uhuru Kenyatta's administration wants to build a country where no citizen, regardless of his status in society, will be tortured, either by State agencies or non-State agencies or actors. I am sure those civil society and NGOs who always shout at the top of their voices just because they want to talk to their donors for more funding and give figures that there is torture and many things going on, I want them to take leave and come and contribute when this Bill goes for public participation, so that all of us together see how we can enrich the Bill. This is a landmark Bill. It gives effect to our Constitution and to our obligations as a State party to the UN Convention against Torture and other Inhuman or Degrading Treatment or Punishment.

With those many remarks, Hon. Temporary Deputy Speaker, it is my humble duty to ask the able Member for Kibra--I wish he was from northern Kenya, he would have had his second term. Too bad he chose and he is competing against the daughter of a very powerful man. I wish him well, that come August 8TH, he will defeat the daughter of my good friend and National Super Alliance (NASA) presidential candidate. The only presidential candidate in NASA is Hon. Raila Odinga. The rest are just mark timing and they are wasting his time.

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): What is your point of order, Hon. Sumra? Hon. Duale, let me hear the point of order from Hon. Sumra.

Hon. Sumra: Hon. Temporary Deputy Speaker, I think Hon. Duale is offering his seat to Hon. Ken and we wish to thank him. Withdraw from your seat and we bring Ken there in Garissa.

Thank you.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. You know the problem with Hon. Sumra, his sycophancy level has reached very high. I am ready to offer him a seat but he does not come from my clan. My clan will not allow him. I am sure the people of Kibra are watching me. They know his track record. They know his development record. Based on that, they will elect him.

I also want to advise, if you allow me, that there is no need of forming 11-member committee. The presidential candidate for NASA or NASWA or CORD is none other than Hon. Raila Odinga. He has what it takes. The opinion poll has shown he has the numbers, resources and the strategy team which the rest do not have. If I was in CORD I would have said, "Raila Tosha". Some of you people, I think, are cowards.

I beg to move and ask the Member for Kibra to second.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): The Member for Kibra, the only thing I will agree with the Leader of the Majority Party on is that you have done exemplary work in Kibra. Go ahead and second this Bill.

Hon. Okoth: Thank you, Hon. Temporary Deputy Speaker. I appreciate the kind words from you and the Leader of the Majority Party. In spirit, I am a Kenyan and I feel a northerner. I am not a stranger to the interests, cries and pains of the people of this country, whether they are in Garissa or whether they are victims of torture in Eastleigh or anywhere else in this country. I am happy to second this Bill.

Kenya is a signatory to the Convention against Torture, which is an international UN treaty. Might I inform you that as we pass this Bill today, we are making history and we are discussing something that will be very important for setting standards in Africa and in the international scene at a time when countries such as the United States under President Donald Trump have threatened to withdraw from the Convention against Torture or the Convention on the Rights of the Child or other important treaties. We are committing ourselves, and I know these times we debate our international obligations and what treaties we must pass or stay within as Members of this House who have the power, through the Treaty Ratification Act, to sign treaties and make them part of our laws by domesticating them appropriately.

I am happy to say that we are taking a step in the right direction. It has been a long process coming. As Hon. Duale mentioned, it has been over nine years since the idea of Prevention of Torture Bill was brought to the House – before some of us got here. In the last three years, as a co-convener of the Human Rights Caucus, we have been lobbying, we have been engaging the civil society, the Departmental Committee on Justice and Legal Affairs, the office of the Attorney-General and other people in Government to make sure that this Bill came through in this fashion. As we move to any opportunities for quick public participation in the next few weeks, I know at Christmas time the public was invited to send their memoranda. It is still not too late to send any opinions through your Members of Parliament so that we can include those in the final amendment at Committee of the whole House stage of this Bill.

Kenya reports through the Universal Peer Review Mechanism in Geneva every couple of years on how we are doing on our human rights record. Our President reports to this House on our human rights record and international obligations. It is often a report that we do not get a chance to discuss critically in this House, but it is important. In Banjul at the African

Commission on Human and People's Rights two years ago, Kenya was scrutinised very critically and asked why we had not passed the Prevention of Torture Act and the Coroners Bill, which I am happy last we passed in the Second Reading. Articles 25 and 28 of our Constitution mention freedom from torture and cruel treatment and the dignity of all persons. I think we are setting a standard for the continent. I would like to comment on a couple of clauses of this Bill.

The first part of it is that the Victims Protection Act will provide many remedies and protections to victims of torture. During trial, they will have access to medical support, psychological support and legal aid through the Legal Aid Act that we passed. That is important. When cases are completed, the remedies that must be done, apart from the remedies that can be fined from the accused and convicted offenders, there are also remedies that can be provided through the Victims Protection Act. So, we are in the right step to try and make sure that victims of torture become whole again as much as possible.

I am happy that this Bill gives a critical and central role to the Kenya National Commission on Human Rights (KNCHR) as one of the agencies that will monitor the status of torture and related crimes and implementation of steps to eliminate torture within Kenya. The Act will apply to and protect any Kenyan who is a victim of torture. It will also apply to any Kenyan who participates in acts of torture. So, even Kenyans who are employed in international corporations, security agencies in places like Afghanistan, if they were to involve themselves in acts of torture, just by being citizens of Kenya, they could find themselves liable to the provisions of this Act. Anybody who is resident in Kenya, be they foreigners, British Army, US Army or the French, participating in acts of torture within our jurisdiction will also be subject to this Act. Any Kenyans who are tortured on vessels flying the Kenyan flag or victims tortured aboard boats or ships or aeroplanes or aircraft that belong to the Kenyan Government or that are listed as Kenyan will also be protected under this law. This is important. It is a very broad jurisdiction and territoriality.

I like the definition of "torture" in Clause 4 of the Bill. It tells us what torture is. Torture is an official crime: it is not just a personal crime. It is the kind of crime that is committed through severe pain or suffering, physical or mental, intentionally for the purpose of obtaining information or confession from that person or punishing a person for an act they are suspected to have committed instead of taking them through the legal process and the Judiciary before a judgment and proper punishment can be given. So, agents of the State decide to punish you through pain without taking you through the legal process. It is intimidation or coercion to stop you from doing something that you want to do. Those types of things are what are called torture. I would say that this is a very good international standard of torture. There are details and examples to clear any ambiguity. This is an area in which we can improve the Bill. The Schedule of the Bill, on Page 1,036, refers to Section 4, which gives us a full schedule of the acts constituting torture.

