

NATIONAL ASSEMBLY

OFFICIAL REPORT

Friday, 24th August, 2012

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

[Mr. Chairman took the Chair]

THE NATIONAL INTELLIGENCE SERVICE BILL

Mr. Chairman: Hon. Members, we are going to start with the National Intelligence Service Bill, Bill No.31 of 2012.

Clause 2

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

THAT, the Bill be amended in sub-clause (1) of Clause 2 by deleting the words “security screening” and substituting therefor the words “security vetting”.

(Question of the amendment proposed)

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

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

Mr. Chairman: Hon. Members, there is further amendment by hon. Millie Odhiambo. Is she present?

Hon. Members: She is not in!

Mr. Chairman: Hon. Millie Odhiambo! Amendment dropped.

(Mrs. Odhiambo-Mabona's proposed amendment dropped)

(Clause 2 as amended agreed to)

Clause 3

Mr. Chairman: Hon. Millie Odhiambo was supposed to move an amendment. Is she in yet?

Hon. Members: No!

Mr. Chairman: The amendment is dropped.

(Mrs. Odhiambo-Mabona's proposed amendment dropped)

(Clause 3 agreed to)

Clause 4

Mr. Keynan: Mr. Chairman, Sir, I wish to move:-

THAT, Clause 4 of the Bill be amended-

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

(1) The National Intelligence Service established under Article 242 (1) of the Constitution shall be a disciplined civilian Service;

(b) in sub-clause (4) by inserting the words "and the National Assembly" immediately after the word "President"

(c) in sub-clause (5) by deleting the words "two thirds" appearing immediately after the words "Service meets the".

Mr. Chairman: Hon. Keynan, you have to explain a bit. You just do not move an amendment without giving your logic why you feel that, that amendment should be carried.

Mr. Keynan: Mr. Chairman, Sir, Clause 4(1) is a matter of definition. It just deals with replacing "national security" with "National Intelligence Service". It is just a definition issue. The other bit is to provide for the requirement of Parliamentary approval. It is meant to put in place that provision so that whatever sections are captured in this Bill are also consistent with the Constitution. Largely, it is something that has been arrived at as a result of a consultative process between the Committee and all the other stakeholders, including the service provider.

Mr. Chairman: The gist or the import, object or the spirit is that that amendment says that the National Intelligence Service be a disciplined force instead of being a civilian. Is that basically what it is? Is that what you are saying?

Mr. Keynan: Mr. Chairman, Sir, that will come in the subsequent amendment. There is a clear section on that. On this one, the first one was clearly to put the words "National Intelligence Service" in place of "national security". Most of it was meant to harmonize the Bill in line with the Constitution and also to make it relevant to the National Intelligence Service instead of just being ambiguous on a national security organ.

Dr. Khalwale: Mr. Chairman, Sir, I have deliberately interrupted because I want to request hon. Keynan to explain to us what he means by the amendment in (c) where he says that

sub-clause 5 be amended by deleting the words “two thirds” appearing. When I read the sub-clause as amended, it does not appear clear to me. Could he explain, please?

Mr. Keynan: Mr. Chairman, Sir, again, that Clause 4(5) is a typo. It talks about two thirds. The Constitution does not talk about two thirds. It talks about at least a third. So, again, there was a typo problem. We are just making it in line with the Constitution.

Dr. Khalwale: Mr. Chairman, Sir, if you delete “two thirds”, it will, therefore, read as follows:- “That in appointing persons as members of the Service, the Director-General and the Council shall ensure that the composition of the Service gender requirement---” What will that mean? After deleting “two thirds”, what is he replacing it with? If he is replacing it with “one third”, then he should say so. Nobody has said so.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Chairman, Sir, I think hon. Keynan is wrong in suggesting that the National Intelligence Service is not part of the security organ. It is. So, it should remain so. We are following his amendment. I quite agree with him on the issue of two thirds. Suppose members of a particular gender do not want to join the service, how do you put that as a requirement? If the structure of the service does not meet the threshold of two thirds, somebody can bring complications. So, let us leave this service for the willing to join. So, I quite agree with the deletion of the “two thirds” in the Bill, but the National Intelligence Service is a security organ.

Mr. Keynan: Mr. Chairman, Sir, first of all, to respond to Dr. Khalwale’s concern, if you read Article 27 on Equality and Freedom from Discrimination, it clearly provides on the issue of gender. What we are trying to cure in deleting “two thirds” is that it is not possible. It is opposite of what is captured in the Constitution. So, we are saying that in appointing persons as members of the service, the Director-General and the Council shall ensure that the composition of the service meets the gender requirement as enshrined in Article 27 of the Constitution. It even makes it clearer.

Mr. Chairman: The gender requirement is very clear.

Mr. Keynan: Mr. Chairman, Sir, the second aspect which hon. Nkaisserry has raised is a matter of definition. The national security organ as clearly provided for in Articles 238, 239 and 242 talks about the police, the NSIS and the KDF. This Bill is for the National Intelligence Service. Clause 4(1) provides for the service in accordance with Article 242 instead of the national security organ, which is ambiguous. If you talk about the national security organ, then it brings in the police and the KDF. It talks about the National Intelligence Service in accordance with Article 242(1) of the Constitution and the other procedures as a disciplined service. So, it is a matter of definition. It is not that the NSIS is not part of the security organ, it is a definition. In consultation with all the stakeholders, that definition was agreed as we have amended.

Mr. Chairman: When you say “disciplined civilian service”, what do you mean? The amendment to Clause 4 is just one clause 4. There are no sub-clauses there. So, you have to cover the whole clause.

Mr. Keynan: Mr. Chairman, Sir, I beg your indulgence. We will deal with this in the subsequent amendments. “Civilian service” is defined and there is a whole clause dealing with that aspect. The only thing that this amendment on Clause 4(1) was meant to cure was a matter of definition. Instead of “national security organ”, that should be replaced with “National Intelligence Service”. It is just a matter of definition. There was not anything else. So, it is a definition.

Mr. Chairman: Yes, the Chair notes that. Hon. Koech!

Mr. Koech: Mr. Chairman, Sir, mine has already been overtaken by events. But we need to be very clear on this issue of definition. It was our expectation as Members of this House that the Committee should have consulted widely up to and including the Government, so that we do not mess up.

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

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

Mr. Chairman: Hon. Odhiambo-Mabona! Yes, hon. Midiwo!

Mr. Midiwo: Mr. Chairman, Sir, if you allow me, I would wish to move the amendment on behalf of Mrs. Odhiambo-Mabona.

Mr. Chairman: No, you cannot. There is a process basically, to do that. But she is around. Hon. Odhiambo-Mabona!

(Mrs. Odhiambo-Mabona walked into the Chamber)

Mrs. Odhiambo-Mabona: Thank you, Mr. Chairman, Sir. I beg to move the amendment to Clause 4.

Mr. Chairman: Can you move, explain, show the logic and rationale of your amendment? Convince the Members of Parliament why this amendment is necessary, in your opinion.

Mrs. Odhiambo-Mabona: Thank you, Mr. Chairman, Sir. I beg to move:-

THAT the Bill be amended in sub-clause (4) of Clause 4 by inserting the following words at the end of the sub-clause –

“and, until the final announcement of the results of the first general elections held under the Constitution, section 29(2) of the Sixth Schedule to the Constitution”.

The amendment on Clause 4 is basically to entrench Section 29(2) of the Sixth Schedule but going by the decisions we made yesterday, I withdraw that.

Mr. Chairman: Fair enough!

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

(Clause 4 as amended agreed to)

Clause 5

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

THAT, Clause 5 of the Bill be amended -

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

(1) The Service is responsible for security intelligence and counter intelligence to enhance national security in accordance with the Constitution and shall-;

(b) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (q)-

(qq) to advise county governments on appropriate security and intelligence matters;

(c) in sub-clause (4) by deleting the words “and use of force” appearing in paragraph (a);

(d) in sub-clause (6) by deleting the words “a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding five years or both” and substituting therefor the words “a fine not exceeding five million shillings or imprisonment for a term not exceeding ten years or both”

Again, this is to expand the functions of the National Security Intelligence Service. You will realize that now we have a devolved Government and one of their core-functions is to give intelligence advice to the Government. So, we felt that there has to be an additional function to provide the same intelligence and security advice to the county governments so that later on they do not say that they are only obligated to advise the National Government.

So, this was made to expand and include more functions as required by the new Constitution taking into account the devolved Government structure that we are likely to have under the current dispensation.

(Question of the amendment proposed)

Mr. Njuguna: Thank you, Mr. Chairman Sir. This being a very radical amendment that will affect the county intelligence in the devolved governments, I would like to know from hon. Keynan whether this position has been shared with the Ministry concerned.

Mr. Keynan: Mr. Chairman, Sir, again, taking into account the issues that hon. Members raised last night, first of all, we must appreciate that these Bills were published less than ten days ago. Under the circumstances, we worked very hard. Hon. Kapondi is here. We had a very interactive and useful session with the CIOC, the Ministry of State for Provincial Administration and Internal Security, the Service itself, the Law Society of Kenya (LSK), the Kenya National Human Rights Commission (KNCHR), the Institute of Public Policy and a number of other institutions. Therefore, this was, again, a consensus position that there was need to expand the functions of the National Intelligence Service (NIS) to include something for the county governments. This was a consensus position.

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, I support that position because we have both the national Government and the devolved governments. They both need to have intelligence information for them to undertake their tasks. However, I also wish to draw your attention to the fact that I also have amendments on that clause.

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

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

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

THAT, the Bill be amended in sub-clause (1) of Clause 5-

(a) by deleting sub-paragraph (i) of paragraph (g);

(b) by deleting paragraph (h);

(c) by deleting paragraph (j);

(d) by inserting the words “on national intelligence” immediately after the words “and functions” appearing in paragraph (r).

Mr. Chairman, Sir, I seek to amend Clause 5 (1)(g)(i) by deleting the paragraph that seeks to have the NIS vet people that are seeking elective or appointive offices. This is because of the nature of their work. I would think that their work should be---

An hon. Member: Where are we?

Mrs. Odhiambo-Mabona: This is 5(1) (g)(i). There are a series of tasks that the NSIS do. They undertake security vetting for people seeking to hold a vettable position. This is borne by the experience that whenever we have sought information even from this agency in our legal committee, some of the information that they gave us in respect of Ahmed Nassir Abdullahi, that is not their core role. So, the information they gave us was not really correct. So, I would like to urge that they focus their attention on issues of national security and if they have any information, that information should go to the police. If you are gathering any information of that nature, it should be to another agency but it should not be their sole or primary responsibility. That is the essence of the amendment.

(Question of the further amendment proposed)

Mr. Midiwo: Thank you, Mr. Chairman, Sir. I rise to support the further amendment. First of all, let me say that I am thankful that we are doing this in the morning when we are fresh. Some of the things in this Bill like this one, we had said during the debate, that we want this agency to have one role namely, gathering intelligence information. We have faulted NSIS, which we are running away from and which we are reforming with this Act for being used or getting involved in politics. By making this amendment, we are taking them away from the arena of politics. They should gather information and give it to the police to act. We will be moving amendment as we go along so that we can have a body that does its core duty and not being misused by politicians to muddy the political environment.

I support the further amendment.

The Minister for Finance (Mr. Githae): Mr. Chairman, Sir, I rise to oppose this amendment. One of the core functions of any intelligence organization is to vet and give a report to the appointing authority on the character and other security issues relating to that appointee.

