

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 28th April, 2016

The House met at 9.30 a.m.

[The Deputy Speaker (Hon. (Dr.) Laboso in the Chair)]

PRAYERS

QUORUM

Hon. Deputy Speaker: Can we have the Quorum Bell rung?

(The Quorum Bell was rung)

Members, we can now settle down.

MOTION

APPROVAL OF THE FIRST SUPPLEMENTARY
ESTIMATES FOR THE FINANCIAL YEAR 2015/2016

THAT, this House adopts the Report of the Liaison Committee on the First Supplementary Estimates for the Financial Year 2015/2016, laid on the Table of the House on Tuesday, April 19, 2016 and in accordance with the provisions of Article 223 of the Constitution, approves the issuance of a sum of Kshs25,968,239,099 from the Consolidated Fund to meet the expenditure during the year ending 30th June, 2016 in respect of the various Votes, as indicated in the Schedule.

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

THAT, this House adopts the Report of the Liaison Committee on the First Supplementary Estimates for the Financial Year 2015/2016, laid on the Table of the House on Tuesday, April 19, 2016, and in accordance with the provisions of Article 223 of the Constitution, approves the issuance of a sum of Kshs25,968,239,099, from the Consolidated Fund to meet the expenditure during the year ending 30th June 2016 in respect of the various Votes, as indicated in the Schedule, subject to:-

i) the insertion of a new sub-paragraph (xxv) under Paragraph 30 as follows:

(xxv) Increase the recurrent allocation to the Parliamentary Service Commission under the programme of General Administration, Planning and Support Services by Kshs332 Million;

ii) Deleting recommendation on paragraph 30(xiii) (on page 8); and, (Relating to the Capital allocations for the Ministry of Industrialization and Enterprise Development)

iii) Deleting the recommendation on paragraph 31 (v) (on page 10); (Relating to the recurrent allocations for the Salaries and Remuneration Commission)

iv) the insertion of a new sub-paragraph (x) under Paragraph 31 as follows:

(x) Reduce the current allocation under the Senate Affairs programme meant for Monitoring and Evaluation by Kshs332 Million; and

v) Making consequential adjustments to the Schedule and the totals to reflect the changes, accordingly.

vi) Effecting the consequential adjustments to Vote 1171 (Ministry of Industrialization and Enterprise Development) and Vote 2081 (Salaries and Remuneration Commission), to reflect a reduction in the Capital Allocation in Vote 1171 by Ksh.150million and an increase in the Recurrent Allocation in Vote 2081 by Ksh.150million).

APPROVAL OF THE FIRST SUPPLEMENTARY
ESTIMATES FOR 2015/2016

SCHEDULE

Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
1011	The Presidency		Total	1,460.6	(806.0)	654.6
		0702000	P.2 Cabinet Affairs	276.3	(586.1)	(309.8)
		0703000	P.3 Government Advisory Services	(74.5)	-	(74.5)
		0704000	P.4 State House Affairs	648.6	(129.0)	519.6
		0734000	P.6 Deputy President Services	610.2	(90.9)	519.3
1021	State Department for Interior		Total	5,197.7	1,261.6	6,459.2
		0601000	P.1 Policing Services	694.6	763.0	1,457.6
		0602000	P.2 Planning, Policy Coordination and Support Service	3,979.2	148.6	4,127.8
		0603000	P.3 Government Printing Services	(69.2)	-	(69.2)

Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
		0605000	P.4 Population Management Services	593.0	350.0	943.0
1022	State Department for Coordination of National Government		Total	616.3	(400.0)	216.3
		0604000	P.1 Correctional services	619.0	(388.0)	231.0
		0623000	P.2 General Administration, Planning and Support Services	(2.2)	(12.0)	(14.2)
		0624000	P.3 Betting Control, Licensing and Regulation Services	(0.5)	-	(0.5)
1031	State Department for Planning		Total	(350.2)	(7,108.0)	(7,458.2)
		0706000	P.1 Economic Policy and National Planning	58.3	206.4	264.7
		0707000	P.2 National Statistical Information Services	(29.4)	2.9	(26.5)
		0708000	P.3 Monitoring and Evaluation Services	(0.4)	(0.0)	(0.4)
		0709000	P.4 General Administration Planning and Support Services	(53.3)	(10.0)	(63.3)
		0710000	P.5 Public Service Transformation	(9.5)	2.5	(7.0)
		0711000	P.6 Gender & Youth Empowerment	(316.0)	(7,309.8)	(7,625.8)
1032	State Department for Devolution		Total	470.7	(35.7)	435.0
		0732000	P.3 General Administration, Planning and Support Services	21.8	-	21.8
		0712000	P.7 Devolution Services	91.6	253.5	345.2
		0713000	P.8 Special Initiatives	348.3	337.2	685.6
		0733000	P.9 Accelerated ASAL Development	8.9	(626.5)	(617.6)
1041	Ministry of Defence		Total	(58.8)	34.8	(24.0)
		0801000	P.1 Defence	554.8	34.8	589.6
		0802000	P.2 Civil Aid	-	-	-
		0803000	P.3 General Administration, Planning and Support	(613.6)	-	(613.6)

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			Services			
1051	Ministry of Foreign Affairs and International Trade		Total	2,156.7	(198.0)	1,958.7
		0715000	P.2 Foreign Relation and Diplomacy	670.0	(36.0)	634.0
		0714000	P.1 General Administration Planning and Support Services	663.6	(264.0)	399.6
		0716000	P.3 International Trade and Investments Promotion	823.1	102.0	925.1
1061	State Department for Education		Total	(311.1)	(14,007.5)	(14,318.6)
		0501000	P.1 Primary Education	(284.5)	(12,898.4)	(13,182.9)
		0502000	P.2 Secondary Education	(1.3)	(479.5)	(480.8)
		0503000	P.3 Quality Assurance and Standards	(100.9)	(250.6)	(351.5)
		0508000	P.8 General Administration, Planning and Support Services	75.6	(379.0)	(303.4)
1062	State Department of Science and Technology		Total	1,024.6	(940.8)	83.9
		0504000	P.4 University Education	1,366.2	(889.4)	476.8
		0505000	P.5 Technical Vocational Education and Training	(192.3)	(1,375.8)	(1,568.1)
		0506000	P.6 Research, Science, Technology and Innovation	(208.0)	(138.0)	(345.9)
		0507000	P.7 Youth Training and Development	179.0	204.4	383.4
		0508000	P.8 General Administration, Planning and Support Services	(120.3)	1,258.0	1,137.7
1071	The National Treasury		Total	(9,508.4)	13,871.9	4,363.5
		0717000	P.1 General Administration Planning and Support Services	(9,682.5)	1,503.4	(8,179.1)
		0718000	P.2 Public Financial	47.4	12,622.1	12,669.5

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			Management			
		0719000	P.3 Economic and Financial Policy Formulation and Management	106.7	(253.6)	(146.9)
		0720000	P.4 Market Competition	20.0	-	20.0
1081	1081 Ministry of Health		Total	409.2	(1,025.2)	(616.0)
		0401000	P.1 Preventive & Promotive Health Services	262.5	193.7	456.2
		0402000	P.2 Curative Health Services	(75.9)	495.4	419.5
		0403000	P.3 Health Research and Development	0.8	-	0.8
		0404000	P.4 General Administration, Planning & Support Services	219.3	(1,427.0)	(1,207.7)
		0405000	P.5 Maternal and Child Health	2.5	(287.2)	(284.7)
1091	State Department for Infrastructure		Total	11,673.4	(1,776.9)	9,896.5
		0202000	P.2 Road Transport	11,673.4	(1,776.9)	9,896.5
1092	State Department for Transport		Total	(0.3)	6,096.0	6,095.7
		0201000	P.1 General Administration, Planning and Support Services	(11.3)	(45.0)	(56.3)
		0203000	P.3 Rail Transport	-	(57.7)	(57.7)
		0204000	P.4 Marine Transport	10.4	1,630.0	1,640.4
		0205000	P.5 Air Transport	(6.8)	4,568.7	4,561.9
		0206000	P.6 Government Clearing Services	7.8	-	7.8
		0216000	P.7 Road Safety	(0.4)	-	(0.4)
1101	Ministry of Environment, Natural Resources and Regional Development Authorities		Total	646.3	1,448.2	2,094.5
		1010000	P.1 General Administration, Planning and Support Services	(65.4)	(12.8)	(78.3)
		1011000	P.2 Environment and Natural Resources	156.9	(1,200.1)	(1,043.2)

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			Management and Protection			
		1012000	P.3 Meteorological Services	17.9	(270.0)	(252.1)
		1005000	P.5 Integrated Regional Development	536.9	2,931.1	3,468.0
1102	Ministry for Water and Irrigation		Total	(196.4)	12,952.3	12,756.0
		1001000	P.1 General Administration, Planning and Support Services	(21.0)	(35.0)	(56.0)
		1004000	P.4 Water Resources Management	(29.7)	1,834.6	1,804.8
		1005000	P.5 Integrated Regional Development	(594.2)	(3,399.1)	(3,993.3)
		0110000	P.4 Irrigation and Drainage Infrastructure	448.6	14,551.9	15,000.4
1111	Ministry of Lands, Housing and Urban Development		Total	(158.7)	(3,539.5)	(3,698.2)
		0101000	P.1 Land Policy and Planning	(108.5)	365.6	257.1
		0102000	P.2 Housing Development and Human Settlement	(8.5)	(157.6)	(166.1)
		0103000	P.3 Government Buildings	(7.5)	(510.0)	(517.5)
		0104000	P.4 Coastline Infrastructure and Pedestrian Access	(2.3)	(57.0)	(59.3)
		0105000	P.5 Urban and Metropolitan Development	(9.8)	(2,949.5)	(2,959.2)
		0106000	P.6 General Administration Planning and Support Services	(22.0)	(231.0)	(253.0)
1121	Ministry of Information, Communication and Technology		Total	(46.1)	5,579.0	5,532.9
		0207000	P.1 General Administration Planning and Support Services	(34.2)	494.7	460.5
		0208000	P.2 Information And Communication	3.0	(335.0)	(332.0)

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			Services			
		0209000	P.3 Mass Media Skills Development	(15.0)	(13.5)	(28.5)
		0210000	P.4 ICT Infrastructure Development	-	5,432.8	5,432.8
1131	Ministry of Sports Culture and Arts		Total	1,502.1	(1,380.9)	121.2
		0901000	P.1 Sports	920.0	(1,487.9)	(567.9)
		0902000	P.2 Culture	235.9	107.0	342.9
		0903000	P.3 The Arts	(51.3)	-	(51.3)
		0904000	P.4 Library Services	48.0	-	48.0
		0905000	P.5 General Administration, Planning and Support Services	349.5	-	349.5
1141	Ministry of Labour Social Security and Services		Total	(243.3)	(542.0)	(785.3)
		0906000	P.1 Promotion of the Best Labour Practice	71.8	(169.0)	(97.2)
		0907000	P.2 Manpower Development, Employment and Productivity Management	(95.9)	(70.0)	(165.9)
		0908000	P.3 Social Development and Children Services	(9.5)	(59.5)	(69.0)
		0909000	P.4 National Social Safety Net	(235.7)	(243.5)	(479.2)
		0910000	P.5 General Administration Planning and Support Services	26.0	-	26.0
1151	Ministry of Energy and Petroleum		Total	41.1	18,596.4	18,637.4
		0211000	P.1 General Administration Planning and Support Services	42.6	(90.0)	(47.4)
		0212000	P.2 Power Generation	-	(4,114.9)	(4,114.9)
		0213000	P.3 Power Transmission and Distribution	(2.5)	23,365.9	23,363.4
		0214000	P.4 Alternative Energy Technologies	1.0	(106.3)	(105.3)
		0215000	P.5 Exploration and Distribution of Oil and	-	(458.3)	(458.3)

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			Gas			
1161	State Department for Agriculture		Total	(2,190.4)	(14,852.8)	(17,043.2)
		0107000	P.1 General Administration Planning and Support Services	12.8	(182.2)	(169.4)
		0108000	P.2 Crop Development and Management	(1,357.1)	(945.0)	(2,302.1)
		0109000	P.3 Agribusiness and Information Management	(7.5)	1,982.3	1,974.9
		0110000	P.4: Irrigation and Drainage Infrastructure	(838.8)	(15,707.9)	(16,546.6)
1162	State Department for Livestock		Total	116.8	(647.4)	(530.6)
		0112000	P.6 Livestock Resources Management and Development	116.8	(647.4)	(530.6)
1163	State Department for Fisheries		Total	(37.7)	(306.6)	(344.3)
		0111000	P.5 Fisheries Development and Management	(37.7)	(306.6)	(344.3)
1171	Ministry of Industrialization and Entrepreneurship Development		Total	402.0	(480.0)	(78.0)
		0301000	P.1 General Administration Planning and Support Services	(24.4)	220.0	195.6
		0302000	P.2 Industrial Development and Investments	(35.1)	(275.0)	(310.1)
		0303000	P.3 Standards and Business Incubation	(16.8)	(425.0)	(441.8)
		0304000	P.4 Cooperative Development and Management	478.3	-	478.3
1181	State Department for Commerce and Tourism		Total	(108.0)	(3,409.0)	(3,517.0)
		0306000	P.2 Tourism Development and Promotion	(69.8)	(3,335.3)	(3,405.1)
		0307000	P.3 Trade Development and Promotion	(46.0)	(23.7)	(69.7)
		0308000	P.4 General Administration,	7.7	(50.0)	(42.3)

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			Planning and Support Services			
1182	State Department for East African Affairs		Total	(44.3)	(50.0)	(94.3)
		0305000	P.1 East African Affairs and Regional Integration	(44.3)	(50.0)	(94.3)
1191	Ministry of Mining		Total	9.0	(882.3)	(873.3)
		1007000	P.1 General Administration Planning and Support Services	20.6	(23.5)	(2.9)
		1008000	P.2 Resources Surveys and Remote Sensing	(15.3)	(585.2)	(600.5)
		1009000	P.3 Mineral Resources Management	3.7	(273.6)	(269.9)
1251	Office of the Attorney General and Department of Justice		Total	(249.9)	(97.0)	(346.9)
		0606000	P.1 Legal Services	(167.2)	(9.0)	(176.2)
		0607000	P.2 Governance, Legal Training and Constitutional Affairs	(224.4)	(65.0)	(289.4)
		0609000	P.4 General Administration, Planning and Support Services	141.8	(23.0)	118.8
1261	The Judiciary		Total	(939.9)	(861.8)	(1,801.7)
		0610000	P.1 Dispensation of Justice	(939.9)	(861.8)	(1,801.7)
1271	Ethics and Anti-Corruption Commission		Total	645.3	(300.0)	345.3
		0611000	P.1 Ethics and Anti-Corruption	645.3	(300.0)	345.3
1281	National Intelligence Service		Total	1,015.0	-	1,015.0
		0804000	P.1 National Security Intelligence	1,015.0	-	1,015.0
1291	Office of the Director of Public Prosecutions		Total	420.4	(181.0)	239.4
		0612000	P.1 Public Prosecution Services	420.4	(181.0)	239.4
1301	Commission for the Implementati		Total	-	-	-
		0613000	P.1 Implementation of the Constitution	-	-	-

