

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 3rd July 2019

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: Hon. Members, the Communication will come later.

PETITIONS

MANAGEMENT OF MENTAL HEALTH

Hon. Speaker: Hon. Members, Standing Order No. 225(2)(b) requires the Speaker to report to the House any petition that is not presented by a Member. I, therefore, wish to report to the House that my office received a Petition submitted by one, Ms. Caroline Ajwang' Oreng' a counselling psychologist from Kisumu. The petitioner makes reference to the Mental Health Act which provides for the care, management and control of persons suffering from mental health illnesses. The petitioner is concerned about the increase in mental health issues that are manifested in the society through murder, suicide, rape, drug abuse and other delinquent misconduct.

Hon. Members, the petitioner claims that these social misconducts originate in our schools and homes and proposes that mental healthcare should be introduced at the formative stages of an individual to ensure that the mental health of upcoming generations is taken care of. The petitioner further avers that there is a section of the general public facing mental health issues and that they lack the financial capability to visit private institutions to receive the appropriate medical attention.

Hon. Members, the petitioner prays that the National Assembly intervenes to ensure:

- (i) an increase in the number of counsellors in Government institutions to provide care to citizens who cannot afford to pay for the services offered by the private institutions; and
- (ii) employment of professional counsellors in schools instead of having guidance and counselling teachers so that the counsellors can fully concentrate on children's mental health and introduce counselling for child offenders, without necessarily subjecting them to jail terms.

Pursuant to the provisions of Standing Order No. 227, this Petition stands committed to the Departmental Committee on Health. The Committee is requested to consider the Petition and report its findings to the House and the petitioner in accordance with Standing Order No. 227 (2).

I thank you, Hon. Members.

There are some Members who want to make comments. Among them is the Member for Mwea.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Speaker. I stand to support that particular Petition. In this very House, we have had a number of Motions which suggest the same thing as the Petition. Therefore, I urge the Departmental Committee on Health to take that Petition seriously and consider it alongside other Motions relating to counsellors out there. Having early education on some of these psychological problems will help our society to grow in a healthier and better manner. That way, we will avoid some of the things that we are seeing in our society presently.

I support the Petition.

Hon. Speaker: Member for Kathiani.

Hon. Robert Mbui (Kathiani, WDM – K): Thank you, Hon. Speaker. I also rise to support this Petition. I have been pushing for payment for parents and guardians of a school where their children had burnt a long time ago. This Petition tells us that there are issues to do with mental health that make people commit some crimes like arson in schools. This is an important Petition which needs to be expedited so that Kenyans can get value from this House.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Igembe Central.

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Speaker, for giving me this opportunity to add my voice to the Petition.

In the 11th Parliament, we had a Motion which was dealing with the same issue. There have been several subsequent Motions focusing on the same.

I, therefore, request that when the Committee sits, they seek all the Motions, look at the conclusions and put them together. The bottom line is that we need counsellors in our schools.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Endebess.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I stand to support the Petition. I remember last week this House passed a Motion that sought to introduce mental health education at the primary level so that it becomes part of the curriculum in the country. Cases of mental health; issues of femicide and suicide need a serious discussion. Counsellors should be introduced so that people have access to them. It is important that the Departmental Committee on Health takes this matter urgently.

There is also a Bill on mental health issues which is pending before the Departmental Committee on Health. It has not seen light of the House. It is a Government Bill that has not been brought here. I remember in the 11th Parliament we tried to have the Bill in our Committee and some petitions were made to withdraw the Bill. So, we hope this will be discussed as issues of mental health need to be given priority.

With those remarks, I support the Petition.

Hon. Speaker: Possibly, the Committee should consider the Petition alongside the Bill which Hon. Pukose has mentioned. It might be useful to inform the petitioner who, maybe, is merely seeking the introduction of the Bill.

Hon. Member for Kimilili.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker for giving me this opportunity. I also support the Petition and urge the Committee to go beyond and look at a way to ensure mental check-ups are made mandatory for all Kenyans because we are losing very many Kenyans to suicides.

This is a very important Petition. I support it.

Thank you.

Hon. Speaker: Member for Tigania West.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Speaker, for giving me an opportunity to may add my voice to the others who have spoken on the Petition.

We realise that on many occasions people do not know that they have a mental problem. If it is captured early and followed up, it will be possible for us to quantify the extent to which one suffers. Therefore, we will counter it by taking care of it early enough.

I support. Thank you very much.

Hon. Speaker: The Petition stands committed to the Departmental Committee on Health. The Committee should consider the Petition and invite the petitioner to make her presentations and any other appropriate stakeholder, while at the same time considering the Mental Health Bill that Hon. Pukose referred to.

Next Order.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House today Wednesday, 3rd July 2019 afternoon sitting:

The list of nominees to fill vacancies in the National Government Constituencies Development Fund Committee in the following constituencies:

1. Jomvu Constituency.
2. Ndhiwa Constituency.
3. Nyando Constituency.
4. Mandera East Constituency, and
5. Embakasi Central Constituency.

The Report of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2018 and the certificates therein:

1. Veterinary Medicine Directorate.
2. Veterinary Service Development Fund.
3. Lands Limited.
4. Kenya Plant Health Inspectorate Service.
5. Prisons Industries Revolving Fund.
6. Regional Centre on Ground Water Resources Education Training and Research in Eastern Africa.
7. Kenya Tsetse and Trypanosomiasis Eradication Council.
8. Kenya Deposit Insurance Corporation.
9. NACADA Alcoholic Drinks Control Fund.
10. Independent Policing Oversight Authority.
11. Non-Governmental Organisations Coordination Board.
12. Egerton University Investment Company Limited, and
13. Petroleum Training Levy Fund.

The Report of the Auditor-General on the Financial Statements of the Small Enterprises Finance Company Limited for the year ending 31st December 2018 and the certificate therein.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairman of the Departmental Committee on Justice and Legal Affairs.

Hon. William Cheptumo (Baringo North, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House Wednesday, 3rd July 2019 afternoon sitting:

Reports of the Departmental Committee on Justice and Legal Affairs on its consideration of:

1. The Anti-Corruption and Economic Crimes (Amendment) Bill, National Assembly Bill No.6 of 2019, and
2. The Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill, National Assembly Bill No.35 of 2019.

Thank you, Hon. Speaker.

Hon. Speaker: Chairman of the Departmental Committee on Labour and Social Welfare.

Hon. Ali Wario (Bura, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House on Wednesday 3rd July 2019 afternoon sitting:

The Reports of the Departmental Committee on Labour and Social Welfare on:

1. The Industrial Training (Amendment) Bill, National Assembly Bill No.4 of 2019.
2. The Employment (Amendment) Bill, National Assembly Bill No.15 of 2019, and
3. The Public Petition regarding dismissal of the ex-corporal Benjamin Chelang'a by the Kenya Defence Forces.

Thank you, Hon. Speaker.

Hon. Speaker: The Vice Chairman of the Departmental Committee on Energy, Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House on Wednesday, 3rd July 2019:

The Report on the Public Petition No.3 of 2019 regarding coal mining activities in Mui, Mwingi East Sub-County, Kitui County.

Thank you, Hon. Speaker.

Hon. Speaker: Chairman, National Government Constituencies Development Fund Select Committee, Hon. Maore.

Hon. Maoka Maore (Igembe North, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House on Wednesday, 3rd July 2019:

The Report of the National Government Constituencies Development Fund Select Committee on the projects, proposals, approvals, disbursement, status and restrictions imposed on constituency accounts for the third quarter of 2018/2019, Financial Year as at 10th June 2019.

Hon. Speaker: Next Order.

NOTICES OF MOTIONS

Hon. Speaker: Hon. Maore.

APPROVAL OF LIST OF NOMINEES TO NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND COMMITTEES

Hon. Maoka Maore (Igembe North, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, pursuant to Section 43(4) of the National Government Constituencies Development Fund Act, 2015 and paragraph 5(10) of National Government Constituencies Development Fund Regulations, 2016, this House approves the list of nominees to the Jomvu Constituency, Ndhiwa Constituency, Nyando Constituency, Mandera East Constituency, Embakasi Central

Constituency Committees of the National Government Constituencies Development Fund, laid on the Table of House on Wednesday, 3rd July 2019.

Hon. Speaker: Leader of the Majority Party.

ALTERATION OF THE CALENDAR

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Standing Order 28(4), this House resolves to alter its Calendar for the Third Session of the Assembly (2019) as adopted on 13th February 2019, by proceeding for a short recess on Friday, 5th July 2019 and resuming its regular sittings on Tuesday, 23rd July 2019 at 2.30 p.m.

ORDINARY QUESTIONS

Question No.312/2019

MEASURES TO SECURE MARKET FOR MIRAA

Hon. Speaker: The first Question is by the Member for Tigania East, Hon. Josphat Gichunge, commonly known as Kabeabea.

Hon. Josphat Kabeabea (Tigania East, PNU): Thank you, Hon. Speaker. I beg to ask the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation the following Question.

(i) Could the Cabinet Secretary state whether *Khat* (also known as *miraa*) has been categorised as a scheduled crop as required by the Crops Act 2013 and the Crops (Food Crops) Regulations 2015?

(ii) What measures is the Ministry putting in place to secure local and international market for the crop?

Hon. Speaker: The Question is referred to the Departmental Committee on Agriculture and Livestock to schedule when the Cabinet Secretary will appear before it.

The next Question is by the Member for Bomachoge Chache, Hon. Alfah Miruka.

Question No. 314/2019

STATUS REPORT ON THE ESTABLISHMENT OF ADMINISTRATIVE SERVICES IN BOMACHOGE CHACHE CONSTITUENCY

Hon. Alfah Ondieki (Bomachoge Chache, KNC): Hon. Speaker, could the Cabinet Secretary provide a status report on implementation of the *Kenya Gazette* Notice of 21st June 2017 on the establishment of the following areas, namely: Rianchogu, Eburi, Getare Township, Itare, Kemboa, Mwobo, Nyagesa, Nyagenke, Nyataro and Nyamiobo sub-locations and Nyansara, Kineni, Mang'ere, Keragia, Misesi and Bonyonge locations, as administrative and

service delivery coordination units in Gucha Sub-county, Machoge Chache Division of Bomachoge Chache Constituency?

Hon. Speaker: Very well. It has provided some bit of comical relief. The Question is referred to the Departmental Committee on Administration and National Security. I am sure the Cabinet Secretary will be able to pronounce those names properly like the Member has ably done.

(Laughter)

The next Question is by the Member for Garsen, Hon. Wario Guyo.

Question No. 315/2019

RE-OPENING OF GALANA WATERING POINT CORRIDOR

Hon. Ali Guyo (Garsen, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Tourism and Wildlife the following Question.

(i) Is the Cabinet Secretary aware of a presidential directive in 2016, urging all parties concerned to open the Galana Watering Point Corridor in Garsen Constituency for access to water by livestock and wildlife?

(ii) Is he further aware that the continued closure of the Corridor is a source of perennial conflicts between pastoralists and the Kenya Wildlife Service (KWS)?

(iii) What action has the Ministry taken to ensure that the corridor is reopened in order to resolve the escalating conflicts between the pastoralists and KWS, in light of the fact that the Agricultural Development Corporation (ADC), Galana, has opened its side of the corridor?

Hon. Speaker: The Question is referred to the Departmental Committee on Sports, Culture and Tourism.

Next is the Question by the Member for Saku, Hon. Rasso.

Question No. 316/2019

MEASURES TO ADDRESS HUMAN-WILDLIFE CONFLICT IN SAKU CONSTITUENCY

Hon. Ali Rasso (Saku, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Tourism and Wildlife the following Question.

(i) Is the Cabinet Secretary aware of rampant and continued human-wildlife conflicts in certain areas of Saku Constituency close to the Marsabit Game Park and Game Reserve without adequate intervention from the Ministry?

(ii) Could the Ministry state the number of deaths, injuries and destruction of properties reported since 2012 and further confirm the number of deaths as a result of human-wildlife conflicts in Saku Constituency that have been compensated so far as well as pending cases?

(iii) What short-term and long-term measures are being pursued by the Ministry to address the rising conflict?

Hon. Speaker: This one will be responded to before the Departmental Committee on Environment and Natural Resources.

The last Question is by the Member for Meru County, Hon. Bishop Kawira Mwangaza.

Question No. 317/2019

NON-COMPENSATION FOR LAND ACQUIRED TO CONSTRUCT
ISIOLO INTERNATIONAL AIRPORT

Hon. (Ms.) Kawira Mwangaza (Meru CWR, Independent): Hon. Speaker, I beg to ask the Cabinet Secretary for Lands and Physical Planning the following Question.

(i) Is the Cabinet Secretary aware that a number of residents of Meru County have never been compensated for land acquired for the construction of Isiolo International Airport?

(ii) Within what specific timelines is the Ministry intending to compensate these residents as well as address related land issues in Meru County?

Hon. Speaker: The Question is referred to the Departmental Committee on Lands to arrange when the Cabinet Secretary will appear before it.

Hon. Members, before we go to Statements, allow me to recognise the presence, in the Speaker's Gallery, of the following guests: National Youth Service (NYS) trainees from the NYS Headquarters located in Ruaraka Constituency, Nairobi County. The Member for Ruaraka Constituency, Hon. T.J. Kajwang' is happy that his constituents are present.

Also present in the galleries are students from Springs High School of Rongai Constituency, Nakuru County; Naivasha High School from Naivasha East Constituency, Nakuru County; Riara University from Lang'ata Constituency, Nairobi County; PCEA Imani Kibwezi Primary School from Kibwezi East Constituency, Makueni County; and St. Bakhita Girls' Kiangini from Makueni Constituency, Makueni County. They are all welcome to observe the proceedings of the National Assembly this afternoon.

(Applause)

STATEMENT

NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT
FUND ALLOCATION FOR 2019/2020

Hon. Speaker: Any Member with a Statement? Hon. Maore.

Hon. Maoka Maore (Igembe North, JP): Thank you, Hon. Speaker.

The National Government Constituencies Development Fund (NG-CDF) is established pursuant to the National Government Constituencies Development Fund Act, 2015. Its main objective is to address poverty at the grassroots level and enhance regional equity in development.

Section 4 of the Act, as amended, establishes the National Government Constituencies Development Fund as a national fund consisting of monies of an amount and not less than 2.5 per cent of the national Government's share of revenue as determined by the Division of Revenue Act and Article 218 of the Constitution.

Firstly, the allocation for this financial year is Kshs41.84 billion, after a proposal by the National Treasury and the Ministry of Planning. That is from Kshs38.749 billion in the annual development estimates of the Financial Year 2019/2020. It was later increased by Kshs3 billion by the Budget and Appropriations Committee (BAC). That is how it ends up being Kshs41.84 billion.

The NG-CDF Board, in concurrence with the National Assembly Select Committee on the NG-CDF determined the Third Quarter Report of the project proposals, approvals, disbursements, status and restrictions imposed on accounts of constituencies for the Financial Year 2018/2019 as at 10th June 2019. So, the Report captures the allocation of the Financial Year 2018/2019 of Kshs33,286,162,000 out of which Kshs28 billion has so far been received from the National Treasury. This, therefore, translates to an outstanding receipt of Kshs5,286,162,000 for the current financial year.

Based on the foregoing, the Board has disbursed to 290 constituencies Kshs19,922,392,919 while Kshs4,077,000,000 was disbursed to constituencies with pending balances for previous financial years' allocations.

Based on the deliberations of the third quarter, the Committee made the following recommendations:

- (i) The National Treasury should ensure that the remaining Kshs5.28 billion is released by the end of July to allow constituencies to implement approved projects.
- (ii) The Cabinet Secretary for the National Treasury should ensure that Kshs4,976,750,000 unremitted by the National Treasury and owed to the NG-CDF Board is provided for in the Financial Year 2019/2020.
- (iii) The NG-CDF Board should fast-track and submit to the National Assembly a comprehensive list of all incomplete projects countrywide, clearly categorising those that have stalled because they either lie in the category of devolved functions, were initiated without authority of the Board or, were underfunded, among other reasons.
- (iv) The Board should come up with punitive measures on constituency committees with low absorption rates.
- (v) The Board should also enforce clearance of outstanding issues as a prerequisite for processing requisition for funds for subsequent financial years.
- (vi) The Board should come up with remedial measures on how to enhance timely submission of project proposals and absorption of funds.

Thank you, Hon. Speaker.

POINTS OF ORDER

Hon. Speaker: I can see Members with interventions. Member for Igembe South, Hon. John Paul.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Speaker. I seek your guidance. I want to make a follow up on Question No.116/2019 where I sought advice from the Ministry of Foreign Affairs on a young gentleman who was arrested in Mumbai, India on 28th May last year. That Question has not been answered up to now.

Hon. Speaker: Was that Question to be responded to before the Departmental Committee on Defence and Foreign Relations?

Hon. John Paul Mwirigi (Igembe South, Independent): Yes.

Hon. Speaker: Chairman, Hon. Katoo ole Metito. Who is the Vice-Chair? Is it Hon. Rasso?

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Speaker. The Committee needs to follow up that. We may not be seized of that matter. I will follow it up and share with the Chair.

Hon. Speaker: Please and share with the Member.

Thank you, Hon. Rasso.

Member for Emuhaya, what is your intervention?

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. I just want to add my voice to the fact that the NG-CDF has done very well. I commend the Committee for the good work. The main challenge we are facing is that the NG-CDF has become a mainstream thing in the constituencies. The expectations of Kenyans are very regular. So, the remaining disbursements really need to be brought to the constituencies. When it is time for bursaries, they expect the money. They live with it as part and parcel of their money and the Kenyan Budget wholesomely.

That is what I wanted to put across.

Hon. Speaker: That is a matter you can discuss when you are discussing the Report that was tabled. I do not think that is business. Those interventions which then become points of arguments about this or the other cannot be used as excuses to make contributions in the Chamber. These other Members who have placed interventions, are they points of order? Hon. Pukose, what is your intervention about?