I want us to be practical. If the President received names, he would like to know what kind of persons they are because the names do not come from him. What body will do this? It is accepted that there has to be vetting. The vetting here is to give background information. Who will be giving background information? We need to be practical. In every country there is an organization that gives the President the background information of the candidates presented to him. Who will be doing this if we remove this agency?

Mr. Mbau: Mr. Chairman, Sir, whereas I do not have serious issues with that one, my only concern is yesterday we talked about vettable positions and passed a clause excluding those seeking elective and appointive positions from going through the process of vetting. So, we need

to be given further description and explanations as to what are vettable positions. Which positions are those which will be vetted and which ones will be excluded from vetting? I would like to be clear on that.

Dr. Khalwale: Mr. Chairman, Sir, I rise to oppose the amendment for the following reason; probably, the hon. Member is mistaking this to mean that you will require a certificate of clearance from NIS. This particular clause does not contemplate a situation whereby you have to be given a certificate of clearance. It simply says confidential information about you is passed over to the vetting authority so that the vetting authority makes an informed decision. Let me connect this to the important issue of running for presidency of the Republic of Kenya. It is a vettable position, Kenyans must know. Now we have provided in the Constitution that if you are not a Kenyan citizen by birth, you cannot be the President of this country. Because of the cross border events we have, for example, people from the Luhya community who, part of the family lives in Uganda and the other part lives in Kenya, one can very well pass and say that my name is hon. Wamalwa, a Kenyan when in real effect the man is a Ugandan.

Let me give you an example. The Vice-President of Kenya in the last Parliament hon. Moody Awori, his own brother was also running for presidency in Uganda. So, if we do not have this kind of intelligence, a very important breach can be made.

Mr. C. Kilonzo: Mr. Chairman, Sir, I want to remind hon. Members of the Special Branch days. If this law was there, it was the Special Branch which would have cleared us. Secondly, this is security vetting. Security vetting is another name of clearing you. I am looking at my brother, Dr. Khalwale here, let us assume his good friend Kimunya is the President tomorrow and he appoints a Director-General. When he is applying for a job where vetting is required, Dr. Khalwale will not be vetted. You will be declared a security threat. Let me remind hon. Members, according to the current NSIS, it has branded some Members of this House as not being Kenyans. If they are allowed to get their way, you will not even run for these coming elections. They will say, "this hon. Member is not a Kenyan". So, I want to plead with hon. Members to support this particular amendment and not to allow this business of NSIS running the show. This is, probably, one of the Bills which was wrongly drafted, giving too much power to one person.

Mr. Chairman: Hon. Members, for your own benefit, I think you had better have the Bill next to you for you to---

An hon. Member: Yes, indeed!

Mr. Chairman: Order. The Chair is communicating. Unless you want to communicate alongside the Chair, you wait until you get your moment.

It actually says that it is among the functions of the security service to undertake security vetting for persons seeking to hold a vettable positions, for persons seeking to be registered. Basically, the first one is the one which Mrs. Odhiambo-Mabona is seeking an amendment. So, you had better inform yourselves fully on that.

Mr. Duale: Mr. Chairman, Sir, I stand to oppose this amendment. We need to differentiate between giving an opinion and giving a vetting clearance.

There is nowhere in the world where you have an intelligence organisation that does not give an opinion on individuals and institutions. Even when you want to form a Non-governmental Organization (NGO) or a trust, the last thing that the Government does is to get an opinion of that organization from the National Intelligence Service of any country. Even in devolved democracy like the USA, the President gets a brief from the National Intelligence

Service of that country on what happens. So, it is not vetting. It is a brief that every intelligence unit over the world gives.

I think hon. Members do not need to worry because even this august House, Parliamentary Committees have been receiving briefs from the NIS over candidates.

Mr. Chairman: Order. Hon. Members, are you sure you have informed yourselves on the Act? Clause 5(1)(g)(i) of the Bill says:- Among the functions “undertake security vetting.”

You need to educate yourselves on exactly what the English Language means.

(i) States as follows:-

“For persons seeking to hold a vettable position.”

Now what is vetting in this? Vetting is vetting.

Mr. Koech: Mr. Chairman, Sir, if you look at Clause 5(1)(a) it is very clear on what the intelligence service is supposed to be doing. When you say “undertake security vetting”, we have to be very careful. We have no problem with the first one, but I want her to be clear on parts “b”, “c” and “d”. So as to avoid any doubts, then we should delete the first one. It is obvious that the NIS provides information.

Mr. Chairman: The amendment only seeks to delete (i) which is basically the one that says:-

“For a person seeking to hold a vettable position.”

But (ii) says:-

“For a person seeking to be registered as a citizen of Kenya.”

(i) Says :-

“For foreign institutions seeking documents or seeking to undertake any activity.”

I think you should educate yourselves on that.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Chairman, Sir, I stand to oppose this amendment. It is actually very straightforward. Intelligence is refined information. The consumer is persons responsible for a particular position. So, this service will need to find out if hon. Nkaisserry is being involved in security issues, so that when I appear before the appointing authority, it is not them to give me the certificate. This information should get to the appointing authority. So, it is actually very important that this position is undertaken.

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, I think the hon. Members are misleading the House. I think I had raised it before. Dr. Khalwale indicated that what I am telling people is that the security will be giving certificates. I want to clarify what I am saying. If they are saying the security shall undertake security vetting, that means they will vet and who will they vet? The NIS will vet persons who are seeking to hold a vettable position. What is a vettable position?

“Vetable position” means a state office, a public office or position in any level of Government requiring the holder to have, in the performance of his official duties, access to sensitive or classified information. We are State officers. We are also public officers. So, we are vettable, according to this Bill. Therefore, as Members of Parliament, we will be vetted, as provided for in this Bill. We are subject to vetting by the NIS.

Mr. Chairman, Sir, for clarity purposes, I want to just indicate to hon. Koech that, if he noticed the way I moved the amendments, he should appreciate that I truncated them. I consulted the Justice and Legal Affairs Committee because I had concerns which I wanted taken on board. The Committee has assured me that those concerns have been taken on board. So, I am dropping the other amendments and keeping only this particular one.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaiserry): On a point of order, Mr. Chairman, Sir.

Mr. Chairman: Hon. Nkaiserry, if you want to rise on a point of order, you have an ICT unit which you can use to request for the same. I do not see your name on my queue.

Hon. Charles Kilonzo, what is your point of order?

Mr. C. Kilonzo: Mr. Chairman, Sir, it is very important that the Government does not mislead people. Vetting is vetting. If you are going to contest for a parliamentary seat, you will be expected to appear before the NIS, so that they can vet you. It is not about collecting information.

An hon. Member: ---(inaudible)

Mr. C. Kilonzo: I have the Floor. "Vettable" position includes Members of Parliament---

(Loud consultations)

Mr. Chairman: Order! Order, hon. Members! Can you allow hon. Charles Kilonzo to conclude?

Mr. C. Kilonzo: Mr. Chairman, Sir, it is very clear when it comes to security vetting. If there is vetting, the NIS will require you to appear before them.

Hon. Members: No, no, no!

Mr. Chairman: Order! Order! What is "No, no, no!"?

Mr. C. Kilonzo: Mr. Chairman, Sir, if I am reading the Bill this way now, someone else can read the resultant Act in the same way.

The Minister for Finance (Mr. Githae): Mr. Chairman, Sir, I think we are confusing two issues. What happens today when it comes to security vetting? First, you do not even appear before the NIS. Secondly, you do not even know that you are being vetted. The NIS compiles a confidential report about you. It is just like the way you would get a reference letter from a previous employer. So, we are confusing issues here. You do not even get to know that you are being vetted. The vetting report is for use by the appointing authority.

Mr. Chairman: Hon. Kathuri, what is your point of order?

Mr. Kathuri: Mr. Chairman, Sir, in this case, we are just being confused by the language that has been used. The word "vetting" is causing a lot of anxiety. Some of us understand "vetting" to be an interview. Others understand "vetting" as compilation of a confidential report about you, which does not even involve you. It only involves the NIS gathering information about you and relaying it to the Independent Electoral and Boundaries Commission (IEBC). So, can we use a softer word to mean exactly that, so as to get out of this crisis? Let us use words like "submit information to IEBC" or something like that, and not the word "vetting". The word "vetting" makes us become too anxious. We are not likely to support this clause in the manner it is worded.

Mr. Chairman: Yes, hon. Sugow.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Mr. Chairman, Sir, I have served in an intelligence service before, and I want to assure hon. Members---

Hon. Members: Who are you? Are you still serving in that intelligence service?

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): No, I am not. I served in an intelligence service in the past.

Hon. Members, through the Chair; let us not be petty. Let us be serious. Let me explain what this means. I have been vetted before, but I never appeared before a panel of the organisation that vetted me. That is the kind of vetting being referred to in this case. It has nothing to do with appearing before a panel of officers to answer questions. Maybe, hon. Members have been confused by the interviews that were conducted in the recent past, in the process of filling up positions in various public institutions.

Vetting by the security agencies does not include a pool interview, but it has to be there. Those who serve in the military and other public offices, including holders of State offices who can access critical information have to be vetted. Vetting does not include appearing before the particular agency. It includes provision of necessary information and intelligence on an individual, confidentially, to an agency seeking such information. Please, understand that this has nothing to do with what we witnessed, where persons who wanted to occupy public offices were required to appear before Parliamentary Committees to be interviewed.

Mr. Chairman: Yes, hon. Isaac Ruto!

Mr. Ruto: Mr. Chairman, Sir, the vetting that seems to be implied here might as well tie with a clause we deleted yesterday, about administrative action to be taken by authorities to bar certain individuals from accessing office. Is this an extension of the administrative activity that the Government wanted to undertake? Obviously, there is certain information that is normally channelled to the authorities when, for instance, one Mohamed from Mandera seeks to occupy public office and the intelligence service thinks that he is connected to certain illegal activities.

In such case, it may be necessary for the security agencies to provide certain information to the authorities about that individual. However, I do not know whether that is equal to the vetting that is being referred to in this particular instance. So, I want to suggest that we remove this particular aspect because vetting is always vetting. Vetting always results in some conclusion or activity or result. So, I suggest that we delete this particular bit.

Mr. Chairman: Yes, hon. Kapondi.

Mr. Kapondi: Mr. Chairman, Sir, we are not being honest with ourselves.

An hon. Member: We are honest!

Mr. Kapondi: Give me my time. It is not a matter of shouting, but a matter of sobriety. The core responsibility of the NIS is gathering of intelligence information. In this case, we are talking about undertaking security vetting. We need to be very clear that vetting is undertaking for the sake of ensuring national security. Without this aspect, you can end up with critical positions in this country being held by individuals who would be serving interests other than the national security interest. So, it is very critical.

Members of Parliament should not look at themselves and forget to look at other critical vettable positions in this country. So, for the sake of national security, let us not be selfish. Let us not be jittery. Let us not forget the bigger picture.

Thank you.

Mr. Chairman: Yes, hon. Chachu Ganya!

Mr. Chachu: Mr. Chairman, Sir, I oppose the amendment. I do not know of any modern state where persons seeking to occupy vettable positions are not vetted. If we need security vetting, then which organ of the state is supposed to do it? It is the NIS. We have to look at the bigger picture. This is not just about us. It is about this nation. How can we stop terrorists, serial killers and other criminals from occupying sensitive positions in this country, if people are not vetted? Vetting is a critical aspect of national security. Anybody seeking to occupy public office

must be vetted. Members of Parliament are Kenyans anyway. We should not have any worry about being vetted, unless one has something to hide. There is nothing wrong with being vetted.