Hon. Temporary Deputy Speaker, I am sure that as a Member from Nairobi County, you have seen these things happening through our security agencies. Regarding the Nairobi City County *askaris*, there was a very good expose by the Kenya Television Network (KTN) recently. The KTN broadcast a feature story titled "Kanjo Territory", in which they highlighted some of the acts that they commit against people trying to do businesses and earn a living in the city. People are criminalised for just being poor and they are not given justice. They are maltreated terribly. Those are the kinds of things I am talking about.

We have seen places where there is human-wildlife conflict because of climate change. Sometimes the perpetrators would be the Kenya Forest Service (KFS) officers and at other times,

it would be the Kenya Wildlife Service (KWS) rangers. They would arrest a poor victim looking for firewood, or who has gone to hunt for an antelope to feed his family. At times the arrested victims get mistreated. They are even punished without being taken to court. Those are acts of torture by State agents. Perpetrators can also be the military and the police or whoever else acting in his official capacity. When I read through the list of painful things that constitute physical torture---

Hon. (Eng.) Gumbo: (*Off record*)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Member for Rarieda, that is not parliamentary language.

Hon. Okoth: Hon. Temporary Deputy Speaker, maybe, he is being tortured mentally or psychologically.

The acts that constitute physical torture include systematic beatings, banging one's head against some hard surface, punching, kicking, striking someone with truncheons and rifle butts and stepping onto one's stomach. These are the easiest examples we can cite. The police sometimes use excessive force while arresting people. They even fire gunshots. Sometimes they forcefully feed suspects on spoilt food or suspects are subjected to electric shocks. We have heard about burning of suspects with cigarette and drowning, waterboarding and those kinds of things. This list is very comprehensive.

Acts of psychological torture include simulation of killing, denial of sleep and mistreating of members of a victim's family. When the police arrest you and find that they do not have evidence against you, they sometimes resort to torturing your family members to force you to give a confession on the crime you are suspected of committing. Those are the types of things that we are trying to change through this law. These provisions are in the Schedule. I suggest that we improve the Bill by moving them to the definition. Therefore, there is no ambiguity since Clause 26 of the Bill says that the CS, through a *Kenya Gazette* Notice, can simply adjust the Schedule. We might have a leadership that may not believe in observance of human rights. Such leadership might adjust the definition of "torture" and say that subjecting suspects to electric shocks and waterboarding is not torture, but just enhanced interrogation, or that harassment of a victim's family is not psychological torture.

We want to make sure that the definition of "torture" is not left to the whims of the CS, but it is placed in the full definition in the body of the law. We should not leave it in the Schedule that can easily be adjusted.

Hon. Temporary Deputy Speaker, how much more time do I have?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): You have no more time left. Just wind up.

Hon. Okoth: Overall, the Bill is good. I am happy that there is adequate preparation to remedy this situation, including restitution.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Okoth, I will give you a minute to wind up.

Hon. Okoth: Hon. Temporary Deputy Speaker, there should be adequate compensation and rehabilitation. A person who commits an offence is jailed or fined. The money paid as fine goes to the State while the victim of the crime gets nothing. However, Clause 17 of this Bill is very clear on the kind of support and remedies that victims of crime must get.

Finally, to our law enforcement officers, the law that we are proposing here is very clear. According to the Constitution, there are no exceptional circumstances to justify torture, not even an "order from above." An order from a superior officer will not be an excuse for committing

torture. You cannot say that you were ordered by your superintendent to do it. You have to follow the law. If you breach it, you will be held individually capable.

With those many remarks, I beg to second and, as the Leader of the Majority Party said, invite all members of the civil society and the academia fraternity to give us feedback on what we have done, so that we can incorporate their views during the final stages of this process. Thank you.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will start with Hon. Isaac Mwaura.

Hon. Mwaura: Hon. Temporary Deputy Speaker, I rise to support this Bill, which was ably presented to the House by the Leader of the Majority Party and seconded by the Member for Kibra. I am sorry, I may be predicting what may happen in future, but I want to wish my dear brother, Hon. Ken Okoth, all the best in Kibra having been voted the best performing Member of Parliament with regard to the application of the National Government Constituencies Development Fund (NG-CDF) for Kibra. He is a very articulate Member and co-founder of the Human Rights Caucus. He is a young and articulate defender of marginalised communities. I urge the people of Kibra not to look for pedigrees or resources. They should look for one of their own - someone who has grown amongst them – to become a true champion, true light and leader in this country.

This country is not known for not having any forms of official torture. We are aware of the dark days of the Nyayo Torture Chambers. This is where many of our gallant soldiers, both male and female, who decided to resist the atrocities of the Nyayo regime were incarcerated, detained without trial and forced to go through so much pain. Some of them suffered permanent disabilities, and families broke up. From the history of our Republic, we know that were it not for such gallant soldiers – some of whom will never be truly celebrated – this country would not have freedom of association, freedom of speech and many other freedoms that we enjoy today. Hon. Temporary Deputy Speaker, the issue of torture is germane in our society because it falls under civil and political rights in terms of generation of human rights. All of us would say that, in one way or another, officially or unofficially, have faced cruel, inhuman or degrading treatment. As a representative nominated to represent special interest groups, I know for sure that many of the groups of the people I represent here have been marginalised. Some people's cases have had to seek the attention of this House because of continuous discrimination and marginalisation. These include cases of intersex people, people living with sickle cell anaemia, persons with disabilities in general, and people with albinism in particular, because of the degrading treatment and cruelty that has been perpetrated against them within the East African region. There are many groups of people who have suffered, including women in terms of sexual cruelty, and other groups of people, including those living with the effects of what is known as the "Wagalla Massacre". Such a Bill is very critical because it seeks to entrench the process that is already provided for in Article 26 of the Constitution that seeks to state that all laws that we have assented to automatically become domesticated by virtue of the passage of the Constitution of Kenya, 2010. However, it is very important to have enabling legislation so as to provide for the various aspects that may not be constitutionally provided for. In this law, I do not see what has become very common with the passage of laws in this House where sometimes we pass

enabling legislation that is not necessarily enabling, but rather seeks to countermand the very provisions of the Constitution.

Nobody under the sun should face cruel and inhumane treatment. Most of the laws and human rights treaties that have been passed under the UN have a clause on cruel, inhuman and degrading treatment. The latest is the Convention on the Rights of Persons with Disabilities (CRPWDs). I think it is Article 18 that speaks to this. There is also the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which speaks about this matter. Other relevant conventions are the Convention on the Rights of the Child and the Convention against Torture.