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
	on of the Constitution					
1311	Office of the Registrar of Political Parties		Total	27.7	-	27.7
		0614000	P.1 Registration, Regulation and Funding of Political Parties	27.7	-	27.7
1321	Witness Protection Agency		Total	5.0	-	5.0
		0615000	P.1 Witness Protection	5.0	-	5.0
2011	Kenya National Human Rights Commission		Total	-	-	-
		0616000	P.1 Protection and Promotion of Human Rights	-	-	-
2021	National Land Commission		Total	120.2	(150.0)	(29.8)
			P.13 Land Administration and Management	120.2	(150.0)	(29.8)
2031	Independent Electoral and Boundaries Commission		Total	690.8	(71.0)	619.8
		0617000	P.1 Management of Electoral Processes	690.8	(71.0)	619.8
2041	Parliamentary Service Commission		Total	436.0	(1,100.0)	(664.0)
		0721000	P.1 National Legislation, Representation and Oversight	-	-	-
		0722000	P.2 Senate Affairs	397.0	(200.0)	197.0
		0723000	P.3 General Administration, Planning and Support Services	39.0	(900.0)	(861.0)
2042	The National Assembly		Total	300.0	-	300.0
		0721000	P.1 National Legislation, Representation and Oversight	300.0	-	300.0
2051	Judicial Service Commission		Total	-	-	-
		0619000	P.1 General Administration, Planning and Support	-	-	-

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			Services			
2061	The Commission on Revenue Allocation		Total	(15.1)	-	(15.1)
		0724000	P.1 Inter-Governmental Revenue and Financial Matters	(15.1)	-	(15.1)
2071	Public Service Commission		Total	(45.5)	(115.0)	(160.5)
		0725000	P.1 General Administration, Planning and Support Services	(36.8)	(115.0)	(151.8)
		0726000	P.2 Human Resource management and Development	(7.4)	-	(7.4)
		0727000	P.3 Governance and National Values	(1.3)	-	(1.3)
2081	Salaries and Remuneration Commission		Total	97.5	-	97.5
		0728000	P.1 Salaries and Remuneration Management	97.5	-	97.5
2091	Teachers Service Commission		Total	6,806.9	(133.0)	6,673.9
		0509000	P.1 Teacher Resource Management	7,960.0	-	7,960.0
		0510000	P.2 Governance and Standards	(46.0)	-	(46.0)
		0511000	P.3 General Administration, Planning and Support Services	(1,107.1)	(133.0)	(1,240.1)
2101	National Police Service Commission		Total	38.0	-	38.0
		0620000	P.1 National Police Service Human Resource Management	38.0	-	38.0
2111	Auditor General		Total	8.5	(247.0)	(238.5)
		0729000	P.1 Audit Services	8.5	(247.0)	(238.5)
2121	Controller of Budget		Total	(51.7)	-	(51.7)
		0730000	P.1 Control and Management of Public	(51.7)	-	(51.7)

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			finances			
2131	The Commission on Administrative Justice		Total	-	-	-
		0731000	P.1 Promotion of Administrative Justice	-	-	-
2141	National Gender and Equality Commission		Total	(4.3)	18.2	13.9
		0621000	P.1 Promotion of Gender Equality and Freedom from Discrimination	(4.3)	18.2	13.9
2151	Independent Police Oversight Authority		Total	(23.6)	-	(23.6)
		0622000	P.1 Policing Oversight Services	(23.6)	-	(23.6)
Total Ministerial Expenditure				21,754.1	4,214.2	25,968.2

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE ACCESS TO INFORMATION BILL

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! You can resume your seats. We are handling the Access to Information Bill (National Assembly Bill No.36 of 2015). Order, Member for Murang'a! We will start.

(Clause 3 agreed to)

Clause 4

The Temporary Deputy Chairman (Hon. Cheboi): Order, Member for Murang'a! There is a lot of excitement coming from your corner this morning. I do not know what is happening there. What is it, Hon. Kahangara? What is it, Member for Murang'a? Let me hear what you have to say.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Temporary Deputy Chairman. I wanted to confirm to this House that Hon. Nyokabi, Hon. Alice Wahome, Hon. Sonia, Hon. Amina and I are ladies. There is a Member, who has left, who asked where the ladies are. In the morning when I checked, I was intact and my gender had not changed. I just wanted to confirm that there are ladies in this House.

The Temporary Deputy Chairman (Hon. Cheboi): That is rather obvious. Hon. Nyokabi would easily prove it by standing. I would not want to go in that direction. Let us proceed with serious business.

I have proposed the Question. I expect Hon. Kiptanui to move his amendment. We are in Clause 4. Let us be Hon. Members for the time being. The rest can be discussed after work hours.

Hon. Kiptanui: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 4 of the Bill be amended by deleting Sub-clause (5) and substituting therefor the following new sub-clause —

“(5) Nothing in this Act shall limit the requirement imposed under this Act or any other written law on a public entity or a private body to disclose information.”

We are seeking to ensure that once the Bill is enacted into law, it shall limit the requirement imposed under this Act or any other written law on a public entity or a private body to disclose information. We are just re-wording that clause.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Member for Chuka/Igambang'ombe. What do you want to say to this? I can see you are not very prepared. Let us have Hon. Makali Mulu. Do you want to speak to this amendment?

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. When I look at this amendment, I get a bit worried. This is because it says that nothing in this Act shall limit the requirement imposed to disclose information, either in this Act or any other written law on a public entity or private body. Unless the Mover of this amendment has not explained well, the reason why I am worried is whether we are trying to introduce limitations. When we were debating this Bill, we said clearly that we want Kenyans to have access to information, including when it is security information, as long as those who have access to that information have been vetted. He needs to clarify that otherwise, I will oppose the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. You will have your say. Hon. Nyokabi, you will have an opportunity to move your amendment. I will give a chance to the Member for Sigowet/Soin, if he wants to speak to this one.

Hon. Kemei: Thank you, Hon. Temporary Deputy Chairman. The Constitution provides that the people of this country have a right to access information. If this amendment limits access to information, then I will oppose it. Unless Hon. Kiptanui explains in detail why we need it, I will oppose it.

The Temporary Deputy Chairman (Hon. Cheboi): Maybe the only thing I can do is to give the Chair of the Departmental Committee on Energy, Communication and Information a chance to explain. I am not going to give more Members a chance because we are limiting ourselves to two Members, which we agreed previously.

Hon. Kamau: Thank you very much, Hon. Temporary Deputy Chairman. We are simply re-wording it. In fact, if you look at the original clause, and I want to read it for the Members, it says that:-

“Nothing in this Act shall limit or otherwise restrict any other legislative requirement for public entity or a private body to disclose information”.

We are just changing that to mean that nothing in this Act shall limit the requirement imposed under this specific Act. Therefore, basically, it does not harm 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)*

The Temporary Deputy Chairman (Hon. Cheboi): We will proceed to Hon. (Ms.) Kanyua’s amendment.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 4 be amended by inserting the following new Sub-clause immediately after Sub-clause (5)—

“(5A) This Act—

- (a) has effect subject to the Constitution;
- (b) applies despite any other existing law, whether or not explicitly repealed or amended by this Act;
- (c) applies despite any regulations or other subordinate legislation under any Act.”

The reason for this amendment is that in our statute books, we have over 33 pieces of legislation, which in one way or the other, touch on matters of information. Sometimes it is not towards releasing information, but towards limiting access to information.

Therefore, this law, coming as it is in 2016, is going to apply, even if the others have not been repealed. You know that cleaning up an entire legal system takes a number of years. Therefore, this particular law is going to come in 2016, but we are in acknowledgement that there are many other laws and regulations that may not be in tandem with it. But with time, and as the new jurisprudence develops, this law will continue to apply. So, this is a saving clause, as it were, on the other existing pieces of legislation.

I beg the House to accept it.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): It is Clause 4. You are inserting a new Sub-clause 5(A). What is it, Leader of the Majority Party? Give him the microphone.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I want Hon. Kanyua to make more clarification on this matter. In her amendment, she says that any other existing law, similar to

this, will be overridden by this law. I know there are certain pieces of legislation on access to information, including the National Intelligence Service. So, I want her to make it very clear. We cannot make a blanket amendment that all other existing pieces of legislation currently will be overrun. Unless they are amended by this House, then one Act cannot override another Act of Parliament.

I indulge her to withdraw that amendment. There are many laws existing even in the private and security sectors.

The Temporary Deputy Chairman (Hon. Cheboi): I will give Hon. Kanyua an opportunity, if her intention is to withdraw but if not, I will give Hon. Kiptanui an opportunity to say something about it.

Let us hear. What is it Hon. Kanyua?

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman. In view of the clause we just passed earlier, which was already protecting the intention that I intended to protect, and in view of what the Leader of the Majority Party has said, I admit that this is a lazy style of drafting where you do not want to look at what all the other pieces of legislation are saying. I agree and withdraw the amendment.

(Proposed amendment by Hon. (Ms.) Kanyua withdrawn)

The Temporary Deputy Chairman (Hon. Cheboi): Okay, that solves the problem.

(Clause 4 as amended agreed to)

Clause 5

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

Hon. Kiptanui: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 5 of the Bill be amended by inserting the words "Subject to section 6" immediately before the words "A public entity shall" in Sub-clause (1).

This amendment seeks to create a proviso on the right of access to information. That is straightforward.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to two Members. I will start with Hon. Roba Duba, if he wants to speak to this.

Hon. Duba: Thank you, Hon. Temporary Deputy Chairman. My earlier pressing of the button was to contribute to Hon. (Ms.) Kanyua's proposal.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let me give the Member for Marakwet West this chance.

Hon. Kisang: Thank you, Hon. Temporary Deputy Chairman. I wanted to discuss what Hon. (Ms.) Kanyua wanted to amend, but now that she has withdrawn, I do not have an issue.

But Clause 6 is straightforward. I support what the Vice-Chair has proposed.

The Temporary Deputy Chairman (Hon. Cheboi): It is Clause 5. You must be speaking to something else.

Hon. Kisang: Sorry, it is Clause 5.

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

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

(Clause 5 as amended agreed to)

Clause 6

The Temporary Deputy Chairman (Hon. Cheboi): Again, we have proposed amendments by Hon. (Ms.) Kanyua and Hon. Kiptanui. We will start with Hon. Kiptanui representing the Committee then we will give a chance to Hon. (Ms.) Kanyua.

Hon. Kiptanui: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 6 be amended-

(a) by deleting the opening statement in Sub-clause (1) and substituting therefor the following new statement—

(i) Pursuant to Article 24 of the Constitution, the right of access to information under Article 35 of the Constitution shall be limited in respect of information whose disclosure is likely to—”

(b) in Sub-clause (1) by—

(ii) inserting the word “or private” immediately after the word “public” in paragraph (f);

(iii) deleting paragraph (h) and substituting therefor the following new paragraph—

“(h) infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession”;

(c) in Sub-clause (2) by —

(i) inserting the words “covert operations” immediately after the words “military strategy” in paragraph (a);

(ii) deleting the words “or foreign activities” appearing in paragraph (d);

(iii) inserting the following new paragraph immediately after (f) —

“(g) information obtained or prepared by any government institution that is an investigative body in the course of lawful investigations relating to the detection, prevention or suppression of crime, enforcement of any law and activities suspected of constituting threats to national security.”

(d) in Sub-clause (4) by inserting the words “as shall be determined by a Court” immediately after the words “protected interests”.

It seeks to remove ambiguity by defining the legal profession, privilege and foreign relations which encompass foreign activities. It also seeks to define what information relates to national security by including additional grounds which are covert operations. This is hidden information or under cover obtained or prepared by any Government institution that is an investigative body in the course of lawful investigations.

Finally, it also provides that the courts shall determine circumstances where exempt information may be disclosed in particular where public interest outweighs the harm to protected interests.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give two Members a chance starting with Hon. Arthur Papa Odera, the Member for Teso North.

Hon. Odera: Thank you, Hon. Temporary Deputy Chairman. Any country in the world will have some information that needs to be protected or information that can easily be used against the best interest of the country. Therefore, as we debate and want Kenyans to enjoy their right of access to information, there is a need to ensure that that right is not exercised recklessly. So, I support the confidentiality of certain pieces of information. If you moved that to the private sector, you would also find that relationships between doctors and patients, bankers and clients need to be protected. So, we need to ensure that within the enjoyment of the right of access to information, it is not recklessly exercised.

So, I support.

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

Hon. (Ms.) Sunjeev: Thank you for ably correcting that very quickly. The Hon. Member before me clarified it very well. I confirm and support. However, this amendment brings in Article 24 of the Constitution which is on the limitation of rights and fundamental freedoms. It brings this into the amendment and that is why I am more comfortable with the change.

*(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)*

Hon. Temporary Deputy Chairman (Hon. Cheboi): We proceed to Hon. Nyokabi's proposal. You now have the microphone.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 6 be amended—

(a) in Sub-clause (1), by—

(i) deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) cause substantial prejudice to the national security of Kenya”;

(ii) deleting the words “or endanger the safety of life of any person” in paragraph(b);

(iii) inserting the following new paragraph immediately after Paragraph (b)—

“(ba) endanger the safety, health or life of any person”;

(b) in Sub-clause (2) by inserting the following new paragraph immediately after paragraph (d)—

- “(da) information that by international law, or agreement between States or with an international organisation is required to be kept confidential;
- (c) by inserting the following new subclause immediately after Sub-clause (4)—
“(4A) A public entity is not obliged to supply information to a requester if that information is reasonably accessible by other means”;
- (d) by deleting Sub-Clause (7).

In sub-Clause 1, I wish to introduce the words “cause a substantial prejudice to the national security of Kenya”. In looking at interpretation, it has become clearly apparent that “cause substantial prejudice” has been interpreted and is a well-known concept. “Undermine in law” is a little bit unclear. So, we are seeking to change the language to “cause substantial prejudice to the national security of Kenya”. Information that can cause substantial prejudice to the national security in Kenya should not be released unless other standards are met. However, at a first instance, information relating to national security that will cause substantial prejudice to the national security of Kenya should not be released.

Still on the same clause, in the second part, we have the sub-clause covering the exemption on endangering the safety of life of any person. There was a typographical problem in that one. In the new amendment sought, we want to separate the exemption on impeding due process of law. Information that would impede the due process of law cannot be released. We want to separate and have another clause on endangering the safety of health or life of any person. It is just better language and arrangement.

Thirdly, amendment on Clause 6 is for the coverage of information by international law or agreement between States or with an international organisation that is required to be kept confidential. There are many agreements between States and international organisations. Under both Kenyan and the international law, at a first instance, those agreements should not be open to the public unless there are reasons why they should be disclosed. It has become controversial on some of the resources that we have. So, at a first instance, we should keep those agreements confidential until such a time as the State might, in its own interest, release the information.

The information that a requester requires should only be availed where it is not accessible by any other means. Where information has already been put out there in websites and is in public domain, it is unnecessary trouble on Government officers to come back and request the same information which is available in public domain. If that should happen, then a requester is not allowed to burden the State with unnecessary obligations.