So, I oppose the amendment.

Mr. Chairman: Yes, hon. Githae.

The Minister for Finance (Mr. Githae): Mr. Chairman, Sir, as I said, really, we wanted to have a bipartisan approach to this Bill and for the sake of moving forward, I beg to move:-

THAT, Section 5(g)(1), be amended by deleting the word “vetting” and substituting it with “confidential security report”.

Mr. Chairman: Hon. Githae, can you repeat?

The Minister for Finance (Mr. Githae): Mr. Chairman, Sir, again, I wish to repeat. The whole of it now should read: “Undertake to provide confidential security report.”

Mr. Chairman: That is okay. The Bill is going to read: (g) “Undertake to provide confidential security reports for persons seeking to hold a vettable position, for persons seeking to be registered as citizens of Kenya, for foreign institutions seeking documents or seeking to undertake any activity which may have been---”. I think that will be more or less the consensus. Let me now put the Question.

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

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

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, after consultations with the Chairman of the Committee, I withdraw my other amendments in Clause 5.

Mr. Chairman: Hon. Millie Odhiambo, which ones did you withdraw?

Mrs. Odhiambo-Mabona: Mr. Chairman, I have withdrawn the amendment on (h) (j) and (r). The only thing is that I wanted us to be clear that they are undertaking national intelligence security, but I will let it pass.

Mr. Chairman: Okay fair enough. I withdraw all those amendments.

(Mrs. Odhiambo-Mabona’s proposed amendments withdrawn)

(Clause 5 as amended agreed to)

Clause 6

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

THAT, the Bill be amended in Clause 6-

(a) by inserting the words “subject to section 43” immediately after the words “other emissions” appearing in paragraph (c) of sub-clause (2);

(b) by deleting the words “a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding five years or both” appearing

in sub-clause (4) and substituting therefor the words “a fine not exceeding five million shillings or imprisonment for a term not exceeding ten years or both”

Mr. Chairman, Sir, you did not give me the chance to contribute on the other aspects but I think I want to ask the hon. Members here that we need to appreciate, first of all, the work or the main function of NSIS. If you look at our own history, you will realize that they came from the Special Branch to National Security Intelligence Service and to now National Intelligence Service. The import of this is that they are required to advise the Government on all the intelligence issues – every aspect of our lives through the relevant Government departments. So, whether we legislate it or not, this is a core function and in most cases, we need to appreciate that there is no proper written rule for NSIS to function. If we appreciate this, we will be in a position to agree on other things. What this particular amendment seeks to cure is that the main function of the service, first of all, is to collect, analyse, synthesize and then disseminate information to the relevant Government departments. If you look at Clause 6(2)(c), in the process of executing their main function, there must be a clear *modus operandi* that is in tandem with the Constitution. This, again, was an agreed position. So, what we resolved was to put a limit so that they do not enjoy unlimited power that it is not clearly demonstrated within the law. Again, this was a consensus position. So, we have evoked Section 42 or 43 of the Bill which clearly again provides the *modus operandi*. So, it is more of an amendment to make it in harmony with other sections of the Bill.

Secondly, we have also enhanced the punishment which again was an agreed position. So, there was not anything contentious on this particular section.

(Question of the amendment proposed)

Mr. Duale: Mr. Chairman, I support the second amendment of the Committee that to deter rogue and errant NIS staff who will live contrary to the mandate given to them by the Constitution and by this Act that the fine should be as the chairman has put it; Kshs5 million.

Dr. Khalwale: Mr. Chairman, Sir, I rise to support this amendment. With time an officer becomes very sophisticated by way of analysing information. So, while in service when he chooses to use that information against the State, it is because he has got something very lucrative that is causing him to make that unpatriotic decision. So that members of the force will realize the consequences of making that unpatriotic decision, the punishment must be enhanced. An officer must realize that there is a fine of Kshs5 million and a jail term of ten years or both because in the world of espionage, different countries will try to get the best price from the---

Mr. Chairman: Fair enough. You have made your point. In the interest of time---

Dr. Khalwale: I support, Mr. Chairman.

Mr. Chairman: Hon. Millie Odhiambo, the last one because you also have an amendment on the same.

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, I have a similar amendment. If you look at the penalties that are provided, they are actually not regulated very well. You find that there is a fine of Kshs500,000 and a jail term of five years. You cannot equate Kshs500,000 to the five years. So, I am actually harmonizing because if you want to punish somebody by payment of Kshs5 million, the jail term should be higher. I will let mine pass if this one passes.

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

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

(Clause 6 as amended agreed to)

Mr. Chairman: Under the circumstances, the one by Mrs. Odhiambo-Mabona is dropped.

(Mrs. Odhiambo-Mabona's proposed amendment dropped)

Clause 7

Mr. Chairman: We shall start with the amendment by Mr. Linturi. Is Mr. Linturi not here? That amendment is dropped.

(Mr. Linturi's proposed amendment dropped)

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

THAT Clause 7 of the Bill be amended by-

(i) renaming the existing provision as subclause (1) and inserting the words "with the approval of the National Assembly" immediately after the words " who shall" ;

(ii) by inserting the following new subclauses immediately after Subclause (1)-

(2) The President shall nominate a person for appointment as the Director-General and submit the name of the nominee to the National Assembly.

(3) The National Assembly shall, within fourteen days after it first meets after receiving the name of the nominee-

(a) consider the suitability of the nominee; and

(b) either approve or reject the nominee for the appointment; and

(c) the speaker shall notify the President of the decision of the National Assembly.

(4) If the National Assembly approves the nominee, the President shall, within seven days after receiving the notification to that effect, appoint the nominee as the Director-General.

(5) If the National Assembly rejects a nominee submitted by the President, the National Assembly shall request the President to submit a new nominee and the provisions of this section shall apply with necessary modifications with respect to the new nominee.

(6) If, after the expiry of a period of sixty days from the date of the nomination of a person for appointment as Director-General under sub-clause (2), the National Assembly has neither approved nor rejected the nomination of the person, the nominee shall be deemed to have been approved by the National Assembly.

Mr. Chairman, Sir, again taking into account the critical role that Parliament plays, when you read the main functions of Parliament, more so in relation to the security sector, the Constitution says that the security sector is accountable to the Constitution and Parliament. Therefore, we are introducing parliamentary vetting process which will ensure that whoever

becomes the Chief Executive Officer (CEO) of the Republic of Kenya does not appoint cronies, relatives and other unqualified people not purely because of their qualification but because of their ethnic or social affiliations and other relationships.

This is a critical area that we must handle as Parliament, taking into account that the Director-General is a political appointee, but it can be done. We have looked at the best practices all over, in the United States of America (USA), the United Kingdom and other developed countries. That position is normally vetted by Parliament. If the President nominates somebody, the nominee must be subjected to parliamentary vetting.

Mr. Chairman: You have made your point. We shall take one more from Mr. Githae.

(Question of the amendment proposed)

The Minister for Finance (Mr. Githae): Mr. Chairman, Sir, I have looked at the amendments proposed by the Chairman of the Departmental Committee and I would like to say one or two things. By making this position vetted by Parliament, are we not politicizing it? There is need to depoliticize the position, so that there is confidence between the Director-General and the appointing authority. Normally, the positions that are vetted have security of tenure.

Mr. Mbau: Mr. Chairman, Sir, this is a good proposal. However, it appears like Members of Parliament are very keen when it comes to vetting others. Yesterday when we were passing the Leadership and Integrity Bill, it was becoming---

Mr. Chairman: Mr. Mbau, proceed and support the amendment or oppose it, and let us get over this business.

Mr. Mbau: It becomes very sensitive when we touch on the possibility of vetting Members of Parliament. I want to put it this way, that we need to look at the time when we are in the Government and at the time when we shall also be in the Opposition. We should be long-term and not make these decisions as if we shall always be on this side. I want to say that if we are going to subject this position to parliamentary approval, it is only fair to treat it as we have done to others, including the position of the Attorney-General, the Controller of Budget and so on, and then we secure it by giving it security of tenure, so that we depoliticize and make it long lasting.

Mr. Mbadi: Mr. Chairman, Sir, I stand to support this amendment. I would like to remind the Chair of the Budget Committee that actually Members of Parliament are vetted directly by the people of Kenya through the ballot. If the people of Kenya had capacity to vet every office holder, they would do it but because it is not practical, they delegate it to the legislative assembly to do it on their behalf. The National Assembly is subjected to direct vetting by the people of Kenya through the ballot. You only need to give them information.

Mr. Deputy Speaker: Mr. Abdikadir will be the last one before I put the Question. We only have until half past midday to dispose of this Bill.

Mr. Abdikadir: Mr. Chairman, Sir, I just wanted to clarify some things in the Constitution in terms of suitability. Article 73(2)(a) on Leadership and Integrity regarding the principles of leadership and integrity; they include selection on the basis of personal integrity, competence and suitability or election in a free and fair election. So, the two are separate. When you are going to be a leader who is selected, then it will be on the basis of competence and suitability. Suitability is through vetting. If you are going to be elected, the condition is a free and fair election.

Regarding the issue of the role of Parliament in vetting of security agents, it comes from Article 238(1)(a) – National Security is subject to the authority of the Constitution and Parliament. So, national security and all national security organs are subject to authority of Parliament.

Finally, I want to make a correction that the Attorney-General gets vetted and has no security of tenure.

Mr. Chairman: Mr. Baiya, you have a similar amendment.

Mr. Baiya: Mr. Chairman, Sir, that is the point that I wanted to emphasize. Having a similar amendment, it is good that I speak at this point. The joint Committee has a similar amendment; we are seeking to ensure that Parliament plays a role by approving the Director-General.

I beg to support.

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

Mr. Deputy Speaker: Mrs. Odhiambo-Mabona, please move your amendment.

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, I wish to note that going by the same reasoning I had given before, I wish to withdraw my amendment to Clause 7 because we had dealt with it yesterday. I want to respect what hon. Members agreed with.

(Proposed amendment to Clause 7 by Mrs. Odhiambo-Mabona was withdrawn)

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

(Clause 7 as amended agreed to)

Clause 8

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

THAT, the Bill be amended in Clause 8-

(a) by deleting the words “with distinction” appearing in paragraph (d) of Sub-clause (1);

(b) by deleting paragraph (a) of Sub-clause (2) and substituting therefor the following new paragraphs-

(a) is a member of Parliament, a member of a county assembly, a governor or a deputy governor;

(b) has, in the immediately preceding period of five years, served as a member of Parliament, a member of a county assembly, a governor, a deputy governor, a trade union official or held an office in a political party;

(c) by deleting paragraph (b) of Sub-clause (2).

Again, if you look at this, Clause 8 has a lot of ambiguity especially on (1)(d). What we attempted to do was, first of all, to realize that the word “distinction” is not something that can either be qualified or quantified. It is something that is so subjective. So, when you say that so and so must have served with distinction, then that is something dependent on so many other factors. So we said that that particular aspect must be removed. We also enhanced the punishment so that it is consistent - Mrs. Odhiambo-Mabona alluded to the same earlier. The five years and the subsequent penalties to be paid have been outlined. So, this was an agreed position by all the stakeholders. They had consulted. Eventually, we agreed on what should form part of the requirements for a person to be appointed under this particular section. So, it was a unanimous decision, unless, maybe, the Government had a change of heart since last night.

(Question of the amendment proposed)

Ms. Karua: Mr. Chairman, Sir, I rise to support the amendment because of the reason given by the Mover. I think it is strengthened.

Mr. Gaichuhie: Mr. Chairman, Sir, I think my idea has been overtaken by events.