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, I sought a Statement in the House in the month of May. It was on registration of three secondary schools in my constituency, Kietkei Secondary School, Lutaso Secondary School and Chepchoina Secondary School. That has not been responded to up to date. This is a very urgent matter because I have students in these schools, yet teachers have not been posted there. I have carried out the necessary pre-registration requirements for all the three of them. I sought answers from the Cabinet Secretary for Education. Being an urgent matter, this has not been responded to up to date. So, it makes these children who are there to get worried whether they are getting the right education.

Hon. Speaker: I do not see the Chair of the Committee, or the Vice-Chair, who normally sit next to you. Is there any Member of the Departmental Committee on Education and Research who may wish to undertake or have any information on the status of that Question? Was it a Question or a Statement? The Leader of the Majority Party can give an undertaking.

Hon. Aden Duale (Garissa Township, JP): The Member is not sure whether it is a Statement or a Question. I will check with the Table Office and find out if it is queuing. There is a line, unless it was an urgent one. We will find out whether we can put it for you tomorrow because you are a serious Member.

Hon. Speaker: Very well. Member for Samburu North, Hon. Lentoimaga.

Hon. Alois Lentoimaga (Samburu North, JP): I just want to enquire from the Leader of the Majority Party on Members from northern Kenya, the Pastoralists Parliamentary Group on areas that are affected by cattle rustling. The Cabinet Secretary had promised to address the issue of the disarmament of the Kenya Police Reservists (KPRs). It is like we are being cheated. There is nothing going on. We were called...

Hon. Speaker: Hon. Lentoimaga, you have said that the Cabinet Secretary had made a promise. You know, I do not superintend over Cabinet Secretaries. Those are different creatures.

Hon. Alois Lentoimaga (Samburu North, JP): Hon. Speaker, I want the Leader of the Majority Party to address that issue as a matter of emergency.

Hon. Speaker: Hon. Lentoimaga, even if it is an emergency that is not the way to raise it.

Hon. Alois Lentoimaga (Samburu North, JP): What is the way forward, Hon. Speaker?

Hon. Speaker: Hon. Lentoimaga, I thought you are doing your third term in Parliament. Surely, if you want to raise an issue as a matter of urgent national importance, you can do so and you will be given an opportunity. I doubt if anybody is going to tell you to hold brief for the Cabinet Secretary who made the promise to you. Perhaps, you could seek a statement on the promises that were made to Members from northern Kenya.

Hon. Alois Lentoimaga (Samburu North, JP): Thank you, Hon. Speaker.

Hon. Speaker: Very well. Next Order!

CONSIDERATION OF REPORTS AND THIRD READINGS

CONSIDERATION OF PRESIDENT'S RESERVATIONS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. Speaker: Order Members, including the Member for Embakasi South Constituency. You can sit next to the Member for Gem Constituency. He is not a harmful person. You can decide to sit next to him and whisper to him.

(Hon. Julius Mawathe took his seat)

I can see you are now comfortable.

Hon. Members, debate on this Motion was concluded yesterday when the Committee of the whole House considered the President's reservations. Having confirmed that the House has the requisite quorum, I proceed to put the Question. In the event that you have intentions of negating the President's reservations, you will be at liberty to rise in your place and seek a Division. You will ensure that, at least, you have not less than 233 of yourselves present to carry the Motion. This is not so much a matter of who shouts the loudest. Notwithstanding the voice votes, there must be requisite numbers.

(Question put and agreed to)

(Hon. (Ms.) Odhiambo-Mabona stood in her place)

Member for Suba South, I thought you were standing in your place to claim for a Division. Sorry, it is Suba North and not Suba South.

Next Order!

THE KENYA ACCREDITATION SERVICE BILL

Hon. Speaker: Hon. Members, I can see the Majority Whip is doing his work to ensure that the House retains the quorum for purposes of putting this Question. Debate having been concluded, I, therefore, put the Question.

(Question put and agreed to)

The Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move that the Kenya Accreditation Service Bill (National Assembly Bill No. 17 of 2018) be now read a Third Time. I also request Hon. Gikaria, Member for Nakuru Town East Constituency, to second.

Hon. David Gikaria (Nakuru Town East, JP): Hon. Speaker, I second.

Hon. Speaker: Very well.

(Question proposed)

It is the desire of the House that I put the Question. I confirm that there is quorum.

(Question put and agreed to)

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

Next Order!

MOTIONSAPPROVAL OF THE MEDIATED VERSION OF THE
IRRIGATION BILL

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the Irrigation Bill (National Assembly Bill No. 46 of 2017), laid on the Table of the House on Tuesday, 2nd July 2019, and approves the mediated version of the Irrigation Bill (National Assembly Bill No. 46 of 2017).

Allow me to first give a brief background of this Bill. It seeks to provide for the development, management and regulation of irrigation to support sustainable food security and uplift our socio-economic development in the country and for all connected purposes.

The Bill also seeks to repeal the current Irrigation Act, Cap 347 of the Laws of Kenya which commenced on 24th June 1966. So, we are currently dealing with an archaic law that is close to colonial legislation. Once the President puts his signature on this Bill, then that old Cap 347 will be repealed. This Bill was read the First Time. It has been handled in the two Houses.

One time it died in the Senate and we revived it and took it to mediation. So, it is a Bill that has been on the corridors of parliament for a long time. Pursuant to the provisions of Article 110(4) of the Constitution and Standing Order No. 142, it is here today.

We considered the amendments forwarded by the National Assembly and rejected some of the amendments by the Senate on 14th March, 2019. That led to the mediation process. After long negotiations - the Member for Mwea Constituency was part of the Committee - we agreed on a version that is agreeable to all of us and today it can be presented to both Houses for approval. The Irrigation Bill is an important Bill not only for the Government but for the people of Kenya.

I am happy to report that the Mediation Committee had fruitful deliberations and developed a version of the Bill that was agreed by both Houses. I want to single out the Senator for Embu County who was the Leader of the Senate team. He is also a former Minister for Cooperative Development. Beyond the Irrigation Bill, he made our lives easy compared with what we went through during the Kenya Roads Bill and Land Index Bill. Dr. Oundo is smiling; he knows the hell we went through while dealing with the Bills on land value index and physical planning. On this one, we had an easy time. It is because we had a very good chairperson and team. In only one sitting, we agreed on everything.

The clauses in contention were 6, 9, 14, 16, 17, 20, 25, 34 and the Schedule to the Bill. In our report, we have annexed the mediated version of the Irrigation Bill and it is much better than the earlier one. An agreed version was arrived at after consensus with our counterparts in the Senate. If you allow me, I will give the highlights.

Under Clause 6(1), the Senate had proposed amendments to provide for the Cabinet Secretary to consult the Council of Governors (CoG) in regulating irrigation developments. I think that is also part of public participation, so that any time he wants to issue regulations he consults the CoG and other stakeholders. Consultation is a constitutional requirement as provided for in Articles 6 and 189 of the Constitution. Consequently, the Mediation Committee agreed to amend sub-clause (3) to provide for the CS to consult the CoG and other stakeholders in performing his or her functions under Clause 6.

Under Clause 9, which was also contentions, it was on the composition of the Board of the National Irrigation Authority, which is anticipated. The committee considered the amendment and observed that there would be need to have more representation from the county governments as well as persons representing other stakeholders like farmers, the private sector, investors and all that.

Finally, permit me to express my gratitude to Sen. Njeru Ndwiga, who was the Vice-Chairperson of the Mediation Committee. Just like in the mediation committee on the Warehouse Receipt System Bill which he chaired, he exhibited great leadership. I also want to thank Senators and Members of the National Assembly in that mediation process for making the process a success. I also want to thank the Clerk Assistants to this committee, led by a gentleman by the name Kadhi. I want to thank our legal team, led by Jemimah and at times the Director of Legal Services in the National Assembly; the various interns who were following the deliberations; and the Clerk's office for making sure that the mediation succeeded.

It is good to remind Members that the House needs to start considering the Roads Bill afresh. We agreed on everything but the Bill collapsed because the Senators wanted to have two representatives in the constituency roads committee, for which we told them the sky is closer than reaching a decision on that matter. You can as well go touch the sky. How you reach there, I do not know. We told them that one is important and because Kshs8.9 billion was allocated to

the county governments, we told them they can be members there. We have said that is not their domain, just like this morning.

Hon. Speaker, I beg to move and ask a Member who has a lot of interest in irrigation matters, because he represents people who do serious irrigation in Mwea, to second.

Hon. Speaker: Hon. Kabinga Wachira, Member for Mwea.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Speaker. I would like to join the Leader of the Majority Party, who was our chairman, in thanking the mediation team for taking time to understand the real context of irrigation in this country. This particular Bill has taken more than a year since it left this House to the Senate, before the Senate brought their comments and amendments. This is an example of a Bill that has been delayed because of mishandling by the two Houses. From April last year, the Senate responded back to this House in May this year. And it took another two months for them to agree on the date when we could meet for mediation. So, even as we thank them, we still believe there were some delays that were caused by the Senate in going through this Bill.

We believe that what we now have is a mediated version that covers their concerns and our concerns. As a Member who represents one of the largest irrigation schemes in this country, I feel comfortable with the mediated version of the Bill. I would like to note that the real job is now with the Cabinet Secretary to come up with subsidiary regulations to operationalise this Bill once it is assented to by the President. For those who are familiar with the old Cap.347, the problem is not with the Cap.347 itself but with the subsidiary regulations that are associated with that Cap.347. Therefore, I am looking forward to a better job being done by the Cabinet Secretary to come up with subsidiary regulations that will address issues that have been oppressing farmers in irrigation schemes from 1966 when this particular Cap.347 was put in place.

With this, I second. Thank you.

Hon. Speaker: Hon. Members, before I propose the Question, allow me to recognise the presence, in the Public Gallery, of pupils of Paul Mbiyu Primary School in Gatanga Constituency, Murang'a County. They are welcome to observe the proceedings.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Is it the desire of the House that I put the Question?

Hon. Members: Yes.

Hon. Speaker: Very well. I therefore put the Question, having confirmed that the House quorates.

(Question put and agreed to)

Next order.

APPROVAL OF MEDIATED VERSION OF
LAND VALUE INDEX LAWS (AMENDMENT) BILL

Hon. Speaker: Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the report of the Mediation Committee on the Land Value Index Laws (Amendment) Bill (National Assembly Bill No.3 of 2018) laid on the Table of the House on Tuesday, 2nd July 2019, and approves the mediated version of the Land Value Index Laws (Amendment) Bill.

As you are aware, the House passed the Land Value Index Laws (Amendment) Bill, 2018 and the Senate proposed amendments to the Bill which were rejected by this House hence the mediation process. The report before this House is, therefore, a culmination of a very tedious and painful negotiation. It was very painful. I am sure I have witnesses on both sides. At the end of the day we had to agree with our colleagues. Allow me to highlight.

One of the most contentious issues was the title: Do we call it the “Land Value Index Bill”? Our colleagues argued that we call it the “Land Laws (Amendment) Bill”. This Bill is, for the first time, setting a standard for the Government in terms of compensation when it comes to big projects. It is setting a standard for payment of Stamp Duty and land rates so that, for example, one does not say that his property ‘A’ costs Kshs2 billion and then when it comes to property ‘B’, he says it costs Kshs5 billion. Some of the key highlights were in respect of the aspects that were subjected to mediation and on the recommendations of the Committee in respect of the amendments.

Hon. Speaker, with your permission, I would like to submit that in the Physical Planning Bill 2017, in respect of which the House adopted the Mediation Report, there were four key sticky issues at the mediation level. One of the issues which was about the appropriateness of the title of the Bill became very difficult. Some Members were wondering who would be an ‘occupant in good faith’. I am neither a land economist nor a land valuer. For the first time, I have learnt serious terms like “an occupant in good faith”. I am sure there are many people who would not understand that. So, we sat for days to define the term “an occupant in good faith” and agreed on it.

The third issue was about the timeline within which the land value index should be devolved. Should it be 12 years or 10 years? Should it be six months? We eventually agreed that upon the Bill getting presidential assent and the Act being gazetted, the county governments and the national Government must bring to both Houses the Land Value Index for approval.

The fourth issue was about who should be the members of the Land Acquisition Tribunal. This was very easy to deal with. There was provision for five members, whom should be surveyors and valuers. We note that surveyors and valuers are stakeholders and, therefore, there will be conflict of interest. We agreed that surveyors and valuers cannot sit in a tribunal to decide on matters in which communities or individuals who own land are unhappy with. All these issues have been in our Report. I do not want to dwell so much on them.

Hon. Speaker, I am glad to observe that the Mediation Committee was finally able to conclude on this important Bill, which seeks to deal with issues of valuation and compulsory acquisition of land for public projects. I know that the Government encountered problems while acquiring land for construction of the Standard Gauge Railway (SGR), construction of roads and installation of electricity transmission lines. It is very sad that in our country land compensation is very expensive. The Government spends more on compensation for land compulsorily acquired for national projects than on the project itself. Such a thing does not happen in other countries. Recently, we saw in the media how property in Kajiado was overvalued. Homes of

innocent Kenyans were demolished without compensation having been paid. As this House approves the next lot of men and women who will sit in the National Land Commission (NLC), the nominees must declare their assets and liabilities to mitigate against the trend of people becoming overnight billionaires once they are appointed to sit in the National Land Commission. We cannot fight corruption by creating corruption.

I thank my colleagues, Hon. Senators Githiomi, Mutula Kilonzo Jnr, Margaret Kamar, Prof. Oundo, our competent Lands Committee Chair, Hon. Nyamai and Hon. Caleb Kositany. He is a Member of the Jubilee National Executive Committee (NEC); I do not know why he is not convening a NEC meeting. He is just sitting here. People are asking me why that is so. I do not have powers.

Hon. Speaker: You are now spoiling the HANSARD record. We are dealing with the Land Value Index Bill. Anybody reading it will wonder how this House transacts business.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, he was in my Committee. Because he is rarely here, I was trying to give him his other duties. I will withdraw that from the HANSARD. He has other duties which he is not performing to our satisfaction. So, this law seeks to deal with the old issues.

I thank Hon. Mishi Mboko. Hon. Mwashetani was not a Member but he has taken off after what happened yesterday.

Hon. Speaker, with those remarks, I beg to move and request Hon. Kositany to second.

(Hon. Moses Cheboi spoke off record)

Hon. Aden Duale (Garissa Township, JP): I do not know why the Deputy Speaker is opposed to my request for Caleb to second. There is something he knows that I am not aware of.

Hon. Speaker: Member for Soy.

Hon. Caleb Kositany (Soy, JP): Thank you, Hon. Speaker. I need protection from the Deputy Speaker. I am glad you are the one on that seat.

(Hon. Moses Cheboi spoke off record)

Hon. Caleb Kositany (Soy, JP): Hon. Speaker, can you please rein in on the Hon. Deputy Speaker to give me time to speak?

Hon. Speaker: Let us have order.

Hon. Aden Duale (Garissa Township, JP): The Hon. Deputy Speaker is your deputy but from where he sits, he is really intimidating the Member of Soy. He is telling him that the Hon. Speaker will leave the Chair and he will deal with him.

(Laughter)

Hon. Caleb Kositany (Soy, JP): So, Hon. Speaker, do not leave the Chair.

Hon. Speaker: Obviously, that was not a point of order. I think the Hon. Leader of the Majority Party wanted to help me understand what was happening in the silent consultations.

Hon. Caleb Kositany (Soy, JP): Thank you, Hon. Speaker. I shall now proceed since the Hon. Deputy Speaker has been put in his place.

Hon. Speaker, I rise to second and I thank our Hon. Leader of the Majority Party who was the Chair during the mediation process. We had a very good experience going through the

mediation process. The Committee observed on Clause 5 that the duration within which the Commission shall inform the acquiring body of the decision to reject the request shall be within 14 days and not seven days.

The Committee noted that a period of 14 days was reasonable and more adequate for the decision to be communicated. The Committee also agreed with the Senate amendment to Clause 5(b) and (4)(b) and noted the list of persons in actual occupation of the land prior to the date of request.

Hon. (Dr.) Robert Pukose (Endebess, JP): On a point of order.

Hon. Speaker: What is your point of order, Hon. (Dr.) Pukose?

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, I would not want to interrupt Hon. Kositany but our Standing Orders provide that we do not read. He is just reading what is written there. I thought he would contribute.

(Laughter)

Hon. Speaker: Yes, the Standing Orders only permit a Member to make reference to talking notes but not to read verbatim.

Hon. Caleb Kositany (Soy, JP): Hon. Speaker, I do not know what is happening today. I do not know how Hon. (Dr.) Pukose saw me reading when he does not have a copy of what I am referring to.

Hon. (Dr.) Robert Pukose (Endebess, JP): ... *(Inaudible)*

Hon. Caleb Kositany (Soy, JP): You are seated next to me but you have no proof that I am reading. Anyway, let me proceed.

On Clause 6, the Committee resolved that Clauses 6 (107A) and (4) (a), (b) and (c) be redrafted by deleting the words “potential, actual and apparent” as all these words may represent a challenge in the interpretation regarding the assessment of value of land. The Senate amendment to the clause had proposed that the word “apparent” in Clause (b) and (4) (c) be deleted.

With those remarks I beg to second.

Hon. Speaker: Very well, Members for Ainabkoi, Kiambu and Taveta, we need to proceed with the business.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Hon. Members, it seems it is the desire of the House that I put the Question.

Hon. Members: Yes.

Hon. Speaker: You want me to put the Question or ask the Mover to reply. But he has just been seconded. So, I will just put Question.

(Question put and agreed to)

COMMUNICATION FROM THE CHAIR

GUIDANCE ON PROPOSED AMENDMENT BY THE SENATE TO PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL

Hon. Speaker: Hon. Members, before we go to the next Order, just in case we get to business appearing as Order No.16, I wish to give this guidance which is a consideration by this House on the proposed amendment by the Senate to Clause 2 of the Public Private Partnership Bill, 2017.