The twin-talk approach where you have a stand-alone convention and specific clauses in the various other conventions is an emphasis that nobody should be discriminated. It is because of this that I would want to call upon our friendly allies, including the US Government led by President Donald Trump, that we would want to see an international regime where the US Government does not seek to condone corruption, inhuman treatment and torture. This is because when you remove yourself from such international treaties thereof in the name of sovereignty, then the citizenry that may befall under your own international obligations in relation to security may be subject to torture, cruel, inhuman and degrading treatment.

Hon. Temporary Deputy Speaker, we know that in Africa, our people have continued to suffer because of poor governance. We know, for example, that even the seat of the African Human and People's Right Commission in The Gambia has been subject to ridicule. It is only the other day that an incumbent President, Yahya Jammeh, was forced into exile, so that the democratically elected President Adama Barrow could take over the reins of leadership.

We need to lead by example having known the histories of our own forefathers in fighting for Independence and having known the struggles of those who participated in the second liberation of this country. We cannot forget the many struggles across Africa of the people seeking better governance. We remember the Rwanda genocide, the apartheid regime in South Africa and other jurisdictions. We owe it unto humanity not just to pass legislation, but also to breathe life into this kind of legislations so that nobody goes through that which happened before.

In terms of having international customary law, otherwise known as the *Pacta Sunt Servanda* national sovereignty is being redefined not just in terms of saying that then you have a proper grasp of the state within the ambit of the nation state, but also in terms of how you exercise issues of human rights and fundamental freedom. It, therefore, calls upon the comity of nations that those who come to equity must come to equity with clean hands.

In promoting human rights and good governance, it is important to ensure that you set the bar high. It is just the other day that we wanted to provide leadership in the African Union (AU). Kenya is now leading by example and I want to commend the Leader of the Majority Party for this very timely Bill being sponsored by the majority party, so that we can show our neighbours that we have enough municipal laws, not just for purposes of responding to the UN reporting mechanism, but because we want to protect our people in our country, counties and constituencies like the workers of various companies in Ruiru Constituency, so that they are treated with dignity.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you Hon. Member. I now give the Floor to the Member for Rarieda. Hon. Gumbo. Hon. Members, given the numbers, we can actually give everybody a chance if you are kind to each other.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker. This is a good Bill because it highlights what ought to be obvious. It is not just a national obligation, but an

international obligation for every country to ensure that the citizenry is not subjected to any form of official torture. In fact, the objective of this Bill goes to implement Kenya's obligation under the UN Convention against Torture and cruel inhuman or degrading treatment and punishment and all other relevant national conventions to which Kenya is a signatory to.

So, to that extent, this Bill goes a long way to align us with those modern nations which have outlawed all forms of torture, whether physical or mental. I am happy that in this Bill, we have taken the definition of "torture" under Clause 4 to not just include severe pain or suffering, but also mental form of pain and suffering and highlight the fact that such pain or suffering has to be intentionally inflicted.

So, I do not want to repeat what most people have said. Torture is a very degrading experience, but I am happy that in enacting this Bill, we are in fact stressing the fact that there would be no justification for torture. We are excluding cases where people might use state of war, internal political instability or public emergency to try and justify forms of torture. It is also important that the Bill says that junior officers are at liberty to disobey their seniors if the instructions given have the effect of inflicting or coming in the form of torturing another human being.

This is important because it gives immunity to junior officers for refusing to obey orders from superiors to inflict any form of torture. We know that, ordinarily, if a junior officer disobeys an order from a senior officer, that would amount to insubordination. So, to that extent, a junior officer by the force of this law, will be at liberty to disobey those orders that have the effect of wanting the junior officer to inflict one form of torture or another to another person, whether physical or mental.

This Bill is important given the environment that it covers. We know what has happened in this country. We know where we are coming from. There are cases where people have been convicted because of information that has been obtained under torture. I can remember when I was a student at the university, a gallant son from my constituency who has since disappeared because of being heavily tortured at Nyayo House, once appeared in court. Because of the dehumanising nature of the torture he had been subjected to, he told the magistrate and prosecutor at that time that, that way of handling people was not the future for Kenya. He is a hero of this country.

We are now going through this Bill and making it an offence to use information obtained through torture. The Bill even goes further to say that, indeed, other than just criminalising information obtained through torture, such information may be used against the person who inflicted torture in the first place. So, if there is proof that information was obtained through torture, then the reverse will apply and the person who obtained that information through torture could end up facing criminal action.

I think there is a problem in the drafting of this law in Clause 29 which states that:

"29. The Chiefs Act is amended by repealing section 20."

My understanding of repealing a section is doing away with it. If you repeal you negate. Section 20 of the Chiefs Act states on the conduct of chiefs:

"20.(1) No chief shall—

- (a) engage in the activities of any political party or act as an agent of any such party; or
- (b) in the performance of his functions or the exercise of his powers under this Act—

- (i) subject any person to torture or to any other cruel, inhuman or degrading treatment;
 - (ii) enter or search any private premises with a warrant duly issued by a magistrate; or
 - (iii) demand or solicit any donations or collections in a manner likely to suggest that such donations or collections are a precondition for any service; or
- (c) maintain a cell or other place of confinement of persons.

What do we mean by repealing? Are we saying then that we are going back to the time when chiefs could actually do these things? I think this is a problem. The provision as it is now says that chiefs cannot do all these things. It goes ahead to say:

“20. (3) A chief who contravenes any of the provisions of this section or the provisions of any code of conduct prescribed under subsection (2) shall, without prejudice to any other penalty prescribed by law, be guilty of an offence and liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one month or both.”

At the Committee stage, we should amend this. If we repeal, then, what are we saying? Are we saying then, that chiefs can do all these things which the Act currently stops them from doing? I think this will be a good way to go.

We know, of course, that torture is not exclusive to countries such as ours. For the so called First World countries, we see some very dreadful videos of how they extract information from suspects. For example, using waterboarding which is not acceptable. This law highlights that as human beings, any form of inhuman treatment to fellow human beings is not acceptable. It should not be just a Kenyan standard, but an international one so that we prohibit completely all forms of torture whether physical or psychological.

With those remarks, I beg to support, but also indicate that if we do not do anything to amend Clause 29 which attempts to repeal Section 20 of the Chiefs Act, we will have reversed the gains we have made in regard to containing the conduct of chiefs all over this country. I support, but will be proposing the relevant amendments particularly to Clause 29 of this Bill so that it will be progressive. We should recognise the dignity of Kenyans living in or outside the country. We should also comply with our international obligations with regard to prevention of torture.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to the Member for Kiharu.