Lastly, we have put the offences in one clause 26 instead of reading offences in every section. A neater way of drafting is to put offences in one clause. So, we are deleting the offence here, so that it goes to the offences clause in 26.

I beg to move these amendments and beg the House to accept them.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. In the first instance, I will guillotine your amendments, but if I realise that the House wants to specifically vote for each of your amendments, I will do exactly that. So, all I need is to get the mood of the House, whether we should go amendment by amendment or we go the guillotine way to save time. Looking at the mood of the House, I think some Members seem to suggest that they would want us to go clause by clause. So, I will first propose the Question.

(Question of the amendment proposed)

We will discuss it generally and then we will come to the vote amendment by amendment. Let me start with the Member for Garissa Township, the Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Chairman. My problem is with Sub-clause 1. I want Hon Nyokabi to listen to me. The Bill states that “disclosure of information that is likely to undermine the national security of Kenya”. Hon. Nyokabi wants to amend that to read that “cause substantial prejudice to the national security of Kenya”.

The Bill covers a wider spectrum. The word “undermine” is different from “prejudice to the national security”. The Bill is hers and her amendment is weaker than the provision in the Bill. So, let us have the one in the Bill. I beg that we drop the amendment. The word “prejudice” is weaker. It is only one section and we are dealing with national security. So, let us say anything that undermines the national security of our country cannot be disclosed.

The Temporary Deputy Chairman (Hon. Cheboi): I can see Hon. Nyokabi shaking her head in agreement. Do you want to withdraw that particular one, so that we do not waste time discussing it? Okay. Let us hear from Hon. Jamleck Kamau again.

Hon. Kamau: Hon. Temporary Deputy Chairman, I want to pursue my good colleague, Hon. Nyokabi. Just like what Hon. Duale has talked about, on issues that we are discussing, we cannot talk about “substantial prejudice” as that is a new term that has been introduced which is not even in the opening clarification. When you talk about undermining the national security of Kenya, that covers a wide plethora of areas that we can look into as opposed to talking about prejudice.

The Temporary Deputy Chairman (Hon. Cheboi): So, which one are you speaking to?

Hon. Kamau: I am talking about the first one.

The Temporary Deputy Chairman (Hon. Cheboi): The one which Hon. Duale has dealt with?

Hon. Kamau: Yes, but I have another one.

The Temporary Deputy Chairman (Hon. Cheboi): I want you to go to the other one. Let us leave this first one.

Hon. Kamau: I have no issues with the second one. The one on endangering safety of life of any person is okay. The one which I was talking about relates to Sub-clause 2, which talks about information relating to national security and then it is enumerated. On part (da) “information that by international law, or agreement between States or with an international organisation is required to be kept confidential” this is actually covered under (d) on foreign relations because national security includes foreign relations.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, so your problem is (b) on Sub-clause (2). I will give an opportunity to Hon. Nyokabi eventually, but let me give a chance to two other Members. Let me have the Member for Chuka/Igambang’ombe and then Hon. Sambili.

Hon. Njuki: Thank you, Hon. Temporary Deputy Chairman. I want to echo the sentiments of the Leader of the Majority Party. I want to draw your attention to a case which occurred recently in the United States of America (USA). There was a law like this which had a loop hole. The famous Apple Technology Company, which manufactures iphones, refused their phone to be cracked by security. They felt that the information being sought did not have enough ground to cause any insecurity in the country. It was a big problem because it was about a

criminal case. Putting the word “prejudice” will bring an argument whether there is substantial prejudice. The way it was is enough.

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

Hon. (Prof.) Sambili: Thank you, Hon. Temporary Deputy Chairman. I support that we use the word “undermine” in this clause. I think it is strong enough. “Substantial prejudice” cannot be measured. This is to protect the security of the State. Even though people demand freedom of access to information, it is important to protect the security of the nation. I request my sister to leave out the use of “substantive prejudice”.

The Temporary Deputy Chairman (Hon. Cheboi): I will hear from Hon. Nyokabi, so that she can tell us which one she might be intending to drop. If none, I will simply proceed and put a vote on each clause.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman. I am persuaded that the word “undermine” covers a little bit more than causing substantial prejudice. I want to drop the first amendment on causing substantial prejudice to the national security of Kenya. Anyway there is a part explaining what national security is. I will retain the second amendment on deleting the words “or endanger the safety of life of any person.”

The Temporary Deputy Chairman (Hon. Cheboi): You are talking about (ii).

Hon. (Ms.) Kanyua: Yes, I will drop a(i) and also the one which the Chairperson of the Committee has raised on the matter of international law on agreement between State parties. The Leader of the Majority Party is also advising that the law on treaties that the House recently passed covers that matter substantially. Let me drop those two and withdraw them.

The Temporary Deputy Chairman (Hon. Cheboi): Which ones do you intend to retain?

Hon. (Ms.) Kanyua: I will retain parts (ii), (iii) which goes together and then (c) on a requester who is trying to get information already available through other means. I will also retain (d) on clearing and tightening the offences.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, can we put the three to vote under guillotine. We have removed two amendments which she has dropped, that is a(i) and (ii). Is it?

Hon. (Ms.) Kanyua: Yes.

The Temporary Deputy Chairman (Hon. Cheboi): Not (ii), but (b) on Sub- clause 2. Right?

Hon. (Ms.) Kanyua: Yes (b) on Sub-clause 2.

*(Proposed amendment by Hon. (Ms.) Kanyua
on parts a(i) and (b) dropped)*

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

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

*(Clause 6 as amended agreed to)
(Clause 7 agreed to)*

Clause 8

The Temporary Deputy Chairman (Hon. Cheboi): On this particular one, we have an amendment by Hon. Kiptanui.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 8 of the Bill be amended in Sub-clause (1) by inserting the words “in writing” immediately after the words “shall be made”.

This is straightforward. It seeks to provide that the application for access to information shall be made in writing.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Two Members will speak to this. Let me hear from Hon. Mishi Juma.

Hon. (Ms.) Khamisi: Thank you, Hon. Temporary Deputy Chairman. I support the amendment on writing. If one puts a request in writing, then there will be a record of that application.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kimaru, Member for Kesses.

Hon. J. K. Bett: Thank you, Hon. Temporary Deputy Chairman. I also want to concur with the amendment by Hon. Kiptanui. We cannot go by verbal application for access to information. It needs to be documented for future reference. I concur.

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

(Clause 8 as amended agreed to)

Clause 9

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

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 9 be amended, by—

(a) inserting the following new subsection immediately after subsection (2)—

“(2A) As soon as the information access officer has made a decision as to whether to provide access to information, he or she shall immediately communicate the decision to the requester, indicating —

- (a) whether or not the public entity or private body holds the information sought;
- (b) whether the request for information is approved;
- (c) if the request is declined the reasons for making that decision, including the basis for deciding that the information sought is exempt, unless the reasons themselves would be exempt information; and
- (d) if the request is declined, a statement about how the requester may appeal to the Commission”;

(b) deleting Sub-clause (5).

In Clause 9, we seek to insert a New Clause 2A. It requires the information officer to, as soon as practically possible, revert to the requester. In the second amendment in (b), which is deleting Sub-clause 5, is an offence. As I said earlier, we will put the offences in one section at the back of the Bill. Those are the amendments that I seek to move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): As I give a chance to Members, let me see if there is concurrence that we can guillotine the two, so that, Members will contribute to both. Okay, there is concurrence to that. We will start with the Member for Nakuru Town East.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Chairman. I support what the Chair has just said. It is important, particularly if you are seeking for information, to be given answers. We have had cases where one seeks information and no one wants to give it out. At least there must be an answer, whether yes or no. If no, there must be reasons. I concur and support.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Fatuma. I will give a chance to two more Members because I consider this to be two different clauses. Hon. Fatuma, you are not sure, can I give the chance to somebody else?

Hon. (Ms.) F. I. Ali: Thank you, Hon. Temporary Deputy Chairman. I wanted to speak on Clause 16.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Makali Mulu.

Hon. Mulu: Hon. Temporary Deputy Chairman, I support this amendment, but I want to put a kind of a caveat. I get a feeling that repeatedly the Mover of this amendment is saying security information cannot be accessed. The spirit of the Bill is that security information will be accessed only by vetted people, so that we do not appear like we are telling Kenyans that if they want information on security, they cannot be given. If one is vetted and qualified, and he can keep the information confidential, that should be the spirit of the Bill and the Mover. That needs to come out clearly because Kenyans might think that anything to do with security is out of bounds for them.

I support.

The Temporary Deputy Speaker (Hon. Cheboi): Let us hear from the Committee. Hon. Kiptanui.

Hon. Kiptanui: Hon. Temporary Deputy Chair, I had initially thought of opposing this amendment, but having listened to the Members, I have changed my mind and I support it.

What Hon. Nyokabi is trying to propose is already contained in Clause 9. What has been provided is very clear. If you request for information, there are timelines. The officer who has that information must give it to you within stipulated timelines. The penalties are also provided.

The Temporary Deputy Speaker (Hon. Cheboi): There seems to have been limited consultations between the Mover of the Bill and the Committee? Committee Members should be encouraged to work closely with the Committee whenever a Bill has been proposed, so that we do not have this kind of scenario.

Hon. Kiptanui: Hon. Temporary Deputy Chairman, she, indeed consulted. That is why I rose to support the amendment.

The Temporary Deputy Speaker (Hon. Cheboi): Okay, Hon. Duba wants to speak to the amendment, but we have a limit of contributions from two Members per clause. I have given

a chance to four Members because I considered the fact that there are two clauses. You will speak to the other one.

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

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

(Clause 9 as amended agreed to)

Clause 10

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 10 be amended by deleting sub clause (4).

This is a drafting style amendment to ensure that the offence is put together with all the other offences in Clause 26. That is the only effect of this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, before I open it to the Members to speak to it, I would like to inform the Membership that we have with us at the Speaker's Gallery, a delegation from the Nigerian Command and Staff College, led by Air Commodore, Abubakar Liman, Prof. Usman Tar From Nigeria Defence Academy and Colonel Sebastian Lekaunye from the Kenya Defence Forces.

The delegation is in the country on a study tour. On my own behalf and that of the National Assembly, I wish them a fruitful engagement during the course of their stay in the country.

Thank you.

(Applause)

Hon. Members, I had proposed the Question on that particular amendment. I now open the amendment for Members to speak on it. I will give a chance to two Members.

Hon. (Ms.) Kanyua: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Speaker (Hon. Cheboi): What is it, Hon. Nyokabi?

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, there was an amendment to Clause 10, but we also have New Clause 10A. Can I move both of them together or do we proceed with the one I moved earlier first and then we go to the New Clause?

The Temporary Deputy Chairman (Hon. Cheboi): The New Clause will obviously come at the end. We will proceed and prosecute Clause 10. We will deal with others later because it will have to be read a Second Time. For now, let us deal with Clause 10 as it is and not the New Clause.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, I have already moved that one. The Vice-Chair was going to respond to it.

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

The Temporary Deputy Chairman (Hon. Cheboi): What is it, Member for Nakuru Town East?

Hon. Gikaria: Hon. Temporary Deputy Chairman, we just moved the same thing earlier. Do we need to keep repeating it? It is the same thing. It talks about conviction. She had indicated that she would bring it later.

The Temporary Deputy Chairman (Hon. Cheboi): Much as you might have a point, for good order, let us proceed in the manner we are doing now. We will not waste so much time on it, anyway. We will give a chance to Members to quickly ventilate on it and then I will put the Question.

Let us hear the Vice-Chair of the Committee, Hon Kiptanui, and then I will give the Floor to Hon. Omulele.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Chairman. I rise to support the amendment. We do not object to it.

The Temporary Deputy Chairman (Hon. Cheboi): Thank you. Let us listen to the Member for Luanda, Hon. Omulele.

Hon. Omulele: Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity. I also rise to support the amendment. It is quite in order to make the whole Bill orderly.

The Temporary Deputy Chairman (Hon. Cheboi): That is straightforward.

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

(Clause 10 as amended agreed to)

(Clauses 11, 12 and 13 agreed to)

Clause 14

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 14 be amended in Sub-clause (1) by deleting the word “redacted” in paragraph (b) and substituting therefor the word “edited”.

The amendment is just replacement of one word. The drafters of this Bill have used the word “redacted”. As a country, we have just dealt with the International Criminal Court (ICC), where we saw usage of the language of reduction. The language that we have always known in Kenya is that of editing. It would be in good stead in keeping with our own laws to use the language that we know. In Kenya, we use the language of unedited copy as opposed to redacted form. The latter is influence of other jurisdictions on our drafters. The amendment just seeks to replace the word “redacted” with a word that is commonly used in Kenya.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): On this amendment, I could give an opportunity to one Member. Let us hear what Hon. Racheal Amolo has to say to this one.

Hon. (Ms.) Amolo: Thank you, Hon. Temporary Deputy Chairman. I rise to support the amendment because it will make it easier for all Kenyans to understand this law with ease.

I support the use of the word “edited”.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Duba, do you have something on this particular one?

Hon. Duba: No, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Member for Chuka/Igambang’ombe.

Hon. Njuki: Hon. Temporary Deputy Chairman, I was a bit worried about your style. Sometimes you give a chance to two Members while other times you give a chance to three Members.

The Temporary Deputy Chairman (Hon. Cheboi): Do not push it too hard, I might insist on one.

Hon. Njuki: Thank you, Hon. Temporary Deputy Chairman. I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, the official position is two Members. Sometimes we have two different amendments in one particular clause. That is when I give a chance to four Members. Member for Chuka/Igambang’ombe, I might withdraw the privilege that I have given you.

Hon. Njuki: Hon. Temporary Deputy Chairman, I know that you are a good man. You will not withdraw it. Initially, I thought you were a bully, but I came to realise that you are a good man.

I wanted to support this amendment because a good law should be easy to interpret. If we use words like “redacted” instead of “edited”, it may cause complications to Kenyans who want to understand the Bill.

I support.

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

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

(Clause 14 as amended agreed to)

(Clause 15 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Member for Chuka/Igambang’ombe, on this particular one, I am not giving a chance to any other Member. That is the beauty of being the Chair during a particular session. You make decisions yourself.

Clause 16

Hon. Kiptanui: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 16 of the Bill be amended in Sub-clause (4) by deleting the words “to a term not exceeding three years imprisonment” and substituting

therefor the words “to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both”.

The proposed amendment seeks to introduce a fine as a penalty to allow for discretion of a judge whether he can impose a fine or prescribe a term for imprisonment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Ms.) Fatuma Ibrahim.

Hon. (Ms.) F.I. Ali: Hon. Temporary Deputy Chairman, I want to oppose this amendment because the fine is too high. Remember, we are dealing with a nation with a 52 per cent of its population being poor people. Prisons are full and we should reduce the imprisonment term to six months or a year. We should be careful with the laws that we make here.

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

Hon. Kisang: Thank you, Hon. Temporary Deputy Chairman. We had a discussion in the Committee about this issue. I support the amendment because initially, it only had the option of imprisonment, but we agreed to give the judge or magistrate an option of either jailing someone for three years or less. I wanted to explain to Hon. (Ms.) Fatuma that the judge has discretion to jail one for one or two days because the term does not exceed three years. This amendment gives the judge leeway to make a decision.