Mr. Chairman: Fair enough.

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

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

Mr. Chairman: Mrs. Odhiambo-Mabona, you have a further amendment?

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, whereas I support the Chairman, I want to say that many times I push the agenda of the public--- But, sometimes, in pushing the agenda of the public as Members of Parliament, we have decided to criminalize ourselves. As Members of Parliament, when any Bill comes before the House, you say that you will not take this position if you have served as a Member of Parliament. Personally, I would want to say that if we think this is a sensitive issue, we should have made a provision that you should not serve in the position immediately. It should be if you have served in the last five or ten years. But what we are doing here is that we are just making a blanket provision that we should never ever, as a Member of Parliament, serve as a DG. I do not know what is wrong with being a Member of Parliament. As Members of Parliament, we are really doing part of criminalizing ourselves and making this position look like it is not a position that people should go for. So, my amendment is that we delete but, if the Minister is agreeable, I would want to suggest that he could move---

Mr. Chairman: Order! By carrying the amendment proposed by Mr. Keynan, it is already overtaken.

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, but I had tried to draw your attention to that before and you did not give me the opportunity because I wanted to inform---

Mr. Chairman: We will have carried that now and so, essentially, yours is void under the circumstances. Even Mr. Baiya's. Look at it and look at the amendment we have just carried and you will see---

Mr. Baiya: Mr. Chairman, Sir, my first amendment has actually been exhausted by Mr. Keynan's amendment. But there is an amendment to Clause 8(2)(b). It is still outstanding and I still want to move it.

Mr. Chairman: By deleting Paragraph 'b' of Sub-clause 2, yours is already deleted.

Mr. Baiya: Mr. Chairman, Sir, not really.

Mr. Chairman: Let us look at it.

Mr. Baiya: Mr. Chairman, Sir, if you look at the purpose of my amendment, it is seeking to outlaw somebody who has held office in a political party. But my amendment was seeking to only give that as a barrier where someone has held office in the last preceding five years.

Mr. Chairman: We have already deleted Sub-clause 2 by Mr. Keynan. So, you are overtaken by events. You cannot move yours now.

(Clause 8 as amended agreed to)

Mr. Mbadi: On a point of order, Mr. Chairman, Sir. Whereas I agreed with this proposal, I wanted to add "president and deputy president" because someone may desert---

Mr. Chairman: It has been overtaken by events. You have to understand how the practice moves.

Clause 9

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

THAT, the Bill be amended in Sub-clause (1) of Clause 9-

(a) by inserting the word "Parliament" immediately after the word "President" appearing in paragraph (d);

(b) by inserting the words "from unauthorized disclosure" at the end of Sub-paragraph(vi) of Paragraph (n).

Again, this particular aspect - and just for the attention of hon. Members - if you look at Clause 9(1)(d), basically, there was an omission of the role of Parliament. The Constitution clearly says that the security sector is accountable to the Constitution and Parliament. Therefore, we just added Parliament in addition to reporting to the President, the National Security Council and the Cabinet Secretary, there was no provision for Parliament. That is a requirement under the Constitution. So, what we did was to cite the constitutional oversight role of Parliament. Again, it was agreed by almost all the stakeholders. The other bit was just an amendment to improve on 2(n)(6). It was an editorial issue. That was agreed and so there was no controversy on this because that is what the Constitution provides.

(Question of the amendment proposed)

Mr. Chairman: I will take one further contribution before I put the Question.

The Minister for Finance (Mr. Githae): Mr. Chairman, Sir, I am really wondering whether this is necessary because the DG is already reporting to Parliament through the Cabinet

Secretary. To me, this is legislative overkill. In any case, the same reporting is provided for in Clauses 28 and 29. This is legislative overkill.

Mr. Midiwo: On a point of order, Mr. Chairman, Sir. It is important that our colleagues on the other side of thinking understand what we are trying to do for this country this morning. The “other side of thinking” means the conservatives who think things will not change. I want to plead with Mr. Githae who is not old, but he is just too old in his thinking. He is also over-conservative. You will be on the other side. It is just a matter of five months! Even if you try to rig, it is not possible again. You will be on the other side. Please, let us do this thing for posterity. Let us give all the powers to the National Assembly as per the wisdom of the Constitution. Let us not create an institution which is above the law. You will regret because for us, we will be inside.

(Laughter)

Mr. Chairman: You have made your point!

Mr. Kabogo: Mr. Chairman, Sir, some of these things we need to look at them quite seriously. If you look at (d) the Director General will be reporting to the Cabinet Secretary. The Cabinet Secretary will be reporting to the House. So, if we want to direct reports from the NIS to Parliament, it is opening it up too much. Already, the Cabinet Secretary----

(Loud consultations)

Allow me to have my space.

Mr. Chairman: Order! Yes, proceed and conclude.

Mr. Kabogo: Mr. Chairman, Sir, it seems that there are some people, who are more senior than others in this House.

Mr. Chairman: Order! Nobody is senior to the other.

Just proceed, Mr. Kabogo.

Mr. Kabogo: Mr. Chairman, Sir, I am trying to say that the Director-General is reporting to the President and the Cabinet Secretary who is answerable to the House. So, his reports are coming to the House through the Cabinet Secretary. Do you want to say that the Director-General’s reports flow into this House? Security matters are serious issues.

(Loud consultations)

I think it is covered. Stop answering me!

Mr. Deputy Speaker: Order! Order!

Mr. Keynan: Mr. Chairman, this is an extra ordinary sitting and we need to do a lot of things. I want really to empathize with my good friend Kabogo; the NIS is an independent entity recognized under the Constitution of Kenya. Therefore, the functions of a Cabinet Secretary in charge of this are just administrative. Therefore, the direct linkage between the National Assembly and NIS is critical and is direct. On the matters of how the information will be shared, that will be determined under the Standing Orders and the Powers and Privileges Act. This is the bit we need to appreciate.

Mr. Samoei: Mr. Chairman, Sir, I want us to be very clear that any institution established under the Constitution and under any law is established and supervised by the people of Kenya.

Mr. Chairman, Sir, we should not demean this Parliament. If we do not have confidence in ourselves as Members of Parliament to take charge of critical security information in the country, then we do not deserve to be in this House.

Mr. Chairman, Sir, it is important that this Parliament supervises every institution created under law on behalf of the people. Therefore, I support this amendment.

I agree with hon. Jakoyo Midiwo, but only to the extent that this is important for supervision. As to who is will sit where or in which side, I disagree with him.

(Laughter)

Mr. Chairman: Order! Order!

Hon. Dalmas Otieno, ordinarily, you do not rise on a point of order. We have to listen to you. Do you want to contribute?

The Minister of State for Public Service (Mr. Otieno): On this matter, Mr. Chairman, Sir, if they will hear me. Clause (d) is specific on the reports to be given by the Director General; reports on threats to national security. These reports will be given on a continuous daily basis. Reports of these threats, they would come today and they are reversed tomorrow as information is received. This Clause (d) literally is daily requirements the Director-General will be doing. But we need a report by the Director-General to Parliament. This should come under Clause 82 of the Act, where there is an annual report to the President and the Cabinet Secretary. It is in that clause where we should add Parliament.

Parliament, nevertheless, still reserves the right to summon any officer to give a report to it. When we do so, those technical officers established under the Constitution will have to attend to Parliamentary Committees in the company of the Cabinet Secretary----

Dr. Kwalwale: On a point of order, Mr. Chairman, Sir.

Mr. Chairman: Order! What is your point of order, hon. Khalwale? Everybody else is on a point of order. Why do you have to stand up and shout?

Proceed, Dr. Khalwale.

Dr. Khalwale: Mr. Chairman, Sir, because we are now about to vote, I want to request the Chair to kindly re-invite the hon. Keynan to explain something which is not clear to us. Once it is clear, we shall vote. .

Clause 9(1)(d), which we are amending, says report to the President, the National Security Council and the Cabinet Secretary. To my mind, this means that he will be reporting daily on operational issues. So, if we add in Parliament, whose role is to oversight, principally, on matters of accounts, how the money was spent---

(Loud consultations)

Let me make my point. I want him to clarify for me because it is serious. You cannot expect over 400 Members of Parliament to maintain confidentiality on operational matters of this organization. I insist that we be convinced that if add here this word "Parliament", Parliament will only be restricting itself on matters of accounts. We oversight on accounts, but we cannot oversight on operational strategy and tactics. We will be putting our country at stake. I beg that we are talking about survival of the State. So, if on a daily basis, Members of Parliament start making fun on matters of operations, we will lose out. We should continue overlooking on accounts and not operations.

I beg oppose.

Mr. Chairman: Hon. Keynan, proceed and explain yourself.

Mr. Keynan: Mr. Chairman, Sir, I want hon. Khalwale to listen to me. This is not a public exercise. This is a security requirement. This particular clause was a consensus position. My brother hon. Kapondi can bear me witness. It is through the Committee system that Parliament will decide.

Secondly, I do not know---. At a certain stage, some of us will be required to make really material disclosure on certain things. The Minister knows we have debated this. We had over four meetings with the NIS, the Ministry, the joint Committees on National Security, the Constitutional Implementation Commission (CIC) and the Law Society of Kenya. As I said, this was an agreed position. The import of this--- and I do not want facts to be misrepresented, the way hon. Khalwale is doing. Nobody wants the Director-General to be briefing the National Assembly every day. I want you to read and understand it.

Mr. Abdikadir: On a point of information, Mr. Chairman, Sir.

Mr. Keynan: Mr. Chairman, Sir, I allow hon. Abdikadir to inform me.

Mr. Chairman, Sir, I have allowed Mr. Abdikadir to inform me.

(Maj-Gen. Nkaisserry consulted loudly)

Mr. Chairman: Order! Order! Maj-Gen. Nkaisserry, you come from a disciplined background. You do not have to shout there and gesticulate.

Hon. Abdikadir!

Mr. Abdikadir: Mr. Chairman, Sir, I would like to tell Dr. Khalwale that it does not help to scaremonger. We are making laws here and it is appropriate to be very calm when you are making laws. Let us read the Clause together. It says:-

“Report to the President, the National Security Council and the Cabinet Secretary – the amendment is to add Parliament – on threats and potential threats to national security and interests as is appropriate.”

Mr. Chairman, Sir, it is very clear; it states that “as is appropriate.” If it is not appropriate to be reporting daily on the Floor of the House, it is certainly not appropriate.

Mr. Chairman, Sir, finally, the oversight role of the National Assembly is set in the Constitution. Even if you limit it here, that will not be limited, because the Constitution has said so. So, let us not make laws---

Mr. Chairman: Eng. Maina!

Eng. Maina: Mr. Chairman, Sir, this Parliament must decide what our law is in this nation. We are discussing here about State security. A State must also have its secrets. Here, we are like a mob. I am sorry to say.

(Loud consultations)

Just hold on! Just hold on! Excuse me! Can I be heard?

(Mr. Outa consulted loudly)

Mr. Chairman: Order! Order! Hon. Outa, if you really want to participate in this debate, you better stop shouting from where you are.

Eng. Maina: Mr. Deputy Speaker, Sir, let me explain.

(Loud consultations)

Mr. Chairman: Order! You cannot explain. Hon. Members, this is the National Assembly. This is where you are supposed to listen to every opinion and position by a fellow hon. Member regardless of how much you agree or disagree with it. If you shout again and try to turn this into a market, unfortunately, you will see yourselves out of this House, and you may have lost an opportunity to participate or interrogate this Bill the way you wanted. So, can we have some decorum?