Hon. Kang’ata: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. I think Kenya should join civilised societies which do not support torture at all. To that extent, I rise to support this Bill. In any event, our Constitution is quite clear that torture is prohibited in this country. Therefore, we need a statutory instrument which is going to effect the provisions of the Constitution.

However, allow me to raise some reservations. I wonder why some of these ideas emanate from western countries. As we all know, their guarantor of security is the United States of America (USA) through an initiative called the North Atlantic Treaty Organisation (NATO). I always wonder if at all USA is the guarantor of security and is also deemed as the best example of a good democratic society, why is it that they still have Guantanamo Bay or who do they practise water boarding with? Maybe there is some benefit to be derived from torture.

If at all America has been unable to ensure that torture does not occur in its shores and has an extrajudicial facility based in Guantanamo Bay in Cuba, then, that suggests to a certain extent that, maybe, torture may work to a little extent. Even the elected President of the USA, Donald Trump, said that waterboarding may work as he has been advised by some of his advisers. Therefore, we must also ask ourselves if we were to torture criminals like drug barons and terrorists a little bit, maybe we could have a positive outcome.

I would not want us to become very lenient with people who are doing very bad things like selling drugs to our children and bombing them. When we capture them and take them to court, they go and apply for bail pending trial and go home to continue harassing witnesses. There are some situations which our law cannot remedy. For instance, the task of eradicating the Sabaot Land Defence Force, which was a very vicious militia, by just capturing them and taking them to court, they would intimidate witnesses and go back home.

I would not want a situation where we make a provision which is going to make our law enforcement agencies ineffective. Therefore, this Bill must make a provision which will give our police some little bit of leeway. For instance, they should not show mercy to criminals. In the Philippines, there was a mayor called Duterte. He told his people to elect him because he was going to kill all drug barons and once he was elected, he did exactly that. Nowadays, no one is doing drugs in the Philippines.

A country like Singapore has very strong anti-drugs laws, even Indonesia. The other day, I saw President Widodo saying that he has killed drug barons. I would not want this law to be used to make some of our laws lenient and allow terrorists and drug barons to get a free hand to do bad things in this country. I want us to have a strong police force that can face some of the challenges that we have in this country. Let us not use this law to soften some of our laws.

However, I am not supporting the torture of political prisoners. I am not supporting the torture of people who hold a different set of opinions. I do not want the Nyayo Torture Chambers to return to this country. I am referring to known criminals; people who do bad things. These are people who kill our babies and those who think that prison is a holiday camp. Prison is not a holiday camp. Such characters who may hide information from the police--- If at all the USA is doing the same, we should not use this law to gag our police and army. Be that as it may, I also realise that we have expanded the role of the KNCHR. Why is it that we did not amend the law which founded the KNCHR and expanded its role instead of having a stand-alone legal Act? It appears that this law is a form of duplication. We could have just gone to the law establishing that Commission and added any other function instead of having a stand-alone piece of legislation.

As I summarise, I urge the Departmental Committee on Administration and National Security, headed by Hon. Kamama, to look at this law, consult security experts and pose this question to them: Will this law compromise your ability to combat crime in this country? If they say that it will not, I am okay. But if they say that it may fetter our country, I support a strong Government that handles crime and ensures our people are safe notwithstanding what the people in the civil society say out there. Without security, we cannot have any other right. Security is the first primary duty of any state. At times, in ensuring security for the people, you may step on some few toes here and there which is too bad. I would not support stepping on anyone's toes negatively, but on the other hand, if by doing that we secure our people, why not?

I ask for this Bill to be committed to the Departmental Committee on Administration and National Security for consultation with security experts. Otherwise, we may be like the story we were told in primary school where the hyena and the hare once decided to beat up their mothers.

The hare started beating drums while the hyena beat the actual mother. Sometimes, these white people out there, the Westerners, tell us to enact these laws, but in their own countries, they do not do the same. For instance, the USA tells us to enact this law, but in their country, they still have Guantanamo Bay and renditions.

With those few remarks, I support the Bill, save for those few issues.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Bondo.

Hon. Ogolla: Thank you, Hon. Temporary Deputy Speaker. The Member for Kiharu was trying to replace weaknesses in terms of criminal procedures and the justice system with torture. He implied that you can as well torture somebody because you are not too sure about how they will be handled by our judicial system. That is really funny. Sometimes one might want to go in that direction when things are not working.

When dealing with this Bill, one thing that is important is that there is a clear recognition that espouses the provisions in the Constitution that for purposes of freedoms and liberties, one cannot be subjected to torture. The Bill brings this forth in terms of details. That is one good bit of the Bill.

We know the history of Kenya and want to believe that the former President Moi did a lot to this country in terms of some of the very minute things that even after he left, we have not been able to do, including things to do with the environment. President Moi did a lot. In the process of doing a lot, one of the most difficult things that Moi did, that was so negative, was this thing to do with state torture. The history of this country will never be complete if we do not have this kind of monumental arrangement like Nyati House and Nyayo House that were clearly torture chambers. Half of the Judiciary was handling some of these issues. We will go down in history in a very bad light as a country, particularly during the Nyayo Era. This brings us to a situation where we have all manner of cases, some people disappearing and others not handled well especially victims of torture.

Historically, we have victims of torture. There are those who have been awarded settlements through court by suing the State. The State has been losing quite a bit of money and resources in this. There are those who, in as much as they have been awarded, have never received their payment and compensation. One of them is a former Member of this House, Hon. Mak'Onyango, the former Member of Parliament for Alego Usonga. He has been going round and round. His payment has never been honoured. There is also Mwandawiro Mghanga. These are some of the things that we really have to look at as we look at these things. That will be one of the main weaknesses of this Bill.

When we look at compensation, how far back are we able to trace some of these issues of torture? If we look at them in that manner, what are the arrangements that could be in place for purposes of redress or addressing some of these situations other than going through this elaborate court system where you are to sue the State, the Attorney-General and they do not respect some court resolutions? That is one weakness that we really have to look at when we are looking at the Bill.

In terms of the definition of "torture", there are one or two things that could be amiss. Maybe when Hon. Okoth will be looking at this later during the Committee stage, he might have to look at this. Some could be treated as acts of robbery. When a person is tortured for purposes of extracting their resources, that is excluded in the definition of "torture". One would look at it as robbery. If someone targets your car or property and you are subjected to torture for purposes of either harming or maiming you such that the items can be taken away without much

resistance, that is not included in the definition. As a country, we have intentions to exclude ourselves from the International Criminal Court (ICC). There are those arrangements where individuals organise for purposes of torturing certain groups. That is also missing when we look at the definition. This is something that we should look at such that we do not look forward to international courts when there are certain things that we can sort out locally.