Hon. Members, as you may be aware, the National Assembly is seized of several proposed amendments by the Senate to the Public Private Partnerships (Amendment) Bill (National Assembly Bill No.52 of 2017) as indicated in today's Order Paper.

In particular, the Senate proposes to amend Clause 2 of the said Bill with the intention of introducing new definitions to the term "accounting officer". The proposed amendment raises several issues as follows:

(i) Section 3 of the Interpretation and General Provisions Act (Cap 2 of the Laws of Kenya) provides that the term "accounting officer" has the meaning given by Section 2(1) of the Public Finance Management Act, 2012. Cap 2 of the Laws of Kenya and therefore assigns any and all definitions and interpretations of the term "accounting officer" to the parent Act that handles public finance legislation, that is the Public Finance Management Act;

(ii) The National Assembly has already legislated on the definition of "accounting officer" by amending the parent Act, namely the Public Finance Management Act 2012, through the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.21 of 2019). The legislation by the National Assembly in this regard was passed on 13th June 2019 and it provided that:

The Public Finance Management Act, 2012 (No. 18 of 2012)	S.2 (1) in the definition of "accounting officer"- “(d) in the case of the Parliamentary Service Commission- (i) the Clerk of the Senate, in respect of the Senate; (ii) the Clerk of the National Assembly, in respect of the National Assembly; and, (iii) Such other officer in the Parliamentary Service in respect of any other office in the Parliamentary Service as the Cabinet Secretary shall, upon resolution by the Commission, designate, within fourteen days of the resolution”.
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This amendment was passed with the objective of actualising the Resolution of the Parliamentary Service Commission (PSC) made at its 256th Meeting held on 14th February 2019.

(iii) Standing Order No.49 (1) of the National Assembly Standing Orders prohibits the House from opening up for review any Motion (including a Motion through which a Bill has undergone Third Reading) within six months of its adoption and passage. Pursuant to this provision, and in light of the fact that the said legislation amending the Public Finance Management Act, 2012 through the Statute Law (Miscellaneous Amendment) Bill, 2019 was undertaken on 13th June 2019, it follows therefore that this legislation can only be revisited on or after 13th December 2019;

(iv) The other definitions that the Senate proposes to introduce with regard to definition of “accounting officer” already have their meanings assigned to them by the Public Finance Management Act, 2012, namely section 2 sub-section 67 (national Government entities including constitutional commissions and independent offices) and Section 148 (county government entities).

In view of the above considerations, I wish to guide the House that the proposed amendments by the Senate with respect to the definition of “accounting officer” under Clause 2 of the Public Private Partnerships (Amendment) Bill (National Assembly Bill No.52 of 2017) offend our Standing Order No. 49(1) and in this regard, the said proposed amendments are inadmissible.

On the same note, no amendment will be allowed relating to the definition of the term ‘accounting officer in respect to the Parliamentary Service Commission Bill, 2018 in the Committee of the whole House which is coming up this afternoon. Indeed, the next Order.

I thank you, Hon. Members, the House is accordingly guided.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PARLIAMENTARY SERVICE BILL

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Members, we are now in the Committee of the whole House to consider the Parliamentary Service Bill (National Assembly Bill No.6 of 2018).

(Clause 3 agreed to)

Clause 4

The Temporary Deputy Chairman (Hon. Patrick Mariru): There is an amendment by the Chair of Departmental Committee on Justice and Legal Affairs, Hon. Cheptumo.

Hon. William Cheptumo (Baringo North, JP): Thank you, Hon. Temporary Deputy Chairman. I also had an amendment to Clause 2.

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have not dealt with Clause 2.

Hon. William Cheptumo (Baringo North, JP): Then, let me proceed. Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 4 of the Bill be amended in sub-clause (1) by deleting the words “shall be” and substituting therefor the words “is established”.

This amendment seeks to harmonise the drafting style used in the Bill for greater certainty. So, it is just a question of replacing the words “shall be” and substituting with the words “is established”. Just to strengthen the certainty of the provisions.

(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)

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

Clause 10

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, you have an amendment.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 10 and substituting therefor the following new clause—

Removal from office.

10. (1) A Member of Parliament, supported by at least one-quarter of all the members of the respective House, may propose a motion for the removal of a member of the Commission only for—
- (a) serious violation of the Constitution or of any other law including a contravention of Chapter Six;
 - (b) gross misconduct, whether in the performance of the member’s functions or otherwise;
 - (c) physical or mental incapacity to perform the functions of office;
 - (d) incompetence; or
 - (e) bankruptcy.
- (2) If a motion presented under sub-section (1) is supported by at least one-third of the Members of the respective House—
- (a) the respective House shall appoint a select committee comprising of eleven of its Members to investigate the matter;
 - (b) the select committee shall within ten days report to the respective House whether it finds the allegations against the member of the Commission to be substantiated.
- (3) Where the select committee finds that—
- (a) the allegations against the member of the Commission have not been substantiated, there shall be no further proceedings on the matter;
 - (b) the allegations against the Member of the Commission have been substantiated and the motion is supported by a majority of all the

members of the respective House—

- (i) the Speaker of that House shall inform the Speaker of the other House of the resolution within seven days; and
- (ii) the member of the Commission shall continue to perform the functions of the office pending the outcome of the proceedings under this section.

(4) The procedure prescribed in sub-sections (1), (2) and (3) shall apply with the necessary modifications to the consideration of the Motion for removal of a member of the Commission by the other House.

(5) If both Houses pass the motion in the same form, the member of the Commission shall stand removed.

Hon. Temporary Deputy Chairman, this amendment seeks to set out the procedure for removal a member of the PSC. We observed that Article 127 of the Constitution is an exception of the application of the provisions of Chapter 15 on commissions of the Constitution on the composition, mode of appointment and the removal process of constitutional holders. The point here is that it is Parliament which appoints the members of the commission. It can only be removed by a process set out by the Commission. That is basically to divorce this from the provisions of Chapter 15 on commissions. That is basically the reason why we are proposing that amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I think this is a very good amendment because at least it gives a threshold that a Member must be supported by at least one quarter of the Members of the respective House. At least the House now has powers because the way we nominate commissioners, we can remove them but again it cannot be abused. So, the threshold is very high. Even the allegations have been set, for example, serious violation of the Constitution, gross misconduct and physical and mental incapacity. I really wish we do not get a commissioner who becomes physically and mentally incapacitated not to perform in the commission.

When the Departmental Committee on Justice and Legal Affairs was dealing with this, I was saying that the threshold must be very high and then a committee is established if that threshold is met and that committee gives the commissioner... So, it cannot be abused. You cannot be removed just because your party does not want you. You know there are commissioners from small parties of 14 members like Hon. Momanyi. He knows the role I played. So, some people will say this is a man of few goats and he can be marginalised. So, even him...

Hon. Ben Momanyi (Borabu, WDM-K): On a point of order, Hon. Temporary Deputy Chairman,

Hon. Aden Duale (Garissa Township, JP): What is out of order? You are a member of a party with 25 MPs.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Where is your card here? I cannot see your card.

Hon. Ben Momanyi (Borabu, WDM-K): Hon. Temporary Deputy Chairman is the Leader of the Majority Party in order to refer to my party as a small party and yet it is a parliamentary party recognised by this House? It is the third biggest party in this country.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Maybe he should have done it in comparative terms.

Hon. Aden Duale (Garissa Township, JP): Yes. When you compare with a party like the Jubilee Party which has got 170 Members compared to 23 or 24, it becomes small. When you are compared with the Orange Democratic Movement (ODM) with more than 70 MPs, relatively you are small. So, I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have just two more Members and then we make progress. Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you for giving me an opportunity to contribute on this clause. Hon. Temporary Deputy Chairman, you know now we have established the due process which is very important. It means without these amendments we will find ourselves constantly taken to court and most probably we will lose the cases in court. So, these are very important amendments by the Chair of the Departmental Committee on Justice and Legal Affairs. I beg to support now that due process has been established.

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

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

(Clause 10 agreed to)

Clause 11

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair of the Departmental Committee on Justice and Legal Affairs, you have an amendment.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 11—

Oversight
and public
participation
programmes.

11A. (1) Pursuant to Article 118(1) (b) of the Constitution, each Member of Parliament shall facilitate public participation in the legislative and other business of Parliament and its committees through public awareness campaigns in the Member's area of representation.

(2) For the purposes of subsection (1), each Member shall—

- (a) establish public participation and oversight programmes for his or her area of representation;
- (b) hold public hearings on matters of public interest within the area of representation;
- (c) facilitate access to information held by the legislature;
- (d) facilitate the participation of the communities in the engagement with government departments on financial matters;

(3) Each House of Parliament shall prescribe, in the Standing Orders, the manner of undertaking public participation under this section.

(4) The Commission shall provide services and facilities necessary to actualise the objects of this section.

Hon. Temporary Deputy Chairman, the justification is very simple and clear. We observed that there is need to incorporate certain provisions in the Bill to empower the commission to facilitate the activities of Members of Parliament within and outside the precincts of Parliament with a view to actualising Article 118(1)(b) of the Constitution which provides and I quote:

“Parliament shall-

(b) facilitate public participation and involvement in the legislative and other business of Parliament and its committees.”

Article 118 now is not optional for us. We have to participate. If you look at the National Government Constituencies Development Fund processes and all other decisions in our constituencies, public participation is critical, mandatory and constitutional. I think that it is critical to have provisions in this Bill to facilitate and enable Members to actualise that particular provision of the Constitution, that is, Article 118.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): We shall start with the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): This is a very important amendment. People should not think of it in terms of money. It is like if a Member has a petition from his constituency; Parliament can give him the services like a clerk and a legal person to assist him outside Parliament. They can go together to his constituency. They can create a secretariat for him so that what the Member brings from his constituency is something that PSC can also invest in. We are saying this is very important.

If a Member has a problem in his constituency today, Parliament can provide the necessary technical expertise. People always think about money. It is not about money. It is technical expertise so that they go and draft petitions for them. When a Parliamentary Committee is going to talk to my people, I also have a team that is from Parliament that is listening and drafting all the information. I really support the Chair of the Departmental Committee on Justice and Legal Affairs.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, thank you for this opportunity. I also stand to support the amendment proposed by the Chair. As Members of Parliament and as Members of the National Assembly, our mandate in the Constitution is explicitly clear. The lack of legal provision has made it completely impossible for us to discharge our duties on oversight and legislation. This is because we are legislating on behalf of people. You must listen to the people and get their views which you can then come and incorporate in the legislative process. I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us make progress on this. Hon. Barasa, must you speak to this?

Hon. Didmus Barasa (Kimilili, JP): Yes, Hon. Temporary Deputy Chairman. I just want to say that this amendment is very good. I support it because it is going to add value to us as

Members of Parliament. It will also ensure that whatever we give back to the people that we represent is going to be meaningful because we are able to get technical expertise and advice from this. I support. It is very important.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Keynan.

Hon. Adan Keynan (Eldas, JP): Thank you, Hon. Temporary Deputy Chairman. This is a very important amendment and I am glad that the Chairman of the Departmental Committee on Justice and Legal Affairs has done further to clean it up. This is actually the core function of the commission. For those of you who were around before the birth of the commission in 1999, almost all the technical support used to come from the Executive. It is a reality that we have three arms of Government. Of course, there are other emerging arms of Government. We must respect the sanctity and the special place of Parliament both in the Constitution and in the minds of the people of Kenya. That is why we have this particular amendment. This is one thing that has actually been misconstrued by certain quarters to give the impression that PSC is going to do this. No! There is no monetary benefit here

Right now, PSC or Parliament provides facilitation in the budget-making process and that process must include visits to the 47 counties in Kenya. It is a critical thing. Transport and other facilities must be there. These things must be done. We are doing it right now, but the way it has been captured in this amendment adds value. I hope the Members will see sense. There is nothing to be afraid of in this. Article 1 of the Constitution talks about sovereignty which is equated to representation. You really need to understand. I agree with Hon. Oundo that this is one of the best amendments and provisions that will add value to the provision of facilities and services.

There is no money. I repeat to whoever is out there that there is no monetary gain in this. I support the amendment.

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

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 13 of the Bill be amended by—

- (a) deleting sub-clause (2); and
- (b) deleting sub-clause (3).

The justification is that the membership of the Commission is set out under Article 127 of the Constitution. Thus, there is no need for us to legislate on provisions to empower the Commission to co-opt persons who are non-members of the Commission into membership of the Commission's committees. Should the Commission feel that they need to co-opt certain persons in their committees, it is administrative. They can do so. We do not need to legislate on that. That is what is provided for under the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I oppose this amendment which proposes to delete the sub-clauses. This is the Parliamentary Service Commission. For the first time, the leadership of the Commission are not Members. The Bill is very clear under Clause 13(3) that a person co-opted under Subsection (2) shall have no right to vote at any meeting of the committee. The Whips and the leadership might sometimes be asked to attend the Commission meetings to present the grievances of our Members. We have not been given voting rights, and we will not vote. We represent Members. The Whips represent Members and parties. If I go to the Commission as the Leader of the Majority Party and I have no vote, there is nothing wrong with that. Members come to my office with issues. Clause 13(3) of the Bill says that a person co-opted under Subsection (2) shall have no right to vote on any meeting of the committee. I do not want to have any voting rights.

In the old Commission, the Vice-President, who was the Leader of Government Business used to be the Vice-Chair of the Commission. This is not offensive. I ask the Chair to withdraw that amendment. Do not explain. You have explained. What else do you want to explain? When Hon. Mbadi, our Majority Whip, or even my deputy have issues from their Members, we are not saying that we want to sit on the Commission. We want to be co-opted to present the issues before the Commission when need arises without joining the Commission. Right now, when we hear issues, we have to wait for the leadership meeting. Members come to my office, and they did so even today. Do I have to look for individual commissioners? I talk to commissioners and they can still help me. Maybe there is a matter where a commissioner wants to convince me to take their matter to the Commission.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, I will give you a chance. Let us hear from one or two Members and then we will come to you. The House will make a decision either way.

Let us have Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, I also stand to oppose this. In these commissions, sometimes there are issues in which you may need expertise from somewhere else. I have seen that the process of the House of electing or selecting Members to the Commission quite often does not take into consideration the expertise that may be needed. They may feel that they need somebody to advise them on something specific at a specific time. That is necessary. Further, it limits the fear that we will pick people to sway the decision.

For that purpose, I oppose the amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have somebody who has not spoken to this. Yes, Hon. Noor.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you, Hon. Temporary Deputy Chairman for giving me this chance. I rise to also oppose the amendment by the Chair. There is a lot of value to this Clause. The Commission may from time to time establish such a committee as may be necessary to carry out its functions and exercises better. The members of the Commission might not be experts in all fields that they are attending to. It is important that when need arises for them to address a particular issue, they can establish that committee with co-opted persons to address it. After the co-opted persons address it with their expertise, they can leave. They do not

have any right to vote, but they have the knowledge, expertise and technical know-how that can add value to our Commission.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Kirima.

Hon. Moses Kirima (Central Imenti, JP): Hon. Temporary Deputy Chairman, I rise to oppose the amendment. If the amendment is carried, it will reduce the co-opted members to be of no value. They may have more knowledge that is almost equal to the contribution of the points which will be discussed by the commissioners. It is always good when they are there so that they can add value to the contributions of the Commission. They can be given a chance to vote. When they have no vote, it then means they will sit on the Commission as statues with no value. This amendment should be ignored and not effected at all. The Chair should withdraw the amendment without being embarrassed. This is a matter of the House.

The Temporary Deputy Chairman (Hon. Patrick Mariru): We will come this way. Let us go to that far end. Hon. Oundo, I will give you a chance and then we will make progress. Let us have Hon. Miruka. I do not see your card here. Nevertheless, speak to this.

Hon. Alfah Ondieki (Bomachoge Chache, KNC): Because of time, Hon. Temporary Deputy Chairman, I oppose the amendments. In fact, if we allow that amendment, we reduce value in the Commission. The co-opted members have different thinking and reasoning. If you remove them, that means the Commission will have no additional information.

I oppose the amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is not Hon. Oundo. Let us have Hon. Kizito.

Hon. Justus Kizito (Shinyalu, ODM): Hon. Temporary Deputy Chairman, I rise to oppose this amendment. One thing that we must understand is that when we elect commissioners, we are not necessarily electing experts. Sometimes they get to a point where they become a bit redundant and cannot agree on critical issues.

I oppose the amendment. We should leave that Clause as it is, so that we can get more people in the Commission especially those who have the technical know-how to enrich it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. We will definitely put the Question, but before then, allow me to give the opportunity to Hon. Keynan to contribute very briefly, as well as the Chair. Hon. Members, we must make progress. I have given the opportunity to a number of Members to contribute to that Clause.

Hon. Adan Keynan (Eldas, JP): Hon. Temporary Deputy Chairman, I appreciate the sentiments and I understand where the Chair is coming from. I also understand the import of the contribution of the Leader of the Majority Party. There is no harm in this amendment because we have done it in the past. It will be at the discretion of the Commission. The composition of the Commission is spelt out under Article 127 of the Constitution. Once in a while, we have done it. So, I see no harm in this amendment. Therefore, let us go ahead and approve it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you have the Floor.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I want to take up from where Hon. Keynan has left. If we amend this Clause, nothing will stop the Commission from co-opting anybody in the committees.

Two, there is nothing that will bar the Commission from co-opting people because its powers will include and not limited to the ability to co-opt anybody. We are all trying to say that we should not legislate what is obvious. This House should make a decision on that issue.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we must make progress.

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

(Clause 13 agreed to)

(Clauses 14 and 15 agreed to)

Clause 16

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you have an amendment.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 16 of the Bill be amended in paragraph (c) by deleting the words “pursuant to Articles 128(2) and any law made under Article 226(1)(b) of the Constitution or such other offices as the Commission may designate pursuant to Articles 127(6) (b) or any law made under Article 226(1)(b) of the Constitution” appearing immediately after the word “Clerks”.

The justification is that the words which are being deleted make unnecessary cross reference to the constitutional provisions. The Committee noted that the constitutional provisions cited are applicable referencing without re-stating them in the Act. We want to avoid the cross reference of those sections of the Constitution.