*(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)*

(Clause 16 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): I will only judge by the decibels of the voices and not the prolonged voices.

(Clause 17 agreed to)

Clause 18

Hon. Kiptanui: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 18 of the Bill be amended—

(a) in Sub-clause (1) by deleting the expression “section 7” and substituting therefor the expression, “section 8”;

(b) in Sub-clause (3) by deleting the word “two” and substituting therefor the word “one”.

The proposed amendment seeks to remove a typographical error and reduce the penalty of a person convicted of alteration.

(Question of the amendment proposed)

Hon. (Ms.) Kipchoim: Hon. Temporary Deputy Chairman, I rise to support the amendment by Hon. Kiptanui.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Makali Mulu.

Hon. Mulu: This amendment is straightforward. So, I support it.

*(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 18 as amended agreed to)

(Clause 19 agreed to)

Clause 20

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 20 be amended by inserting the following new Sub-clause immediately after Sub-clause (2)—

“(3) The Commission shall designate one of the Commissioners as “Access to Information Commissioner” with specific responsibility of performing the functions assigned to the Commission under this Act”.

The amendment seeks to provide for the designation of one of the commissioners as an “Access to Information Commissioner” to oversee the enforcement of the provisions of the Bill once enacted into law. As it is now, the commissioners have many functions, but as they get the new duty on the access to information law, they designate one of their members to be in charge of access to information matters. This has a precedent in many other countries. The Government amendments, which will come in the Data Protection Bill that we are still waiting for, were to create an information commissioner who will then oversee these matters. One commissioner from the Commission on Administrative Justice (CAJ) will be dealing with these matters and when the Data Protection Bill comes, we will then harmonise the two. It would be easier handing over to one commissioner as opposed to having the entire commission dealing with access to information. This is an administrative measure.

I want to beg the Members to agree to amend Clause 20 to require that the CAJ designates one of the commissioners as an Access to Information Commissioner.

(Question of the amendment proposed)

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

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, I support the amendment to Clause 20, but I want to ask Hon. (Ms.) Nyokabi to do a further amendment with your permission. It is good to hold one commissioner responsible in the event that confidential information is leaked other than look for a person who leaked it. I will be very happy if she could

do a further amendment on this to provide that the commissioner is vetted by the relevant institutions, so that he knows that he is the custodian of a very important section.

Hon. Member: Vetting to be done by the National Assembly?

Hon. A.B. Duale: No. He can be vetted by the agencies such as the National Intelligence Service (NIS).

The Temporary Deputy Chairman (Hon. Cheboi): Hon. A.B. Duale, your suggestion makes a lot of sense if Hon. (Ms.) Nyokabi can accept. This is a real ambush and it will be very difficult for us to process the further amendment unless we look into it. Hon. Kiptanui.

Hon. Kiptanui: I support.

The Temporary Deputy Chairman (Hon. Cheboi): Member for Nakuru Town East, please, proceed as we buy time to look into the further amendment.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Chairman. I want to oppose the amendment to have one commissioner responsible. As Hon. Duale has said, if information leaks, it can be traced. She has rightfully said that it is an administrative measure and I do not think it needs to be in the law. In the National Police Service Commission, one commissioner was away for a while and assuming that the designated commissioner fails to perform because of health issues, what happens? It is an administrative issue and any commissioner can perform that role.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Ms.) Fatuma.

Hon. (Ms.) F.I. Ali: Thank you, Hon. Temporary Deputy Chairman. I want to strongly oppose this amendment for two reasons. Any commission has an institutional responsibility and confidentiality policy where it will not allow information to leak out. If you isolate one commissioner to handle confidential information and there are three commissioners, we will have a super commissioner who will be above the chairperson of the commission.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Fatuma, the proposed further amendment is not yet before us. That was also the problem which Hon. Gikaria was grappling with. We are discussing the proposal by Hon. Nyokabi. Until he proposes a further amendment, I want you to either oppose or support the amendment or generally contribute to the amendment which is already on the Floor of the House. Do you support that amendment or you have a problem with it?

Hon. (Ms.) F.I. Ali: Hon. Temporary Deputy Chairman, I want to oppose this amendment for one major reason. It is not good to isolate one commissioner to handle confidential information. It is always appropriate to do it within the commission. They have a confidentiality policy and institutional responsibility.

I oppose this amendment.

The Temporary Deputy Chairman (Hon. Cheboi): I am tempted to dispose of this amendment because we do not seem to be ready yet. I do not want us to take too much time on this amendment. Let us give the opportunity to the Member for Baringo South.

Hon. (Ms.) Kipchoim: Thank you, Hon. Temporary Deputy Chairman. I want to support the amendment by Hon. Nyokabi, which was supported by the Leader of the Majority Party. We have to bear in mind the fact that we are dealing with classified information. We are further saying that those who want to access the information are supposed to request in writing. There must be a desk to receive the information. There should be an officer to deal with the information.

With those remarks, I support that there should be a commissioner to deal with the information.

The Temporary Deputy Chairman (Hon. Cheboi): I will give the last opportunity to the Members who want to make any further amendment. If they are not ready, I will proceed and put the Question.

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

(Clause 20 as amended agreed to)

(Clauses 21, 22, 23, 24, 25 and 26 agreed to)

Clause 27

Hon. Kiptanui: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 27 of the Bill be deleted.

This amendment seeks to realign the drafting of the provisions and regulations with Article 94 of the Constitution and Standing Order No.118, which says that the regulations should be in distinct part.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kiptanui, for clarity, are you deleting the entire clause?

Hon. Kiptanui: Yes, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kiptanui, do you want to contribute? Members feel that you did not say the reason why you want to delete Clause 27.

Hon. Kiptanui: Hon. Temporary Deputy Chairman, we are deleting this clause and moving it to a different part of this Bill. We are deleting Clause 27, but we are introducing it in another part of this Bill.

The Temporary Deputy Chairman (Hon. Cheboi): It is clear. Let us proceed.

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

(Clause 27 deleted)

(Clause 28 agreed to)

New Clause 10A

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the following new clause be inserted immediately after clause
10—

Methods of
providing access
to information

10A. (1) Access to information may be given to a requester in one or more of the following forms—

(a) a reasonable opportunity to inspect the original record containing the information;

(b) a copy of the record containing information, edited if necessary;

(c) in the case of a record that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the requester to hear those sounds or view the images;

(d) in the case of information by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the public body or private body of a written transcript;

(e) in the case of information which is held on a computer, or in electronic or machine-readable form, and from which the public entity or private body concerned is capable of producing a printed copy of the information or part of it, by supplying such a copy; or

(f) in the case of information available or capable of being made available in computer readable form, by supplying a copy in that form.

(2) Where the requester has requested access to information in a particular form, access shall be given in that form unless the giving of access to information in that form would—

(a) unreasonably interfere with the operations of the public entity or private body;

(b) be detrimental to the preservation of the information; or

(c) involve an infringement of copyright subsisting in a person other than the public entity, private body or the State.

(3) If a requester with a disability is prevented by that disability from reading, viewing or listening to the information concerned in the form in which it is held by the public entity or private body, the information access officer of the public entity or private body shall, if that requester so requests, take reasonable steps to make the information available in a form in which it is capable of being read, viewed or heard by the requester.

(4) To the extent, if at all, subsection (2) limits the right to access to information, this is to be read as applying only to the extent strictly necessary to prevent unnecessary disruption of the work of the body providing the information, to avoid detriment to the preservation of the record, or to avoid breach of copyright, as the case may be.

Hon. Temporary Deputy Chairman, New Clause 10A seeks to give the methods through which access to information may be provided. It is one thing to say access to information and another thing to guide what that access entails. This is what the clause says.

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

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order, Hon. Kiptanui?

Hon. Kiptanui: Hon. Temporary Deputy Chairman, my point of order is that the Mover has already said that she is moving the amendments as per the Order Paper. I am wondering why she is reading the entire two pages for us.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, the main intention of this new clause is to give the methods of providing access to information and the detail of what those methods can be. In our jurisdiction, it has not been very easy to get electronic records and to put them into our jurisprudence in terms of the documentation that we could receive. This clause goes into a lot of details on the methods of providing access to information.

I beg Hon. Members to accept this clause.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I want Hon. Nyokabi to listen to me. What is the difference between this amendment and the one under Clause 11(3) of the Bill? Explain to us because what you are saying is covered in Clause 11(3).

The Temporary Deputy Chairman (Hon. Cheboi): You are comparing New Clause 10A with Clause 11(3)?

Hon. A.B. Duale: They are the same. I am asking her to explain if there is any difference.

The Temporary Deputy Chairman (Hon. Cheboi): Let us give a chance to Hon. Nyokabi and then we will hear Hon. Jamleck Kamau.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman it is, indeed, true that Clause 11(3) covers aspects of New Clause 10A. However, New Clause 10A covers what to do with persons living with disabilities. It is an improvement of Clause 11(3). There are more details in New Clause 10A as opposed to what we have in Clause 11(3).

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Let us be clear, Hon. Members. There is quite a lot of movement here.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, if you allow me---

The Temporary Deputy Chairman (Hon. Cheboi): No! We are already at the process of putting the Question. So, make the decision.

Hon. A.B. Duale: Please, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): The problem is I gave an opportunity for Members to ventilate on it. Hon. Nyokabi has explained that this is an improvement of the previous one. Can we accept it or reject it?

Hon. A.B. Duale: I want to convince the Committee Chair because it is a very important Bill. I urge Hon. Nyokabi---

Hon. Linturi: --- (*Off-record*)

Hon. A.B. Duale: Hon. Linturi, I want Hon. Nyokabi to listen to what I am saying.

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Linturi!

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I think what Hon. Nyokabi is doing is good, but we do not do it in legislation. It is like a story. We cannot put it in the Bill. I want her to drop it. I have convinced her.

The Temporary Deputy Chairman (Hon. Cheboi): I give the Floor to Hon. Jamleck. Let us hear what the Committee is saying.

Hon. Kamau: Hon. Temporary Deputy Chairman, I want to agree with my colleague. This new clause talks about the methods of providing access to that information, which is very well covered under Clause 11(3), as the Leader of the Majority Party has said.

The Temporary Deputy Chairman (Hon. Cheboi): Are you convinced, Hon. Nyokabi?

Hon. Kamau: Just to convince her even further, Hon. Temporary Deputy Chairman, if you look at Clause 11(3), any information to be made accessible to an applicant shall be produced forthwith at the place where it is kept for inspection in the form in which it is held, unless the applicant requests that it be made available in another form. So, it covers everything.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nyokabi, let us see if you are convinced so that we do not take too much time on it.

Hon. (Ms.) Kanyua: Yes, I am convinced, especially remembering that the devil resides in the detail. I am convinced that we stay with Clause 11(3). What we were doing is just extrapolating. That extrapolation can be done in the regulations.

I beg to withdraw my amendment.

(Proposed New Clause 10A by Hon. (Ms.) Kanyua withdrawn)

The Temporary Deputy Chairman (Hon. Cheboi): You know you are in your happy mood either lately or today because you seem to get convinced on almost every other---

(Laughter)

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, law making is consensus.

The Temporary Deputy Chairman (Hon. Cheboi): I think it is really consensus, but I am saying you are in your better moods, especially noting where you specifically reside and come from.

New Clause 15A

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the following new clause be inserted immediately after clause 15—

Mediation by the
Commission

15A. (1) Upon receipt of a complaint regarding failure to act, or upon request to review a decision under this Act, the Commission shall, if it considers that the complaint or request appears to be well-founded, endeavour to mediate between the person lodging a complaint or requesting for review, and the holder of the information.

(2) If the mediation contemplated in Sub-section (1) fails, the Commission may—

(a) if satisfied that there has been an infringement of the provisions of this Act, order—

(i) the release of any information withheld unlawfully;

(ii) payment of compensation;

(iii) any other lawful remedy or redress; or,

(b) inform the complainant that, in its opinion, the complaint is not sufficiently serious to merit its further action.

(3) Before making any order under sub-section (2)(a) the Commission shall give the entity concerned, and the information access officer the opportunity to be heard.

(4) For the purposes of this section, the Commission may exercise the powers provided for in section 23.

Hon. Temporary Deputy Chairman, mediation by the Commission is sometimes very important. Even before we go to an adversarial mechanism, there needs to be a chance for mediation on matters of information so that, at the first instance, the Commission would call for a mediated process. The reason that this is important is that, sometimes, the officer whose information is requested from might give an answer which is not shared by the ministry or department. So, in the mediation, there is a chance to correct what would ordinarily lead to an adversarial process that takes long. So, this clause seeks to introduce mediation as a process before adversarial.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to two Members. Let me reserve the Leader of the Majority Party. Never mind the Standing Orders. I will start with Hon. Makali Mulu. Do you want to speak to this one?

Hon. Mulu: Not on this one, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Leader of the Majority Party, do you want to speak to it? After him, we will have Hon. Kiptanui.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, the only mediation I am aware of is the mediation between the Senate and the National Assembly, which is provided for in law. I really

want Hon. Nyokabi to explain better. Who are the people to be mediated on? That is not something we should legislate. We can put it in the regulations.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Kiptanui so that if it is something that is of consensus, we can move on.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Chairman. I persuade the Mover to drop this amendment. You cannot compel two parties to agree on an issue. There is a difference between mediation and arbitration. The latter is mandatory. For me, this provision might not be effective.

I oppose.

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

Hon. (Ms.) Kanyua: I want to persuade the Hon. Members to agree with me on this particular one. The Data Protection Bill that is coming has an internal tribunal mechanism first before we go to the Commission. The proposed mediation by the Commission is the second best alternative to that proposal before the matter goes to adversarial. Sometimes, a person can request for information but before being given reasons as to why the information cannot be availed and the matter raises a lot of controversy, there is a chance for mediation between the requester and the department from which the information is sought. The Commission will handle that mediation.

Hon. Temporary Deputy Chairman, as you know, in our new constitutional jurisprudence, alternative dispute resolution has become a big thing, including in the Judiciary. Before we all end up in court, let us try and negotiate this matter out of court.

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to two members because it seems you are not convinced on this particular one. Let us hear Hon. Namwamba and Hon. Jamleck Kamau.

Hon. Ababu: Hon. Temporary Deputy Chairman, this is a good proposal. I am surprised that we are opposed to a mechanism that would start entrenching alternative dispute resolution as a culture in resolving disputes. This is the reign of access to information in line with the letter and spirit of the Constitution. It is a critical arena. To provide a mechanism that would prevent or offer an alternative to the adversarial contestation in a court of law is a good mechanism. I urge the Chairman of the Committee and his team to support this. It is progressive.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear what the Committee Chair, Hon. Jamleck Kamau, has to say.

Hon. Kamau: Hon. Temporary Deputy Chairman, the first thing you have to do is to differentiate between arbitration and mediation. New Clause 15A(2)(a) says:-

“If the mediation contemplated in Sub-section (1) fails, the Commission may, if satisfied that there has been an infringement of the provisions of this Act, order the release of any information withheld unlawfully.”