With regard to reporting cases of torture as indicated in the Bill, a lot of what we call torture happens in areas where people do not have much information. Many times, those who target others for torture hardly do it in centres of information, urban areas or where they can be accessed easily. If you look at that against the arrangement for purposes of reporting, there is a problem and challenge that the Bill needs to look at. Where can you get the KNCHR offices in a village in Busia or Migori? What information would you have for purposes of reporting issues of torture? Many times, torture is executed by instruments of State, particularly the police. The Bill then states that we need to report to the police. I do not think that is something that will be easy to do. Many times, the police protect themselves. Some of these agencies are protective internally such that it is not easy for one to report anything against them and they take it positively. The arrangement that we have in the Bill for purposes of reporting cases of torture needs to be looked at afresh. The Bill says that for purposes of reporting, we target clearly two or three areas, namely, the National Police Service, which again is normally the main executor of torture, and the KNCHR. It also indicates any other relevant institution. When we talk about any other relevant institution and you look at that against the fact that this is a fairly new body in the country, it is going to be new to the society. So, the information is not going to be there. So, what are these other relevant institutions that one might want to report to?

Hon. Okoth: On a point of information, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): What is it Hon. Okoth?

Hon. Ogolla: He is raising a point of information. Can I allow him?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes.

Hon. Ogolla: You are allowed, Hon. Okoth.

Hon. Okoth: Thank you, Hon. Temporary Deputy Speaker. I also wish to thank Hon. Ochanda. There are other relevant institutions that we can clarify in the Bill. We have the National Police Service Commission and the Independent Policing Oversight Authority (IPOA). There is also a section of the Bill that speaks to the very important issue the Member has raised on the question about who to report to and if they can collude being the agents that perpetrate torture. It is like reporting to, most often, the perpetrators of torture in this country like the police. But there is a section of the Bill that makes aiding and abetting torture a crime, by agencies that can participate in it like the military, KWS and police. There is a section that talks about aiding and abetting, whether they refuse to take the report properly or refuse to pursue investigations or participate in cover up. There is a specific fine of Kshs1 million for that offence.

Hon. Ogolla: That is good information. But besides that, if you look at it in terms of what I was bringing out, you are still getting back to the same institutions and agencies by telling them what has happened and then you go to a second level of the same agencies. These are exactly the kinds of issues that I was trying to bring out in the sense that there are areas where it is not easy to get this information. But there are other areas in terms of the geography of this country, where a lot more times, victims of torture do not have this information that we are talking about or fear, for example, reporting to the police. So, where else do they go to? We need to have simpler ways of taking up these issues including opening up some levels of the Judiciary

where people can report, if they do not report to the police. Where else can you report to if you are in Bondo and you are a victim of torture somewhere on the island? So, those are some of the things I was talking about.

Hon. Temporary Deputy Speaker, the Bill is good, but there are some areas that we need to look at particularly for purposes of targeting communities or groups of people for torture. That is not very well looked at in the Bill.

I believe the Bill can be enriched further.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I now see the Member for Kajiado North, Hon. Manje, wants to contribute.

Hon. Manje: Thank you Hon. Temporary Speaker for giving me this chance to support this Bill on prevention of torture. Any document that tries to mitigate the suffering of a human being should be supported.

Kenya is a signatory to the UN Convention against Torture and other cruel, inhuman and degrading treatments. Having said that, we should live to that and this Bill will go far ahead to mitigate the same. These inhuman acts result from lack of understanding the essence of human life and what a human being is. Any time you torture a human being, you reduce his or her dignity.

This Bill will mitigate some torture that happen in our cells and prisons. Those who engage in this torture will face the rule of law. When somebody uses torture to extract information, it is laziness. It shows that some of these investigators do not have the right skills of getting information. Torturing to extract information will not solve the problem of crime in our country. The only thing that can solve this problem is an understanding by the people who intend to commit a crime that at the end of the day, they will be held responsible through investigative skills. What our investigation officers do is round up a group of people and put them in, torture them and try to eliminate them through torture methods. Sometimes, people might give information that is not correct. They get it through duress. Such information will not be admissible in a court of law and it can be used against the officer who extracted it.

I also think this is a very uncivilised method of administering justice. As we develop, we should device good methods of extracting information. For example, if a crime is committed somewhere, there will always be a fall back somewhere and if we have very good investigators, at the end of the day, they will reach the bottom of the crime. But if you use force because of laziness, then most likely, you might not get the criminal.

This Bill will align our country to other developed countries that have already discovered that you can only deal with crime through proper investigations and improving investigative skills. There are certain types of crimes that cannot be eliminated through torture, for example, terrorism. It will not serve any purpose to torture a terrorist because, at the end of the day, they are prepared to die for such kind of a crime. So, the best method is to use proper investigative skills.

Torture is the basic method used by officers. It shows that these officers lack the basic content of investigation. That is why when thugs get somebody, they torture him or her before they kill. That is why many people have been killed by thugs. Thugs normally torture their victims because they do not have time. They are lazy and want to extract information as fast as possible and that is why they do that.

Internationally, there are some countries that practise torture. There are different methods of torturing like waterboarding techniques where somebody is put under water and given a feeling that he is drowning so that he can give information. There are other methods of torture

like injecting heat or cold into a person to extract information. All these should be dealt with and forgotten as we move towards civilisation.

To finish, this Bill will go a long way in making sure that our country joins the modern world by making sure that victims are not tortured before they give information.

I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now see the Member for Embakasi South, Hon. Sumra.

Hon. Sumra: Thank you, Hon. Temporary Deputy Speaker. I would like to congratulate Hon. Ken Okoth. This Bill will actually help many people. In this life, we have physical, mental and emotional torture. I have seen children and wives tortured. We have even seen in the media some husbands get tortured. I do not know how this Bill will help them, but if it covers that, we are not looking at torture by the police only. The police have tortured too many people. Currently, when *boda boda* operators are arrested, the police literally slap them if they do not give money. This is happening. Apart from this, when they are put in cells, I have seen some children going to buy some *chapati*. So, this is happening.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Sumra, Hon. Birdi would like to give you information. Do you want to be informed?

Hon. (Ms.) Sunjeev: I would like to give him some information, if he agrees.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): You have to accept, Hon. Sumra.

Hon. Sumra: I will torture her if I do not accept. Carry on.