(Question of the amendment proposed)

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

(Clause 16 as amended agreed to)

Clause 17

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you have an amendment to Clause 17.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, there is a new part in Clause 16. We will come to that later.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, what did you say? Check your Order Paper. That is on page 1083.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 17 of the Bill be amended in paragraph (c) by deleting the word “service” and substituting therefor the word “affairs”.

The proposed amendment seeks to remove the requirement in the Bill that restricts potential appointees to be clerks to persons who have 10 years of proven experience in public service. The amendment opens up the position. Somebody who has been in the private sector can apply to be a Clerk. Currently, it only restricts to a person who has served in the public service. We are opening up the position, so that all Kenyans in the private sector and public service can apply to be a Clerk of the National Assembly or the Senate.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Keynan.

Hon. Adan Keynan (Eldas, JP): Thank you, Hon. Temporary Deputy Chairman. This amendment by the Chair of the Departmental Committee on Justice and Legal Affairs is very good. It is consistent with some of the pronouncements the courts have been making over the last few years, including some that we legislated in the last Parliament. This is prudent and in line with the Fair Administrative Action Act and Article 55 of the Constitution, which allows the face of Kenya, taking into account education, race and everything else.

I agree with that amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, with a lot of respect to Hon. Keynan and the Chair, I have a problem with this amendment. Who are the commissioners? They are elected from Members of Parliament.

An Hon. Member: It is the clerks of the National Assembly and the Senate.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Clause 17(c) relates to the clerks.

Hon. Aden Duale (Garissa Township, JP): I was wondering how you can tell Members of Parliament to have 10 years public service.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Finally, so that we make progress, I will give the opportunity to Hon. Barasa to contribute briefly.

Hon. Didmus Barasa (Kimilili, JP): Hon. Temporary Deputy Chairman, this is a very good amendment because we have very good Kenyans from the private sector who are better than those in the Government. We have lawyers with reputable experience in their practice. When you say that we limit the position of clerks to people who have worked in the Public Service only, we lock out Kenyans who are very brilliant.

I support the amendment.

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

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

(Clause 17 as amended agreed to)

(Clause 18 agreed to)

Clause 19

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, before I go to Clause 19, I need your guidance. I have New Clauses 17A and 16A. Will we come to those clauses later on?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, those will come as Second Reading at the end.

Hon. William Cheptumo (Baringo North, JP): I stand guided, Hon. Temporary Deputy Chairman.

I beg to move:

THAT, the Bill be amended by deleting Clause 19 and substituting therefor the following new Clause 19—

Administrative
functions of
the Clerks.

19. The Clerks shall, in each of their respective Houses, be responsible for—

- (a) the day-to-day management and functioning of the respective Houses;
- (b) the execution of the Commission's decisions relating to the respective Houses;
- (c) the management of the staff under their respective control pursuant to Article 128(2) of the Constitution;
- (d) advising the Commission and implementing Commission resolutions on all matters relating to —
 - (i) the appointment, promotion and discipline of the members of staff of the respective Clerks;
 - (ii) the assignment of duties, supervision and training of the staff of the respective Clerks;
 - (iii) the deployment of staff of the respective Clerks to serve in any other area in the parliamentary service.
- (e) the preparation and submission of the programmes necessary for the achievement of the mandate of the respective House for approval by the Commission;
- (f) the performance of such other duties as the Commission might determine or as may be provided for in any other written law.

The amendment seeks to clarify the provisions and sets out the administrative powers of each of the Clerk of the House. It is observed that the powers and functions to be assigned to the Secretary to the Commission under the Parliamentary Service Act must take cognisance of the bicameral nature of Kenyan Parliament as established under Article 93 of the Constitution. The basis of this amendment is to make the functions of the two clerks of the two Houses to be very clear as set out under Article 93 of the Constitution. That is the essence of this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Oundo, you have the Floor.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman. The amendment proposed by the Departmental Committee on Justice and Legal Affairs seems to be progressive and takes care of the bicameral nature of Parliament. However, since Parliament is one institution, we should consider a situation whereby we have one centre of power. I am particularly concerned by the implication of Article 127 of the Constitution that clearly says that the Clerk of the Senate shall be the Secretary to the Commission. The plain reading means that we will have a centralised system. Even if we have different Clerks serving different Houses, we should have one centre of reference where we can channel issues regarding the overall management of the affairs of the institution called Parliament”.

Thank you. I support the amendment

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us now hear the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I thank the Chair of the Departmental Committee on Justice and Legal Affairs. Currently and historically, the Clerks of Parliament even before the promulgation of the new Constitution and before the bicameral Parliament, used to be civil servants. So, we must go according to other jurisdictions. In the UK, the Clerk is the Principal Constitutional Adviser to the Houses. Secondly, he is not a civil servant and is supposed to be politically impartial. I support the amendment because we must insulate the Clerks.

Hon. Keynan has an issue because Clause 19 sets out the Clerk shall, in each of their respective Houses, be responsible to the Commission for... One, they are appointees of the Commission. I advise Prof Oundo that in the 11th Parliament, under the new Constitution, the Accounting Officer for both Houses and the Joint Services used to be the Clerk of the Senate and the Secretary to the Commission. So, nothing was moving in the National Assembly. So, we amended the Public Finance Management Act and made the Clerk of the National Assembly an Accounting Officer for the National Assembly. Later, we realised that even then, there was a crisis in the Joint Services. Three weeks ago, we also gave the Director-General accounting power so that the Joint Services can handle human resource, staff and the gym that we keep talking about as an Authority to Incur Expenditure (AIE) holder. So, from where I sit, the Chair is only giving the functions of the Clerks.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Keynan.

Hon. Adan Keynan (Eldas, JP): Hon. Temporary Deputy Chairman, in fact, I thank the Chairman of the Departmental Committee on Justice and Legal Affairs but plead with him that we leave it the way it is in the original Bill. The further amendment by the Departmental Committee on Justice and Legal Affairs will cause jurisdictional conflict, perception crisis and will also negate the miscellaneous amendment that we passed just last week.

It is understood that the Commission is one, the staff are one and the roles of both Houses are there. So, there is no need to put this in the Bill. Let us leave it the way it is in the Bill. The way it is drafted in the Bill takes care of everything and is also consistent with the amendment that we passed. Therefore, the further amendment by the Departmental Committee on Justice and Legal Affairs will just cause conflict. I beg that the Chair withdraws it.

What Hon. Oundo said is correct. I plead with my brother, the Chairman of the Departmental Committee on Justice and Legal Affairs, to withdraw his amendment and allow it to remain the way it is properly framed in the Bill.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyikal, speak to it briefly then we vote.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, I want a brief clarification because the distinction is very important. The difference I see in the Bill as drafted is that there was an authorised officer, but in the amendment, the words, “authorised officer” have been removed. Can the Chair explain to us exactly what that means in operational terms? If they are accounting officers and you leave out the words, “authorised officer”, it splits the function of that office. So, can we get that clarification before we move on?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairman, I will give you a second stab on this, so that the House then takes a decision.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, what we have done in the amendment is to clearly set out the functions of the two Clerks. The authority still remains with the Commission.

Listening to Hon. Keynan, I have no problem with that position and I am inclined to withdraw this amendment to Clause 19 because we just wanted to clarify. But I still believe what we set out in the current Bill can still serve. Basically, the confusion that used to exist is clarified in the Bill.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairman, make it clear. Have you withdrawn your proposed amendment to Clause 19 of the Bill?

Hon. William Cheptumo (Baringo North, JP): Yes, I have withdrawn it.

(Proposed amendment by Hon. William Cheptumo withdrawn)

(Clauses 19 and 20 agreed to)

Clause 21

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 21 of the Bill be amended by deleting the expression “the Senior Deputy Clerk” wherever it appears and substituting therefor the expression “a Deputy Clerk”.

The amendment seeks to redraft to harmonise in line with the fact that the Commission has renamed the title of the Senior Deputy Clerk as Deputy Clerk. That has already been done by the Commission. So, we want to avoid referring to the title Senior Deputy Clerk, which has already been done away with by the Commission.

(Question of the amendment proposed)

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

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

(Clause 21 as amended agreed to)

Clause 22

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairman, you have an amendment.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 22 of the Bill be amended -

(a) in sub-clause (1) by deleting the word “and” appearing in paragraph (e) and substituting therefor the word “or”;

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

(2) -

(2) Before a Clerk is removed under subsection (1), the Clerk shall be informed of the case against him or her in writing and shall be given reasonable time to defend himself or herself against any of the grounds cited for the intended removal.

(c) by deleting sub-clause (3) and substituting therefor the following new sub-clause

(3) -

(3) The Commission shall, within seven days of a decision to remove a Clerk, submit that decision to the relevant House of Parliament for approval in accordance with the Standing Orders of that House.

It is noted that Clause 22(2)(d) of the Bill as currently drafted presupposes that a Clerk has already committed some wrong and is under a duty to explain himself or herself. Otherwise, the Commission shall remove him or her. The wording as it is gives the impression that already that particular staff or Clerk is guilty. We are not very happy with the wording itself. That is why we did some redrafting.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I need the Chairman of the Committee to make a number of clarifications. The Bill provides for the process of the removal of a Clerk to be similar to that of removing a commissioner. This is unacceptable. A Clerk is a staff of the Commission. So, how a commissioner is removed from office cannot be the same as removing a Clerk from office. So, I want the Chair to come clear on this. Maybe other Members can contribute.

Clause 22 of the Bill says that the Clerk of a House of Parliament may be suspended or removed from the office of the Commission for “inability to perform the function of the office whether arising from infirmity of body or mind, gross misconduct or misbehaviour, incompetence, bankruptcy, violation of the Constitution”. In that case, a clerk will never be removed. I can tell you that you can as well call him a commissioner. It will be hard for the Commission to remove a Clerk from office. That is not how CEOs of other commissions are removed.

I want to ask the Chair of the Departmental Committee on Justice and Legal Affairs to explain to us. We need to move a further amendment. The way you can remove your Fund Manager in the National Government Constituencies Development Fund (NG-CDF) is not the same way you remove the NG-CDF Chairman. The Fund Manager in the constituency office is an employee of the Member of Parliament. Even so, you can easily remove the Chair of the NG-CDF and bring the name here. But now you are telling me to remove a Clerk of the House - I do not want to become a Clerk anyway - like taking somebody to... The Chair needs to give us some time to consult. We need to know. We have a competent former Principal Secretary, Hon. Nyikal, who can tell us how CEOs are removed.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Keynan, I will come to you. Let us hear from Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, the main issue generally lies in the original Bill. Probably, the Chair of the Departmental Committee on Justice and Legal Affairs, in my understanding, seems to clear the ambiguity or the difficulties contained in the Act. Instead of the word “and”, which presupposes that for a Clerk to be removed, he must have breached all those, he has brought in the word “or”. In my limited understanding, it means in any of those, the Clerk can be disciplined or removed on the basis of flouting any of the provisions or the issue stated between (a) and (f). That is my understanding, so that instead of “and” he is saying “or”.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyamai, did you want to speak to this?

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Hon. Temporary Deputy Chairman, I have listened to the amendment brought by the Chairman of the Departmental Committee on Justice and Legal Affairs and it makes the process of removal of a Clerk extremely difficult, giving conditions that are equal to the removal of a commissioner. This process is tedious. Let us

agree that the Clerk is an employee of the Parliamentary Service Commission. So, this makes the process extremely difficult.

I oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear Hon. Tong'i.

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Chairman. I have listened carefully to what the Leader of the Majority Party has said and my colleagues' contributions. Knowing how open minded the commissioners are, I am sure we are able to engage and get the understanding. They must have had some wisdom behind their proposal on the way to remove a Clerk and maybe we can pick their wisdom and their understanding and reach a consensus. As it is, it looks difficult to manage and even control the Clerk because if he is going to have the same powers as a commissioner, then, how on earth are you going to manage? Who is going to be boss of the other?

Any institution where everybody is a boss becomes nobody's business. Who is going to give direction? The function of management is to give direction, strategy, develop and advise. Who is going to advise who because all of you as, per the amendment are equal? We need to understand what they had in mind. Based on that understanding, we will be able to agree and get to a consensus. Maybe they mean well, but we need that understanding.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I can tell the Chair is consulting, which is okay. In the meantime, let us have Hon. Barasa.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Temporary Deputy Chairman. We need to ensure that the Clerk is highly competent. If he becomes incompetent, he should be removed like any other officer. If you are making the conditions to remove the Clerk similar to that of removing a Member of Parliament, we should list them. If we have a Clerk who is not performing properly, he should be removed with ease and another Kenyan brought to serve the Parliamentary Service Commission better.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Leader of the Majority Party, you have the Floor.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, you need to give us time. I have even seen a worse thing. Even the removal of the Clerk is being subjected to both Houses. What business do we have with the removal of a Clerk? You are doing an amendment which has never happened in the world. That for the Commission to remove the Clerk, they must bring it to both Houses. For the removal of a commissioner, the procedure is that it first must come to the House because they are our Members. We have appointed them. But today, if a Clerk violates even the code of conduct of the Commission, he should be sacked. In fact, if the Chamber cannot function because of the inability or ineffectiveness of a Clerk, that alone should sack him. When you say gross violation, are we removing a Cabinet Secretary or a President? I want the Chair to remove the whole of Clause 22. We must have a procedure for removal of the Clerk. It is in the Constitution. We are legislating for the Commission. The

Chairman will give us time. We need to delete the section in the Bill and the one by the Chair and then we get a better version because you can also not have a vacuum.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Leader of the Majority Party, you can be consulting with the Chair and whoever else as we have one or two other Members because we still must make progress.

It is your chance Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, there is a minor issue. We should also look at parts (a), (b) and (c) separately. Part (a), as Hon. Oundo was saying, is quite clear. You have to remove that “and” and have “or”. That is okay, but we are taking the whole thing as it is. When we come to the rest, we are making it complex. Knowing the nature of the House, if you want to bring that matter back to the House, the forces that will play will be impossible. Split the two and after doing that, do not make it too difficult. The forces in the House will be very different.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Mwangi Mburu.

Hon. Jonah Mwangi (Lari, JP): Thank you, Hon. Temporary Deputy Chairman. I support the other Members. The Clerk should be answerable to the Commission. The Commission should have an easier way of removing the Clerk when need be although we should not use that avenue to bring in our people in a funny way. We should have the most competent people in the country to get those positions, but the position of the Clerk should not be so secured like a chief magistrate or the Maraga position. We should find a way of having a line in between. We should have an easier way of removing the Clerk, but we should also have an easier way of vetting in a new Clerk if we have to. There is some control here that we are looking at. We are looking at a competent Clerk and we must have a say on how the Clerk is given the job. We must also have it easy on how the Clerk is removed and it should be as easy as it can be.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mwathi, you have the Floor.

Hon. Peter Mwathi (Limuru, JP): Hon. Temporary Deputy Chairman, I want to speak like a former commissioner. It is very important to know that in the removal of a Clerk, you do not have to embed that process or make it so tedious such that it is going to be difficult. I know we have very good Clerks, both of them. This amendment seeks to create, in its eventuality, a rogue Clerk. If you have a rogue Clerk, it will be very difficult for that person to work for the Commission. It will be very difficult for us to remove that person because probably the Clerk will start giving foreign trips to Members here and he will not be removed. I agree with Hon. Nyikal that the word “or” in that first part is okay, but sub-clauses (2) and (3) should not be included in this Bill.

That is my submission.

The Temporary Deputy Chairman (Hon. Patrick Mariru): It looks like the Chair wants to speak to this. It seems there is white smoke after your consultation.

Hon. William Cheptumo (Baringo North, JP): There is one area I really want to agree with Members, that we cannot subject the removal of a Clerk to the Houses. I really agree with that. After consultations, therefore, I withdraw all the other proposed amendments to Clause 22, except as in Clause 22(1). I think there is a serious reason we need to go in that direction.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. I hope that is clear, Hon. Members. Let make it clear what you have done, Hon. Chair. Please come up again. What have you dropped, just for record? Mention them. It is important so that Members are able to vote.

Hon. William Cheptumo (Baringo North, JP): I have dropped all the other proposed amendments to Clause 22. I have withdrawn amendment (b) and (c). All the other amendments are withdrawn except the ones I have said, that is Clause 22(1)(a).

*(Proposed amendments to Clause 22(2) and 22(3)
by Hon. William Cheptumo withdrawn)*

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

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

(Clause 22 as amended agreed to)

Clause 23

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have three amendments. The Leader of the Majority Party, I propose we start with the Chair. He is proposing a deletion.

Hon. William Cheptumo (Baringo North, JP): I do not know why the Leader of the Majority Party is saying that mine will collapse when his goes through. I know he has the seniority, but I have considered that jointly with the Leader of the Majority Party.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Just to be clear. The Leader of the Majority Party is dealing with sub-clause (5).

Hon. William Cheptumo (Baringo North, JP): That is also mine. I am also dealing with that section. I propose to delete 23(2), (3), (4) and the amendment in (5). What I am saying is that we have been able to discuss with the Leader of the Majority Party. I am inclined to withdraw these proposed amendments and go with his proposals.

The Temporary Deputy Chairman (Hon. Patrick Mariru): So, you are dropping all your amendments to Clause 23.

Hon. William Cheptumo (Baringo North, JP): Yes.

(Proposed amendment by Hon. William Cheptumo withdrawn)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. It is noted, if you have dropped them, for the record. Hon. Leader of the Majority Party is left to move his.

Hon. Aden Duale (Garissa Township, JP): I beg to move:

THAT, Clause 23 be amended by—

- (a) deleting sub-clause (5) and substituting therefor the following new sub-clause—

“(5) The Commission shall, in establishing the offices set out under section (1), have regard to strengthening—

- (a) the leadership offices in the National Assembly established under Article 108(1) of the Constitution; and
 (b) other leadership offices that may be established in the Houses of Parliament.