Eng. Maina, conclude in half a minute!

Eng. Maina: Mr. Deputy Speaker, Sir, I did not mean really to dishonour this House. What I meant is that we are a large number of people. Beyond five people, it is very difficult to keep a secret. Therefore, this House should not introduce anything which touches on security. It can go to the public and our enemies even outside this country. Therefore, I think---

Mr. Chairman: Eng. Maina, so that you know exactly what the Bill says, when it says “as appropriate” it means---

Eng. Maina: I do understand, Mr. Chairman, Sir. But what I am saying is that on matters of State security, there is a President who will be given votes by all Kenyans. They will put their lives on him. We should have the President---

Mr. Chairman: Hon. Karua, the last one and then I will put the Question!

What is your point of order, hon. Ethuro?

Mr. Ethuro: On a point of order, Mr. Chairman, Sir. Is it in order for Eng. Maina to follow the misleading information by my good friend, Dr. Bonny Khalwale? The Chairman of the Constitution Implementation Oversight Committee (CIOC) read and used the words “as appropriate.” I also want to add another one. This House would be called upon by the Executive, especially when the President deploys troops to war. Now, without the House having appreciated what the potential threats are, how do you expect it to support the President when he is committing troops to war?

Mr. Chairman: Hon. Members, everybody will be doing a very good service to this country and Parliament if you read the clause and educate yourselves on the content of it, instead of turning this into politics.

Hon. Martha, the last one and then I will put the Question!

Ms. Karua: Mr. Chairman, Sir, thank you for this opportunity. I want actually to agree with hon. Bonny Khalwale and also the CIOC Chair. Whereas there should be reports to Parliament, we should be very clear that we do not lump up reports to Parliament, together with the day to day reports to the President, the National Security Council and the Cabinet. I am pleading with the Chair of the Committee, hon. Keynan, for clarity. Let the clause for Parliament be separate. Yes, we will be given information, but it cannot be on the day to day operations.

An hon. Member: As appropriate!

Ms. Karua: Mr. Chairman, Sir, it is as appropriate, but it should be in a different clause for clarity, so that we separate it from operational issues. That is the point that hon. Bonny Khalwale is putting across.

Mr. Deputy Speaker: Order, hon. Members! I will now put the Question.

(Question, that the words to be inserted)

be inserted, put and negated)

Hon. Members: Division! Division!

(Several Members stood up in their places)

Mr. Chairman: Order! Order! Hon. Members, you have the requisite numbers. Ring the Division Bell!

Mr. Chairman: Order, hon. Members! I am going to announce the results of the Division. 78 hon. Members vote electronically and two hon. Members voted manually.

Hon. Members: How! How!

Mr. Chairman: Order! When an hon. Member has a problem, he can come to the Chair here and register his vote manually. Incidentally, for your benefit, one voted yes and the other voted no. So, that should not worry you.

(The results of the division were displayed on the monitors)

As you can see, the Ayes are 35 and the Noes are 45. The amendment is dropped.

DIVISION

(Question negated by 45 votes to 35)

AYES: Messrs. Abdikadir, Bahari, Baiya, Chanzu, C. Kilonzo, Ethuro, Dr. Gesami, Messrs. Hassan, Keter, Keynan, Kiptanui, Koech, Konchellah, Dr. Kones, Mr. Kutuny, Dr. Laboso, Messrs. Lang'at, Magwanga, Mbadi, M.H. Ali, Midiwo, Mututho, Mwadeghu, Mwaita, Nyamai, Ochieng, Odhiambo, Mrs. Odhiambo-Mabona, Ogindo, Messrs. ole Lankas, Outa, Ruto, Yinda

NOES: Ms. Amina Abdalla, Messrs. Bett, Chachu, Duale, Gaichuhie, Githae, Kabogo, Kapondi, Ms. Karua, Mr. Kathuri, Dr. Khalwale, Mrs. Kilimo, Messrs. Kimunya, Kinyanjui, Kioni, Ms. Leshomo, Eng. Maina, Messrs. Mbai, Mbau, Mrs. Mugo, Messrs. Mung'aro, Mureithi, Murungi, Mwangi, Dr. Mwiria, Mr. Ndambuki, Ms. Ndeti, Messrs. Nguyai, Njuguna, Maj-Gen. Nkaisery, Mrs. Noor, Messrs. Ojaamong, Omollo, Otieno, Rai, Prof. Sambili, Mr. Shitanda, Maj-Gen. Sugow, Messrs. Waititu, Wamalwa, and Wambugu.

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

Mr. Chairman: What is your point of order, Mr. Mbadi?

Mr. Mbadi: Mr. Chairman, Sir, our Standing Orders are very clear that if you are present in Parliament it is out of order not to vote or abstain. From the screen it is very evident that three Members have neither voted nor abstained. Could we know who these Members are?

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Chairman, Sir, I am trying to punch in to vote but the machine is refusing to pick it up.

Mr. Chairman: The Chair will excuse you because of the fact that we are getting used to these equipments and gadgets.

The Attorney-General (Prof. Muigai): On a point of order, Mr. Chairman, Sir. I just wanted to inform hon. Mbadi that I have no constitutional authority to make a vote except to

guide those on this side of the Floor. I have already guided them and the results speak for themselves.

(Laughter)

(Clause 9 agreed to)

Mr. Ogindo: Mr. Chairman, Sir, hon. Mbadi raised a very pertinent issue and we were waiting for the Chair to make a ruling on the same. Chair, you just let it pass and yet this thing is going to recur here. I am just seeking your guidance on the same.

Mr. Chairman: Order, hon. Ogindo! May be, you did not hear what the Chair said. Three hon. Members did not vote. Prof. Githu Muigai, the Attorney-General, does not have any voting right because he is an Ex-officio Member of the National Assembly. Hon. Nanok has already said that he had a problem logging in. It looks like there is one other hon. Member. Because of the fact that we are using this technology now and getting used to it, I think the Chair is able to excuse that for the time being.

Hon. Members, I did not vote either and so that explains everything. I had no problem with the system.

[Mr. Chairman left the Chair]

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

Clause 10

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

THAT clause 10 be amended-

(a) in sub-clause (1) by deleting the word “shall” appearing immediately after the words “five years and” and substituting therefor the word “may”;

(b) in sub-clause (2) by inserting the following new paragraph immediately after paragraph (e)-

(ea) partisan political activity;

(c) in sub-section (3) by deleting the words “sub-section (2)” appearing immediately after the words Director-General under” and substituting therefor the words “paragraphs (a), (b), (d), (e), (ea) of sub-section (2)”.

Mr. Temporary Deputy Chairman, Sir, the amendment to Clause 10 is meant to delete the word “Shall” with regard to the term of office to mean “May”. It is about being in office for five years, but it is worded as “Shall” which is not desirable in our view.

For (b), we are seeking to include partisan political activities as a ground for possible removal of the DG. This is, again, contained within the Constitution. So, we are simply bringing it within the statute.

(Question of the amendment proposed)

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, I think it was a mistake to put that if there is supposed to be a renewal then you put the word “shall”. It is like you are making it mandatory that the DG must be reappointed. That was discussed in my Committee and we agreed.

Finally, with regard to partisan political activities, I think it is very important because there have been complaints all over that sometimes we misuse our security intelligence in getting involved in gathering information that is not desirable for the security of this country. I support.

The Temporary Deputy Chairman (Mr. Ethuro): I also want to put hon. Members on notice that if you are supporting--- I would be interested more in listening to people who are opposing.

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

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

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Keynan, as you move, remember that part (b) of your amendment has already been taken care of by Mr. Baiya’s amendment.

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

THAT Clause 10 of the Bill be amended -

(a) in sub-clause (2) by deleting the words “and sentenced to imprisonment for a term of at least six months” appearing in paragraph (c);

(b) in sub-clause (3) by deleting the words “subsection (2)” and substituting therefor the words “subsection (2) (a), (b), (d) or (e)” ;

(c) in sub-clause (4) by deleting the words “sub-section (2)” and substituting therefor the words “subsection (1)”;

(d) by deleting sub-clause (5) and substituting therefor the following new sub-clause-

(5) Where a person who was serving in the public service prior to appointment as a Director-General is subsequently removed from office under sub-section (4), that person shall have the option of retiring or being deployed within the public service.

Mr. Temporary Deputy Chairman, Sir, this is subject to the amendments by hon. Baiya. Clause 10(2)(c) says that if the Director-General is convicted of an offence and sentenced to imprisonment for a term of at least six months---. So, what we are saying is that we just remove “sentenced to an imprisonment for a term of at least six months” and just leave it as “if the Director-General is convicted of an offence”. So, we are just making it right so that it is consistent.

If you look at 2(e) and (f), these are the factors that necessitate the formation of a tribunal. So, if somebody has already been declared bankrupt or incompetent, these are issues that will have already been adjudicated by other competent agencies and there is no need to duplicate the same by forming tribunals. So, we suggest that those two be removed.

If you look at 10(4), I think it was typo. Instead of (2) it is supposed to be (1). The same goes for (5). The import of this is to make sure that if a Director-General, for example--- If a serving State officer is transferred by the CEO to head that important agency and in between, the CEO loses confidence in that particular officer and yet the officer is still competent, what do you do with that officer? Do you just sack and terminate? You must have a fall- back position which is that, that person can be deployed to any other Government department. This is so that we do not criminalize---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Keynan! I think you are clear.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, whereas I agree with most of the proposals by the Chairman, I would like to understand why he would want us to remove the word “incompetence” and---

(Mr. Keynan interjected)

Mr. Temporary Deputy Chairman, Sir, Mr. Keynan is informing me that he is not removing (e) and (f). So, if that---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Millie Odhiambo! Once you have the Floor, you speak through the Chair. Disregard all other noises from your neighbourhood.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I will disregard all my neighbours and request the Chairman of the Committee to clarify what Mr. Keynan is seeking to remove and in light of the fact that I wanted to bring an amendment to Sub-clause 4. This is because I already believe that clause 10(2) provides very high standards in terms of the removal of the Director-General. In my proposed amendments, I was actually saying that once we have already put those high standards in place, then let us not leave it at that. Let us also be fair to the office holder of Director-General by removing Sub-clause 4 so that we only put positions in such a manner that once you are removed then you do not leave it at the whims of the President.

I, however, want to request the hon. Member to clarify why he would want to remove that because it informs my own amendment.

The Temporary Deputy Chairman: Let us get hon. Githae now.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I was following up on hon. Odhiambo-Mabona’s view that once we have given all these conditions for the removal of the Director-General, then we really need to remove (4) and (5), so that we give him security of tenure. This is in line with what we have done with the Inspector-General of the Police and all the other organs. Again, because he has been vet by Parliament, if you vetted somebody, then you must give him security of tenure, so that the, he can give independent advice. So, I have presented an amendment that Clauses 4 and 5 be deleted.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members! There is an orderly way in which we bring amendments. We are talking about the amendments by hon. Keynan. It is also dealing with Clauses (4) and (5). We should have carried the deletion first.

Hon. Keynan, before I allow you, let us allow hon. Duale to make a comment as we also consult here.

Mr. Duale: Mr. Temporary Deputy Chairman, Sir, I totally oppose the deletion of Clauses 4 and 5.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, since there are proposals by the Minister for deletion and we have taken all hon. Keynan's amendments at the same time and there also proposed amendments by hon. Odhiambo-Mabona, I suggest that we deal with each sub-clause. So, if you look at your Order Paper, hon. Keynan had various proposals. Let us deal with part (a) of hon. Keynan's amendment.