Hon. (Ms.) Sunjeev: Hon. Temporary Deputy Speaker, my point of information pertains to what Hon. Sumra has just said. When *boda boda* operators are on the road and they are slapped, that is not torture. It is intimidation and brutality. That is not torture. Torture is when you are being forced for some other information.

Hon. Sumra: I think you have tortured me. I do not wish to torture you more.

(Laughter)

When these people are taken to cells, it is emotional torture. If she heard me properly, I said that there is emotional, mental and physical torture. I accept it as part of the correction. Hon. Ken has brought some extraordinary Bills in this House. His Bills are very informative and very educative. All I know is that there are massacres and other political tortures which I disagree with. When somebody is arrested for political reasons, I do not think he should be subjected to torture. This Bill, even though it gives the NPS teeth, it will also give some teeth to our human rights groups. It will give them some muscles to move.

I do not want to speak much because most of the Members support the Bill. I only want to congratulate my brother, Hon. Ken Okoth. This is a very good Bill.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to the Member for Budalang'i, Hon. Ababu Namwamba.

Hon. Ababu: Thank you, Hon. Temporary Deputy Speaker. This is a good Bill. It is a progressive Bill. It is a Bill that advances both the letter and spirit of the Constitution specifically Article 29 of the Constitution that protects the person from torture. Article 29(c) is very clear. For persons who are detained, the Constitution is very clear that such people shall not be subjected to any form of violence from either public or private sources. They should not be

subjected to torture in any manner whether physical or psychological, corporal punishment, treated or punished in a cruel, inhuman or degrading manner. That is the Constitution under Article 29.

We know that the Bill of Rights contains provisions that are non-derogable meaning that you cannot deviate from those provisions. Even in instances where the Constitution permits a level of limitation because it acknowledges that some of these provisions in the Bill of Rights could be limited, the Constitution is very clear. It is very unambiguous in terms of setting the limits as to how exactly a right may be limited in Article 24. Again, it is very clear that a right to a fundamental freedom in the Bill of Rights shall not be limited except by law and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account a number of factors that the Constitution clearly sets out in Article 24.

Therefore, this is a progressive Bill in so far as it seeks to bring to life, to give meaning, to amplify the provisions of the Constitution, including Article 29, which very specifically outlaws any form of torture, degrading or inhuman treatment. This law should particularly be seen in the context of a very sad history that this country has. Our country has had a very unfortunate history regarding the challenge of torture. We have had many instances where security enforcement agencies have misused, misapplied the law and the authority vested in them to brutalise people, harm people and cause deaths of people.

Last week on this Floor, I remember mentioning the case of a young man by the name Titus Adungosi, a one time student leader at the University of Nairobi, who lost his life in the hands of the police merely because of rightfully, constitutionally agitating for the rights of students and expansion of civil liberties in this country. The full story has never been told as to what exactly happened to Titus Adungosi. All the pointers confirm that he was a victim of brutal brutality. He was a victim of torture in police custody. The late Titus Adungosi, a fine son of my county of Busia, is just one among very many Kenyans who paid the ultimate price because of police brutality and because of illiberal application of the law.

Therefore, this law is good. Of course, we have to be careful to ensure that we do not allow any of those old relics to sneak back.

I want to agree with the Member for Rarieda that the provision that makes reference to role of chiefs should be looked into. We know previously that chiefs have been used as agents of the State to advance some of the bad manners that we have since outlawed under the new Constitution. May this law not provide any loophole for us to return some of these very unfortunate relics of the law and of practice from the past. Let this law be a platform where this country can proudly join the league of countries that have truly declared total war on torture. In a society that prides itself on the rule of law, a society that believes in a functioning judicial system, you have no reason to apply brutal force that would not distinguish you in any manner from the cave man, to extract any information or to brutalise a person into submission.

We are investing in an effective judicial system. We need to show faith in the effectiveness of that judicial system and subject suspects to a process that is not only civil, but one that truly does exemplify and epitomise our commitment to the rule of law. Suspects have to be treated with dignity. We know the pressures and the difficulties in enforcement of the law, but at the same time, we have to be alive to the fact that the only thing that distinguishes a civilised society from the anarchy you witness in the animal kingdom is the rule of law. The distinction between democracy, mobocracy, civility and anarchy is the rule.

We must enforce the Constitution and the best way to enforce it is through Bills such as these that amplify and advance both the letter and the spirit of the Constitution. I hold this Bill as a symbol in honour of those who have suffered brutality and torture to see Kenya through to where it is today. Those who have the privilege of enjoying the constitutional expanded space for civil liberties under our Constitution can only jealously protect this kind of system. Any Government worth its salt and any Parliament worth the name would jealously want to protect the gains that have been witnessed in the last few years under our new constitutional dispensation.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Cherang'any, Hon. Wesley Korir.

Hon. Korir: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to support this Bill. From the outset, this is a timely Bill as we move with the world. The world has agreed under the UN that torture is obsolete. Torture was an effective way of gathering information from criminals a long time ago since there were no other options. The world has come of age in terms of technology. We now have other ways of getting information. Any country that still uses torture to get information is going backwards. I was saddened when I heard the President of the US, Donald Trump, praising the use of torture as a way of getting information. He is still in the old-age and the world should come out strong and refuse torture for their people. The US opened the Guantanamo Bay Torture Camp, but they have never known where to put those people. They are now struggling because there are people who have been there for years and they have nowhere to take them. In my view, torture is not an effective way of gathering information.

As the Member for Rarieda pointed out, I am worried as I look at Clause 30 of the Bill, which states that:

“30. The Children Act is amended by repealing Section 18.”

Section 18 of the Children Act states that:

- “(1) No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty.
- (2) Notwithstanding the provisions of any other law, no child shall be subjected to capital punishment or to life imprisonment.
- (3) A child offender shall be separated from adults in custody.
- (4) A child who is arrested and detained shall be accorded legal and other assistance by the Government as well as contact with his family.”

What is the rationale for repealing this section? Are we saying that children can now be tortured, punished and put in same protective custody with adults? We need to get an explanation on this amendment. What alternative do we have? If we repeal Section 18 of the Children Act, what are we doing with children?

I am happy to note a section which says that part of the mental and psychological torture include shame infliction such as stripping a victim naked, parading a victim in public places, shaving a victim's head or putting a mark on a victim's body against their will. Women who marched on the streets of Nairobi with the slogan “My dress, my choice” can now smile. Stripping people should be something of the past. In this age, we do not need to strip our sisters and mothers because of their dressing. We now have a law that will put anyone who does that to jail.