- (b) inserting the following new sub-clause immediately after sub-clause (5)—

“(6) The facilitation and strengthening of offices pursuant to subsection (5) shall take into account the order of precedence set out in Article 108(4) of the Constitution.”

This is just to make sure that it conforms to Article 108(1) of the Constitution. That, Commission shall establish offices set out under Section (1), having regard to the strengthening of the leadership offices. Under a presidential system of democracy, the offices of the leadership, both the Whips and the Leader of the Majority Party and the Leader of the Minority Party are important. It is for posterity; even for those who will come.

Again, we have pegged it on Article 108(1) of the Constitution and any other leadership offices that may be established in the Houses of Parliament. That includes chairs and vice-chairs. So, the Commission can have powers to facilitate them.

Secondly, the facilitation and the strengthening of the offices pursuant to Section 5 shall take into account the respective roles of the Houses. What do we mean by “respective roles of the Houses”? It is that we have a House of 349 Members *vis-a-vis* one of 67 Members. So, they cannot be the same.

There must be respective roles of the Houses as set out under Articles 95 and 96 of the Constitution. More so, the precedence set out in Article 108(4) of the Constitution should be followed. You cannot give more facilities to the Speaker of the Senate against the Speaker of the National Assembly. The order is in the Constitution: The Speaker of the National Assembly is higher. He is No.3. The other Speaker, namely, that of the Senate, participates.

So, this is what we said this morning. That, whatever facilitation the PSC will do, it must be based on the roles of the Houses. It must also be based on the numbers. It must be based on the precedence in the Constitution, so that everybody gets any facilitation according to the Constitution.

I beg to move.

(Question of the amendment proposed)

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

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

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have another amendment by Hon. Ronald Tonui. Hon. Tonui seems to have taken leave. In the circumstances, that gets dropped. Hon. Oundo, do you have instructions from the Member? I am not sure you have those instructions, do you?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Probably, I might not have written instructions, but I have moral instructions.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Oundo! Up to that extent, your request falls.

(Proposed amendment by Hon. Ronald Tonui dropped)

(Clause 23 as amended agreed to)

Clause 24

Hon. William Cheptumo (Baringo North, JP): I beg to move:

THAT, Clause 24 of the Bill be amended—

- (a) in sub-clause (2) by deleting the words “such services jointly shared” and substituting therefor the words “shared services”;
- (b) in sub-clause (3) by inserting the word “by” immediately after the words “shall be headed” and by inserting the words “of service” immediately after the words “terms and conditions”;

The amendments are re-drafting clarifications to provide certainty to the meaning of the provisions. Basically, it is to make it clear. It is not very clear the way it is. We just want to realign those words and shared services. So, those terms are to bring some certainty to the provisions of the Bill.

(Question of the amendment proposed)

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

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

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

(Clause 24 as amended agreed to)

Clause 25

Hon. William Cheptumo (Baringo North, JP): I beg to move:

THAT, Clause 25 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)-

(3) The provisions of sections 19, 26(2) and 27(4) shall, with the necessary modifications, apply to the officer appointed to head the centre for parliamentary studies and training.

The justification is that the amendment seeks to empower the officer appointed to head the Centre for Parliamentary Studies and Training (CPST) to manage and control the staff employed at the Centre and also administer their scheme of service. Basically, it is to empower the person in charge of the institution to have control.

(Question of the amendment proposed)

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, the Chairman of the Committee must be clear. The Bill says that the Commission may establish a centre for parliamentary studies and training. The powers given here and the powers the Chairperson wants to give, are they powers of an accounting officer? If you cannot give him the powers of an accounting officer, then you know... Please, explain to us.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson, please, under the circumstances, you can have a second stab on that.

Hon. William Cheptumo (Baringo North, JP): First, Hon. Temporary Deputy Chairman, there is, indeed, a person in charge of the Senate. That is true. If you look at Clause 19 of the Bill, it says that the Clerks shall, in each of their respective Houses, be responsible for several issues. Because the Clerk of the National Assembly is an accounting officer, the same should be done, at the same level, to the person in charge of the Centre in terms of...

(Loud Consultations)

Can I be allowed to explain?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Members! The Chairperson is on the Floor. Chairperson, please, finish.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I am not saying that the powers of the person in charge of the Centre should be equal to the Clerk. I am not saying that. I am saying that he is an accounting officer.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson, please, proceed. Do not listen to other contributions. You have the Floor.

Hon. William Cheptumo (Baringo North, JP): Hon. Keynan should clarify to us. He is a Commissioner. As far as I am concerned, he is an accounting officer. If he is, then he should be given the powers of an accounting officer. That is what I am saying. We cannot mislead this

House. I want the Commissioner to tell us whether the person in charge of the Centre is an accounting officer. If he is not...

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is your point of order, the Leader of the Majority Party? Hon. Chairman, take your seat. The Leader of The Majority Party is on a point of order.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, accounting officers within the reading of the Public Finance Management (PFM) Act, up to today, are only three, namely, the Clerk of the Senate, the Clerk of the National Assembly and the Director-General of Joint Services. Any other officers that the Commission... In fact, for him to be an accounting officer where he can expend public money, we must amend the PFM Act. The Commission can only give you responsibility, but in the exercise of expending money, it must be an amendment to the PFM Act. So, from where we seat...

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Majority Party, what are you exactly doing? Are you contributing?

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, the Chairman is out of order. His amendment is asking us the question of who an accounting officer is. He cannot ask us that question.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Before I give other Members an opportunity, I still have to give the Chairman a chance to finish his part. I must give the Chairman an opportunity to finish then I will give an opportunity to other Members to speak to this.

Hon. William Cheptumo (Baringo North, JP): I want the Commissioner, who is a Member of this House, to confirm to this House that the person in charge of the Centre is not an accounting officer.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Are you done? The Chairperson is giving Hon. Keynan an opportunity to speak. That cannot happen. Hon. Keynan, because you have been mentioned and you seem to have information that may be helpful, you can have the Floor.

Hon. Adan Keynan (Eldas, JP): Hon. Temporary Deputy Chairman, with a lot of humility and respect, I know Hon. Cheptumo is a seasoned lawyer. We must read different provisions of the Constitution and certain sections of different Acts of Parliament holistically.

Article 127 of the Constitution confers powers of appointment and constituting offices to the Commission. If you read Articles 126, 127 and 128 of the Constitution, you will see that the functions of the two Clerks are clearly spelt out. The Director of the Centre for Parliamentary Studies and Training is a creation of the Commission according to Article 127 of the Constitution. Therefore, for one to come around and try to circumvent us to bring another office equivalent to the Clerks is unconstitutional. Therefore, I want to beg Hon. Cheptumo to withdraw this amendment. It is an indirect way of creating a third Clerk and that is not what is envisaged under Article 127.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Yes, Hon. Momanyi.

Hon. Ben Momanyi (Borabu, WDM-K): Hon. Temporary Deputy Chairman, Hon. Cheptumo's question was specific. He wanted the Commissioner to confirm whether the person

in charge of the CPST is an accounting officer or not. The Director of CPST is not an accounting officer. That is what Hon. Cheptumo wanted a clarification on.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson, you will definitely get a chance. I want to give an opportunity to a Member who has not spoken, Hon. Sankok. I will give a chance to one or two more Members then we can make progress.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. The Chairperson is right. The only problem is the English Language. You know English is not straight forward. So, instead of “accounting officer” let him replace that with “authorised officer.” That is simple English, which came by ship.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Oundo, we have to make progress on this matter. Please, speak for a few seconds then we give the Chairperson the Floor.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman. I want to request the Chairperson to withdraw this amendment because it has the import of creating a third layer, which is not anticipated in the Constitution.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Finally, Hon Chairman.

Hon. William Cheptumo (Baringo North, JP): I want to assure Members that I will not withdraw this amendment for a simple reason. Usage of the word “accounting officer” may have been misused in this particular case. The right word is “authorised officer” In the words of the Commission’s Chairperson, who is a respected Member here, the Commission has powers to appoint persons to be authorised officers.

The other point is that if you read the proposed amendment, the provisions of Sections 19, 26(2) and 27(4) shall, with the necessary modifications, apply to the officer appointed to head the CPST. So, we are not saying that the provisions of Section 19 shall apply as it is or Section 26(2) as it is, but with modifications. So, I want to plead with the Members that this is the way to go. As a Committee, we do not joke. We are thorough.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Members!

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

(Clause 25 as amended agreed to)

Clause 26

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 26 and substituting therefor the following new clause—

Parliamentary
schemes of
service. 26. (1) The Commission shall formulate the Parliamentary Service
schemes of service setting out the terms and conditions for the

employment of the officers and other staff of the Service.

(2) Each Clerk shall be responsible to the Commission for the administration of the schemes of service for the staff deployed to their respective Houses as contemplated in Article 128(2) of the Constitution.

(3) Each Clerk shall be the authorised officer of the Commission responsible for the discipline of the staff deployed to their respective Houses.

This is fairly straight forward. The Committee observed that Clause 26(1) of the Bill provides for internal procedure matters of the Commission, which should be prescribed through regulations and a scheme of service. The Committee, therefore, proposes that these provisions be deleted and the clause be drafted as proposed.

We are not objecting to the content of that clause, but we are saying that if we legislate on every issue, it may not be proper. The Commission has powers to develop regulations and we are providing a section for that power to develop regulations. You will realise that as we go by. That is what we are saying. You can do this through regulations or schemes of service, which can be done by the Commission without necessarily legislating.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, the Chair cannot take us for granted. You cannot tell us “as we go forward”. What is forward? In every law that we make, there must be provision that says upon enactment of this law, the relevant body will bring regulations to the House. That is what Clause 27 is saying. So, why delete it?

The Temporary Deputy Chairman (Hon. Patrick Mariru): We are on Clause 26.

Hon. Aden Duale (Garissa Township, JP): Clause 26 is on what? It says the Commission shall formulate and disseminate to officers a scheme of service. So, he is deleting the whole of it. I was confusing it with Clause 27.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Members, let us make progress on this.

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

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

(Clause 26 as amended agreed to)

Clause 27

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 27 of the Bill be deleted.

The reason is basically the same. These are items which are in order and proper, but we are saying that they should not be legislated on. The Commission has powers to still do the same administratively instead of legislating on it.

(Question of the amendment proposed)

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

(Clause 27 deleted)

It is important to note that in Clause 25, we made a cross-reference to Clause 27, which is now deleted. It is not a problem. We will do a recommittal of Clause 25 so that we can clean it up.

Let us move on to the next clause.

(Clause 28 agreed to)

Clause 29

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 29 of the Bill be amended by deleting sub-clause (c) and substituting therefor the following new sub-clauses—

- (a) may establish or adopt a contributory optional superannuation, provident or medical fund or other scheme for its employees; and
- (b) may grant pensions, gratuities, retiring allowances or sickness or injury benefits to any employee.

This is to rearrange. What is provided under Clause 29 is also in order, but they have put together all those items in one clause. We are saying that it is good to separate the two. If you look at paragraph (c), it talks about contributory optional provision of provident and medical scheme for its employees. The other aspect is about granting pension, gratuities, retiring allowances and so on. We felt it is good to distinguish the two because they are all lumped in one clause. We felt that it was good to retain the same, but split them into two. We are not removing

anything. We are just trying to redraft because of the wording, so that you do not lump together two items. We agree with you, the Leader of the Majority Party, because this is your Bill.

(Question of the amendment proposed)

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

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

(Clause 29 as amended agreed to)

Clause 30

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 30 be amended-

- (a) in sub-clause (1) by deleting the word “service” appearing after the words “specialised police” and substituting therefor the word “unit”;
- (b) in sub-clause (2) by deleting the words “Assistant Commissioner” and substituting therefor the words “Assistant Inspector General”;
- (c) by deleting sub-clause (4); and
- (d) by deleting sub-clause (5).

The amendment to sub-clause (1) seeks to clarify that the Bill seeks to establish a new police unit and not a new police service. The proposed Parliamentary Police Unit will operate alongside the existing police units like the Diplomatic Police Unit, the Presidential Escort and the Kenya Airports Police Unit. So we just want to comply with the provisions of the National Police Service Act, so that instead of police service, we say police unit. That is basically what we are saying.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Chair, it reads in the Bill that there is established a Parliamentary Police Unit, not service, which shall have a specialised police service.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Majority Party seems to have acceded to that. Let us have the final one, then we put the Question. Hon Mabongah.

Hon. Mwambu Mabongah (Bumula, Independent): Hon. Temporary Deputy Chairman, I just wanted to find out something from the Chair. When you talk about a police unit which is under the Inspector-General of the Police, how many personnel are you looking at? You have to be sure. There are units which have very few personnel. You need to be very specific and tell the House exactly how many personnel you are looking at.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, briefly, do you want to clarify for the comfort of Hon. Mabongah and the Members?

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I want to confirm to the House that when we were conducting public participation on this Bill, the Police Service came before the Committee and we were able to discuss these issues. In terms of the numbers, I may not confirm here. It is, of course, a concern. You can imagine if this unit were to serve Parliament, it should be reasonable in terms of the numbers, but that is the business of the IG, the in-charge of the police.

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

Hon. Aden Duale (Garissa Township, JP): I totally agree with the Chair, but to speak to Hon. Mabongah, that is the domain of the IG of the Police. Ours is to say there shall be a police unit. The number, how they operate and who they are, are not a function of the PSC.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, whereas I agree with what the Leader of the Majority Party has said, I thought sub-clause (5) had some reason in it, that the Commission may request the transfer or redeployment of officers in the unit. If it is a unit serving the Commission and they actually feel that there is need to change, they may do that. I agree that in sub-clause (4), they do as they do their other things, but in this one, there may be a point. So, as you are deleting sub-clause (4), I do not think we should delete sub-clause (5) as well. I do not know how the Chair should address that.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Allow Members to make a decision on it now.

*(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 30 as amended agreed to)

(Clauses 31, 32, 33, 34 and 35 agreed to)

Clause 36

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 36 of the Bill be amended by inserting the following new sub-section immediately after sub-section (2) -

(3) The Commission shall hold bi-annual sessions with each House of Parliament on the status of implementation of Article 127(6) of the Constitution.

The amendment seeks to provide for a forum for the Commission to regularly update Members of Parliament on issues arising out of the implementation of the Commission's mandate under Article 127 of the Constitution. This is a very important move so that once in a while, the Commission should update Members. Sometimes we struggle with *kamukunjis* and other issues. Thank God for the Leader of the Majority Party who is very proactive. This is to enable the Commission to interact with Members.

(Question of the amendment proposed)

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

(Clause 36 as amended agreed to)

(Clause 37 agreed to)

Clause 38

The Temporary Deputy Chairman (Hon. Patrick Mariru): There is an amendment by the Chairperson of the Departmental Committee on Justice and Legal Affairs.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 38 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clauses—

(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member, the secretary and the Clerks shall be administered by the chairperson.

(5) Every oath or affirmation taken by any other officer shall be administered by the secretary.

The amendment seeks to relieve the Chairperson of the Commission of the task of swearing in Members and all officers of the Commission. The Bill requires the Chair of the Commission to even witness the swearing in of the officers of the Commission. I think that should not be the business of the Chair, but it can be done under the leadership of the Secretary of the Commission. Let us allow the Secretary to oversee the swearing in of senior officers of the Commission.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, I thought that some functions cannot be legally delegated. For example, taking an oath for senior staff can be so cumbersome that the Chair or the Speaker cannot spare time to administer the oath. How many times has it happened? I would want us, as a House, to ventilate on the matter and agree whether this amendment is necessary or not such that we would rather retain the Chair to administer. What if somebody administers ghost workers? Who will be held responsible?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Iringo.

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Temporary Deputy Chairman. I do not find this amendment necessary. If it is a matter of swearing in, it is for a short while and it happens once in a while. So, I do not see why we should spare the Chair that honour and exercise because it is quite important. It does not cost much and it cannot take much of his time. So, I request the Chair to withdraw that amendment and we proceed.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Janet.

Hon. (Ms.) Janet Nangabo (Trans Nzoia CWR, JP): I agree with my colleagues. There is no need for the Secretary to swear in commissioners. It is important for the Chair to know his role. Commissioners and senior staff are very few. So, I ask the Chair to drop it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyamai, let us make progress on this.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Hon. Temporary Deputy Chairman, I oppose this amendment. These are only ten people and this is their Chairperson who is swearing them in. I do not see any problem neither do I know why the Committee thought that the Secretary is the right person to do it. Let this be given to the Chairperson.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, could we get a quick stab from you?

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, there is nothing serious here. We did not want the Chair of the Commission to do everything. I see the mood in the House is such that he should oversee the swearing in. So, I withdraw this amendment.

(Proposed amendment by Hon. William Cheptumo withdrawn)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well, it is noted that you have withdrawn.

(Clauses 38, 39, 40, 41, 42 and 43 agreed to)

Clause 44

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 44 of the Bill be amended in sub-clause (1) by deleting the words “commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both” appearing at the end of the sub-clause and substituting

therefor the words “commits an offence and shall be liable on conviction to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding three years, or to both”.

The Committee observed that the prescribed penalties for the convicted offenders were lenient and may not deter the committal of offences. That is why we are proposing to enhance the penalty. It is basically to ensure that whatever penalty is meted to offenders is enough to deter the officers from participating in any illegal activity or committing crimes.

(Question of the amendment proposed)

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

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

(Clause 44 as amended agreed to)

(Clause 45 agreed to)

Clause 46

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 46.

In view of my withdrawal of the amendment to Clause 38, some of these schedules provide that the clause be deleted in light of re-drafting Clause 32(a) of the Bill, which provides for the power of the Commission to make regulations for further enforcement of the provision.

Later on, there is a whole part where we are giving powers to the Commission to make regulations and we have outlined a number of areas where it can make regulations. That is why we are deleting that. So, we will transfer what is being captured in that particular case to New Clause 32A, which we are going to introduce.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman. I totally agree with the Chair. I am just wondering because we are anticipating debate. What happens if New Clause 32A does not go through and we already deleted Clause 46? We need guidance.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Oundo, we shall get there. We do not know what decision the House will make on that particular one.