Clause 10(2)

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

THAT, Clause 10 of the Bill be amended -

(a) in sub-clause (2) by deleting the words "and sentenced to imprisonment for a term of at least six months" appearing in paragraph (c);

(Question of the amendment proposed)

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

Part (b) of Mr. Keynan's amendment to Clause 10(3) has been overtaken by the amendment by hon. Baiya which was carried. Now we can go to Clause 10(4) which is dealing with Sub-clause 4.

Clause 10(4)

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

THAT, Clause 10 of the Bill be amended -

(c) in sub-clause (4) by deleting the words "sub-section (2)" and substituting therefor the words "subsection (1)";

(Question of the amendment proposed)

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Mr. Ethuro): Minister, I want to advise you, because you brought your amendment too late. The Chair is just being generous to you coming from that side. So, you can only oppose hon. Keynan's amendment.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I am not opposing hon. Keynan's amendment. I am actually improving. If you look at 10(1) and (2), it already gives the conditions under which the Director-General can leave office. These conditions are; a violation of the Constitution, gross misconduct, if he is convicted of an offence and sentenced to imprisonment for a term of six years (d) physical and mental incapacity (e) incompetence (f) bankruptcy. If we have these conditions and first of all we have already agreed that you will be vetted by Parliament, normally, the policy has been that for all the positions vetted by Parliament, then the holders have security of tenure.

After having given all these conditions for which a Director-General can be removed, then we need to remove (4) and (5), so that we can give security of tenure. We should not forget that this is not a competitive recruitment. We have agreed that the President will nominate. So, he is nominating somebody they have chemistry with. So that issue of there not being chemistry does not arise.

I, therefore, beg to move.

The Temporary Deputy Chairman (Mr. Ethuro): I had already advised, hon. Githae, that your amendment came too late. So, you can only oppose. You cannot move. So, the Chair will treat your moving as opposing the amendment by hon. Keynan.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is it in order for hon. Githae to mislead the House that all the positions that are being vetted have security of tenure yet he knows very well that even Cabinet Secretaries are going to be vetted? The Attorney-General was vetted. All these positions do not have security of tenure. As a matter of fact, when a new President comes in, it should be like the Cabinet. You come in with your new security advisor and you proceed. That is how it is in the civilized world.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I just want to clarify that hon. Keynan's amendment is just correcting a typo and we need to separate the two sections. So, let us deal with the typo that is being corrected by Mr. Adan Keynan.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, let us invest in listening. That is why the Chair changed from the entire clause to the sub clause so that we can dispose it. If the understanding of the House is that Clause 4 is a typo, let us proceed and let us not argue. Particularly, hon. Githae, being a Government Minister, should understand this more than anybody.

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

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

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Millie has an amendment to sub clause 4?

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

THAT, the Bill be amended in Clause 10 -

(a) by inserting the following new sub-clauses immediately after sub-clause (1) and then appropriately renumbering the subsequent sub-clauses-

(2) The Director General shall be appointed by the President through an open and competitive process and vetted by Parliament.

(3) Any appointments made before the first general elections held under this Constitution shall be done in compliance with section 29 (2) of the Sixth Schedule of the Constitution.

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

Mr. Temporary Deputy Chairman, Sir, I am being encouraged to drop this amendment. However, I would like us to discuss it because I like being fair.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Odhiambo-Mabona! You remember the argument of yesterday and today. If you feel persuaded, why discuss it?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I am not persuaded because I like being fair. I was very keen that we vet this position.

The Temporary Deputy Chairman (Mr. Ethuro): Which one because we have several of them?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, the position of the Director-General. I brought an amendment on Sub Clause 4 which I seek to delete. This is what the hon. Minister is trying which is rare.

The Temporary Deputy Chairman (Mr. Ethuro): So, you want Sub Clause 4 to be deleted?

Mrs. Odhiambo-Mabona: Yes, that is what I am speaking to. The reason I want it to be deleted is that I was very keen that we bring vetting of this officer. We have provided for---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mrs. Millie Odhiambo! Part of the confusion is from our end. So, I am sympathetic to you. But the order of things is, one, the argument was that this is a typo and it has been carried. Ideally, we should have brought the deletion before we go to the other amendment.

So, under the circumstances, you are time barred.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, can I just raise an issue about that?

The Temporary Deputy Chairman (Mr. Ethuro): Yes.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, even when we were going on, I saw the mistake, I tried to raise it with you, I raised a point of order and I even raised my hand. I have done that because three of my amendments have gone in the same way. So, I request that you be vigilant but I like being fair. I am not very passionate about it but I like being fair. So, if we are already vetting and providing for procedures of removal, I thought it would have been fair that we do not leave this at the whim of a person to just remove you when you are not giving reasons. Somebody might just remove you from a job because they hate your face; you are not looking handsome or pretty enough. That was my reason but if it has been overtaken by events, that is okay.

The Temporary Deputy Chairman (Mr. Ethuro): I thank hon. Millie for being understanding. The Chair has the responsibility to take every amendment on the Order Paper. So, that should be the correct position.

(Question of the amendment proposed)

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

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

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I just want it to be indicated in the record that I had an amendment on Clause 10(1) which has been overtaken by events. I was going to withdraw it any way, but this is just for the record.

The Temporary Deputy Chairman (Mr. Ethuro): So, you have withdrawn both of them?

Mrs. Odhiambo-Mabona: Yes, Mr. Temporary Deputy Chairman, Sir.

*(Proposed amendments to Clause 10 by
Mrs. Odhiambo-Mabona were withdrawn)*

The Temporary Deputy Chairman (Mr. Ethuro): I will now put the question.

An hon. Member: What about the amendments by hon. Baiya?

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! I am referring to the sub clauses and it does not matter how many amendments were made to the clause. The ones that were carried are the ones that should be part of the Bill.

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

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

(Clause 10 as amended agreed to)

Clause 11

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

THAT, the Bill be amended in Clause 11 by deleting the words “section 10(3)” appearing in paragraph (c) of sub-clause (1) and substituting therefor the words “section 10 (2), (3) and (4)”.

If you look at Clause 11, you will find that the office of the Director-General shall become vacant if the holder---

The amendment is on “c”. Again, this was an editorial issue. Part “c” is supposed to cover 10(2), 10(3) and 10(4) which we have just gone through right now. Sub-Clause 10(2) talks about the circumstances that can create a vacancy in the Office of the Director- General while 10(3), again, is on the issues that can form the basis for a tribunal and 10(4) is where the President decides that he has no--- This is in addition to the other two like where the Director dies in office or resigns. This is an editorial problem and there was not anything.

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

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

(Clause 11 as amended agreed to)

Clause 12

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

THAT, the Bill be amended in Clause 12 by inserting the following new sub-clause immediately after sub-clause (2)-

(2) In this section, temporary incapacity means any inability to carry out duties under the Act or other written law due to an illness or other incapacity lasting continuously for a period of not less than three months.

This amendment was intended to provide a clear definition of terms. Again, it was a consensus thing. It was agreed by all the players that we interacted with.

(Question of the amendment proposed)

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

(Clause 12 as amended agreed to)

(Clauses 13 and 14 agreed to)

Clause 15

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 15 of the Bill be amended-

(a) in sub-clause (2) -

- (i) by deleting the words “or relevant professional intelligence qualifications” appearing in paragraph (b);
- (ii) by deleting the words “seven years” appearing in paragraph (c) and substituting therefor the words “ten years”;
- (iii) by deleting the words “five years” appearing in paragraph (d) and substituting therefor the words “seven years”;

(b) in sub-clause (3)-

- (i) by deleting paragraph (a) and substituting therefor the following new paragraphs-
 - (a) is a member of Parliament, a member of a county assembly, a governor or a deputy governor;
 - (b) has, in the immediately preceding period of five years, served as a member of Parliament, a member of a county assembly, a governor, a deputy governor, a trade union official or held office in a political party;

(ii) by deleting paragraph (b).

Mr. Temporary Deputy Chairman, Sir, this Service is supposed to have a number of other directorates. Clause 15(2)(b) talks about holds a degree from a university recognized in Kenya or relevant professional intelligence qualifications. Again, we realized that was too subjective. It is not something that can easily be qualified and quantified. So, we deleted that part.

Sub-clause (c) was meant to increase the years of experience because this is a very competitive and important position within the service. Therefore, we raised the number of years of experience from seven to 10 years at the Director's level and also (d) just to be in line, in a similar management position in the Government again from five to seven years. So, again, this was an agreed position by all the stakeholders that we interacted with. It was just meant to ensure that whoever is appointed as the Director-General---

The Temporary Deputy Chairman (Mr. Ethuro): Order! Mr. Keynan, I think you are clear, especially when you say all the stakeholders were agreeable. As I propose the amendment, I want Mr. Abdikadir to realize that if the chairman's amendment is carried, then his will be dropped.

(Question of the amendment proposed)

Mr. Abdikadir: Mr. Chairman, Sir, I think the amendments are a bit different. The amendment from the Chair of the Legal Committee was dealing with criminalizing of Members of Parliament from serving in these positions. The idea was that a Member of Parliament or a Member of the County Assembly who had not served for the previous five years could be appointed to this position.

The amendment says that somebody who has at any time within the five years, immediately preceding the date of appointment, held office as a Member of Parliament or a County Assembly or a Governor or Deputy Governor. So, it is just that previous five years. So, they are separate amendments. That one dealt with the term. This one is dealing with the individual being a Member of Parliament or Member of the County Assembly.

The Temporary Deputy Chairman (Mr. Ethuro): I am persuaded, Mr. Abdikadir. Even the chairman can appreciate that they are different.

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, usually, I do not like opposing amendments brought by Mr. Keynan because he is usually a very thorough legislator. But we need to learn that in the past, the education level was very low when people joining this intelligence process. Nowadays, people join this service with high academic qualifications. Therefore, it takes a shorter time to learn. Instead of raising this to seven years, why can we just not leave it at five years and in management, seven years? This idea of just raising it to 10 years, some people will be retired before even they become Director-General. I oppose.

I would like to request my friend to allow us to retain the Bill as it is, the qualifications as they are; five and seven years, respectively.

Mr. Samoei: Mr. Temporary Deputy Chairman, Sir, I also do not like opposing what Mr. Keynan has proposed but this monster called experience which keeps haunting citizens in this country, including some of us--- If we had been subjected to this thing called "experience", we would not be in this House. I really want to persuade Mr. Keynan that it takes a shorter time now for Kenyans to learn. We should not wait for slow learners to give them jobs. Let us leave it as it

was; five years. If a person is competent and he can do this job and he is younger, why would we wait for a slow learner so that we give him the job?

I really want to persuade, Mr. Keynan.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Githae, I suppose you are standing in for the Minister?

The Minister for Finance (Mr. Githae): Yes, indeed.

I wish to support what hon. Samoei has said. We must give our youth an opportunity to serve. Raising the experience from five years to 10 years is not reasonable. Therefore, I support that we amend this to remain the way it was; that is, five years.

Also, on what the Chairman of the Justice and Legal Affairs Committee has said---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Minister! You do not need to amend this for it to remain as it was. You just oppose it.

Proceed.

The Minister for Finance (Mr. Githae): We did not want to say “oppose” because we normally do not like opposing what the chairman has said.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Keynan, I am sure you are persuaded by the Minister.

The Minister for Finance (Mr. Githae): I have not finished. I think the amendments for the legal committee are different---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Githae! We are speaking to Mr. Keynan’s amendment.