Forceful circumcision has not been included in this Bill. Some cultures do not circumcise their people, but some people have been forcefully circumcised in villages and cities against their wish and left to bleed. Some have even died. That is torture. That should be included in this Bill either as physical or mental torture because when you circumcise somebody, you are subjecting them to pain they had not prepared themselves for. We should not force them. Anybody who practises this should know that the law is now in place. We need to go forward.

Hon. Kang'ata had a very good idea on how to handle bad people in this country. He said that we should only inflict torture to terrorists and murderers to get information. That is old-age technology. If we want to get information, we must strengthen our systems. We must embrace technology. We can do thorough investigation, so that we do not need to extract information from suspects through torture.

We need to have Closed Circuit Television (CCTV) cameras in police cells and interrogation rooms to deter police officers from torturing suspects who are in custody. They should know that people are watching them and if they use torture, they will be prosecuted.

There is a clause under which one can report a case of torture, but I want to propose the formation of an anti-torture unit within the National Police Service. We do not need to hire new people. We need to train those who are already serving to deal with torture issues. They need to have a very strong investigative unit. Human rights lawyers should be given powers to investigate and prosecute anybody who tortures suspects under police custody, so that when you are affected, you can have somewhere to run to, but not to the same people who work with those who tortured you. People who have been tortured have not been given justice because they report to people who work with those who tortured them. The system in the NPS is the same. No police office would want to arrest and prosecute a fellow police officer because they believe that they are brothers and sisters since they went to the same training college. We need to create an anti-torture unit within the NPS to work with human rights lawyers, who will prosecute cases of torture.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. (Ms.) Sunjeev Birdi.

Hon. (Ms.) Sunjeev: Thank you, Hon. Temporary Deputy Speaker. From the outset, I would like to congratulate Hon. Ken Okoth on this great initiative of bringing this Bill to the Floor of the House. What I know and understand about Hon. Ken Okoth is that he is a human rights crusader and he feels very strongly for the human rights of people in this country. If he was not a Member of Parliament today, I can imagine him being a very serious human rights activist out there. So, I applaud him for bringing this Bill to the Floor of the House at a time when all we wish to do is talk about politics towards our elections. We do not know whether we will be here after August, but we know that there is a person in his name that has brought change to our country with this lovely Bill.

I support this Bill wholly. It should be made very clear that the basis of this Bill is in the definition. They have said that it is on cruel, inhuman and degrading treatment or punishment inflicted by a public officer or a person acting on behalf of a public officer. That is the gist of this whole Bill because even though as a country or Government we have so many Bills, we do try to streamline the behaviour of people and human beings in general. This Bill provides a legal framework for prevention, prohibition and punishment to acts of torture and ill treatment. It is about time that we join hands with other countries to ensure that we are at par with the UN Convention against Torture.

Hon. Sumra said that he sees many children and women tortured. He said torture comes in different ways, but this particular Bill is for the purposes of torture committed by a public officer. So, we have to be very specific on the angle and to who it is directed.

I would also like to reiterate that I am quite happy with the offences that are included in the Bill. It says that if as a result of torture, a victim dies, the person is liable, on conviction, to imprisonment of life. It is right and prudent to give such people harsh judgments because taking somebody's life is inhuman.

Once again, I support the Bill in its entirety. I once again congratulate the Member.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Member for Shinyalu, Hon. Anami.

Hon. Anami: Thank you, Hon. Temporary Deputy Speaker. I thank the Member for Kibra, Hon. Okoth, for having brought this Bill to the House and presented it with the articulation that he has done. One of the greatest achievements we have made as a country after Independence is the promulgation of the Constitution of Kenya, 2010. Many people, including members of the public, contributed to the Constitution and made reference to torture and instances when Kenyans were dehumanised. There have been instances where Kenyans were dehumanised. We have always said that this is a people's Constitution. This can be truly a people's Constitution if we all endeavour to enrich humanity. We can do this through such legislation. I would, therefore, like to submit that this is legislation that has come at the right time and we need to build on it. The kind of torture that Kenyans have gone through and continue to go through, especially in the hands of public officers such Administration Police, chiefs, assistant chiefs and now through the *Nyumba Kumi* initiative, is bad. I have seen instances where the public gets impatient and opts to mete mob justice on such officers because of the frustration that comes from the system. It is very unfortunate. We should look at such issues holistically. We should put measures in place to enrich humanity in all ways, for instance, in our education system.

(Hon. Njomo consulted loudly)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member for Kiambu, we are not in Kiambu.

Hon. Anami: Thank you, Hon. Temporary Deputy Speaker. I was wondering whether it was not intended to harass us. Thank you for that protection.

We can create an enlightened society if we integrate this in our education system and other public interventions where people are seen as equal social partners. We can get rid of violence. We know torture is a result of violence and is promoted by violence. Violence begets violence. I would like to persuade my brother, Hon. Kang'ata, to look at these things differently. The African society is an inclusive society and we might not go the way of killing everyone who is not behaving well. We can get people who are not behaving well to behave well by reforming their character and behaviour. We have behavioural change institutions like schools and prisons. These institutions can create an environment for reforms. I do not know why the police believe they must torture everybody who comes their way. The other day, we were talking about promoting public relations in the police. They never learn. When police chase youths with viboko, they are anxious to beat them. Policemen chase women in the villages and extract money in the pretext that they are getting rid of traditional brews, which in some cases, are not illegal undertakings. They lock these women together with other suspects irrespective of their ages.

Young and old people are put in one room and this is torture. We should have a system where the police must be retrained. Reforms must start with the people who torture others, so that they can change their approach. Extraction of evidence from witnesses or suspects cannot always be obtained by beating them up. There are ways of getting these people to provide information without harassing them.

I would like to advocate for the passing of this Bill and especially the creation of mechanisms for an enabling environment for reforms. These reforms should be in the general society and in institutions where public officers are trained. I do not understand why we are so anxious to train policemen just for six to nine months yet they will be dealing with issues that go beyond six or nine months. We churn these people out very quickly. Let us have an arrangement where they can have follow up training sessions. If this is provided in a legislative process, especially through procedures from the line Ministries, then, let it be so, so that policemen have a way of enriching humanity and not dehumanising and degrading people who come their way.