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

(Clause 46 deleted)

(Clauses 47, 48 and 49 agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): We are done with the clauses.

New Part 16A, 16B, 16C, 16D, 16E, 16F, 16G and 16H

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, move the Second Reading of those clauses.

William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following New Part immediately after Clause 16—

PART IIIA- SERVICES AND FACILITIES FOR PARLIAMENT

Services and facilities for Parliament

16A. (1) The Commission shall, to the extent of its constitutional mandate, be responsible for fulfilment of the provisions under Article 127(6)(a) and (d) of the Constitution and in particular shall formulate policies, regulations, strategies and put in place mechanisms for the provision of such services and facilities as are necessary for the effective functioning of Parliament and the well-being of Members and the staff of the Commission.

(2) The Commission shall adopt comprehensive strategic plans that ensure the realisation of Article 127(6)(b) and (d) of the Constitution.

Outsourcing of services and facilities.

16B. (1) The Commission shall ensure availability, accessibility, adaptability and acceptability of services and facilities for use by Members and staff of Parliament.

(2) The Commission shall put in place adequate infrastructure that would be necessary for provision of services for the well-being of Members and staff of Parliament.

(3) The Commission may provide or designate exclusive use of certain facilities for Members.

(3) The Commission may outsource certain services and facilities for the welfare of Members.

(4) Despite subsection (1), the Commission may take measures to facilitate the use of facilities not available within the precincts of Parliament by Members and staff of Parliament.

Facilitation of activities held outside the precincts of Parliament.

16C. (1) The Commission shall prescribe the minimum standards for travel and accommodation for Members and staff of Parliament to facilitate performance of official duties outside the precincts of Parliament.

(2) The Commission shall regularly review the domestic and international travel allowances applicable for Members and staff of Parliament.

- Discharge of mandate of Members. 16D. The Commission shall take measures to facilitate Members to discharge their mandate as provided for in Articles 94, 95 and 96 of the Constitution including—
- (a) equipping and allocating offices to Members;
 - (b) facilitating Members to conduct public participation in the performance of their duties;
 - (c) take any other measure as may be necessary.
- Enhancing legislative skills. 16E. The Commission shall facilitate the enhancement of legislative skills of Members and staff of Parliament through the provision of structured and continuous trainings locally or in foreign countries.
- Use of technology in Parliament. 16F. The Commission shall foster and promote the use of technology in all administrative processes, communication, preparation, dissemination and storage of information and in the relevant day to day functions of Parliament.
- Facilities for Parliamentary Parties. 16G. (1) The Commission may provide facilities to a parliamentary political party or caucus to promote the ideals of the political party or parliamentary caucus.
(2) For the purposes of sub-section (1), the facilities provided shall be for exclusive use by sitting Members.
- Promotion of the ideals of parliamentary democracy. 16H. (1) The Commission may initiate and undertake programmes that promote the ideals of parliamentary democracy.
(2) The Commission may undertake the programmes under section (1) either singly or jointly with domestic and international legislative organs, the Members and staff of such legislative organs and other relevant organisations.
(3) The Commission may, pursuant to international law and treaties, undertake collaborative works with similar institutions that provide parliamentary services in the Commonwealth and other jurisdictions.
(4) For the purposes of attaining the objectives of the programmes under this section, the Commission may enter into memoranda of understanding, contracts or such other agreements as may be authorised from time to time with persons, organisations or other relevant institutions.

On these proposed amendments I wish to explain that we observed there is need to incorporate certain provisions in the Bill relating to provision of services, facilities and activities for Members. The Bill as it is now, tends to concentrate on provision of matters touching on staff of the Commission. All this is provided in the New Clause 16, which introduces issues on matters concerning Members of Parliament. Basically, this is the essence of the additional New Clause 16.

(Question of the new part proposed)

(New part read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Temporary Deputy Chairman. This is a serious Bill concerning parliamentarians and Parliament. Chair, I think these

are very good amendments. It is making the PSC handle obligation in law to provide up to date services in terms of infrastructure, facility, staff and outsourcing.

I have said this many times, because I have been here for the last 13 years, and the Chair, Hon. Kioni and Hon. Keynan will agree with me. The Chairs are the ones who were lobbying and we have a budget of Kshs43 billion. There must be outsourcing and a Java within the precincts of Parliament. If I do not want to eat in the Parliament Restaurant, I can get fast food. So, this Bill is important for the Commission to have powers to ensure that the facilities are up to standard as in other jurisdictions.

In this Parliament, there must be a holding ground for receiving dignitaries. You know the Speaker receives people in his office. There should be a proper Commonwealth Parliamentary Office like in other jurisdictions. We must have parliamentary parties' caucus rooms, so that when we want to caucus as Jubilee, there must be a designated caucus hall where our party leader can walk in instead of the idea of going to our party headquarters. This is where we are talking about facilities. Our offices should have researchers, internet connectivity and the gym must work. This is a good day. We allocate resources to the Commission, but they must be in tandem with the facilities of a parliamentary jurisdiction.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Can we have Hon. Kioni, who has not spoken?

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Chairman. I support this amendment. I think it is important to make it clear because we will soon be bashed that we are providing things we do not deserve.

One, if you are talking about catering, this is a service we pay for. Two, when you go out and visit other jurisdictions, we are actually embarrassed to invite them back home. The services in our Parliament do not match theirs. Kenyans need to understand that when we say that better services need to be offered, it has nothing to do with making our stay better. It has everything to do with improving the image and integrity of this country. We will have a better Parliament. We are here today, others will come tomorrow. So, this has nothing to do with us, but the country and it is the image of Parliament that we are improving.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Oundo, briefly.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman. I sincerely thank the Committee for this amendment. When I came here, I thought I was coming to paradise, but when I landed, reality sank that what I expected is not what I got. I hold the National Assembly with such exalted status. I expected things to move smoothly, be organised and services to be in an extent far much better than what we had elsewhere. At times, I think the University of Nairobi (UoN) had better facilities and good management than this place. I hope with these amendments, we will move to the next level to accept and acclaim the status of the National Assembly in national matters.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Barasa, briefly.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Temporary Deputy Chairman. These are good amendments. I have gone through the preliminaries and I have not seen a definition of the word "Members". Are they Members of Parliament or Members of the Commission? Some of these terms at times, when you get to some level, somebody might ask who a Member is. So, maybe you could have specifically and clearly stated they are Members of Parliament.

The Temporary Deputy Chairman (Hon. Patrick Mariru): You need to check Clause 2. Maybe, there is interpretation there.

Hon. Gichimu, please be brief because this is straight forward.

Hon. Githinji Gichimu (Gichugu, JP): Thank you, Hon. Temporary Deputy Speaker. I wish to support the amendments by the Committee. Looking at 16E and F, they are meant to equip Members with the requisite skills. The Commission is now mandated by law that it is its responsibility to ensure that Members acquire the necessary skills through the requisite and current technology. I believe it is good for us to contribute to this House on all matters that relate to legislation.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let us make progress.

*(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)*

New Clause 17A

William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 17-

Clerks' term of
office

17A. (1) A Clerk of a House of Parliament shall be appointed by the Commission for a term of five years and is eligible for re-appointment for one further term of five years.

(2) Despite sub-section (1), if the person appointed as Clerk of a House of Parliament is an employee of the Commission serving on permanent and pensionable terms, the person shall continue serving on permanent and pensionable terms for the duration of the term provided for in sub-section (1) or retire from the parliamentary service upon attaining the age of sixty years, whichever is the earlier.

(3) An employee of the Commission serving on permanent and pensionable terms who has served as a Clerk of a House of Parliament and has completed his or her term of office as set out in sub-section (1) before attaining the age of sixty years shall be compulsorily retired and is eligible for payment of pension in accordance with the applicable laws.

Hon. Temporary Deputy Chairman, the justification here is that in view of the fact that the clerks of the two Houses hold constitutional offices established under Article 128(2) of the Constitution, there is need to provide term limits comparable with the prevailing limits applicable to other constitutional office holders. A time has come when we really need to provide for a term of a clerk. We are proposing a maximum of two terms for somebody to serve as a

clerk. It has been necessary because if you look at the other commissions, we have similar provisions where somebody serving as a secretary to the commission has a term specified in the law. This law, therefore, should be clear to specify the term. There is an argument about it.

Hon. Temporary Deputy Chairman, allow me to explain that. If, for example, upon serving two terms, you will still have not reached your retirement age, the thing is that a Kenyan who wants to serve as a clerk should think twice before applying. If you think by applying you will retire before you attain 60 years of age, then the best thing you can do is to take the option of not applying. However, I think the spirit is to ensure that we comply and have a law like the other commissions.

(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. Patrick Mariru): Yes, the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I support this amendment with one side of my heart. As a House, we must always follow what we do in this House, especially when we are creating other commissions. There are commissions where you serve for a term of six years, and which is not renewable. There are some which one serves for a term of four years. But this is good. They are proposing five years. I do not know where the five years came from. In most commissions, it is four years renewable and so, you serve twice for eight years. We have no problem with five years.

This is in line with the *Mwongozo* principles. This is because even Speakers of both Houses serve for two terms. Most of the Speakers have served for two terms. This culture where a clerk wants to live in this building for 20 or 30 years must end. You stay until you “grow your head” and then you get even more powerful than the speakers. So, clerks must serve for five years. If they reach 60 years, they go home. If they do not perform well, they should be sacked by the Commission and they become accounting staff. In fact, we will bring an amendment to this law that even in future, anybody who is above the position of Deputy Director must be on contract and it should be based on one’s performance.

As Hon. Kioni was saying, we must protect our integrity. Our parliamentary jurisdiction must be one of the best. So, we must get staff who are very competent and who know their work. We do not want to have staff who, because they are employed by a commissioner, cannot even write a good report. So, clerks and any other member of staff must work very hard. We should respect the integrity of Parliament. We do not want Parliament to be the dumping ground for staff. Even us, we have our people! Going forward, we must have more Turkanas and Samburus working in this Parliament. All Kenyans must be given an opportunity. Clerks must serve for five years, renewable based on performance.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Shall we make progress on this one?

(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 Part 32A

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

PART VA- PROVISIONS ON DELEGATED POWERS

Regulations on
Services and
facilities for
Members.

32A. (1) The Commission may make Regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may prescribe regulations on—

- (a) the priority of allocation of resources available for use by Members;
 - (b) the criteria for allocation of offices to Members on the basis of ranking, leadership position, persons with disability or other suitable factors;
 - (c) minimum standards on quality of goods and services provided for use by Members;
 - (d) minimum standards on equipping of offices of Members;
 - (e) the conduct of the business of the Commission;
 - (f) the administrative and management structure for the services and facilities of the Commission in accordance with the principles set out in this Act;
 - (g) the terms and conditions of service, pension and other retirement benefits of employees;
 - (h) the procedures for the discipline of the staff of Parliament;
 - (i) the financial procedures of the Commission;
 - (j) the orientation and training of Members and staff of Parliament;
 - (k) the security of Members;
 - (l) the handling of the assets and other resources of the Commission;
 - (m) the delegation of the Commission's functions or powers;
 - (n) public participation and outreach programmes; and,
 - (o) any other matter required under the Constitution, this Act and other written law.
- (4) For the purposes of Article 94(6) of the Constitution—
- (a) the purpose and objective of the delegation under this section is to enable the Commission to make regulations for better carrying into effect the provisions of this Act;
 - (b) the authority of the Commission to make regulations under this Act is limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section.
- (5) The principles and standards applicable to the delegated power referred to under this Act are those found in—

*No. 23 of 2013.
Cap 2.*

- (i) the Statutory Instruments Act, 2013;
- (ii) the Interpretation and General Provisions Act;
- (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and,
- (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

Hon. Temporary Deputy Chairman, what we have done in this New Part 32A is to retain what is provided for in Clause 46 of the Bill. We have widened the areas where the Commission can make regulations from time to time. Basically, we deleted Clause 46 so that we now retain New Part 32A. That is the basis of the amendment.

(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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, you have an amendment to the Third Schedule.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I wish to withdraw this amendment because I withdrew my proposed amendments under Clause 38. The Chair of the Commission should be able to oversee the oath-taking of all the commissioners and the staff of the Commission. That amendment was as a result of that. However, now that we did not proceed with the amendment under Clause 38, I withdraw the amendments to the Third Schedule.

The Temporary Deputy Chairman (Hon. Patrick Mariru): You have dropped the amendment on the Third Schedule. That is noted.

(Proposed amendments by Hon. William Cheptumo to the Third Schedule withdrawn)

Yes, the Leader of the Majority Party, you have an amendment.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, because I am the owner of the Bill, I need to move a further amendment to the Third Schedule and remove where it says: “I have been appointed as chairman.” I remove the word “chairman” because it is in the Constitution.

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. You went faster than yourself. Therefore, you made the Chair move faster than himself! Hon. Members, let me take that again so that we capture it.

(Third Schedule as amended agreed to)

Clause 2

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended-

(a) in the definition of the term “Secretary” by inserting the following words at the end of the definition—

“or in the absence of the Secretary, any other person exercising the functions of the Secretary”.

(b) by inserting the following new definition in proper alphabetical sequence-

“Member” means a Member of Parliament.

There are two amendments. One was even raised by Hon. Barasa about the definition of the word “member”. The amendment defines that word “member” as a Member of Parliament. Hon. Barasa, I think you are now satisfied with that.

The justification is that it seeks to clarify the definition of the term “secretary” to include the person acting as the secretary of the Commission in the absence of the secretary. The amendment thus brings on board the concerns raised by the PSC regarding the definition. This is to enable any other person to act in that position in the absence of the Commission Secretary.

This is also consistent with the provisions of the Constitution under Article 259(3)(a) which provides that a function or power conferred by the Constitution on an office may be performed or exercised as the occasion requires by a person holding that office. In the event that the person holding that office is either sick or absent, it is then acceptable for somebody else to hold that position. That provision was not there before. This seeks to clarify that position.

(Question of the amendment proposed)

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I have no problem with the amendment defining the term “Member of Parliament”, but I have a problem

with the one defining the term “secretary”. We are trying to legislate on an administrative matter. When you say “in the absence of the secretary, any other person exercising the functions of the secretary”, who is the other person? You cannot do that in law. If the secretary is not feeling well or he is away, there is the deputy or even the Clerk of the National Assembly who can take the minutes. Let us not create a provision for “any other person”. Who is any other person? Is it somebody from the street?

The Chair has to withdraw this amendment. Sometimes, you do not stick to your guns. You are a good man and you are a ranking Member. We cannot say “any other person”. We have never done that in law. The Secretary to the Commission is always there. Even when the Speaker, who is the Chairman, is away, there is a Vice-Chair. Even when the Vice-Chair is away, another Member will chair. You are over-legislating. In fact, you are mentioning “any other person”. That is very dangerous.

The Temporary Deputy Chairman (Hon. Patrick Mariru): You will get a chance. Let us start with Hon. Janet. Chair, I will give you a chance.

Hon. (Ms.) Janet Nangabo (Trans Nzoia CWR, JP): Hon. Temporary Deputy Chairman, it is not even clear. Is it when the Commissioners are being sworn in or is it about chairing the meetings?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Let us start with Hon. Sankok, then we come to Hon. Oundo.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, according to the Mwongozo Code of Governance, it is very simple. Once the secretary is not available, the Deputy Secretary may take over or the members may appoint another person to act as a secretary. You do not have to put that in law. It is there. It is in the Mwongozo Code of Governance. Sometimes, you go deep until you get stuck in the mud. Let us just forget about it. Withdraw the amendment Hon. Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Unless you are withdrawing the amendment, Hon. Chair, I will still give an opportunity to Hon. Oundo. If you are not withdrawing, I will give you the last opportunity.

Hon. William Cheptumo (Baringo North, JP): Of course, you agree with me that we are saying the same thing. The wording is...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Chair! I will give you a chance. Why not listen to these two Members, Hon. Oundo and Hon. Gichimu, and then we come back to you?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, in that particular Clause, we intend to define or conceptualise the office that holds that particular position. Article 127(3) of the Constitution of Kenya is very categorical who the Secretary to the PSC is. I do not want to say it is mischievous, but any other definition is unconstitutional. I do not want to use other words. It is just unconstitutional and what we are doing is unnecessary.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Let us have Hon. Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Chairman. I also feel that the Chair should drop that amendment because it is over-legislating. When he says that the definition of the term “Secretary” also includes any other person exercising the functions of the secretary in his absence, it is the same thing. Why should we have it as an amendment? It should be dropped because it goes without saying that any other person who has the authority

and mandate to exercise the powers of the Secretary in his absence will take control. There is no need to have that amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): We will be closing this debate shortly. Let us have Hon. Lomenen.

Hon. James Lomenen (Turkana South, JP): Hon. Temporary Deputy Chairman, I seek your indulgence. In the Constitution, the Chairman of the PSC is the Speaker. I need guidance. What does the Constitution say regarding the Secretary of the PSC? It is the Clerk of the Senate. If it is the Clerk, are we supposed to go against the Constitution? He has to withdraw that amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Let us have Hon. Keynan.

Hon. Adan Keynan (Eldas, JP): Hon. Temporary Deputy Chairman, let me make this crystal clear. The Constitution under Article 127 is very explicit. The Secretary of the PSC is the Clerk of the Senate. In his absence, the person who deputises him is the Deputy Clerk of the Senate. That is in the Constitution. Let us leave it there. That is the way it is. Over-legislating does not make any sense. I urge my brother, Cheptumo, to withdraw because it is already catered for in the Constitution.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Finally, let us have the Chair.

Hon. William Cheptumo (Baringo North, JP): Before I withdraw, Hon. Temporary Deputy Chairman, there is nothing wrong with this amendment. I have the Floor.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, but he is rising on a point of order. I will stop him if he is contributing. He is on a point of order.