This same Commission is supposed to order for the information to get out. So, even before going to mediation if, indeed, they have seen there is infringement on the provisions, they are supposed to order for that information to be availed.

Besides, as I said earlier, arbitration and mediation are different. I think mediation is a voluntary process. I agree with my colleague, Hon. Ababu, that it is a good thing. However, I think this is better covered in the regulations.

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to the last Member to speak on this amendment. If arbitration or whatever you call it fails, I will put the Question and then you will make a decision.

Let us listen to Hon. Rege. I recognize him because I know he is an Information and Communication Technology (ICT) guru.

Hon. (Eng.) Rege: Thank you for the kind words, Hon. Chairman. I concur with all my colleagues in stating that this is truly a good thing to have in the country. Nonetheless, we have to be careful. It is so unfortunate that the Data Protection Bill is not available for Members to take a look. In fact, it would have been nicer if this was looked at alternately with the Data Protection Bill. But I support the Chairman of my Committee in saying that we leave this out for now.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, now make your decision.

(Loud consultations)

Has the mediation succeeded?

Hon. (Ms.) Kanyua: Yes. I am also not very keen on adversarial methods of resolving matters. Allow me to withdraw this particular amendment. Because the legal officers are here, the provision will be carried in the Data Protection Bill and in the regulations.

(Proposed New Clause 15A by Hon. (Ms.) Kanyua withdrawn)

New Clause 26(A)

The Temporary Deputy Chairman (Hon. Cheboi): I give the opportunity to Hon. Nyokabi to move the clause.

Hon. (Ms.) Kanyua: I beg to move:-

THAT, the following new clause be inserted immediately after clause

26—

Offences and penalties.

26A. (1) Any person who knowingly discloses exempt information in contravention of this Act commits an offence and is liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or both.

(2) It shall be a defence to a charge under subsection (1) that the exempt information disclosed was already in the public domain at the time of disclosure.

(3) An information access officer who—

- (a) refuses to assist a requester who is unable to write to reduce the oral request to writing in the prescribed form and provide a copy to the applicant in accordance with section 8(2);
- (b) refuses to accept a request for information;
- (c) fails to respond to a request for information within the prescribed time; or
- (d) fails to comply with the duty to take reasonable steps to make information available in a form that is capable of being read, viewed or heard by a requester

with disability in accordance with section 11(5), commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or both.

(4) Any person who –

- (a) charges a fee exceeding the actual costs of making copies of such information and supplying them to the applicant;
- (b) fails to respond to a request for information required for the exercise or protection of a right in accordance with the requirements of this Act;
- (c) fails to respond to a request to correct personal information; or
- (d) it having been ascertained that information held is out of date, inaccurate or incomplete, fails within the prescribed time, or within a reasonable time if no time is prescribed, to correct, destroy or delete the information, or to attach a statement to the information in accordance with section 15,

commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding six months, or both.

(5) Any person who is convicted of an offence under section 18(3) after a request has been made for disclosure of the information in question, with the intention of preventing the disclosure of that information in response to that request is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

(6) Any relevant private body that fails to make publicly available the name and contact details of its information access officer or officers commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings.

(7) Any relevant private body that is convicted, or any officer of which is convicted of an offence under this Act, or which, although not convicted is in serious breach of this Act may, after a fair hearing, be debarred from entering into any future contract with government under the Public Procurement and Disposal Act or any Act replacing that Act.

(8) A person who—

- (a) fails to attend before the Commission in accordance with any summons or order issued under subsection 24 (1)(a);
- (b) knowingly gives any false or misleading statement of information to the Commission; or
- (c) causes an obstruction or disturbance in the course of

any proceedings before the Commission,
 (d) commits an offence and shall be liable, on conviction, to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both

(9) A person shall not be criminally liable for the disclosure or authorisation of the disclosure made in good faith in reliance on this Act.

(10) A person to whom information is disclosed under this Act, conveys that information to others but who alters the information, or conceals part of the information or misrepresents the information, with intent to deceive, commits an offence, and is liable on conviction to fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

This clause seeks to bring the offences and penalties in one section of the Bill instead of having to read the offences piecemeal. This is the new style of drafting, where you put the offences and the penalties as an enforcement section. It is good for the readers and users of the law and for the enforcement commission. We are just tidying up the Bill so that the offences are found in one place.

Thank you, Hon. Temporary Deputy Chairman. I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Part VA

The Temporary Deputy Chairman (Hon. Cheboi): I will give the opportunity to Hon. Kiptanui to move.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, the Bill be amended by inserting the following new part immediately after section 24—

PART VA – PROVISIONS ON DELEGATED POWERS

Regulations.

25. (1) The Cabinet Secretary may, in consultation with the Commission, make regulations, prescribing anything required by this Act to be prescribed or generally for the better carrying into effect the provisions of this Act .

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(a) the manner in which applications under this Act shall be made;
(b) the form in which information requested under this Act shall be supplied;

(c) the making of an application for personal information by representatives of the person to whom the information relates;

(d) the measures to be taken by public entities to facilitate the exercise by persons of their rights under this Act;

(e) the measures to be taken by public entities to ensure that adequate records are created and maintained by the entities;

(f) the procedures for the making of an application by a complainant for the review by the Commission, of a decision made by a public entity relating to access to information;

(g) the procedure to be followed by a public entity in consulting with a third party before giving access to information obtained by it from that party;

(h) the procedures requiring a public entity to ensure that personal information is accurate;

(i) compensation to be sought by an individual who has suffered damage as a result of the holding of inaccurate information about the individual's personal affairs by a public entity;

(j) the records that public entities shall be required to keep; or

(k) such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(3) For the purposes of Article 94 (6) of the Constitution—

(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;

(b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;

(c) the principles and standards applicable to the delegated power referred to under this section are those found in—

(i) the Statutory Instruments Act, 2013;

(ii) the Interpretation and General Provisions Act,

(iii) the general rules of international law as specified under Article 2(5) of the Constitution; and

(iv) any treaty and convention ratified by Kenya under Article 2(6)

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of 2013

Cap. 2 of the Constitution.

This New Part seeks to align the drafting of regulations with Article 94(6) of the Constitution and Standing Order No. 118, which says regulations should be in a distinct part. You remember we deleted some sections of this Bill. We are now introducing those provisions in this Part.

(Question of the new part proposed)

(New part read the First Time)

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

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

(The new part was read a Second Time)

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

Schedule

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kiptanui, you have an amendment to the Schedule. We can afford to be brief and finalise.

Hon. Kiptanui: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the Schedule by deleting paragraph 4(2) relating to the Official Secrets Act and substituting therefor the following new subparagraph—

(2). Section 3 of the Official Secrets Act is amended by inserting the following new sub-section immediately after subsection (7) —

“(8) The provisions of this section shall apply subject to Article 35 of the Constitution and the law relating to access to information.”

This seeks to amend the Official Secrets Act. Presently, Section 4 deals with other matters not just relating to information. As such, it should not be repealed.

(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)*

(Schedule as amended agreed to)

Clause 2

The Temporary Deputy Chairman (Hon. Cheboi): There are two amendments by Hon. Nyokabi and Hon. Kiptanui. So, let us start with the Committee's proposal.

Hon. Kiptanui. Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 2 of the Bill be amended by—

- (a) inserting the following new definition in its proper alphabetical sequence —
“State” has the meaning assigned to it under Article 260 of the Constitution”.
- (b) by inserting the word “entity” immediately before the word “business” in the definition of the term “public record”.

This amendment seeks to include the definition of “State” as used in Article 260 of the Constitution. The other part of the amendment seeks to realign the definition of the term “public record”.

(Question of the amendment proposed)

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

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

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 2 be amended—

- (a) by deleting the definition of “exempt information” and substituting therefor the following new definition—
“exempt information” means information that may be withheld by a public entity or private body in accordance with section 6;
- (b) in the definition of “information access officer”, by inserting the phrase “or private body” immediately after the phrase “public entity”;
- (c) by deleting the definition of “person” and substituting therefor the following new definition—
“person” includes a company, association or other body of persons whether incorporated or unincorporated;
- (d) by inserting the following new definitions in their proper alphabetical sequence—
“chief executive officer” of a public body or private body means the Principal Secretary in the case of a Government Ministry or Department, managing director in the case of a corporate body, or the person assigned

the principal administrative responsibility in any body by whatever title; and,
“citizen” means any individual who has Kenyan citizenship, and any private entity that is controlled by one or more Kenyan citizens.

This amendment is on definitions. One of the definitions is on exempt information that may be withheld by a public entity or a private body in accordance with Section 6. It is very critical that the Bill is clear on what information is exempt. That is what the interpretation will seek to do.

The second interpretation is on information access officer, who is required to be appointed not just by a public entity, but also by a private body that is covered by the provisions of this Bill.

In paragraph (c), we seek to define a “person” to include a company, association or a body incorporated or unincorporated. This is meant to expand the meaning of a “person” beyond just a natural person. In paragraph (d), we provide the definition of a “chief executive officer” of a public body or a private body to mean the Principal Secretary in the case of a Government Ministry, or department, managing director in the case of a corporate body, or any person who is assigned the principal administrative responsibility in anybody by whatever title.

In this country, we have many ways of referring to chief executive officers. Sometimes, it is “managing director,” “executive director,” or “CEO”. So, we want to capture all of that as part of the definition of “chief executive officer”.

Lastly, the amendment seeks to define a “citizen” to include a Kenyan citizen and a company controlled by one or more Kenyan citizens. These are just definitions for easy understanding of the law.

The Temporary Deputy Chairman (Hon. Cheboi): You will have to be brief, Hon. Nyokabi.

(Question of the amendment proposed)

I will give an opportunity to Hon. Kiptanui and Hon. Duale only.

Hon. Kiptanui: I want to propose that we support part of these amendments and object to others.

The Temporary Deputy Chairman (Hon. Cheboi): Speak to all of them, including the ones you object to. Then, I will give more Members an opportunity to speak to the amendments.

Hon. Kiptanui: On parts (a) and (b), I do not have any objection. Part (c) is defining the term “person” as including a company, association or any other body. If you check the Bill, the definition there says a person has the meaning assigned to it in Article 260 of the Constitution. If we retain the definition as per the Constitution, it will be better.

Finally, part (d) is re-defining “chief executive officer.” She says it should include a Principal Secretary (PS) in the case of a Government ministry. That cannot happen. The meaning of a chief executive officer is very clear. We cannot say that the PS can also be a CEO.

The Temporary Deputy Chairman (Hon. Cheboi): It makes a lot of sense. Let us start with the Member for Chuka/Igambang’ombe, and then I will come to the Leader of the Majority Party.

Hon. Njuki: I want to support what the Vice-Chairman of the Departmental Committee on Energy, Communication and Information has said. When it comes to corporations, they are

immortal beings. In that case, we have to provide a leeway for that continuation. It is important that we do not make the definition of a person definite to mean what is stipulated in that part of the Bill.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Lastly, let us have the Leader of the Majority Party.

Hon. A.B. Duale: I tend to agree with the Vice-Chairman of the Departmental Committee on Energy, Communication and Information. A person has been defined in the Bill within the reading of Article 260 of the Constitution. What we are making is an Act of Parliament. There is no way an Act of Parliament can supersede a definition contained in the Constitution. If you give us a few minutes, we will consult and ask Hon. Nyokabi to do something.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nyokabi, the contention is on sub-clauses (c) and (d). Sub-clause (c) is on the definition of “person” and (d) the definition of “chief executive officer”, where you are including PSs in ministries. You have an opportunity to enter into some mediation. If it fails, we will proceed to have it contested.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker.

On (c), which is on the definition of “person”, I am convinced. It is particularly speaking to the judges who have decided to interpret “person” to mean a natural person. That introduced a whole new concept in law that was unknown. In a country where we need to interpret the law progressively, “person” must mean natural and incorporated persons in our country. We hope the judges will get that. That is why we wanted to put it here. The few judgements that have come up have been moving in the direction of vindicating the idea that “person” only means a natural person.

On CEOs in parastatals or Government ministries, there is no doubt in anybody’s mind that our Cabinet Secretaries (CSs) remain political heads of institutions. The administrative head has always been the PS. The buck must stop somewhere. In this amendment, it stops at the PS. We should keep the definition of a CEO and drop that of “person.”

The Temporary Deputy Chairman (Hon. Cheboi): I see that you have withdrawn amendment on sub-clause(c) but retained the one on (d).

(Proposed amendment on part (c) withdrawn)

We will deal with each of them. Do we deal with them in guillotine?

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

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

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

(Clause 2 as amended agreed to)

Hon. Members, I am surprised at how you have left it to Hon. Nyokabi to acclaim alone in soprano and yet, there was some mediation.

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Mover to move so that we can report progress to the House.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, I beg to move that the Committee of the whole House doth report to the House its consideration of the Access to Information Bill (National Assembly Bill No. 36 of 2015), and its approval thereof with amendments.

In particular, we seek a re-committal of Clause 23(6). We give the reason for the re-committal being the tidying up of the Bill.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

THE ACCESS TO INFORMATION BILL

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Access to Information Bill (National Assembly Bill No. 36 of 2015) and approved the same with amendments, pending re-committal of Clause 23(6).

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report, subject to re-committal of Clause 23(6).

Hon. Kiptanui: I second.

(Question proposed)

(Question put and agreed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we are going back to the Committee.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE ACCESS TO INFORMATION BILL

(Re-committal of Clause 23(6))

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we are only looking at Clause 23(6). Hon. Nyokabi.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 23(6) of the Bill be deleted.

We recommitted this clause for the purposes of deleting it because Clause 26(7) already covers it.

(Question of amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Anybody who wants to speak? Hon. Wamunyinyi, do you want to contribute?

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady, for giving me an opportunity to make my comments on this proposed amendment. I support the proposed amendment by Hon. Nyokabi because it is already captured elsewhere and there is no point for duplication. The point I want to stress is that when we are making law, we must ensure we are cautious so that we make good laws which have no mistakes. I want to encourage Members to be keen when we are undertaking the process of legislation.

Thank you.

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

(Clause 23 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Nyokabi to move reporting.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Access to Information Bill (National Assembly Bill No. 36 of 2015) and its approval thereof with amendments.

Thank you.

(Question put and agreed to)

THE ENERGY BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We are now in the Committee of the whole House to consider the Energy Bill (National Assembly Bill No. 50 of 2015). Can we take a few minutes to ensure that the Leader of the Majority Party is here? It has to be moved by him or his deputy, unless he has expressly given that function to somebody else. The Chairman of the Departmental Committee on Energy, Communication and Information, we will continue with you because most of the amendments are from the Committee.

(Clauses 3 and 4 agreed to)

Clause 5

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 5 of the Bill be amended in Sub-clause (4) by deleting the word “regularly” and substituting therefor the words “after every three years.”

The reason for this is to remove ambiguity as to when the national energy plan will be reviewed. If you look at Clause 5(4) as it is right now, it is not explicit on the timeframe. Therefore, I beg to move that we substitute the word “regularly” with the words “after every three years.”

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Is there a Member who wants to contribute? Hon. Member for Kakamega County.