Hon. Temporary Deputy Speaker, you will be surprised at our efforts to establish police posts and police stations. They are becoming counter-productive. Communities do not know whether to accept them or to refuse them. I have had an instance where members of the community say: "Now, Mheshimiwa, you are putting up a police post here. It means a lot of torture to our youth and the mothers of this community." Indeed, that happens. We had an instance where in a Pentecostal Church, we have a person called Mama Assembly, the woman exemplary leader who represents the interests of women. Such a person can never be associated with brewing of *chang'aa*. So, when the police did not find *chang'aa* in her house and she was not ready to part with money, they assigned her a few jericans of *chang'aa*. Mama Assembly was then arrested and asked to take a bond because she did not give them a bribe.

Let us deal with this thing holistically. I would like to support the Prevention of Torture Bill and even ask that we structure it in such a way that it does not just concern public officers. Let us be concerned with other remedial initiatives.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to the Member for Bahati, Hon. Onesmas Ngunjiri.

Hon. Ngunjiri: Ninashukuru Mhe. Naibu Spika wa Muda kwa kunipatia nafasi hii ili nchangie Mswada huu.

Pili, ningetaka kumpongeza Mhe. Okoth kwa kuuleta Mswada huu wakati ufaao. Haswa, kwa ujuzi ninao, kwa mambo nimepitia, Mswada huu unahitajika sana na ni muhimu sana sisi kama Wabunge tuangalie kwa makini. Mara nyingi, Miswada huja hapa Bungeni na tunaikimbiza bila kuangalia matokeo yake. Njia za kuwaadhibu washukiwa kama wameshikwa na polisi zimezidi kila mahali. Polisi wanatumia njia nyingi sana. Matusi ambayo wananchi ambao tunaongoza wanatusiwa ni adhabu kubwa sana kabla hawajafikishwa kortini. Wanatusiwa vibaya sana. Polisi wanawatukana wananchi kwa majina ya waheshimiwa na watu wengine wakubwa. Ni kama hawa ndio mwisho. Ukishikwa na polisi, ni kama umefika mwisho. Ningetaka kutoa mfano wangu mwenyewe. Wakati tulishikwa, ambao tunajulikana kama Pangani 6, kuadhibiwa ambako tuliadhibiwa bila kupelekwa kortini kulikuwa ni kwa hali ya juu zaidi. Kama Mbunge ambaye anaheshimiwa na amechaguliwa na watu anawekwa seli na hawezi kupewa maji, anapewa ndoo ya kuenda choo mukiwa na wengine huko ndani, huwezi badilisha nguo--- hii ni adhabu ambayo haitakikani. Ndio ninasema Wabunge wajaribu kuangalia jambo hili sana. Nyinyi Wabunge kwanza ningeomba muanze kuelewa. Uhusiano wenu na polisi uko na shida. Wakiona Mbunge sijui ni kama uliwafanyia kazi gani. Inakuwa matusi ambayo haifai

kwa mtu ambaye anaheshimika. Kama Mheshimiwa ataadhibiwa na matusi kama hayo, mwananchi wa kawaida, wale tunaongoza, hali yao itakuwa namna gani?

Pia, kunyang'anya watu mali yao baada ya kushikwa na kuingizwa seli ni kuadhibu mtu kabla hajafika kortini. Unakuta hata njia ya kupea hawa watu chakula, wengi wanaadhibiwa kwa majina ambayo hata siwezi kutaja hapa kwa sababu lugha hiyo ni mbaya kwa Mbunge kutaja. Lakini unakuta wanaadhibiwa vibaya sana. Hata rumande zingine ukiingia hali ni mbaya sana. Kwa hivyo, lazima tuangalie mikakati. Nafasi imekuja ya sisi tuangalie huu mjadala na tuangalie ni kitu gani tutaweka kisheria ili kulainisha vifungo ambavyo tunaweza ongezea. Kwanza hasa wakati huu tunaenda kwa siasa. Na ile siasa tunaenda, nawahakikishia nyinyi Wabunge, polisi wanawangoja. Matusi mtapata na kuadhibiwa na kufungiwa mikutano ovyo ovyo. Hivi vitu viko hapa. Ni kama wakati wa kuvuna mahindi. Wakati wao wanasema umefika. Licha ya hayo, kuna polisi tunaheshimu kwa sababu utaratibu wao ni mzuri. Wanaheshima, wakitaka kukuletea *summons* kuna utaratibu mzuri. Lakini kuna wengi ambao njia zao lazima tuzikatae kama Wabunge na tuweke sheria kali, wataadhibiwa namna gani. Tumeona wengi wakifa katika seli; tumeona wengine wakibakwa wakiwa kwa seli; tumeona wengine wakiadhibiwa kwa njia ya matusi; na tumeona wengine wakiadhibiwa kwa kunyang'anywa mali yao. Hayo yote tumeyaona. Wakati umefika.

Juzi niliona kwa NTV, ulaghai wa polisi wa trafiki. Niliona wakiokota pesa kwa wananchi na nikajiuliza kama huyu mtu amewekwa kuchunga maisha ya raia ama amewekwa hapo--- Niliona polisi mmoja ambaye kijiti chake kimewekwa Big G upande wa chini ndio noti ikiangushwa chini, inachukuliwa kwa hicho kijiti. Mambo haya ndio yako kwa seli na yana madhumuni ya kuadhibu watu wetu. Ni mambo ya aibu. Nauliza Wabunge tuweke mikakati ya kutosha kwa Mswada huu ili tusaidie mwananchi wa kawaida. Kama wewe utaadhibiwa kama Mbunge, unafikiriaje mtu yule wa chini?

Wengi wanakubali mambo fulani yafikishwe kortini ili waondoke kwa seli. Sio kwa sababu wamekosa, lakini wanakubali ili waondoke kwa seli. Afadhali waende kortini ama wapelekwe rumande kwa sababu ya ile adhabu iko kwa seli. Kwa hivyo, utaratibu wa kujua mtu kama amefanya makosa sio kumwadhibu, kumpiga au kumnyang'anya mali yake. Kuna utaratibu ambao unahitaji kufuatiliwa. Jambo muhimu tungeomba Wabunge wenzangu ni tuangalie sana jambo la kutozwa faini au kifungo kwa mtu anayemuumba Mkenya bila sababu. Kuchukua sheria mikononi mwako---

Sehemu zingine unawekwa stesheni ya polisi kabla ya kupelekwa kortini na utahukumiwa huko, utapigwa faini huko, utaachiliwa huko ama utaadhibiwa huko huko ndani. Kwa hivyo, ninaunga mkono jambo hili ili tuweke mikakati. Mhe. Okoth, Mungu akubariki sana.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Members. The time being 6.30 p.m., the House stands adjourned until tomorrow, Wednesday, 8th February 2017 at 9.30 a.m.

The House rose at 6.30 p.m.