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman. Is the Chair of the Departmental Committee on Justice and Legal Affairs in order to say that we are saying the same thing after we have even given the unconstitutionality of his amendment? The professor, the next Governor of Turkana, Hon. Keynan and Hon. Sankok have spoken and told you that, in the absence of the Secretary who is the Clerk of the Senate, it is the Deputy Clerk who serves as the Secretary and not any other person. Is he in order to mislead the House?

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chair had the Floor. Let him finish.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairman, even when I want to withdraw an amendment, it does not necessarily mean that I just have to stand and say that I have done it. There is no formula of withdrawing an amendment. One has to speak. I have to explain why I want to withdraw an amendment.

(Laughter)

The person who will exercise the functions of the Secretary will be the Deputy Clerk of the Senate. I have heard the Members' contribution. Withdrawing this amendment does not at all negate the principle of the law which we are passing today. I withdraw the amendment under Clause 2(a), but the other one remains.

*(Hon. William Cheptumo withdrew part 2(a)
of his proposed amendment to Clause 2)*

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair has withdrawn the amendment in Clause 2(a), but Clause 2(b) still remains.

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

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the Mover.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Parliamentary Service Bill (National Assembly Bill No. 6 of 2018) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

THE PARLIAMENTARY SERVICE BILL

Hon. Patrick Mariru (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Parliamentary Service Bill (National Assembly Bill No. 6 of 2018) and approved the same with amendments.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have the Mover.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request the Chair of the Departmental Committee on Justice and Legal Affairs to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. William Cheptumo (Baringo North, JP): I second, Hon. Temporary Deputy Speaker.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): I see an interest in this Report from Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to take this opportunity to sincerely thank the drafters of the Bill. It gives meaning to work in Parliament. It gives us purpose and allows us to deliver or execute our mandate in an environment that acknowledges the critical importance that Parliament plays in this country.

As we stand here today, Members of Parliament seem to be under bashing by every Tom, Dick and Harry. Everywhere you go, many a time, they are treated below the rank of even junior civil servants. We hope that once the Bill has been assented to by the President, whatever has been provided for will essentially be implemented.

Secondly, I am impressed by the call for capacity building and skill improvement for Members of Parliament. Many of us come from diverse professions and backgrounds and it takes a bit of time to get comfortable and learn the ropes. That is why the *Mwananchi* Report that was released the other day caused a lot of heat and emotions in the country. It hit quite a number of us in our constituencies. But because we now have a Bill that has institutionalised training and capacity building, we hope that it will allow our Members to move forward. All along, many of us had reservations about the quality, capability and capacity of the various clerks and staff who serve in the various committees. With the new Bill in place, we hope that the PSC will undertake massive re-training of our clerks, so that they can move in tandem with the expected quality of reports and affairs. Quite a number of them have capacity issues.

With those few remarks, I support the Bill and ask the Members to support it. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Leader of the Majority Party, you have the Floor.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, before I move my re-committal, allow me to say only one thing. I want to shame those who are saying that this Bill contains increment of salaries for Members of Parliament. I also want to shame those who are saying that Members of Parliament are using Parliamentary Service Bill for their own selfish interests.

This House passed an Act operationalising a number of commissions from the 10th Parliament, like the Teachers Service (TSC), National Land Commission (NLC), Judicial Service Commission (JSC), Ethics and Anti-Corruption Commission (EACC) and the Office of the Director of Public Prosecutions (DPP). It is very sad and shameful for Parliament to have a Commission which does not have an Act of Parliament that can be used for its operationalisation. We have done that business this afternoon. We had an issue with Clause 38 because we removed the Chair of the Commission who is automatic. It is in the Constitution.

Hon. Temporary Deputy Speaker, I beg to move:

THAT, the Motion of agreement with the Report of the Committee of the whole House be amended by inserting the following words, “subject to re-committal of Clause 38”.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Do you have a seconder?

Proceed, Hon. Keynan.

Hon. Adan Keynan (Eldas, JP): Hon. Temporary Deputy Speaker, let me second this re-committal. As the leadership of the Republic of Kenya which is duly elected, we must be prepared to walk the talk when it comes to certain pertinent national interests. Being a Member

of the Commission and your appointee, there are certain things you expect us to do not only for this House and members of staff, but also for Kenyan taxpayers. This Bill has attracted a lot of politics. I want to assure Members of Parliament, staff and Kenyans that this Bill will add value, improve service delivery and inform the critical tasks of Members of Parliament not only on oversight, legislation and budget-making, but also in rebuilding the image of Parliament as a critical first arm in our governance structure.

I know that there are many people who have been misinformed and that is why, once in a while, I have been calling on Hon. Dr. Oundo because I know that he may have been privy to certain creative imaginations which were not part of this Bill.

This is a deliberative House. One need to come before it, expound on issues, deliberate and make Kenyans understand. The final decision we make is what will inform the content of a Bill.

The Departmental Committee on Justice and Legal Affairs has had an opportunity to consider and subject the Bill to public participation. Some of the amendments must have been informed by...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Keynan, your remit at this level is not to make comments generally, but to second the recommittal of the Bill. I will give you an opportunity after I propose the Question.

Hon. Adan Keynan (Eldas, JP): Hon. Temporary Deputy Speaker, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Keynan, you can now say all the things you were desirous of.

Hon. Adan Keynan (Eldas, JP): Hon. Temporary Deputy Speaker, the Parliamentary Service Commission is one of those constitutional commissions under Chapter 15 of our Constitution. The framers of the current Constitution had in mind Article 127 which, in their wisdom, decided to have a Parliamentary Service Commission, a representative Commission that is supposed to deal with the first arm. I will always say that the first arm of our governance structure is Parliament because that is where the people have bestowed their elective power.

Being one of the commissioners, we have been subjected to a lot of rumour mongering, regional talks and trivialisation of certain critical aspect of this Bill. I want to put it on record that this Bill did not have any issue in mind. The idea was, and if we did not do this today, we would have been condemned...

Under Chapter 15 of the Constitution - and I am glad that, Hon. Temporary Deputy Speaker, you are a lawyer - we enacted the National Land Commission Act in 2012, while the Independent Electoral and Boundaries Commission Act was enacted in 2017. The Ethics and Anti-Corruption Commission Act was enacted in 2016, the Judicial Service Commission Act was enacted in 2011 and the Commission on Revenue Allocation Act was enacted in 2012. The Public Service Commission Act was enacted in 2017; the Salaries and Remuneration Commission Act was enacted in 2018; the Teachers Service Commission Act was enacted in

2012; the National Police Service Commission Act was enacted in 2014, while the Kenya National Human Rights Commission and the National Gender and Equality Commission Act were enacted in 2012 and 2011 respectively.

The Parliamentary Service Commission has been enacted today and yet, this is the deliberative House that is tasked with the passage of this critical Bill. The question is how come we enacted laws concerning other constitutional commissions and aligned them with the current Constitution, but the one concerning Parliament is the last one we are doing today? It is simply because of certain political undertones. These are things we must overcome as the true representatives of the people of Kenya. This is why I thank Members for their understanding, appreciation and for their timely decisions on this Bill.

I undertake, on behalf of the Commission, to shame those who have been attributing certain misleading creative imaginations on the Bill. Nowhere in the Bill does the Parliamentary Service Commission purport to increase remuneration of Members of Parliament. Has anyone seen it anywhere in the Bill? It is not there. I ask those who have been propagating that; those who have been talking ill of Parliament and those who have been abusing the leadership of this House that today, they have seen the contents of the Bill and they have become familiar with them.

Sorry, but we will not be cowed or ashamed in doing the right things. What Parliament has done today is the right thing. Therefore, I hope and pray that once His Excellency the President assents to the Bill, it will see a transformative improvement in service delivery and the image of Parliament.

I thank the Members for their time and support for the Bill. I assure the Members that they will see enhanced and improved service delivery on the part of the Commission, which is chaired by our Hon. Speaker, the able Hon. J. B. Muturi and the other nine commissioners.

Thank you, Hon. Members.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Nduati, do you have something to say to this? Let us have the Member for Ndaragwa, Hon. Kioni.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker. I want to say a few words in support of this Bill and on re-committal.

When we were dealing with the status of the implementation of the Constitution... We have three arms of the Government. While we have gone to give the examples of other commissions, including the Human Rights Commission and the Ethics and Anti-Corruption Commission, we can only compare the Parliamentary Service Commission to the Public Service Commission and the Judicial Service Commission. So, we had one arm of Government without an Act of Parliament. We have done a very important thing today because it goes a step further in ensuring that we have implemented the Constitution so that Kenyans can continue benefiting from what we intended from day one.

It is important to make it clear that this Bill does not provide for us or for me as the Member of Parliament for Ndaragwa. But it provides for Parliament as an institution that will be there long after we are gone. It is not meant to give us any privileges over others.

The Bill also helps to make it clear to some extent the role of a Member of Parliament. I know that the Salaries and Remuneration Commission pegged Members of Parliament at position 46 due to their lack of wisdom. Parliament is one of the very important institutions in the matrix of the governance in the country. The Bill may help us to try and clear the misinformation that seems to have found its way into the minds of some governors and other people.

Finally, it is important that the Commission, as it reads the Bill and seeks to implement it, ensure that Members of Parliament, this Parliament and other Parliaments, are never ever again reduced to the level of beggars. That was the case in the 1980s and 1990s, and it did not serve this country at all. We need to ensure that Members of Parliament, not that they should be over-provided for, but are not reduced to a level where they cannot represent the people who elected them for the reason that they cannot even fend for themselves or cannot move around and be seen like people who are here by mistake.

With those remarks, I beg to support the re-committal.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, this is a job that is done. It is good to leave it where it is now. I direct that the next necessary steps with regard to this particular Bill be undertaken when the matter is set down again for consideration.

(Putting of the Question deferred)

I see the Chair of the Committee wants to say something. Hon. Chairman, you have had your fair bite on it. I will give you just one minute, if the issue you have is really burning.

Hon. William Cheptumo (Baringo North, JP): Thank you Hon. Temporary Deputy Speaker. I just want to thank my colleagues and the Members of my Committee.

When we did public participation, there was no single presentation by any Kenyan or group of persons objecting to this Bill. This negative perception which has always been put forward by newspapers or other leaders that this law is meant to benefit Members of Parliament has been disproved today. As Hon. Keynan has said, every clause of this Bill has nothing at all to give the impression that we are using this law to benefit ourselves.

I thank Members of the Departmental Committee on Justice and Legal Affairs and all Members who had time to debate this Bill. I believe that from today, as this law will be assented to by the President, the Commission shall be enabled legally to facilitate the functions of Members of Parliament, the same way the Judicial Service Commission (JSC) is facilitating the Court of Appeal Judges, magistrates and so on, and the same way the public servants are being facilitated by the Public Service Commission (PSC). Therefore, even this Commission should be able to facilitate Members of this House to function.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Wambugu, what is so urgent that has not been said?

Hon. Ngunjiri Wambugu (Nyeri Town, JP): Thank you, Hon. Temporary Deputy Speaker. I just wanted to add my thoughts to this particular Bill. The Chairman has explained that the role of the Commission is to facilitate the operations of this House. I see it going a step

further. The role of the Commission is also to protect the capacity of this House to function. Parliament is one of the three arms of the Government. It is actually the second arm of the Government. There is this misconception in the public that the only thing that the Parliamentary Service Commission does is to discuss salaries and remuneration of Members of Parliament. One of the things I hope will happen when we have executed what we have just done today is to establish a proper and fully funded communications department within the Parliamentary Service Commission. We need to have an outfit that communicates and explains to the public the role and the things that Parliament is doing.

It is very unfortunate that many times, the public has no idea what Parliament has been doing the whole time unless we have a conversation about remuneration. For example, it would pass as a headline that MPs spent the whole day discussing their salaries and yet the truth is that, MPs would have sat three days a week for three months. The one day that we talk about salaries is the day we make it to the headline news. We have passed laws; we have made amendments and done a lot of work for two or three months. But every now and then, the only thing that the public gets to hear is that we discussed remuneration. That is why, in my opinion, it is going to be critical to establish a communications department the same way the Executive has a Government Communications Department, and the same way JSC creates its own communications capacity. It is going to be important for the Commission to make a strategic and deliberate effort to communicate to the public not just when we have a crisis or a problem, but consistently and all the time.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Wambugu, you are absolutely right. But you must also remember that Parliament is the only arm of Government that conducts its entire business in the glare of the public on a daily basis. So, we are out there. Everything we do is out there. The rest of the other arms of Government operate under an opaque cloud. It is only what they wish public to hear that they put out there. That may be the difference.

Hon. Members, let us make progress. We have said enough on this Bill. I have already directed that the next necessary steps will be undertaken when the matter is set down for consideration.

I, therefore, direct that we move to the next business.

Hon. James Lomenen (Turkana South, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): There is nothing out of order, Hon. Lomenen. What is out of order? Let me hear you.

Hon. James Lomenen (Turkana South, JP): Hon. Temporary Deputy Speaker, thank you for giving me this opportunity. It is a point of order and also a point of information. I come from far; the furthest corner of this country. Before I leave this House, I ask you with uttermost faith to give me a few seconds to advise the commissioners in our Commission. It is a burning issue. We have commissioners of the Parliamentary Service Commission. I am the Vice-Chairman of the Committee on National Cohesion and Equal Opportunity. It is not in order when you are a commissioner or a staff of the Parliamentary Service Commission to use your position to marginalise, suppress and neglect those other regions that are not represented in the Commission. In that relation...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Lomenen, you may be having grievances, but this is not the opportunity to air them.

Hon. James Lomenen (Turkana South, JP): Thank you, Hon. Temporary Deputy Speaker. I have said it. God has heard. Other people have also heard.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Lomenen, you are out of order.

Next Order.

MOTION

REPORT ON INQUIRY INTO THE PROPOSED KENYA AIRWAYS' PRIVATELY INITIATED INVESTMENT PROPOSAL TO KENYA AIRPORTS AUTHORITY

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this great opportunity to move this very critical Report which will give direction in the aviation industry in this country. Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Inquiry into the proposed Kenya Airways' Privately Initiated Investment Proposal to Kenya Airports Authority, laid on the Table of House on Tuesday, 18th June 2019.

The Committee considered the submissions made by the stakeholders. It took our Committee more than six months of public participation. We were always up and down. We heard those stakeholders and noted that the Privately Initiated Investment Proposal (PIIP) which originated this discussion does not present a viable option for restoring Nairobi as the civil aviation hub of choice in Africa and the whole world.

The Committee further noted that taking into account Kenya Airway's (KQ) financial status and the current lack of competitiveness in Kenya's aviation industry, the Government and the people of Kenya stand to lose the most in the event that the trend is left unchecked or to continue, noting that KQ's debtors enjoy a sovereign guarantee of up to Kshs75 billion. Appreciating the policy adopted by the Cabinet through a Cabinet memo with regard to consolidation of the country's aviation assets and re-establishment of Nairobi and Jomo Kenyatta International Airport (JKIA) as a competitive international aviation hub, the Committee recommends the following:

- (i) That Kenya airways be nationalised.
- (ii) The Government establishes an aviation holding company with four wholly-owned subsidiaries; namely,
 - (a) JKIA company incorporated to manage JKIA as an international hub and offer ground handling and catering services;
 - (b) KAA with revived mandate of managing the remaining airports in this country and airstrips. Under its new mandate, KAA shall maintain at least one serviceable airstrip in our 47 counties for purposes of security, health and other emergencies like delivering of examinations or election materials.
 - (c) The third subsidiary under this aviation holding company is KQ as our national carrier and pride.
 - (d) And fourth subsidiary is that we have a centralised aviation services college. At the moment, they are scattered here and there.

The third, fourth and fifth recommendations in our report touch on the proposed amendments, should this Report be adopted. Those are the legal provisions that we are seeking to be able to operate the new institution. This is going to be historical. Therefore, those recommendations touch on the specific parts of legislation that we will be seeking to move should the House adopt the Report, so that we can operationalise that very important institution.

The sixth and very important recommendation further clarifies some of the recommendations that we are making so that we can even uplift the national carrier, which I will explain in detail in a short while. Of particular importance in this recommendation is that, out of what is called air passenger service charge, we are proposing that 20 per cent of it should be ring-fenced and committed for purposes of maintaining the other airstrips. There was fear of what happens with the other airstrips in this country. Therefore, for the first time in history, our Committee has taken a bold decision to help the country, meaning that if we make JKIA international to raise our resources; those resources which are going to be raised from that facility will benefit the whole country. By doing so, the responsibility of making JKIA perform best is the entire responsibility of the country and the resources coming from JKIA should be shared across the country so that the country develops in a very uniform manner. Recommendations 7 and 8 are again the same recommendations that seek further amendments to various pieces of legislation which Members will see in the Report to operationalise this institution that we have proposed.

The important question after mentioning that is: How did we reach there in terms of having those recommendations? I want to share with the House that you guided us when this issue was introduced in the House, particularly when we had a problem with the PIIP by KQ to KAA. It brought a lot of uproar in the country. Therefore, you gave directions and you really guided the House and the nation that my Committee seizes the matter and in so doing, you directed that we look at policy issues and compliance with due process of law. You also went ahead and directed that we look at issues that are of concern to the people of Kenya as espoused under Article 95(2) of the Constitution. Therefore, we subjected our inquiry to the criteria you gave us. If you look at our Report, it is chaptered along the items of your guidance. We delved into the matter.

We called for the PIIP and it was brought to us and we looked at it. What was it about? It was very brief. Just to summarise for the House, the PIIP said that KQ should take over JKIA. In other words, taking over the resources of JKIA. Questions were raised: How would that help KQ and even the country? Using the criteria you gave, we conducted one of the most extensive public participations that we ever had. We brought in the Ministry, KQ, KAA, KCAA, Treasury and the Attorney-General. We also brought in unions that protect staff of KAA, KCAA and KQ. We also brought in the pilots. We had the best opportunity to interact with the pilots. What were we looking for?