Mr. Keynan: Mr. Chairman, Sir, you know we are legislating for posterity. So, I am persuaded by my colleagues who have contributed. Therefore, we have no problem. This is not my position. It is the Committee’s position. By extension since the House has the right to legislate and taking into account what my great friends have said, I have no problem and I concede.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Mr. Keynan, you know you have amendments (a) and (b); (a) is in sub-clause 2 while (b) is in sub-clause 3. Is it the understanding of the Chair that you are withdrawing all your amendments to sub-clause 2 or is it just particularly---

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, what we are amending is (c) and (d) and leave them as captured in the Bill as seven years and five years. Otherwise, other amendments---

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Keynan, I would rather you look at the Order Paper, so that all of us are following. That is on page 3987.

Mr. Keynan: Actually, we are saying the same thing.

The Temporary Deputy Chairman (Mr. Ethuro): This is the amendment. So, you have to say (i), (ii) and (iii). Which ones are you withdrawing and which ones are you retaining?

Mr. Keynan: I am withdrawing the amendments to (c) and (b) only.

The Temporary Deputy Chairman (Mr. Ethuro): You are, therefore, withdrawing (ii) and (iii) as per the Order Paper and then you are retaining (i)?

Mr. Keynan: Yes, Mr. Temporary Deputy Chairman, Sir.

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

(Clause 15(2) as amended put and agreed to)

Clause 15(3)

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I think they are substantively the same, except for the addition of trade union official in the Defence Committee which is acceptable. So, I think it is better we withdraw ours so that that one can be debated on.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Githae, you were interested?

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I support the amendment by the Chairman of the Justice and Legal Affairs Committee.

It is only in this country where being a Member of Parliament is not an advantage. In other countries---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Minister! If you are not opposed to the amendment, what is the point of contributing to it?

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, it is for posterity.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Minister! It is in your own interest that we minimise contributions.

I will, therefore, put the Question, which is that Clause 15 be amended in sub-clause (3) as proposed by hon. Keynan.

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

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

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

(Clause 15 as amended agreed to)

Clause 16

The Temporary Deputy Chairman (Mr. Ethuro): We have an amendment by hon. Baiya.

Yes, hon. Abdikadir.

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

THAT, Clause 16 be amended in Sub-Clause (1) by deleting the words “The Director-General may, in consultation with the Council” appearing at the beginning of the sub-clause (1) and substituting therefor the words “The Council shall”.

Mr. Temporary Deputy Chairman, Sir, this has to do with employment. We feel it is better that this is handled by the Council, as opposed to an individual, in this case the Director-General. So, we are institutionalising the function in the Council.

(Question of the amendment proposed)

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

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

(Clause 16 as amended agreed to)

Clause 17

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

THAT, the Bill be amended in Clause 17 by deleting the words “the Director-General” appearing in paragraph (b) of Sub-Clause (1) and substituting therefor the words “the Service”.

Mr. Temporary Deputy Chairman, Sir, this is, again, a matter of definition. It is felt under Clause 17(1)(b), instead of having the “Director-General”, should be changed to have “the Service”. So, again, this is something which was agreed upon. It was not contentious.

(Question of the amendment proposed)

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

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

(Clause 17 as amended agreed to)

Clause 18

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

THAT, Clause 18 of the Bill be amended -

(a) by deleting sub-clause (4);

(b) by deleting sub-clause (5);

Mr. Temporary Deputy Chairman, Sir, again, this is a consensus position aimed at avoiding jurisdictional conflict between the police and the NIS. So, it was agreed that the Service must remain relevant to intelligence gathering, instead of being both the judge and the jury. Again, there was no conflict on this one.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Ethuro): Yes, hon. Abdikadir!

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I withdraw the Committee's proposed amendment to Clause 18.

(Mr. Abdikadir's proposed amendment withdrawn)

The Temporary Deputy Chairman (Mr. Ethuro): Yes, hon. Maina!

Eng. Maina: Mr. Temporary Deputy Chairman, Sir, I agree that the NIS should not have powers to arrest but let us take an example of the 2007/2008 post-election violence. The National Security Intelligence Service (NSIS) is on record as having said that the violence was being planned. If the NSIS had power to even detain an organiser of such an event, maybe, we would not have seen what we saw then. Now, my question is this, if---

The Temporary Deputy Chairman (Mr. Ethuro): What is your point of order, hon. Shabesh?

Mrs. Shebesh: Mr. Temporary Deputy Chairman, Sir, the hon. Member is raising an issue which is very sensitive in this country. If we want to go into such discussion, which we will gladly take part in, I would ask that you do not allow the country to be part of it; because it is an issue which is currently before court. I ask that, if you allow the kind of discussion he is introducing, you allow us to do so in-camera, so that we can ventilate on the issue of intelligence information having been used to accuse our own Kenyan nationals.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Shebesh! I do not think the hon. Member was discussing the matter. He was just mentioning it and passing.

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I also wanted to go the way of hon. Shebesh but you have made a ruling. However, it is important that Members of Parliament and other Kenyans know the role that the NSIS played in the post-election violence. The NSIS could have given the information to the police and other Government authority, but they did not share it with law enforcement agencies. Kenyans were butchered after the NSIS gave wrong information to innocent people.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Order, hon. Jakoyo Midiwo! You acknowledged that I had ruled on the matter. You were trying to get the hon. Member not to discuss the matter, but you now want to further the same arguments.

Eng. Maina, proceed, but refrain yourself from that line.

An hon. Member: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Let us put that matter to rest. Put your case differently, hon. Maina.

Eng. Maina: Mr. Temporary Deputy Chairman, Sir, I want hon. Members to understand what I am driving at. Let us forget about the post-election violence, if that is a sensitive subject.

If the NSIS had received information this morning that somebody was about to bomb the Kenyatta International Conference Centre (KICC), why would they have to go anywhere else to seek for assistance to restrain such a person from accomplishing his mission? Imagine that he was going to do it in ten minutes' time.

So, I would want to know whether we are jeopardising anything by completely deleting this clause. That is why I was requesting the Chairman of the Committee to tell us, as Members of Parliament, how---

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Maina, you are very clear.

The Minister for Energy (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, we should not spend so much time on this amendment, because it was agreed that the NIS should not

have powers of arrest. There is history in this country. Remember that people used to disappear. People would be arrested by officers in civilian clothes and disappear.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Kiraitu, you have been very eloquent. Let us leave it that way. Therefore, I wish to put the question that Clause 18 be amended as proposed.

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

(Clause 18 as amended agreed to)

Clause 19

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

THAT, Clause 19 be amended in paragraph (a) of sub-clause (1) by deleting the words “the Chief Justice in the presence of” appearing after the words “Director-General before”.

The main idea in this amendment is that the oath of affirmation by the Director-General should be before the Chief Justice in the presence of the President. We do not think that the involvement of the Chief Justice is necessary. So, we want to delete so that it reads that: “The Director-General will take oath in the presence of the President”. That is it.

(Question of the amendment proposed)

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

(Clause 19 as amended agreed to)

(Clause 20, 21 and 22 agreed to)

Clause 23

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

THAT Clause 23 be amended by deleting the word “Director-General” and instead insert the word “Council”. The development of the disciplinary court should---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Baiya! We will help you. A similar amendment was carried on Clause 16. So, I think you just say for the same reasons. That should be sufficient. I, therefore, wish to put the question.

(Question of the amendment proposed)

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

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

(Clause 23 as amended agreed to)

(Clauses 24, 25, 26 and 27 agreed to)

Clause 28

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

THAT Clause 28 of the Bill be amended-

(a) by deleting paragraph (a) of sub-clause (1) and substituting therefore the following new paragraph-

(a) ensure that there are satisfactory arrangements in place for the carrying out of policy directions.

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

(ee) submit an annual report to Parliament on the activities of the Service during the period covered by the report indicating the activities and accomplishments of the Service and including such recommendations as he or she may consider appropriate.

There are two aspects on this clause. It deals with the civilian component of NIS. Clauses 27 and 28 as read, clearly spells out the functions of the civilian component of NIS and, therefore, Clause 28(1)(a) is a bit subjective. If the civilian component has to be satisfied with the operations of the entity, then it will not be too good. So, we have amended it just to ensure that the civilian component headed by the Secretary in charge of NIS is familiar, but not to the nitty gritty of some of the issues.

Finally, the other aspect addresses the issue of parliamentary oversight. I think that the earlier position by the Minister was informed by the rotation. Here, again, we have proposed that the Cabinet Secretary as the head of the civilian component reports to Parliament. So, these are the things and I think this cures the earlier deletion which we made.

(Question of the amendment proposed)

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Chairman, Sir. Hon. Nguyai has a handkerchief on his neck and a shirt. Is that appropriate dressing for the august House? It is like in a disco. He needs to be in Dagoretti Corner eating meat!

(Laughter)

The Assistant Minister for Local Government (Mr. Nguyai): Mr. Temporary Deputy Chairman, Sir, this, for education purposes, is a cravat. It is a neck tie and the Standing Orders say that we should have a neck tie. I have covered my neck sufficiently. So, I am sufficiently smart but I would like to also offer hon. Midiwo some tips on where to get such attire.

(Laughter)

The Temporary Deputy Chairman (Mr. Ethuro): I suppose that hon. Nguyai has explained himself.

(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 28 as amended agreed to)

(Clauses 29, 30 and 31 agreed to)

Clause 32

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

THAT, Clause 32 of the Bill be amended in sub-clause (2) by deleting the word “service” appearing in the opening paragraph and substituting therefor the words “services and operations”

Again, this was meant to improve on the wordings. If you look at Clause 32(2), limitations of Rights and Freedom under this part is necessary for the purposes peculiar to the intelligence. So, we are deleting just the word “service” and inserting in “services and operations”. So, it was something that was agreed on just to improve on the wording.

(Question of the amendment proposed)

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

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

(Clause 32 as amended agreed to)

Clause 33

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

THAT, Clause 33 be amended by deleting the entire clause.

The provisions of Clause 34 are really to the same effect. They are setting out the limitations or rights and liberties pertaining to servicemen in NIS. So, we propose that to be deleted.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, because I have a similar amendment, I support because you cannot limit somebody's right to religion and conscience. It is even unconstitutional. I support.

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

(Clause 33 was accordingly deleted)

(Clauses 34, 35 and 36 agreed to)

Clause 37

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, I must admit that this was a very controversial section of the Bill. All the other groups agreed on a position but the Service has a different position which was understandable, if the Act is to be consistent. I want to refer hon. Members to Clauses, 43, 44, 45 and 46 as read with Clause 37. You will realize that if we legislate it the way it is---

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Baiya, the Chair advises you that you will move all your amendments except the one to section 1(c), there is an amendment to delete it. If we carry yours then we will come back to it.

Mr. Keynan: So, what our amendment intended to cure was this open ended approach. We wanted it to be in conformity with other sub-sections like Section 43. The way it is put here is that the entity can do anything to anybody without going through the due process of the court as clearly enshrined in Sections 43, 44 and 46. Therefore, if you read this along with other sections, you will realize that the whole of this section is not applicable. We said that Section 37(1)(a) might be possible, but parts (a) and (b) are very subjective; we also amended part (c) by putting "subject to Section 43", which I want to ask the hon. Members to read. Section 43 provides for procedures for warrant of arrest. Section 44 also provides for the judicial process before any action is taken.