Hon. (Ms.) Amolo: Thank you, Hon. Temporary Deputy Chairlady. I stand to support the amendment made by the Chairman on the Order Paper. It is important that we know the exact period of time instead of just putting the word “regularly”. So, doing it after every three years will be good enough for every Kenyan to understand.

Thank you.

*(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 5 as amended agreed to)

(Clauses 6, 7 and 8 agreed to)

Clause 9

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 9 of the Bill be amended—

(a) in the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;

(b) in the heading by deleting the word “Authority” and substituting therefor the word “Commission”;

(c) by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

The amendment seeks to re-define the name of the Energy Regulatory Authority to the “Energy Regulatory Commission.” Section 9 talks about the establishment of the Energy Regulatory Authority. Therefore, we seek, in the marginal notes, to delete the word “authority” and substitute therefor with the word “Commission” in the entire clause.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the Member for Baringo South.

Hon. (Ms.) Kipchoim: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment of the Chair as it is straightforward.

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

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

(Clause 9 as amended agreed to)

Clause 10

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 10 of the Bill be amended—

(a) in the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;

(b) by deleting the word “Authority” and substituting therefor the word “Commission” in the opening statement;

This is the same issue of substituting the word “Authority” with the word “Commission”.

(Question of the amendment proposed)

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

Hon. (Ms.) Khamisi: Thank you, Hon. Temporary Deputy Chairlady. The amendment is straightforward and in order. I support it.

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

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

(Clause 10 as amended agreed to)

Clause 11

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 11 of the Bill be amended—

(a) in the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;

(b) by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

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

“(1) impose such sanctions and fines not exceeding one hundred thousand shillings per violation per day for a maximum of thirty days”.

In the marginal note, we are deleting the word “Authority” and substituting it with the word “Commission”. However, in Clause 11(1), we also seek to increase the amount of the fines that the Energy Regulatory Commission can impose. Currently under this Bill, Clause 11(1) says: “the Authority shall have the power to impose such sanctions and civil fines, being not less than ten thousand shillings per violation per day to secure compliance with orders issued under this Act.” We found that to be extremely punitive because if you propose a fine of not less than Kshs10,000, it could be Kshs100 million or any other amount. We want to impose sanctions and fines not exceeding Kshs100,000 per violation per day for a maximum of 30 days. Those fines do not apply to the ordinary consumers or *mwananchi*. It is for the big institutions.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Yusuf Chanzu. Do you want to speak to this?

Hon. Chanzu: Thank you, Hon. Temporary Deputy Chairlady. The first one is okay. Depending on the key roles that this organisation is supposed to play, we are moving from the word “Authority” to the word “Commission”. I also support the issue of the fines imposed because previously, it was open-ended and any amount could be imposed. I support it. It would have been good for us to put in place categories because those big consumers are also in different categories. For now, we will take it as it is.

(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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have two amendments, one by the Chairperson of the Committee and another one by Hon. Sammy Mwaita. We will start with that of the Chair of the Committee.

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 12 of the Bill be amended—

(a) in the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;

(b) by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

(c) in sub-clause (1) by deleting the words “who shall be the secretary to the Board” appearing in paragraph (d).

In Clause 12, we are again substituting the word “Authority” with the word “Commission”. In the current Bill, Clause 12 (d) states:-

“The Director-General of the Commission who shall be the secretary to the Board.”

We want to delete the words “who shall be the secretary to the board” for the simple reason that in light with the Mwongozo Framework, it is recommended that boards should appoint their own secretaries independently.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I will give a chance to Hon. Janet Wanyama.

Hon. (Ms.) Wanyama: Thank you Hon. Temporary Deputy Chairlady. I support the Chairperson because the amendment is straightforward.

*(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 Chairlady (Hon. (Ms.) Shebesh): Hon. Mwaita, could you move your amendment?

Hon. Mwaita: Hon. Temporary Deputy Chairlady, I wish to move the amendment in an amended form. I have discussed with a few Members of the Committee and I feel that the requirements for appointment as a chairperson or a member of the Board should be expanded.

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

THAT, Clause 12 of the Bill be amended in Sub-clause (2)(b) by deleting the words “in the fields of engineering, physical sciences, law, finance, environmental studies, economics, social sciences or energy” appearing in paragraph (b).

This will not lock out many Kenyans who are qualified in management, taking into account that the members of the board of directors are policy makers. We want to bring in as many disciplines and skills as possible in the running of the Commission.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Can I hear from the Chair of the Committee?

Hon. Kamau: Hon. Temporary Deputy Chairlady, we do not have any objections to that.

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

(Clause 12 as amended agreed to)

Clause 13

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 13 of the Bill be amended by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

This amendment seeks to re-define the name of the Energy Regulatory Authority to the “Energy Regulatory Commission”.

(Question of the amendment proposed)

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

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

(Clause 13 as amended agreed to)

Clause 14

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 14 of the Bill be amended—

(a) in the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;

(b) by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

This again is to move from the word “Authority” to the word “Commission”. You will find quite a number of amendments of this kind.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Wamunyinyi, do you want to speak on this?

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. I was following the previous amendment. The Hon. Chair proposed deletion of the word “Authority” and substitution with the word “Commission”. What is the import? Why do you want this to happen?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is a valid question. Let us have the Chairperson reply. Would you explain again? The Member was not in when you explained it earlier.

Hon. Kamau: Hon. Temporary Deputy Chairlady, when we sat as a Committee - and the Ministry agreed to this - we found that it was paramount to retain the name as “Commission” so that we remove the confusion in naming. It is like in Uganda. Uganda has the Energy Regulatory Authority. With respect to the regional naming of these energy bodies, we thought it was important for us to retain it as the “Energy Regulatory Commission” instead of the “Energy Regulatory Authority”.

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

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

(Clause 14 as amended agreed to)

Clause 15

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 15 of the Bill be amended by deleting the word “Authority” and substituting therefor the word “Commission”;
Again, this is to move from Authority to the Commission.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I really think we can go quickly through the “Authority” and “Commission” so that we can move to other areas. It is rather repetitive. So, I will keep going to the Question.

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

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

(Clause 15 as amended agreed to)

Clause 16

Hon. Kamau: Hon. Temporary Deputy Chairlady, I do not know whether it is in order to propose Clauses 16, 17, 18, 19, 20 and 21 because they all seek to re-define the name from “Authority” to “Commission”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Unfortunately, Hon. Member, we cannot do that. The reason we come to Committee of the whole House is that every clause has to be given authority by the Floor of this House. So, you will go one by one but, we will be fast.

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 16 of the Bill be amended—

- (b) In the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;
- (b) by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”

(Question of the amendment proposed)

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

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

(Clause 16 as amended agreed to)

Clause 17

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 17 of the Bill be amended by deleting the word “Authority” and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 17 as amended agreed to)

Clause 18

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 18 of the Bill be amended by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 18 as amended agreed to)

Clause 19

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 19 of the Bill be amended—

(a) in the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;

(b) by deleting the word “Authority” and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 19 as amended agreed to)

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

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, I do not want to take the House back. Normally, our amendments start from Clause 1 which is the title up to the schedule, but what happens if there is something to be amended in the arrangement of clauses?

If you look at the arrangement of clauses in this Bill under 124 and 125, they talk of conditions for granting licenses and conditions for granting licenses or permits. It is a repeat. If

you go to the marginal notes, Clause 124 is actually on conditions for granting licenses and permits and Clause 125 is amendment of licenses or permits.

I just wanted your guidance. This for me would be a major error. I am sure finally when the Bill goes for printing, this is something that--- If you look at the Bill---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gumbo, take us slowly. Go back.

Hon. (Eng.) Gumbo: Go to page 2717 of the Bill. It is on the arrangement of clauses. If you go to page 2722 of the Bill---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Just a minute.

Hon. (Eng.) Gumbo: Under Clause 12---

(Technical hitch)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kabando wa Kabando, you had a point of order.

Hon. (Eng.) Gumbo: My point of order came before his. I was saying that we start from Clause 1 which is the title when we are doing amendments in this House.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): *(Inaudible)*

Hon. (Eng.) Gumbo: Yes, Clause 1. The amendments normally cover from Clause 1 to the schedules---

If you look at the arrangement of clauses on page 2722, you will find that Clause 124 talks about conditions for granting licenses or permits. Clause 125 is also talking about conditions for granting licenses or permits. This is an error. Clause 124 is correct on pages 2809 and 2810 of the Bill. The marginal note is also correct. It is the conditions for granting licenses or permits. However, the marginal note for Clause 125 is "amendment of license or permit."

So, this needs to be corrected.

Hon. Kamau: Thank you, Hon. Temporary Deputy Chairlady. I thank Hon. Gumbo.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I will use this microphone and you will use that one so that you are on record. Hon. Gumbo, quickly repeat what you have said so that we put it on record and the Chair will respond.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Chairlady. Normally when we do our amendments, they start from the title to the schedules. That is what our amendments capture. Very rarely do we amend the arrangement of clauses. However, the arrangement of clauses on page 2722 shows that Clause 124 is on conditions for granting licenses or permits. Clause 125 is also about conditions for granting licenses or permits. However, the marginal notes under Clause 124 on page 2809 of the Bill are correctly entered as conditions for granting licenses or permits, while Clause 25 is entered as amendment of license permit. I believe that in the arrangement of clauses, we need to have an amendment so that Clause 125 is correctly represented.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. Thank you, Hon. Gumbo. Let us have the Hon. Chair of the Committee.

Hon. Kamau: Indeed, I thank Hon. Gumbo who, when he was serving in my Committee, was always hawk-eyed. He used to get all the errors. I just want to refer you to Standing Order No.152(3) on the custody of Bills which states:

“At any time before the certification of the Bill, the Speaker may correct formal errors or oversights therein without changing the substance of the Bill and thereafter submit the Bill to the President for assent.”

Indeed, this has no change in the content of the Bill *per se*. It is just a question of rearrangement of the clauses. That will be taken care of at that particular time.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. Thank you, Chair. Hon. Gumbo I hope you are happy with that response. We will ensure that the Hon. Speaker does the necessary corrections on the Bill before taking it for assent. It is in our Standing Orders.

Hon. (Eng.) Gumbo: It is good to point it out. When we did the National Construction Authority Bill, there was a case of wrong referencing. The clause that was being referred to as regulations was not the clause for regulations. If you look at the Bill for the National Construction Authority (NCA), you will find that that mistake is still there.

So, I am just concerned from previous experience. It is good to point it out so that we capture it now so that it does not go into the Act. If it goes into the finished law, I am sure it will not give a good image of the House.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We can give assurance to the Hon. Member that we will ensure that that is done and that it is corrected. It is on the HANSARD and the Clerks of the Committee are here. The best I can give you is an assurance that it will be corrected.

Hon. (Eng.) Gumbo: Deeply appreciated, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Is that okay Hon. Members? Hon. Wamunyinyi, I hope it is not on the same thing.

Hon. Wamunyinyi: No, Hon. Temporary Deputy Chairlady. I Just want to be very brief. I want to strengthen Standing Order No.152(3). This House and the framers anticipated there would be instances where you will have some errors or mistakes. So, it gives the Hon. Speaker or Hon. Chairperson the power to make corrections.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is okay. I think that is done. We were on Clause 20.

Clause 20

Hon. Kamau: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 20 of the Bill be amended—

(a) in the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;

(b) by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

It is the issue of “Commission” and “Authority”

(Question, of the amendment proposed)

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

(Question, that the word to be inserted in place thereof be inserted,

put and agreed to)

(Clause 20 as amended agreed to)

Clause 21

Hon. Kamau: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 21 of the Bill be amended by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 21 as amended agreed to)

Clause 22

Hon. Kamau: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 22 of the Bill be amended—

(a) in Sub-clause (4) by deleting the word “Authority” and substituting therefor the word “Commission”;

(b) in Sub-clause (5) by deleting the words “of not less than five hundred thousand shillings or to a term of imprisonment of not less than six months or to both such fine and imprisonment” and substituting therefor the words “not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both”;

(c) in Sub-clause (6) by deleting the words “of not less than five hundred thousand shillings for each day or part thereof that the obstruction occurs” and substituting therefor the words “not exceeding one hundred thousand shillings for each day or part thereof that the obstruction occurs”.

This is again the issue of substituting the word “Authority” with “Commission” but Clause 5 seeks to enhance the punishment of a person who without being authorised interferes with a lock, seal, mark or other fastening placed on any building or room.

If you look at this one you will find that it talks about on conviction a person will be liable to a fine “of not less than five hundred thousand shillings.” “Not less than” is not good drafting and therefore we want to change that to “not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.”

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Hon. Gumbo, you have a point of order. You have to use the microphone at the Dispatch Box please.

Hon. (Eng.) Gumbo: On a point of order, Hon. Temporary Deputy Chairlady. I do not know the rationale for the Chair moving this amendment. This, to me, is a fairly serious offence. My understanding is that the penalty should be as punitive as possible. By saying “not more than one million shillings”, it can even be Kshs5, Kshs10, or for free. I do not know why the Chair does not see it necessary to put a minimum fine.

I know traditionally, we have been using the words “not more than” and then we make a discretionary for the judge or magistrate to give the sentence. This amendment states:

“A person who, unless authorized, opens, breaks, alters or anyway interferes with a lock, seal, mark or other fastening placed by a committee, officer, employee or agent in accordance with the provisions of this section on any building room, place, receptacle, item or plant, goods or materials, commits an offence.”

This for me is really a fairly serious offence. I had wished if the Chair could just explain why he does not think it necessary to put in a minimum sentence, instead of leaving it at the discretionary of the judge or magistrate.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Jessica. You just have to come to the Dispatch Box because our microphones are still not operational.

Hon. (Ms.) Mbalu: Thank you, Hon. Temporary Deputy Chairlady. I wish to support the amendment by the Chair in Clause 22. When it comes to the fine, I agree with the Chair on the figure of not less than Kshs500,000. This time I disagree with the Chair of the Public Accounts Committee. Less than Kshs500,000 would mean that it can even be Kshs.10,000. I do support the amendment by the Chair on Clause 22.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Kiptanui and then Hon. Wamunyinyi. The microphones are working now.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Chairlady. I want to support the Chair on this amendment. I also agree with what Hon. Gumbo has said that Kshs1 million could be less. If you check the Bills we have been passing, you will find that we always set a maximum and not a minimum. That is per the Penal Code. If Hon. Gumbo thinks Kshs1 million is less then he can propose an amendment to that. We do not have any problem. We usually prescribe the maximum and not the minimum.

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

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. I support this amendment and in my thinking there could be various types of related crimes. I am looking at an example of a factory, a kiosk, a small home, a farm house and a big institution. It is good to allow the magistrate discretion so that the fact of the magnitude and mitigation is considered when delivering the final judgment, sentence or conviction. It will allow the magistrate, depending on the seriousness of what the offence is, to give commensurate conviction.

I, therefore, support this proposed amendment.