We called the Ministry and told them: "This PIIP, in our understanding as a Committee, is a strategy for you to answer something, which is a gap in policy". So, we asked them: "What did you want to achieve as a Ministry and as Government that you are using PIIP to address?" It would allow us to see whether that would be the best strategy. When the Ministry appeared, they gave us a very sad picture of aviation. This is very critical. Our Committee looked at it from the aviation point of view rather than reducing the matter to KQ. When you reduce it to KQ, it becomes a debate and we lose direction. So, we looked at the policy direction of the Ministry. We saw a very bad picture of our aviation industry. I want to share with the House the evidence that we found showing that, as a country, we are losing in aviation.

One, we found out that Kenya is losing its market in aviation. We are losing our competitiveness in Africa. What demonstrates that? What was presented to this Committee is as follows: Within the last six years, the share of traffic at JKIA in East Africa dropped from 50 per cent to 34 per cent. That is not something to celebrate. It cannot be celebrated. Bole International Airport, which is our closest neighbour in Ethiopia, grew its market share from 30 per cent to 44 per cent. If you look at the mathematics, they were actually taking our share. In policy, we were losing in aviation.

Two, KQ's market share between 2015 and 2017 dropped by 4 per cent, while the market share of Ethiopian Airline was growing by 20 per cent. We are losing in aviation. Those are the facts and facts do not lie. We went on to establish that within the last decade, can you imagine our neighbour Ethiopia, which is smaller in economy than our own country... We did not want to look at massive airlines like Qatar Airways for primary comparison. We wanted to look at what is within our local territory. Their airline tripled in terms of passengers. Just look at the figures. Within the same time, they increased their passengers to 10 million while our own KQ carried only 4.8 million. That is a country that has a smaller economy than our country. We are losing in aviation. It is even getting worse. We were given other facts. All the people who appeared before us were sharing the same conclusion that we are losing in aviation. We found out that Ethiopian Airline has gradually grown and currently, it has 153 destinations and a fleet of 100 of them. When you compare with our KQ, we have only 53 destinations and only 40 aircraft. Nothing more than that! The picture is not very good for our country. KQ was also making losses because of the model they were operating in, and it cannot be allowed to proceed in the same manner because we will lose as a people of Kenya. I said that in my introductory remarks. Currently, we only operate 45 routes in Africa. Our competitors are operating 77 routes and above. There are so many examples that I can continue to give. Members can find them in the Report. We then realised that it is true we are losing in aviation. That is a very sad state. What does that mean in simple terms for a layman? While we continue losing in aviation, KQ and our hub - which is JKIA - will collapse. When KQ is collapsing, it means airlines in other countries are growing in aviation. Countries like Ethiopia, Rwanda and Qatar will then pick us from Nairobi when going to Europe. We will pass through their countries first and then later deliver us to Europe where we will be going. That is not where Kenya wants to go. Therefore, we realised that there is a problem in aviation. That is how we approach this debate. We will help our country. When my Committee realised that, we decided to take action. That is why we came up with the recommendations which I have just mentioned to you. So, why did we go the nationalisation way? There were two reasons why we went that way.

First, we realised that the competitors of KQ around Africa are national. Why? They benefit from Government subsidy and that is why they can reduce the cost of the air tickets way below that of KQ. The reason why KQ tickets are high is because they are not getting subsidised by the Government. They are not a national airline. So, the bone of contention is how a private airline can get Government subsidy? We realised in the interviews and our research that airlines which are not getting government subsidies are making losses. One of them is Kenya Airways. Another one is in South Africa and Seychelles. The ones getting government subsidies are hitting the roof. They are benefitting because they lower the cost of their tickets and this will kill KQ.

The model upon which KQ is operating is very uncompetitive in the region. Other countries are playing monkey business with us. It cannot be business as usual. That is why we took the nationalisation route so that we can agree as a people that KQ is our national resource and we need to help it as a Government. If we succeed and the House agrees with us and it gets

Government subsidy, the cost of air tickets will come down. Apart from us parliamentarians who are forced by Government to travel by KQ, other people do not want to travel by KQ because it is very expensive. Now we have found the reason. So, should the House agree with us and we give it subsidies, we will enjoy and the cost of our tickets will be cheaper than those of Emirates and the Ethiopian Airlines. We will bring many people to Nairobi and make our money as a country from the multiplier effect of having the best airline.

The Ethiopian Airline is using this model, the Rwanda Airlines, Qatar, Emirates, Morocco and all those other successful airlines. So, we are not taking our country to unchartered waters but rather, to where it has been proved to be successful. We are pleading with this House to understand us.

That is why we are going national to give KQ the same treatment as others out there. Within three years, the others will be crying and coming to Nairobi. We do not want to airlift Kenyans, make them stop in Ethiopia before they go to Qatar or Europe because we have killed our own aviation sector. That is part of the reason we need to nationalise it.

Why did we create an aviation holding company in our recommendation number two? What motivated this Committee is that the aviation assets in our country were working at cross-purposes. KQ was not talking to the Kenya Civil Aviation Authority (KCAA) and vice-versa. They were competing and that is why we are losing at the airport. That is because our national airliner is not talking with the operator. They must talk. How can KQ write a letter to the Ministry and the Ministry writes to KCAA for them to talk, while they can meet in a board room and solve the issues without bureaucracies? They should be held together so that they can enjoy the services of being at home.

Secondly, the reason why we went the aviation holding way is because KQ is paying for parking at home at JKIA. That is what is contributing to the losses that are being declared. It is paying up to a tune of Kshs2 billion a year. Other airlines are not paying at home. If they were paying, the same money benefits the airline again.

We wondered as a Committee and citizens of this country. We do not pay parking at home. We drive home, park and relax. We also do not pay here in Parliament. So, why would we have a national airliner - which is the pride of the country, carrying our flag and making millions in terms of the multiplier effect - pay at home? That is why they are making losses. For that synergy to come in, we resulted to have a holding company so that they can talk. Once they talk, all these things will be sorted out, such as paying for parking at home.

Thirdly, when we have those assets held together, we leverage on the capital. So, if you have one holding company, the financial books of KQ, KAA and JKIA will improve. This means that if the balance sheet is better when we are leasing planes, we can get them cheaply. However, when the risk exposure is as it is for KQ now, to lease or buy planes is very expensive. That is why they are making losses. They are paying much money on leasing.

When the House agrees with us, they will re-negotiate again for those leases. This is because the balance sheet will be better and the risk will reduce from what it is. KQ is exposed to the highest risk. They cannot get any assistance outside this country. That is why we have guaranteed them about Kshs75 billion. We are asking the House to agree with us. We will change this country.

There were also a number of issues that were raised along the way when we were discussing this. Some of the issues that affected people - and which ought to be clarified - are that there were claims that some unknown faces were hiding in leasing companies. KQ has 40

planes and we own 3 of them, 17 are on loan 20 are leased. Therefore, there were suspicions that some unknown faces are hiding in those leasing companies to fleece KQ. But that that is not true.

We are leasing from reputable organisations that lease planes in the world. I have them in my Report. However, for the benefit of the House, I want to name a few. One is called AerCap based in Dublin. It has 1,153 planes being leased out to the world and we, as KQ, are leasing one from them. There are a number of companies in my Report that are leasing from them such as Qatar, Pacific and Air China. Those are reputable organisations.

Another one is the Aviation Capital Group based in the USA. KQ is leasing 3 planes from them. They have 297 planes. So, where are these faces that people are claiming are hiding in those companies to fleece money from KQ? That is not true and I can demonstrate that. There are 17 planes that we have taken on loan. Members are asking who these are. There is a company called Tsavo and another one called Samburu. There are allegations that some of those companies belong to people who fleece KQ. May I demonstrate in this Report that information is power? Bad information is bad power and good information is good power. That is why committees are established to determine good and bad information. What I have just given is bad information. So, what is good information? I now want to share with the House the good information. Tsavo Limited is a syndicate or group of banks that have come together to lend KQ money so that they can buy more aeroplanes. They bought seven aeroplanes. These are not for Pkosing or some other people. We are in a state of suspicion about this and I do not know why. I suspect you, you suspect me and we suspect everybody is eating somewhere. I think we have become an eating country rather than a reasoning one.

So, they have bought seven aeroplanes with the loan from Tsavo Limited which consists of Citi Bank, J.P. Morgan Chase and the African Export-Import Bank (Afrexim Bank). Those are reputable banks that you and I have borrowed money from. So, who is Samburu Limited? KQ has bought 10 aeroplanes though a loan from Samburu Limited, which is owned by Standard Chartered Bank and Afrxim Bank. Most of us here bank with Standard Chartered Bank because it is a well-known bank. That is why we are raising these issues and giving good information. For example, the 10 banks which lend KQ money converted themselves to KQ Lenders Company. This is a choice of banks coming together and agreeing to call themselves whichever name. Maybe, it was a mistake for them to call themselves Tsavo Limited and Samburu Limited. These are some of the issues which are misleading the country.

In that respect, with good information, we can help our country. It is now high time that leadership is called upon in this country to save the aviation industry. We have done what we were supposed to do as a country. As a Committee, we dissected and listened to everybody and we all agreed to help the aviation industry. I want to plead with the country and the House that in terms of transport, if we put our concentration in making profits from the first line of investments that we have, then we are lost. In transport, our concentration in terms of making profits should be from the multiplier effect of the transport installation.

For example, if we own airplanes, ships or *matatus*, then we should be thinking of how we can move more people so that they can do business in our country and we make money. If we want to make money from our first service, then we will make transportation very expensive and that is how far we have pushed KQ. It is a private entity and their interest is not to help the people of Kenya, but to make money for shareholders. That is the business of a private entity. It is not their responsibility to say how they should transport more people so that Kenya can earn money from the multiplier effect.

Therefore, in this Report, we want to shift our mind and say that it should be the responsibility of the Government of Kenya to provide transport for its people. That is why we want KQ to become a Government entity so that, tomorrow, we can ask them how many people they have brought to Kenya and how much they have made. Even as KQ struggles, we realised in this inquiry that it is able to inject more than Kshs100 billion to our economy every year. That is why we should concentrate so that they can move from making Kshs100 billion to Kshs300 billion. That is better, rather than private people saying they should earn their money from the primary installation thus making transport very expensive.

That is the reason why this Committee is pleading with the House and the people of Kenya to understand, agree with us and adopt this Report. According to this Report, things will change and transport costs will come down.

As I conclude, I want to address the issue that Kenyans are asking; about how much nationalisation will cost us. Will it be very expensive? It is not going to be more expensive than going this direction which will kill the aviation sector. That is because we have done our mathematics. The minority shareholders are about 2 to 3 per cent and those are the people who might require cash ejection. We asked the National Treasury to do some calculations and they said it will cost this country about Kshs800 million and this will be immediate. But in terms of banks, they can convert it into equity or bonds.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Pkosing, you have said how much?

Hon. David Pkosing (Pokot South, JP): Kshs800 million.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Kshs800 million. Very well! Proceed.

Hon. David Pkosing (Pokot South, JP): This is because there is no other alternative. The minor shareholders are the ones who are trading. The banks shares are not trading and they can be converted into bonds and transacted soon. We asked the National Treasury and they agreed with us that they can be converted into bonds. Then, we can free KQ from all these burdens within the next six months and give it a new mandate. Our transport will be cheaper and we can move easily. I want to clarify this so that people do not start asking about an alternative and how much it will cost the country.

After all, Kshs75 billion is already committed. In the event that something happens, we will lose a lot of money. So, why should we not make a sacrifice and have a primary investment of about Kshs800 million as I explained and then we can proceed? This is the new direction we are asking the House and the people of Kenya to agree with us. We did extensive study and heard many people. Everybody wants us to have a better aviation. I want us to look at it as aviation and not like one installation.

There was also debate on what will happen to KAA and KQ and we cleared this quickly. KQ is making more than 70 per cent of the revenue of KAA. This means that if KQ dies, then KAA will automatically die. This means they have a symbiosis relationship. Actually, they are conjoined twins. That is why we agreed to have them as a holding company.

With those many remarks, I beg to move and ask my colleague Hon. Kemosi Mogaka to second me. I thank you for giving me this historic opportunity to present our Report in aviation.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kemosi.

Hon. Vincent Kemosi (West Mugirango, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I stand to second the Report by the Chair. As a Committee, we interrogated in depth how we can bring KQ back to its feet. We interrogated various stakeholders because KQ is

the “Pride of Africa” and Kenya. In the earlier 1990s and 2000s, KQ was making a lot of profits and, indeed, it was earning this country very huge revenue. But, suddenly, KQ’s progress was hampered and that is why currently in Kenya, we do not have a carrier which plies many routes in Africa and the rest of the world.

As a country, we are losing the competitiveness of KQ and the market share to other competing airlines like Ethiopian Airlines, Rwanda Air, Emirates, Morocco Airlines, South African Airlines, among others. Ethiopian Airlines currently operates 153 destinations and has a fleet of 100 aircraft. KQ has a fleet of 40 aircraft and only plies 53 routes. In the early 2,000, Kenya Airways was plying more routes than Ethiopian Airlines. But since there was a spirited effort by the Government of Ethiopia to bring Ethiopian Airlines into wellbeing, these days in this region, Ethiopian Airlines has taken most business which was being enjoyed by Kenya Airways in those years. Kenya Airways, as it is today, is privately owned as compared to Ethiopian Airlines, which is fully owned by the Government of Ethiopia and which is enjoying full Government subsidies unlike Kenya Airways, which does not. Although they make a lot of money, most of that money goes to staff. Most of the staff are expatriates. It also goes to paying other bills.

(Hon. Wafula Wamunyinyi spoke off record)

Hon. Vincent Kemosi (West Mugirango, FORD-K): Yes, it goes to pay bills like paying for...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Wamunyinyi, you are being disruptive. You have just walked in and you are disrupting Hon. Kemosi when he is seconding. You cannot disrupt him. Let him have his say. Hon. Kemosi, proceed.

Hon. Vincent Kemosi (West Mugirango, FORD-K): It goes to pay parking fees and other bills which can be exempted by the Government of Kenya, if it was fully owned by the Government. That way, Kenya Airways will come back to its feet.

There is need to protect our competitiveness in the aviation sector and, more particularly, to bring KQ into wellbeing. This can be achieved through nationalisation of KQ by the Government buying out the shares of the private owners and hence making KQ a national carrier as it was before. It is recommended and I support that the Government establishes an aviation holding company with four wholly-owned subsidiaries, that is, JKIA, KAA and KQ, which will be an independent entity and hence a national carrier. The resources from the said aviation holding company and any revenue generated shall be utilised for the mutual benefit of all the four subsidiaries. By so doing, if we have profit generated by the aviation industry, then we are very sure that we can bring Kenya Airways into profit-making.

This idea of having a holding company is not new. This is something that is happening globally. If you look at Egypt, which also has a good aviation industry, they do have a holding company which manages their airports and also their airlines. The same applies to the United Arab Emirates (UAE) where Emirates Airlines is also managed together with the airport and the revenue that is generated is shared between the two companies, that is, the airline and also the airport within which they operate. This idea can be applicable in Kenya and we have seen that KAA makes profits. Kenya Airways generates a lot of revenue as we stand currently. However, most of the money that they generate ends up paying bills. So, if we merge the two, I am quite confident that we will be able to bring Kenya Airways back on its feet and it will be making profits. We will also have an airline which can also ply most routes in the world, if not Africa.

With those few remarks, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): I will give the first go at this to Hon. Osotsi. However, before he starts, we have seen that the main recommendation of the Committee is to nationalise. It would be important for the House to know that there was a time when KQ was a national company and then it was privatised. The Committee is proposing to nationalise it again. Probably, you should have inquired into what went wrong when it was a national company and what informed us to privatise it. What is the magic bullet that you recommend that will now re-energise it in the new re-nationalisation as you propose?

Proceed, Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker for giving me a chance to contribute to this very important Motion. One thing that has come out very clearly was that I must...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Osotsi, try the next microphone. That one seems to be working better.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker. As I have said, I have read the Report. One thing that has come out very clearly is that the Committee did a very good job in trying to assess the PIIP that had been proposed by KQ. I have a lot of reservations after going through the Report. KQ had proposed that we have a Special Purpose Vehicle (SPV) which will operate, manage and develop JKIA for a period of 30 years. They will basically own 100 per cent of that SPV. In other words, it meant that KQ was going to take over JKIA. The Committee's proposal is similar to what KQ had proposed. The only difference is that, currently, the ownership is at 100 per cent by the Kenyan Government. But under SPV, the ownership would be by KQ, which is a private company.

As you have rightly pointed out, Hon. Temporary Deputy Speaker, it is a major source of concern that KQ was a national company which was privatised and now we are turning it back to a nationalised company. The Committee has not been very clear on that. That will send a negative perception as to the success of privatisation in this country. Bear in mind that we have had public companies which were doing so well, but they collapsed as soon as they were privatised. One example is the Mumias Sugar Company. It was doing so well as a public company. The moment it was privatised, it went down. We are seeing the same scenario with KQ. If you go through the Report - and I agree with the Committee - it highlights the reasons KQ is not performing well. If the reasons why KQ is not performing well are very clear in the Report, why do we want to nationalise it again? Why can we not deal with those reasons? One reason is that compared to other countries in the region - for example, Ethiopia and Rwanda - we still charge landing fees.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Osotsi, I know you will run the whole gamut of 10 minutes, but it is time to call it a day. You will have...

Hon. Dominic Koskei (Sotik, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Member for Sotik, what is out of order?

Hon. Dominic Koskei (Sotik, JP): Hon. Temporary Deputy Speaker, there is nothing out of order. I just wanted you to lend us a few minutes to contribute.

(Laughter)

I know that may be out of order, but we were planning to contribute. I know it is out of order but, please, let us make history today.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Koskei, you have it. You are out of order and this is a House of order; a House of records and a House of rules. It knows when to rise and when to sit. So, we cannot extend just because Hon. Koskei thinks that he wishes to speak today. Tomorrow, you will have an opportunity.

Hon. Osotsi, you will have six minutes when this matter is set down for consideration again, and you will have priority at that time.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 7.00 p.m., this House stands adjourned until Thursday, 4th July 2019 at 2.30 p.m.

The House rose at 7.00 p.m.