Again, what we wanted to determine in this amendment is that this particular section must only be limited to suspects and not to every ordinary Kenyan. Those are individuals who have been identified as criminals. Therefore, the information on these individuals would have been presented to a court of law, to a judge, and not a subordinate court. The judge will have satisfied himself or herself that, indeed, what is before the court is fair and, therefore, warrants the issue of a warrant. If this process is not followed, it will mean that we will be going back to the era of the Special Branch when everybody was a suspect; anybody could come and pick up your wife or your girlfriend just because you had dinner or lunch with her. If you look at the information relating to that person's family or private affairs may be required. This is too broad because of extended families. So, we felt that this must be specific and in compliance with the section provided for. The import of this was to make sure that it was in harmony with other sections as already provided for by the clauses of the Bill.

The Temporary Deputy Chairman (Mr. Ethuro): I wish to propose that Clause 37 be amended in sub-clause (1). This is because there are other amendments to sub-clause 1 except (iii) as proposed by the Chairman.

(Question of the amendment proposed)

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, as the chairman of the Committee has rightly pointed out, there was no consensus on this issue, mainly because the service felt very strongly, and they had empirical data to support it, that accepting the amendments that were being proposed by the Committee, will actually render the Service almost unable to perform its functions. These amendments to Section 37, even in our Constitution, the rights are not absolute. In fact, the Constitution recognizes that certain rights are not absolute. These are some of them.

Secondly, the fundamental rights and freedoms are also limited by law provided that it is reasonable and is applicable in an open democracy. The main reason was that the proposed amendments, particularly on privacy, were intended to enable the Service to carry out its mandate, where the Service will use a warrant for investigative work. We have already removed the powers of arrest from this Service. So, the issue of this Service behaving like the former Special Branch does not arise. It will not arrest because they will not have the powers of arrest. We are saying that their actions will be on the strength of a warrant. We are opposing these amendments, because they will render the Service unable to perform its core mandate. Since there is no power of arrest, the issue of it behaving like the former Special Branch does not arise.

We strongly oppose this. We had no consensus and we also had empirical data from the Central Intelligence Agency (CIA) and Federal Bureau of Investigations (FBI). We are saying that certain rights cannot be absolute. This is subject to warrant. So, I am appealing to this House that we reject the proposed amendments as they will make this Service unable perform its functions.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I have consulted with my Chair, and I want the House to appreciate that what we were seeking to secure here---

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Ogindo, you have a further amendment. Start with it and then explain.

Mr. Ogindo: Yes, Mr. Temporary Deputy Chairman, Sir. I want to further amend Mr. Keynan's amendment as contained in the Order Paper paragraph (a)(i). The amendment stops at the word "offence" thereby deleting "or is under monitoring by the Service"

The Temporary Deputy Chairman (Mr. Ethuro): So, you are proposing that all the words after the word "offence" be deleted?

Mr. Ogindo: Yes, the whole essence of that is that this amendment by the Chair was seeking to bar the possibility of freedom being encroached upon under the guise of investigation and monitoring. Much as I know that these freedoms are not absolute, we want investigations to be done in an orderly manner, so that when you are put under surveillance, it is because you are suspected to have done something. That is the whole essence of that.

I beg to move.

The Temporary Deputy Chairman (Mr. Ethuro): I wish to propose that the amendment by Mr. Keynan be further amended as proposed by Mr. Ogindo. I think the matter is clear.

(Question of the further amendment proposed)

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, I want to agree that the only people who should be subjected to this are those who are suspects. I want to beg my colleagues that we read Article 24 of the Constitution. Sub-section (1) reads:-

“A right or fundamental freedom in the Bill of rights, shall not be limited except by law--
_”

So, if we make this law, by interpretation it means that we have limited freedom legally. I will go on:-

“---and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all the relevant factors.”

Unless we want to make the National Security Intelligence Service (NSIS) impotent, then we must realize the intention of this is not what used to obtain in the old draconian days. The intention is that the person whose privacy is being interfered with has already been suspected; therefore, the agency will be doing everything possible to ensure that the person does not go on and carry out the felony that he is about to commit.

If we allow Mr. Ogindo’s amendment to pass, it means the NIS will be working only on people who have already committed an offence. We want them to also work on people who are about to commit an offence so that we prevent the commitment of that particular offence.

The Temporary Deputy Chairman (Mr. Ethuro): We have heard you, Dr. Khalwale.

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I rise to support this particular amendment by Mr. Keynan because there is no experience the world over where the NIS or the FBI can have that automatic authority to go to people’s home, to possess property and get involved in the affairs of the people without approval by a competent court of law where it can be done fast. So these particular clauses; (a) and (b), should be deleted. Thank you.

Mr. Bahari: Mr. Temporary Deputy Chairman, Sir, I stand to support Mr. Keynan’s amendment because Dr. Khalwale put it very clearly that under reasonable circumstance, I think a threat to security is a reasonable circumstance. I wish those rights can be limited because it is potential and it is urgent. Therefore, those rights can be limited and I support the amendment by hon. Keynan.

The Temporary Deputy Chairman (Mr. Ethuro): This is now a matter to be determined. I am putting the question of the amendment by Mr. Ogindo which is a further amendment to what Mr. Keynan was proposing.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I have heard what Mr. Keynan, Dr. Khalwale and the Chairman of the Justice and Legal Affairs Committee have said. As a way forward, we do not need to make this institution impotent because this is what we are doing. I will propose that, as a compromise---

(Mrs. Shebesh consulted loudly)

Just listen to me, Mrs. Shebesh.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mrs. Shebesh! Let the Minister make his contribution, and if he is misleading, you know what to do.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I want to make a very simple solution to all these three different issues. Clauses 7(a), (b), (c) and (d) remain as they are but you put to protect the concerns we say “subject to section 43”. The

amendment will be deleting (b) and (c) but I am saying that we subject all of them to “subject to section 43”.

(Loud consultations)

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Githae! Order, hon. Members! Mr. Githae, the Chair has been more than generous to you and you seem to be abusing the privilege. You know if there is a compromise, you should talk to hon. Members without even pointing to us; bring that compromise to the Chair and then it will come as a proposed amendment. Let me, therefore, put the question. The question is on Mr. Ogindo’s further amendment. So I will put the question that Clause 37 be amended in sub-clause (1) as proposed by Mr. Keynan and further amended as proposed by Mr. Ogindo.

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

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

The Temporary Deputy Chairman (Mr. Ethuro): Now we will put the question to the amendment proposed by Mr. Keynan as amended by Mr. Ogindo, which is that Clause 37 be amended in sub-clause 1 as proposed by Mr. Keynan and as further amended by Mr. Ogindo.

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

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

Mrs. Odhiambo-Mabona: What about mine?

The Temporary Deputy Chairman (Mr. Ethuro): We are coming back to you. We are just disposing that one.

(Loud consultations)

Order, hon. Members! We have all listed amendments here, including the one by Mrs. Odhiambo-Mabona, which cannot be taken until we have entertained the proposed amendment by Mr. Baiya. That is the sequence! Mrs. Odhiambo-Mabona, you must be respectful of the Chair. You know I have always acknowledged that even where we have wronged you, we have acknowledged. So we can never do any harm to you.

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, we are proposing an amendment to Clause 37 and the proposal we are making is for sub-section 1(c). We are seeking to delete it; that is information relating to that person’s family or private affairs may be required. We are seeking to delete that. We are also seeking to delete sub-section (2) which states that the limitations under section 1(c) shall apply where the person has committed an offence or is suspected to have committed an offence. I believe that has already been taken care of by Mr.

Keynan's amendment but more importantly, we are also seeking for an inclusion of a new clause to say that the Service shall prior to taking any action under this section obtain a warrant under Part IV. We are seeking to imply that so that it is quite clear so that the warrant of arrest is mandatory. It is quite clear that deprivation of a fundamental right under the Constitution, the section should be clearly well worded to avoid any ambiguity and also bearing in mind where we are coming from, for avoidance of any doubt and about even the history of the institution, we do not want to leave any ambiguity as to what the agency can or cannot do. Now that we have also denied it the role of the police; powers of arrest in general, this will make its responsibility even more clear.

With those few remarks, I beg to move.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, the reason I was trying to raise that point of order is that earlier amendments actually overtook part of my amendment. I was actually trying to do the compromise of hon. Githae, because by the amendment of the Chairman, we have deleted (a) and (b). By this amendment, we are trying to delete (c) now.

My amendment was seeking to retain them. You can search a person's home and seize the possessions---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Millie! Maybe, you will also need to understand the procedures from the Chair. When you have an amendment proposing a deletion, we take it first. So, if that amendment for deletion as proposed by both the Chairman and hon. Baiya is carried, then, of course, to add or to retain does not arise. But if the deletion is negated, then we come back to you. That is just the procedure of the House.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, if I have an amendment, I think it will just be good to hear my side, so that you are informed as you give direction. It is just in good faith.

Having said that---

The Temporary Deputy Chairman (Mr. Ethuro): Order! Mrs. Odhiambo-Mabona, on the issue of procedures, that is my sole responsibility. That is why there is a Chair.

Mrs. Odhiambo-Mabona: But that is why I am also pleading with the Chair---

The Temporary Deputy Chairman (Mr. Ethuro): You cannot plead against procedures. We have procedures of the House to follow. That is why we have a Parliament.

Mrs. Odhiambo-Mabona: So, Mr. Temporary Deputy Chairman, Sir, are you saying it is not my responsibility to plead with the Chair?

The Temporary Deputy Chairman (Mr. Ethuro): No, you can, but not on the basis that if there is a deletion, I should hear before a deletion. I take the deletion first.

Mrs. Odhiambo-Mabona: That is okay, Mr. Chairman, Sir.

You have already done the deletion of (i) and (ii). The proposed amendment relates to mine. Now, I can raise mine at this point.

The Temporary Deputy Chairman (Mr. Ethuro): Yes, you contribute to his. So, you allow me to propose his amendment and then you contribute.

Mrs. Odhiambo-Mabona: So, I wait for you, Mr. Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): That is also another procedure, which you must live with.

Mrs. Odhiambo-Mabona: Mr. Chairman, Sir, I have been trying to contribute where the amendment related to mine and you are not giving me the chance to do so.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Millie, do not argue with the Chair! Since we have allowed the saving of that other clause of (c) in sub-clause 1, until pending Baiya's amendment, I want to take that one first.

(Question of further amendment proposed)

PROGRESS REPORTED

The Minister for Trade (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I rise on a point of order to move:-

THAT the Committee do report progress to the House and seek leave to sit again.

Mr. Temporary Deputy Chairman, Sir, as Members will notice, we are only done half way into the matters we agreed to do today. To allow for adequate consultations on all these very important Bills, it is important that we, first of all, report progress and then we when get to the House, we seek to leave to meet again in the afternoon.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

Mr. Ethuro: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House is considering the National Intelligence Service Bill, Bill No.31 of 2012 and seek leave to sit again today.

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

The Attorney General (Prof. Muigai) seconded.

(Question proposed)

(Question put and agreed to)

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

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

THAT, pursuant to the provisions of Standing Order No.20(1), this House resolves to hold a sitting today, Friday, 24th August, 2012, commencing at 2.30 p.m., until the conclusion of business appearing in today's Order Paper.

Mr. Deputy Speaker, Sir, the matter is clear cut. I want to appeal to Members in our usual spirit that we set up for this sitting. The only reason we are moving in this direction, instead of continuing, is to facilitate a break even for our Muslim brethren and sisters to attend their prayers. Otherwise, we would have continued.

With those few remarks, I beg to move and ask the Attorney General to second.

The Attorney General (Prof. Muigai): Seconded.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, we will now adjourn the proceedings of the House. The House stands adjourned until today, Friday, 24th August, 2012 at 2.30 p.m.

The House rose at 12.20 p.m.