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

(Question, that the words to be inserted in place thereof be inserted,

put and agreed to)

(Clause 22 as amended agreed to)

Clause 23

Hon. Kamau: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, clause 23 of the Bill be amended—

- (a) in the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;
- (b) by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 23 as amended agreed to)

Clause 24

Hon. Kamau: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 24 of the Bill be amended—

- (a) in the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;
- (b) in sub-clause (1) by deleting the word “Authority” and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 24 as amended agreed to)

(Clause 25 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Jessica, do you have a point of order?

Hon. (Ms.) Mbalu: Yes, Hon. Temporary Deputy Speaker. This is on the other clauses we have passed. It is my observation that we pronounce the position we are taking on the clauses for the sake of the HANSARD. It does not matter whether the explanation in the amendment is the same. For example, in Clauses 23 and 24 we are deleting the word “Authority” and substituting with the word “Commission”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Chair has been pronouncing that he is proposing the amendment as per the Order Paper. Once he says that it covers us because we are able to reflect on what is on the Order Paper.

Thank you, Hon. Jessica for that observation.

Clause 26

Hon. Kamau: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 26 of the Bill be amended in Sub-clause (1) by deleting the words “Institute or the Authority” appearing in paragraph (b) and substituting therefor the words “Agency or the Commission”;

This is a little bit different. The amendment seeks to define the Institute of Nuclear Power Energy and Petroleum Agency in line with the practice of the international atomic energy and other comparable jurisdictions.

If you look at Clause 26(b), you will see the words “Institute or Authority”. We want to amend this by removing “Institute” and putting “Agency or the Commission”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): This one is slightly different from the ones we have been moving.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ken Obura, you want to comment on this amendment?

Hon. Obura: Thank you, Hon. Temporary Deputy Chairlady. I wanted to comment on the previous clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Then let us have Hon. Jessica.

Hon. (Ms.) Mbalu: Thank you, Hon. Temporary Deputy Chairlady. For the sake of the HANSARD, I rise to support the Chair on the same, since we had already taken up the substitution of the word “Agency or the Commission”. I support the deletion of the word “Institute or Authority”.

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

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

(Clause 26 as amended agreed to)

(Clauses 27, 28, 29, 30, 31, 32, 33, 34 and 35 agreed to)

Clause 36

Hon. Kamau: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 36 of the Bill be amended in Sub-clause (4) by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 36 as amended agreed to)

Clause 37

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 37 of the Bill be amended in Sub-clause (3) by deleting the words “apply for review” and substituting therefore the word “appeal”.

Hon. Temporary Deputy Chairlady, this amendment seeks to ensure that a person aggrieved by the decision of the tribunal applies for appeal at the High Court. There is a difference between “review” and “appeal”. We want to substitute the two. “Review” is a bit restrictive. It connotes, in a civil procedure, correction of the decision of the court due to errors but this is an appeal.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me start with Hon. Wamunyinyi.

Hon. Wamunyinyi: Hon. Temporary Deputy Chairlady, when you make references to a review in general, it becomes ambiguous. We want to see an appeal or a request to relook at any situation, to be clear to the point. This proposed amendment is quite in order and I support it.

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

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

(Clause 37 as amended agreed to)

(Clauses 38 and 39 agreed to)

Clause 40

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 40 of the Bill be amended—

(a) in the marginal note by deleting the word “Authority” and substituting therefor the word “Commission”;

(b) by deleting the word “Authority” and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 40 as amended agreed to)

Clause 41

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 41 of the Bill be amended by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”

(Question of the amendment proposed)

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

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

(Clause 41 as amended agreed to)

(Clauses 42 and 43 agreed to)

Clause 44

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we have an amendment from Hon. Mwaita.

Hon. Mwaita: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 44 of the Bill be amended in Sub-clause (2) by deleting the words “in the fields of engineering, physical sciences, law, finance, economics or energy” appearing in paragraph (b).

This amendment is the same as the one done to Clause 12. It is just making it neater by introducing the words “social sciences” just before the words “energy”. It is cleaning up so that it ties up with what we did to Clause 12.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mwaita, please move the amendment in the amended form. You probably need to read it out, so that it is reflected.

Hon. Mwaita: Hon. Temporary Deputy Chairlady, I beg to move the amendment in an amended form. As I said, the amendment to Clause 44 is similar to what we did to Clause 12. We are just inserting the wordings “social sciences” before the word “energy” to make it wider and acceptable. It can also take more professionals and skills. This will enhance the performance of the authority.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mwaita, I am getting instructions on how to move a further amendment. You have the amendment on the Order Paper and a further amendment, is it not so?

Hon. Mwaita: Yes Hon. Temporary Deputy Chairlady. I have done a further amendment too. I said that I wanted to move the amendment in an amended form. I presented the new version to the Table and I distributed copies of the same to Hon. Members.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I can see an intervention by Hon. David Ochieng.

Hon. Ochieng: Hon. Temporary Deputy Chairlady, we are not getting the amendment. We do not have the text.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, before you proceed, let me read out the further amendment. You have the amendment that Hon. Members have in their copies of the Order Paper.

Hon. Members, Hon. Mwaita is amending his amendment further to read as follows:-

THAT, Clause 44 of the Bill be amended in Sub-clause 2 by inserting the words “social sciences” immediately before the words “or energy” in paragraph (b).

His original amendment is in the Order Paper. The further amendment is what I have just read.

Let us hear the Chair of the Committee first.

(Question of the amendment proposed)

Hon. Kamau: Hon. Temporary Deputy Chairlady, this particular Clause 44 talks about the establishment of the Rural Electrification and Renewable Energy Cooperation. What Clause 44 is talking about is the persons who are eligible for appointment, and what the Member is doing is to include amongst other degrees, like in engineering, physical sciences, law, finance, economics and degrees in social sciences. I have no objection to his further amendment.

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

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairlady, I wish to also support this amendment in the amended form to allow qualifications in social sciences to be carried on board. That means the person who is going to be given that particular duty will encompass many Kenyans who will be capable of doing the work.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ochieng, do you have a different opinion?

Hon. Ochieng: Yes, Hon. Temporary Deputy Chairlady. I have a lot of respect for Hon. Mwaita, but we have done this for very many Bills in this Assembly. It would probably be good because everybody wants their profession to be represented and we are creating specific institutions to carry out specific functions. We are talking about appointing a chairman. Why do we want to open it up? Why do we not just say that this is a specialized area and, therefore, the board should be chaired by a specialized person? I am a lawyer. I agree that somebody may want a lawyer to chair something, but why should lawyers want to chair everything? I want to convince the Chair of the Departmental Committee that this is a very specialized area. Why does he want to open it up for anybody with any professional qualification to be able to chair the board? We should be looking for specific qualifications.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay, that is the other side. I give the Floor to Hon. Richard Makenga.

Hon. Makenga: Hon. Temporary Deputy Chairlady, I want to support the amendment to Clause 44 as proposed by the Member.

Hon. Mirenga: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ken Obura, what is your point of order?

Hon. Mirenga: I agree with the proposed amendment. However, “economics” is defined as a social science. So that we are neat and orderly, if we have social sciences, then they subsume economics as well.

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

(Clause 44 as amended agreed to)

(Clauses 45, 46, 47, 48, 49, 50, 51 and 52 agreed to)

Clause 53

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 53 of the Bill be amended—

(a) by deleting the marginal note and substituting therefor the following new marginal note —

“Establishment of the Nuclear Power, Energy and Petroleum Agency”.

(b) by deleting the words “Energy and Petroleum Institute” appearing in the heading of Clause 53;

(c) in Sub-Clause (1) by deleting the words “Energy and Petroleum Institute” and substituting therefor the words “Nuclear Power, Energy and Petroleum Agency”;

(d) in Sub-clause (2) by deleting the word “ Institute” and substituting therefor the word “Agency”;

The proposed amendment seeks to refine Energy and Petroleum Institute to the Nuclear Power, Energy and Petroleum Agency. This is in line with the practice of International Atomic Energy Agency and other comparable jurisdictions. Right now, we have the Energy and Petroleum Institute and we want to change it to “Nuclear Power, Energy and Petroleum Agency.”

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Ken Obura.

Hon. Mirenga: Hon. Temporary Deputy Chairlady, this is a fairly straightforward amendment. I want to support the Chairman because this is in line with international practice so that we have a more uniform institution here just like it happens everywhere else.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us now have Hon. (Ms.) Regina Muia.

Hon. (Ms.) Muia: Hon. Temporary Deputy Chairlady, although my comment was on the earlier amendment, I want to support the proposed amendment.

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

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. I am not opposed to this proposed amendment but I would like to get a clarification from the Chairman. As he interchanged the words, what was the earlier spirit? He has said that it is to comply with the international standards but what was the intention when he used the earlier words he is now substituting? I would like him to go further to the commission because it is likely to happen again with authority and commission. What was the original spirit?

Hon. Kamau: Hon. Temporary Deputy Chairlady, I explained why we proposed to change from authority to commission. On this one, Clause 53 of the Bill talks about establishment of the Energy and Petroleum Institute and yet internationally, we have the International Atomic Energy Agency. In line with international practices, instead of an institute, we should call it an agency.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I believe that is the same reasoning behind authority and commission.

Hon. Kamau: Yes.

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

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

(Clause 53 as amended agreed to)

Clause 54

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 54 of the Bill be amended by deleting the word “Institute” wherever it appears and substituting therefor the word “Agency”;

(Question of the amendment proposed)

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

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

(Clause 54 as amended agreed to)

Clause 55

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 55 of the Bill be amended—
(a) by deleting the word “Institute” and substituting therefor the word “Agency” wherever it appears;
(b) by deleting the word “Institute” in the marginal note and substituting therefor the word “Agency”;

(Question of the amendment proposed)

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

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

(Clause 55 as amended agreed to)

(Clause 56 agreed to)

Clause 57

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 57 of the Bill be amended—
(a) by deleting the word “Institute” and substituting therefor the word “Agency” wherever it appears;
(b) by deleting the word “Institute” in the marginal note and substituting therefor the word “Agency”;

- (c) by inserting the following new paragraph immediately after paragraph (a) —
 “(aa) the Attorney-General or his representative;
- (d) in Paragraph (b) by—
 (i) deleting Sub-paragraph (ii) and substituting therefor the following new subparagraph—
 (ii) education, science and technology;
 (ii) deleting Sub-paragraph (iv).
- (e) by deleting Paragraph (c) and substituting therefor the following new paragraph—
 “(c) the Chief-Executive Officer;
- (f) in Paragraph (d) by deleting the words “five other members” and substituting therefor the words “four other members who are not in the public sector”.

Under part (a), we are deleting the word “Institute” and substituting it with “Agency”. In Paragraph (b), we are deleting Sub-paragraph (ii) and substituting thereof with the new paragraph “education, science and technology.” Clause 57(b) (ii) of the Bill talks about science and technology while (iv) talks about higher education. We want to combine those two to “education, science and technology” as one nominee.

Under part (e), we are deleting Paragraph (c) and substituting therefor the new paragraph “the Chief-Executive Officer” who will be the secretary to the board instead of the Executive Director.

Under Paragraph (d) where they are not more “five other members” appointed by the Cabinet Secretary (CS), we are deleting the words “five other members” and substituting therefor the words “four other members.” The current composition is 11 members and we want to reduce it to nine members. We are also removing the need for a representative of the CS in each ministry for the time being responsible for higher education. I talked about that earlier on.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the Member for Turkana Central.

Hon. Nakara: I think the Chairman has explained my doubt on part (c). I support.

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

Hon. Kiptanui: I support my Chairman. We are also introducing the Attorney-General as a member of the board.

*(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)*

(Clause 57 as amended agreed to)

(Clause 58 agreed to)

Clause 59

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 59 of the Bill be amended by deleting the word “Institute” wherever it appears and substituting therefor the word “Agency”.

(Question of the amendment proposed)

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

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

(Clause 59 as amended agreed to)

Clause 60

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 60 of the Bill be amended—

(a) in sub-clause (1)—

(i) by deleting the words “an Executive Director who shall be the” and substituting therefor the word “a”;

(ii) by deleting the word “Institute” and substituting therefor the word “Agency”;

(b) in Sub-clause (2) by deleting the word “Executive Director” and substituting therefor the word “Chief Executive Officer”;

(c) in Sub-clause (3) —

(i) by deleting the word “Executive Director” and substituting therefor the word “Chief Executive Officer” in the opening statement;

(ii) by inserting the words “and related fields” immediately after the words “or energy” in paragraph (b).

(d) in Sub-clause (4) by deleting the word “Executive Director” and substituting therefor the word “Chief Executive Officer”;

(e) in Sub-clause (5) by deleting the word “Executive Director” and substituting therefor the word “Chief Executive Officer”;

(f) by deleting the word “Executive Director” and substituting therefor the word “Chief Executive Officer” in the marginal note”.

Hon. Temporary Deputy Chairlady, the amendment seeks to realign the clause with the State Corporations Act, which places the Chief Executive Officer (CEO) as a member of the board and the one responsible for the day-today management of the organisation but not the Executive Director. The amendment also seeks to refine the Institute of Nuclear Power, Energy and Petroleum as an Agency, in line with the practice of International Atomic Energy Agency.

The amendment further seeks to ensure that the person qualified for appointment as the CEO should be a holder of a recognised degree in Kenya in the fields of engineering, nuclear science, law, finance, economics, energy and any other related field.

Thank you.

(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 60 as amended agreed to)

(Clause 61 agreed to)

Clause 62

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 62 of The Bill be amended by deleting the word “Institute” and substituting therefor the word “Agency”.

(Question of the amendment proposed)

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

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

(Clause 62 as amended agreed to)

(Clauses 63 and 64 agreed to)

Clause 65

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 65 of the Bill be amended—

- (a) by deleting the word “Institute” and substituting therefor the word “Agency”;
- (b) by deleting the word “Institute” and substituting therefor the word “Agency” in the marginal note”.

(Question of the amendment proposed)

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

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

(Clause 65 as amended agreed to)

Clause 66

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 66 of the Bill be amended by deleting the word “Institute” and substituting therefor the word “Agency”.

(Question of the amendment proposed)

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

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

(Clause 66 as amended agreed to)

Clause 67

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 67 of the Bill be amended by deleting the word “Institute” wherever it appears and substituting therefor the word “Agency”.

(Question of the amendment proposed)

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

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

(Clause 67 as amended agreed to)

Clause 68

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 68 of the Bill be amended—
(a) by deleting the word “Institute” and substituting therefor the word “Agency”;

(b) by deleting the word “Institute” and substituting therefor the word “Agency” in the marginal note”.

(Question of the amendment proposed)

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

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

(Clause 68 as amended agreed to)

Clause 69

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 69 of the Bill be amended—

(a) by deleting the word “Institute” wherever it appears and substituting therefor the word “Agency”;

(b) in the marginal note by deleting the word “Institute” and substituting therefor the word “Agency”.

(Question of the amendment proposed)

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

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

(Clause 69 as amended agreed to)

Clause 70

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 70 of the Bill be amended by deleting the word “Institute” wherever it appears and substituting therefor the word “Agency”.

Question of the amendment proposed)

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

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

(Clause 70 as amended agreed to)

Clause 71

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 71 of the Bill be amended by deleting the word “Institute” wherever it appears and substituting therefor the word “Agency”.

(Question of the amendment proposed)

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

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

(Clause 71 as amended agreed to)

(Clause 72 agreed to)

Clause 73

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 73 of the Bill be amended in Sub-clause (2) by inserting the words “which shall be published in the Gazette” immediately after the words “updates biennially”.

This amendment seeks to ensure that renewable energy resource inventory and resource map are made available to the public.

(Question of the amendment proposed)

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

(Clause 73 as amended agreed to)

(Clauses 74, 75, 76, 77 and 78 agreed to)

Clause 79

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 79 of the Bill be amended—

(a) in Sub-clause (1) by deleting the word “Authority” and substituting therefor the word “Commission”;

- (b) by inserting the following new sub-clauses immediately after Sub-clause (7)—
- “(7A) An applicant aggrieved by a decision of the Tribunal under Sub-section (7) may appeal to the High Court against the decision of the Tribunal.
- “(7B) Within ninety days after an applicant files an appeal under Subsection (7A), the High Court shall hear and determine the appeal.”
- “(7C) If the High Court fails to hear and determine the appeal within the period referred to under Subsection (7B), the decision of the Tribunal shall be final.

The purpose of this amendment is, firstly, to redefine the name of the institution from “Authority” to “Commission”. Secondly, it is to ensure that a person aggrieved by the decision of the Tribunal appeals at the High Court. In light of Article 50 of the Constitution, the High Court should make a determination within 90 days.

Clause 79(7) says that an applicant who is dissatisfied with the decision of the Cabinet Secretary under this section, may appeal to the Tribunal within 30 days after the decision has been made. There is no provision for such person to appeal at the High Court. That is what we are bringing in – that this person who is aggrieved by the decision of the Tribunal can now go to the High Court, although the High Court should also make a determination within 90 days.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me start with Hon. Jessica Mbalu.

Hon. (Ms.) Mbalu: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment. It is important that any aggrieved person or applicant has to be heard by the courts. I also welcome the decision of the court that a tribunal be formed. This is to ensure that the aggrieved person shall be heard fairly.

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

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, the intent of this amendment is good but if you look at the marginal note--- This is on the Cabinet Secretary granting geothermal resources licence. This is big business. I have no problem at all with the Committee Chair giving aggrieved persons access to appeal their cases to the High Court, but why do you limit the time or period for the High Court? You know how our court system works. It is clogged. These are commercial disputes and are rarely given priority. Why then would you limit them to 90 days? The implication of this is that you are making the Tribunal the final authority.

I plead with the Committee Chair. The intention here to go to the High Court is good but why can we not allow these aggrieved people to exhaust all the legal processes from the High Court, the Court of Appeal and, if need be, even to the Supreme Court? Why do you limit it and say that within 90 days, if the High Court does not make a decision, it will reverse to the decision of the Tribunal? The commercial interests here are too big to be limited in this sense. In a way, what you are saying is that the decision of the Tribunal would, in more ways than one, be final. I plead with the Committee Chair to remove this last section which says:

“(7C) If the High Court fails to hear and determine the appeal within the period referred to under subsection (7B), the decision of the Tribunal shall be final.

Please look at the bigger picture and the underlying interests in this whole matter.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Committee Chair, let me give another member a chance. Maybe they have another issue.

Hon. Kamau: I can explain the reason so that members can get what we propose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. Go ahead.

Hon. Kamau: The reason why we, as a Committee, came up with the 90 days is because we are talking about geothermal resource licencing. It is actually a serious resource that needs to be licenced. Therefore, it is a very urgent thing for the Government. We know and have heard cases in court where disgruntled people who have lost a licence rush to court and this case stays in court for three, four or five years. In essence, this means that the plans for the Government cannot go on. That is why we said that, since it is an important thing, the courts should give a decision whichever way within 90 days.

If you look at the Public Procurement and Asset Disposal Act, you will find that there is a provision that any aggrieved party can go to court and the courts will have to make a decision not in 90 days but in 60 days. That was put in proviso for the procurement laws.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me hear from the Member for Teso North.

Hon. Odera: Thank you, Hon. Temporary Deputy Chairlady. This has to do with the exploitation of our natural resources. It has to do with the required effort by the Government to address the energy needs of our nation. This has to do with being able to do things in time. This may involve, at some point, responses to certain needs that the country has. Therefore, if we want to move forward and ensure that Kenyans have energy where and when they need it, it is important that we be time bound in our actions. So, I fully support that we have a time limit within which the courts will resolve these disputes. We know how much the court process has been abused in this country. It is important that we impose a time limit.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, the Member for Turkana Central.

Hon. Nakara: Thank you, Hon. Temporary Deputy Chairlady. Sometimes, it may not be a mistake of the applicant but a mistake of the High Court. Maybe they have many cases to go through and because of that reason, they delay to hear the appeal. So, it is good to give a grace period so that the applicant can appeal again than just closing it because it may not be the mistake of the applicant. Sometimes, the High Court has many things to do.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I can see Hon. Members consulting. I will give you a minute to consult.

(Hon. Kamau consulted the Clerks-at-the Table)

Hon. Members, we are giving the Committee Chair one minute to consult. We are at liberty to do that so that we get the laws correct. It is during this time that there are negotiations and give and take. Let us see if we can accommodate Hon. Gumbo's concerns. Hon. Jessica Mbalu, do you want to say something?

Hon. (Ms.) Mbalu: Thank you, Hon. Temporary Deputy Chairlady. Let us allow the Committee Chair to consult for us to make laws for this country. This is important because this is a Parliament that makes laws for the country and for posterity. As we support the amendment by the Committee Chair about the decision of the Tribunal, I think we should not leave the Tribunal

to be the last choice. We have the courts which can listen to the application of the aggrieved people. This is important. Most of the members of the Tribunal may not have the legal knowledge. On a light note, tribunals can be formed with different motives. The Committee Chair should make a consideration on this. He can pronounce himself. It is important that we support the Committee Chair on this. I pray that you listen to us.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us now listen to the Committee Chair.

Hon. Kamau: Hon. Temporary Deputy Chairlady, we actually wanted to come up with a deposit; that somebody who is appealing to the court must make a deposit equivalent to some percentage of the figure. Unfortunately, at this particular point, it is just a licence which is being granted. There are no amounts that are involved at this time.

After further consultations, what we have agreed to is we can move a further amendment to make it 120 days instead of 90 days.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Committee Chair, you need to move a further amendment, which is something very simple to do. Have it written so that you move it as a further amendment clearly indicating the words you are substituting.

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 79 of the Bill be amended in Sub-clause (7B) by deleting the words “ninety days” and substituting therefor the words “one hundred and twenty days.”

The High Court shall hear and determine the appeal within 120 days after an applicant files an appeal under Sub-section (7A).

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

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, I want to second. What we need to do is to give the aggrieved persons enough time to be able to exhaust the appeal mechanisms. We are talking about licences here. If we were talking about a contract, then it would be easy to put a filing fee of, say, a percentage like we did in the procurement law. The amendment is just talking about a licence. It is good because it widens the period within which the aggrieved person can be heard.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us now have Hon. Naomi Shaban.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairlady, maybe with the concurrence of the Chairperson, I think that instead of the 120 days, is it not neater to say four months?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): To be consistent in wording, we need to use days. I think we have been using “days” in our laws. We also want to be precise.

Hon. Chair, I do not want to answer for you, but I think we have been using “days”. Can you respond to Hon. Shaban?

Hon. Kamau: Thank you, Hon. Temporary Deputy Chairlady. I really appreciate her support. Since the other clauses talk about days, I think it is neater to actually continue with the usage of the word “days”.

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

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

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

(Clause 79 as amended agreed to)

(Clause 80 agreed to)

Clause 81

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 81 of the Bill be amended by deleting the word “Authority” appearing in the opening statement and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 81 as amended agreed to)

(Clauses 82 and 83 agreed to)

Clause 84

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

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 84 of the Bill be amended in Sub-clause (4) by deleting the word “Authority” and substituting therefor the word “Commission”.

(Question of the amendment proposed)

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

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

(Clause 84 as amended agreed to)

(Clauses 85, 86, 87 and 88 agreed to)

Clause 89

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 89 of the Bill be amended—

(a) in Sub-clause (2) by deleting the words “of not less than five hundred thousand shillings and if the offence is of a continuing nature, to a further fine of not less than fifty thousand for every day or part of a day during which that offence continues or a jail term of not less than six months” and substituting therefor the words “not exceeding one million shillings and if the offence is of a continuing nature, to a further fine not exceeding one hundred thousand shillings for every day or part of a day up to a maximum of thirty days during which that offence continues, or to imprisonment for a term not exceeding twelve months or to both”;

(b) in Sub-clause (3) by deleting the words “of not less than five hundred thousand shillings and if the offence is of a continuing nature, to a further fine of not less than one million shillings or a jail term of not less than twelve months or both and substituting therefor the words “not exceeding one million shillings and if the offence is of a continuing nature, to a further fine not exceeding one hundred thousand shillings for every day or part of a day up to a maximum of thirty days during which that offence continues, or imprisonment for a term not exceeding twelve months or to both”.

This amendment seeks to enhance the penalties for various offences outlined in this Bill. Clause 89 talks about a fine not less than Kshs500,000. For the same reasons we had agreed on earlier, we want to change to a fine “not exceeding one hundred thousand shillings for every day or part of the day up to a maximum of thirty days during which that offence continues”.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us listen to the Hon. Member for Turkana Central.

Hon. Nakara: Thank you, Hon. Temporary Deputy Chairlady.

We need to make this penalty very harsh so that we do not allow criminals to play with the lives of the people and interfere with their businesses.

Although the penalty is a bit lenient, I support it. I wish the Chairman of the Departmental Committee on Energy, Communication and Information could have raised the penalty to discourage crime.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, the Member for Baringo Central.

Hon. Mwaita: Hon. Temporary Deputy Chairlady, I support the Chairman because what he has said is “not less than” The concern of my friend that the penalty should be enhanced can be taken care of by that.

I support.

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

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

(Clause 89 as amended agreed to)

(Clause 90 agreed to)

Clause 91

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 91 of the Bill be amended by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 91 as amended agreed to)

Clause 92

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 92 of the Bill be amended in Sub-clause (1) by deleting the word “Authority” and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 92 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Deputy Leader of the Majority Party, could you please approach the Table?

(Hon. (Dr.) Shaban approached the Table)

Clause 93

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 93 of the Bill be amended by deleting the word “Authority” wherever it appears and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 93 as amended agreed to)

(Clause 94 agreed to)

Clause 95

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 95 of the Bill be amended by—

(a) deleting the word “Authority” appearing in paragraph (b) and substituting therefor the word “Commission”;

(b) deleting the word “Authority” appearing in paragraph (c) and substituting therefor the word “Commission”;

(c) deleting the word “Authority” appearing in paragraph (d) and substituting therefor the word “Commission”;

(Question of the amendment proposed)

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

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

(Clause 95 as amended agreed to)

The Temporary Deputy Chairlady (Hon. Shebesh): Hon. Members, due to time constraints, we are going to move to reporting.

Let us have the Mover.

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Energy Bill (National Assembly Bill No.50 of 2015) and its approval thereof with amendments.

The Temporary Deputy Chairlady (Hon. Shebesh): I think you have the wrong Motion. Approach the Table so that we give you the right Motion. We have not completed the Bill, so we have to seek leave to sit again.

PROGRESS REPORTED

THE ENERGY BILL

Hon. Kamau: Hon. Temporary Deputy Chairlady, I beg to move that Committee doth report to the House its consideration of the Energy Bill (National Assembly Bill No. 50 of 2016) up to Clause 95 and seek leave to sit again another day.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE ACCESS TO INFORMATION BILL

The Temporary Deputy Speaker (Hon. Mbalu): Order, Members! I call upon the Chairperson to report to the House.

Hon. (Ms.) Shebesh: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Access to Information Bill (National Assembly Bill No.36 of 2015) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. Mbalu): May we have the Mover of the Bill to move for agreement with the report.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request Hon. Kiptanui to second the Motion for agreement with the report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. Mbalu): Yes, Hon. Kiptanui.

Hon. Kiptanui: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Mbalu): Can the Mover of the Bill move for the Third Reading?

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Speaker, I beg to move that the Access to Information Bill (National Assembly Bill No.36 of 2015) be now read the Third Time. I wish to thank all the members for the contributions and amendments that we passed.

I request the Vice-Chair, Hon. Kiptanui, to second.

Hon. Kiptanui: Hon. Temporary Deputy Speaker, I second.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): He is in order because procedures of the House include bowing while seconding.

(Question proposed)

(Hon. (Eng.) Gumbo spoke off the record)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Gumbo, you know we do not shout to catch the attention of the Speaker.

Since you are on my request list and you caught my eye, I give you chance to make only two comments. Before you speak, it is at my discretion to add five minutes before the closure of the House. We need to work within that.

Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, let me start by thanking my friend who is the Member of Parliament for Nyeri County, Hon. Priscilla Nyokabi for valiantly making sure this Bill comes to the stage it is in.

This is actually a constitutional Bill because it is what gives effect to Article 35 of the Constitution. It has had a lot of ping pong between the Ministry of Information, Communication and Technology, the Attorney-General's Office and Parliament. I am glad that finally we reach here and it has taken the efforts of a parliamentarian who believes that access to information is vital.

But, as we do that, let us not disregard clear provisions of the Constitution. Our Constitution in Article 35(1)(a) is very clear that every citizen has a right of access to information held by the State. The Constitution is the fundamental law of the land. When we hear Government officials talking about information held by the State as inaccessible yet it is held by the State on behalf of the people of Kenya, it is unfair.

When we hear a Government functionary saying that private information held by the State is hidden, it is a violation of the Constitution and I believe we have made provisions to remedy that in this law. That is so that action can be taken against such people.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you Hon. Member. You have done it all. You have put it very well.

Hon. Members, I am not able to put the Question for obvious reasons. Therefore, I direct that the Question be put at the most appropriate time as it will be scheduled by the House Business Committee (HBC).

Thank you.

THE ENERGY BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): We move to the other Bill which is the Energy Bill (National Assembly Bill No. 50 of 2015) for reporting purposes.

I call upon the Hon. Temporary Deputy Chairlady to do the reporting.

Hon. (Ms.) Shebesh: Thank you, Hon. Temporary Deputy Speaker.

I beg to report that the Committee of the whole House has considered the Energy Bill (National Assembly Bill No. 50 of 2015) up to Clause 95 and approved the same with amendments and sought leave of the House to sit again.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Mover to move the agreement with the Report?

Hon. Kamau: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request Hon. Papa Odera to second the Motion for agreement with the Report of the Committee and seek leave to sit again.

Hon. Odera: Thank you, Hon. Temporary Deputy Speaker.

Aside from the fact that you are in a very good mood today, I second this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Papa Odera, for the sake of the record, thank you for seconding.

(Question put and agreed to)

Hon. Members, this was up to Clause 95. This will appear in the Order Paper, maybe in the afternoon. Get ready Members with contributions.

Order, Members! I congratulate all of you for the contributions. This is a very important Bill. Thank you for being there. From the Speaker's Desk, we are grateful for the kind of work Members are doing.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The time being 1.10 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.10 p.m.